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SUMMARY

BRIEFLY — THIS REPORT SAYS

ADMINISTRATIVE RULES COMMITTEE

The Council reviewed all state administrative agency rulemaking actions from November 1992 through October 1994. The Council approved fee schedules for medical and hospital services proposed for adoption by the Workers Compensation Bureau, approved extensions of time for administrative agencies to adopt rules, and received reports of remedial action in response to informal objections during the 1991-92 interim. The Council formally objected to rules of the Attorney General relating to deceptive pricing practices and subsequently removed the objection upon being informed of a proposed amendment to the rule in question.

The Council recommends House Bill No. 1023 to eliminate the need for the Administrative Rules Committee to request approval from the chairman of the Legislative Council to study and review administrative rules and House Bill No. 1024 to require an agency to repeal or amend any rule that was adopted from federal environmental guidelines which is not relevant to state regulatory programs and to prohibit an agency from adopting rules from federal guidelines which are not relevant to state regulatory programs.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations administered a program of local government efficiency planning grants under 1991 Senate Bill No. 2346 and 1993 Senate Bill No. 2487. Thirteen grant projects were pending at the end of the 1991-92 interim and one of the grants went unclaimed. Of the remaining 12 projects, 11 delivered final reports to the commission during this interim and one is still in progress. The commission awarded \$49,998 for grant projects during this interim.

AGRICULTURE COMMITTEE

The Council studied the adequacy of current noxious weed laws, regulations, and control efforts. The Council recommends Senate Bill No. 2031 to establish a noxious weed educational fund and to provide appropriations for noxious weed control and eradication.

The Council makes no recommendation with respect to its study of the development of a noxious weed trust fund.

The Council makes no recommendation with respect to its study of the desirability of identifying purple loosestrife as a noxious weed and instituting appropriate methods of control or eradication.

The Council studied problems relating to the use of contracts for the sale of agricultural commodities. The Council recommends House Bill No. 1025 to require the mediation of disputes regarding the provisions of agricultural production contracts and to make a parent entity liable for a subsidiary's failure to pay or perform according to the terms of an agricultural production contract.

The Council studied the testing of wheat protein content and ways in which consistent testing can be encouraged. The Council recommends House Concurrent Resolution No. 3001 to urge the Federal Grain Inspection Service to disseminate useful information about technological and regulatory changes affecting the grading of wheat and to encourage the use of first official grades at destination ports.

BUDGET SECTION

The Council received reports on the status of the state general fund for the 1993-95 biennium.

The Council approved nonresident tuition rates proposed by the Board of Higher Education; requests from North Dakota State University to use university lands for the construction of the Ellig Recreational Complex, to construct an aquaculture facility at the Carrington Research Center, and to construct a technology transfer center at the Williston Research Center; and a request from the University of North Dakota to use university lands for the construction of a rural technology center in Grand Forks. The Council also heard a report on the possible transfer of United States Air Force property to Dickinson State University.

The Council received reports on grants by the Advisory Commission on Intergovernmental Relations, duties of the budget office, the budget data to be presented to the Legislative Assembly, salary increases given during the second year of the 1993-95 biennium, the enhanced audit program, funds received and spent for the North Dakota Veterans Cemetery, expenditures for specialized telecommunications equipment by the Information Services Division, the new jobs training program, the progress in matching federal highway construction funds, plans to complete a four-lane highway system throughout the state, the feasibility of establishing a state repository for medical records, and the profitability of ethanol plants receiving production incentives from the state.

The Council approved requests from the Department of Human Services to transfer 1991-93 biennium appropriation authority among the various divisions of the department and to transfer authorized positions from the Developmental Center to the regional human service centers and from the Game and Fish Department to allow expenditure of a \$1 million contingent appropriation.

The Council studied methods to improve the development of biennial revenue estimates. The Council recommends that the chairmen of the House and Senate Appropriations Committees arrange for joint Senate and House Appropriations Committee hearings to be held during the legislative session to obtain information to assist in determining if adjustments are necessary to the executive budget revenue projections. The Council also recommends that members of the Finance and Taxation Committees be included in these meetings.

The Council reviewed the powers and duties of the Emergency Commission and recommends Senate Bill No. 2032 to revise the authority and procedures of the Emergency Commission.

BUDGET COMMITTEE ON GOVERNMENT FINANCE

The Council studied the desirability of annual or biennial reports. The Council recommends House Bill No. 1026 to repeal the statutory requirement for biennial reports by state agencies and institutions.

The Council studied the desirability of establishing a women's correctional facility off the State Penitentiary grounds. The Council recommends House Bill No. 1027 to require judges to sentence inmates to the Department of Corrections and Rehabilitation rather than to the State Penitentiary or the Missouri River Correctional Center. The Council also recommends that a separate women's correctional facility not be constructed.

The Council studied the cost effectiveness and economic impact of permitting Roughrider Industries to manufacture and sell products that may be produced and sold by the private sector. The Council recommends House Bill No. 1028 to allow Roughrider Industries to participate in the workers' compensation program as required by the private sector/prison industry enhancement program.

The Council studied the methods for funding law enforcement, correctional, and emergency medical technician training facilities and programs and the desirability of establishing centralized training for law enforcement, correctional, emergency medical assistance personnel, and other emergency service providers. The Council recommends House Bill No. 1029 to establish a \$2 surcharge on motor vehicle registrations for one year and appropriate the estimated \$1.4 million generated from the \$2 surcharge to the Highway Patrol for the purpose of a building addition for law enforcement training. The Council also recommends that the Highway Patrol and the Bureau of Criminal Investigation continue a combined training facility and program.

The Council reviewed the status of major state agency and institution appropriations. The review focused on revenues, expenditures, and utility expenditures of 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 the 1993-95 appropriations.

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Council monitored the continued development of a continuum of services for the mentally ill and chemically dependent and received status reports from the Department of Human Services and private providers on the development of a partnership between the public and private sectors for providing alcohol and drug abuse treatment services throughout the state.

The Council received reports from the Department of Human Services resulting from a consultant's review of the clubhouse project in Minot to determine the effectiveness of the program. The Council recommends that the Legislative Assembly continue the clubhouse programs at Minot and Grand Forks for sufficient time to allow for a fair test of the adequate implementation of the clubhouse model in the state and provide funding for the two clubhouse programs and the eight psychosocial rehabilitation centers. The Council recommends House Concurrent Resolution No. 3002 to direct the Legislative Council to monitor services for the mentally ill and chemically dependent, including a review to determine the effectiveness of the clubhouse projects in Minot and Grand Forks and the desirability of developing clubhouse programs in other regions of the state.

The Council received reports from the Department of Human Services resulting from its study of alternative formulas to allocate funding to human service centers. The Council recommends that the proposed human service center funding formulas be rejected and that the Department of Human Services, the Executive Budget Office, and the Appropriations Committees analyze the human service center budget requests using a needs assessment process that includes a comparison of the needs of persons in the eight regions, current services available from all sources, and the level of services needed to meet the unmet needs in each region and that the Legislative Assembly should attempt to provide funding to human service centers to make basic and essential services available and accessible in each region.

BUDGET COMMITTEE ON HOME AND COMMUNITY CARE

The Council studied the long-term care needs of veterans. The Council recommends Senate Bill No. 2033 to provide for a western veterans' home at a cost not to exceed \$3 million, including up to \$1,050,000 from a loan from the veterans' postwar trust fund, to provide for site selection of the western facility to be determined by the Administrative Committee on Veterans' Affairs subject to either approval of the 1995 Legislative Assembly or the Budget Section during the 1995-96 interim, and to provide for a Cedar Grove basic care veterans' home.

The Council studied property cost reimbursement for nursing homes. The Council recommends Senate Bill No. 2034 to require the Department of Human Services to include in its nursing home ratesetting system payments for the use of real and personal property acquired after July 1, 1985, recognizing to the extent allowable by the federal government, the valuation of assets limited to the lowest of purchase price, fair market value, or adjusted seller's cost basis.

The Council monitored the development of a ratesetting system for basic care facility residents. The Council recommends House Bill No. 1030 to provide that the Department of Human Services basic care facility ratesetting system apply only to facilities that receive payments from the state or any political subdivision. The Council supports the Department of Human Services proposed basic care ratesetting system to be effective July 1, 1995, which includes reimbursing a basic care facility for direct care costs up to a maximum of the 90th percentile, indirect costs up to a maximum of the 75th percentile, allowable property costs, a three percent operating margin, an efficiency incentive, and annual inflationary adjustments.

The Council monitored the development of a management information system for use by the 1995 Legislative Assembly regarding the cost and utilization of the service payments to the elderly and disabled (SPED) program. The Council supports the SPED program as a cost-effective alternative to more expensive institutional care and supports funding for the program during the 1995-97 biennium to continue the 1993-95 caseloads, adjusted for inflationary increases.

BUDGET COMMITTEE ON HUMAN SERVICES

The Council studied welfare reform. The Council recommends Senate Bill No. 2035 to require the Department of Human Services to seek a federal waiver for a welfare reform demonstration project. The Council recommends several bills regarding child support enforcement—House Bill No. 1031 to provide for the suspension of a motor vehicle operator's license for delinquent child support; House Bill No. 1032 to provide assistance in establishing paternity acknowledgments; Senate Bill No. 2036 to establish the Department of Human Services as a child support receipting and payment center; House Bill No. 1033 to make it illegal for a person with delinquent child support to purchase or use a hunting,

fishing, or trapping license; House Bill No. 1034 to require employers of 25 or more employees to report to the Department of Human Services the hiring of each full-time employee (for the purpose of child support enforcement); and House Concurrent Resolution No. 3003 to direct the Legislative Council to study methods to improve the cost effectiveness and efficiency of the Department of Human Services child support collection system.

The Council studied optional Medicaid services and effect of the Medicaid-eligible population on Medicaid providers. The Council recommends Senate Bill No. 2037 to change statutory references from poor relief to county general assistance and to require the Department of Human Services to develop a method to allocate basic care assistance costs to each county. The Council supports the continuation of state funding of optional Medicaid services; recommends the state, during the 1995-97 biennium, maintain a consistent level of funding for optional Medicaid services, adjusted for caseload increases and inflationary costs; and encourages the 1995 Legislative Assembly to give early consideration to the funding of optional Medicaid services in the budgeting process because of the impact on counties, service providers, and clients.

The Council encourages the Department of Human Services and the North Dakota Hospital Association to continue to study hospital Medicaid reimbursement methods and encourages the Department of Human Services to continue to recognize, through the Medicaid disproportionate share payment process, the needs of providers serving a large percentage of Medicaid recipients.

BUDGET COMMITTEE ON YOUTH SERVICES

The Council studied the provision of services for children for the purpose of developing a seamless delivery system for children's services in the state. The Council also received reports from the Children's Services Coordinating Committee on the status of the implementation of the state children's services plan as outlined in 1993 Senate Bill No. 2016. The Council recommends Senate Bill No. 2038 to establish a community visitation center grant program, to establish a grant program for domestic violence programs for support services for children victims and witnesses of domestic violence, to expand the juvenile court guardian ad litem program, to require parents to be involved in their child's treatment, and to allow the removal of suspected perpetrators from the home in child abuse and neglect situations.

The Council recommends Senate Bill No. 2039 to expand and provide training for mandated child abuse and neglect reporters, to provide training to professionals involved in child sexual abuse cases, to provide assessment and treatment services for child sexual abuse victims, perpetrators, and their families, to require background checks on all out-of-home child care providers, and to establish a child sexual abuse public awareness program.

The Council recommends Senate Bill No. 2040 to extend the allowable length of probation for persons found guilty of a sexual offense against a minor for an additional five years for felony convictions and an additional two years for misdemeanor convictions and to allow judges to sentence a convicted sex offender to a treatment program.

The Council recommends Senate Bill No. 2041 to require the Governor to report to the Legislative Assembly on the status of children and families, to expand the responsibilities of the Children's Services Coordinating Committee, to establish regional and tribal children's services coordinating committees, and to provide an appropriation to implement the Budget Committee on Youth Services recommendations.

The Council recommends Senate Bill No. 2042 to provide public or community health nursing services to students enrolled in public schools and to all newborn children and their families in their homes.

The Council recommends Senate Bill No. 2043 to require all child care providers to be licensed except when child care is provided by a relative or by a person caring for children from only one family other than their own.

The Council recommends Senate Bill No. 2044 to expand intensive in-home family preservation services, to establish children and family units in regional human service centers, to provide child care assistance for teen parents in school, to provide treatment services for severely emotionally disturbed children, and to provide diagnostic crisis beds for children needing mental health, substance abuse, or sexual abuse treatment services.

The Council recommends Senate Bill No. 2045 to lessen the level of evidence

needed in child deprivation cases, to expand the membership and duties of state and local child protection teams, to expand the administrative appeals process within the Department of Human Services for parents, to change child abuse and neglect terminology, to provide assistance to state's attorneys in juvenile court deprivation cases and in child sexual abuse criminal cases, and to establish a State's Attorney Review Board.

The Council recommends Senate Bill No. 2046 to establish a before and after school child care grant program; to require schools to offer voluntary life skills, health education, and tobacco usage cessation programs; and to provide training to teachers on identifying and assessing potential suicide victims.

The Council recommends Senate Bill No. 2047 to reduce the blood alcohol level for individuals under the age of 21 to be charged with driving while under the influence from .10 percent to .02 percent and also to reduce the level for which individuals under the age of 21 will lose their hunting and motorboat operating privileges from .10 percent to .02 percent.

The Council recommends Senate Concurrent Resolution No. 4001 to direct the Legislative Council to study dispositional alternatives available to judges in cases involving sexual offenses against children, the disposition of cases involving perpetrators who do not attend court-ordered treatment, and the courts' use of and compliance with alternative testimony provisions; Senate Concurrent Resolution No. 4002 to direct the Legislative Council to study the implementation of the 1993-94 Budget Committee on Youth Services recommendations and to receive reports from the Children's Services Coordinating Committee on its progress toward meeting its goals and objectives for improving the status of children and families in the state; and Senate Concurrent Resolution No. 4003 to direct the Legislative Council to study the desirability of a long-term funding initiative to make available housing for families who are low income, homeless, or disabled, or who require transitional housing to assist them toward independent living.

COURT SERVICES COMMITTEE

The Council studied the data collection systems relating to the criminal justice and quasi-criminal civil systems, and studied the means of gathering data on sentencing. The Council recommends House Concurrent Resolution No. 3004 to direct the Legislative Council to monitor the development and operation of criminal justice information systems in the state and to study policies and issues relating to confidentiality, dissemination, and retention of criminal justice information.

The Council studied the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction. The Council recommends House Concurrent Resolution No. 3005 to direct the Legislative Council to study the unification of the judicial system, including a study of venue statutes and Senate Bill No. 2048 to provide that a person cited for a noncriminal traffic violation may appeal to the district court from the initial hearing held before a municipal judge, a magistrate, or other qualified person, including a district judge appointed by the presiding judge of the judicial district.

The Council makes no recommendation as the result of its study of the feasibility and desirability of establishing a family court for the resolution of domestic relations cases for low-income persons.

EDUCATION FINANCE COMMITTEE

The Council studied education finance issues, including the use of nonproperty factors in financing education, the quality of education, legal action in this state regarding education finance issues, and the effect of any 1993 North Dakota legislation related to education finance. The Council recommends House Bill No. 1035 to change the minimum high school curriculum requirements by adding two units of the same foreign language, requiring two units of vocational education, and requiring two units in any other course areas; Senate Bill No. 2049 to appropriate \$250,000 for the purpose of establishing two additional North Dakota Governor's schools; and Senate Bill No. 2050 to appropriate \$700,000 for the purpose of providing remedial, maintenance, and gifted elementary summer school programs. The Council recommends House Concurrent Resolution No. 3006 to direct the Legislative Council to study the desirability of using institutions of higher education in the provision of educational options and opportunities to high school students; Senate Bill No. 2051 to appropriate

\$500,000 to assist school districts in implementing professional development plans; House Bill No. 1036 to allow the certification of teachers who are not United States citizens; Senate Bill No. 2052 to appropriate \$640,000 to fund professional development centers in the state's eight service regions; and House Bill No. 1037 to direct the Superintendent of Public Instruction, the director of Vocational and Technical Education, and the chancellor of the North Dakota University System to develop a comprehensive statewide plan for the equitable and accessible provision of elementary and secondary education. The Council recommends House Bill No. 1038 to provide for the inspection of schools at least once every three years and to give the State Fire Marshal the authority to close schools when an inspection reveals the existence of an imminent fire hazard; and Senate Concurrent Resolution No. 4004 to direct the Legislative Council to study school district needs with respect to buildings and facilities and the role of the state in the construction, maintenance, and renovation of school buildings and facilities. The Council recommends Senate Bill No. 2053 to authorize the issuance of general obligation bonds by school districts upon the approval of a majority rather than 60 percent of the qualified voters in the school district; House Bill No. 1039 to replace county reorganization boards with regional committees for the reorganization of schools; House Bill No. 1040 to require that any school board operating under a cooperative agreement issue, at its annual meeting, a schedule of the multiboard meetings in which it plans to participate, for the purpose of pursuing joint or cooperative activities; House Bill No. 1041 to repeal the position of county superintendent of schools; House Bill No. 1042 to require that annexation petitions identify at least one student who resides in the area to be annexed and that in the case of a dissolution, attachment is prohibited unless a minor resides within the territory to be attached; Senate Bill No. 2054 to require that state payments to school districts be made in roughly equal increments over a 10-month period beginning July 15 and continuing on the first day of the following nine months; House Bill No. 1043 to require that all land be in a high school district by July 1, 1997; Senate Bill No. 2055 to appropriate \$500,000 for the purpose of assisting school districts in the development of academic programs designed to improve the English language proficiency of students; and Senate Bill No. 2056 to require that the Public Service Commission establish discounted rates for the provision of telecommunications services to all institutions of higher education and to all elementary and secondary schools in the state. The Council recommends Senate Bill No. 2057 to set a variable mill deduct that will be tied to the level of state appropriations for foundation aid and to provide an appropriation for foundation aid equal to the 1993-95 level plus \$80 million; Senate Bill No. 2058 to provide for the application of weighting factors in grades 9 through 12, to adjust elementary weighting factors in grades 1 through 6, and to weight students in grades 7 and 8 independently; Senate Bill No. 2059 to raise the per student transportation payment for all students transported by school buses to \$1 per day; Senate Bill No. 2060 to require the categorization of disabilities as severe, moderate, and mild and the assignment of appropriate weighting factors calculated mathematically; Senate Bill No. 2061 to require that the proceeds of the common schools trust fund be distributed in the same manner as foundation aid; House Bill No. 1044 to define the roles of a district of residence and an admitting district in the provision of student transportation; Senate Concurrent Resolution No. 4005 to direct the Legislative Council to study education finance issues; and House Bill No. 1045 to change the membership of the North Dakota Educational Telecommunications Council.

The Council makes no recommendation regarding its study of the loss of employment by teachers and administrators as a result of school district reorganizational, cooperative, and restructuring programs, including the possibility of changes in retirement benefits for those teachers and administrators.

EDUCATION SERVICES COMMITTEE

The Council studied the optimum structure and staff development services necessary to meet the needs of middle-level adolescents identified as the at-risk group in North Dakota schools. The Council recommends Senate Bill No. 2062 to provide that each school district having a program accredited middle school is entitled to receive an amount equivalent to seven percent of the contract salary payable to each FTE classroom teacher in the district's middle school program; House Bill No. 1046 to provide that the Board of Higher Education, the Board for Vocational and Technical Education, and the Board of Public School Education

are to discuss, at their annual joint meeting, opportunities for the professional growth and development of elementary, middle school, and high school staff; and Senate Concurrent Resolution No. 4006 to direct the Legislative Council to study statutory and systemic changes necessitated by the implementation of middle school concepts.

The Council studied the placement of students with developmental disabilities in regular classroom settings and the teacher training curricula or specific study courses designed to assist teachers in accepting and teaching students with mental retardation and other developmental disabilities. The Council recommends House Bill No. 1047 to add statutory statements setting forth the legislative belief that students are to be educated in the least restrictive environment; Senate Bill No. 2063 to direct that the Superintendent of Public Instruction distribute all moneys appropriated for special education each biennium, less \$12 million, to school districts according to the number of students each district has in average daily membership; House Bill No. 1048 to require that each school district superintendent develop a long-range professional growth and development plan for the district; House Concurrent Resolution No. 3007 to encourage institutions of higher education which offer teacher preparation programs to collaborate and consult within individual institutions, the university system, the communities they serve, and with the Education Standards and Practices Board; and Senate Concurrent Resolution No. 4007 to direct the Legislative Council to study the delivery of, and costs associated with, professional growth and development plans for teachers.

The Council makes no recommendation regarding its study of the provision of services to blind and visually impaired children and adults.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Council solicited and reviewed various proposals affecting retirement programs of public employees and health and retiree health plans of public employees. The Council obtained actuarial and fiscal information on each of these proposals and reported this information to each proponent. The Council received a report regarding the determination of the Retirement Board concerning the effectiveness of 1993 Session Laws Chapter 534, which increased the benefit multiplier applicable to the Public Employees Retirement System main system for service credit, prior service credit, and retiree benefits from 1.725 percent to 1.74 percent and provided a one percent proportional increase in benefits for prior service pensioners.

The Council received reports on administrative efficiencies and cost savings realized as a result of the creation of the Retirement and Investment Office.

The Council studied whether political subdivisions should be eligible to participate in the state pretax benefits program. The Council recommends House Bill No. 1049 to allow political subdivisions to participate in the state pretax benefits program.

The Council reviewed the allowable investments of the Old-Age and Survivor Insurance System fund. The Council recommends Senate Concurrent Resolution No. 4008 to direct the Legislative Council to study the state's investment process and the investment of state funds.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Council received 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.

HEALTH AND COMMUNICATIONS COMMITTEE

The Council studied railroad crossing safety. The Council recommends Senate Bill No. 2064 to increase, from \$50 to \$100, the fine for going around lowered gates or any other barrier at a grade crossing.

The Council makes no recommendation with respect to its study of the North Dakota Educational Telecommunications Council.

The Council studied the feasibility and desirability of pooling all sources of funding for health care benefits in conjunction with the study by the North Dakota Health Task Force in exploring the control of costs and redistribution of dollars toward improved access to services through a health care reimbursement system. The Council also studied the feasibility and desirability of allowing all

North Dakota residents to participate in the uniform group insurance program. The Council recommends Senate Bill No. 2065 to expand the uniform group insurance program administered by the Public Employees Retirement System to allow voluntary participation for persons who meet medical underwriting requirements of the program. The Council recommends House Bill No. 1050 to provide for health care cooperatives; health care provider cooperatives; a Health Care Commission as a permanent subcommittee of the Health Council; a cost and quality review program; medical savings accounts; insurance market reforms including portability, guaranteed issue and renewal of health insurance products, and modified community rating; medical malpractice damages limitations; medical malpractice attorneys' fees limitations; medical malpractice alternative dispute resolution; expansion of medical assistance to specified populations to the greatest extent possible without needing a waiver from the federal government; an income tax deduction for health insurance premiums paid; and an income tax rate increase. The Council recommends Senate Concurrent Resolution No. 4009 to urge Congress to amend the Employee Retirement Income Security Act to subject employers' self-funded insurance plans to regulation by the states to facilitate health care reform at the state level. The Council recommends House Concurrent Resolution No. 3008 to direct the Legislative Council to study health care reform, including continued study of additional recommendations of the North Dakota Health Task Force and any programs that are enacted by the 1995 Legislative Assembly.

The Council received reports from the Commissioner of Insurance on the progress of the implementation of a basic health policy and on the progress of the partnership for long-term care program.

INTERNATIONAL TRADE COMMITTEE

The Council overviewed state compliance with requirements of international trade treaties. The Council recommends Senate Concurrent Resolution No. 4010 to direct the Legislative Council to establish an International Trade Committee to study international trade treaties and their effect on the state and Senate Bill No. 2066 to establish an International Trade Coordinating Council to oversee and coordinate policies and activities relating to international affairs of the state.

JOBS DEVELOPMENT COMMISSION

The Council studied the methods and coordination of efforts to initiate and sustain new economic development in this state. The Council received reports from the Department of Economic Development and Finance regarding the impact of the income level requirement for the Future Fund and received annual reports from the Department of Economic Development and Finance on loan performance and performance of the department.

The Council studied products liability statutes as they relate to the aircraft industry. The Council recommends House Bill No. 1051 to establish a disputable presumption that an aircraft or aircraft component is free from defects if the product was in compliance with applicable government or industry standards at the time of manufacture; a state-of-the-art defense; a useful safe life defense, and a 10-year statute of repose for manufacturers of small aircraft and aircraft components.

The Council studied incentives that can be enacted by the state to maintain and encourage development of the state's lignite resources.

The Council studied open records, open meetings, and bidding laws for nonprofit corporations and organizations. The Council recommends Senate Concurrent Resolution No. 4011 to direct the Legislative Council to study open records laws and exceptions to the open records laws.

The Council studied the social economic impact of defense-related downsizing, closures, and loss of federal contracts.

JUDICIARY COMMITTEE

The Council studied the charitable gaming laws and rules and the effects of Indian gaming on charitable gaming in this state. The Council recommends House Bill No. 1052 to permit an organization that conducts the game of pull tabs at an authorized site to deduct as an expense 2.5 percent of the gross proceeds for the game of pull tabs; House Bill No. 1053 to provide for an increase in the wager limit to \$25 for the game of twenty-one and to require that at least one

table at a site must accept wagers in increments of \$1 up to a maximum set by the organization which may be below the maximum for any other table at the site; Senate Bill No. 2067 to provide for the ratification of tribal-state gaming compacts executed prior to February 1993; and Senate Concurrent Resolution No. 4012 to direct the Legislative Council to study the tribal-state compact negotiation process.

The Council studied the accusations of child abuse or child sexual abuse by one parent against the other during contested custody and visitation cases. The Council recommends Senate Bill No. 2068 relating to the use of certain terminology when dealing with child abuse and neglect matters and the duties of the state child protection team.

The Council studied the Uniform Interstate Family Support Act and its relationship to existing North Dakota law to determine the desirability of adopting it. The Council recommends Senate Bill No. 2069 to enact the Uniform Interstate Family Support Act and to repeal the Revised Uniform Enforcement of Support Act.

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 Correction or Clarification of Defamation Act; the Uniform Statute and Rule Construction Act; the Uniform Partnership Act (1993); and amendments to the Uniform Probate Code Article II—Intestacy, Wills, and Donative Transfers with conforming and miscellaneous amendments to Articles I and III.

The Council makes four recommendations as a result of its constitutional and statutory revision responsibility. The Council recommends Senate Concurrent Resolution No. 4013 to amend the Constitution of North Dakota to provide for the removal of the Lieutenant Governor as presiding officer of the Senate and to allow the Senate to select the presiding officer from among its members; House Concurrent Resolution No. 3009 to amend the Constitution of North Dakota to create a new executive branch article; House Concurrent Resolution No. 3010 to amend the Constitution of North Dakota to change the term of members of the House of Representatives from two years to four years and to authorize the Legislative Assembly to establish a procedure whereby one-half of the members of the House of Representatives are elected biennially; and Senate Bill No. 2070 to make technical corrections to the North Dakota Century Code.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council accepted 222 audit reports prepared by the State Auditor's office and independent accounting firms. The Council received performance audits on statewide leasing, motor pool services, the Medicaid drug rebate program, the child support enforcement program, the status of recommendations contained in the Workers Compensation Bureau performance audit, and the status of recommendations contained in the Department of Human Services performance audit.

The Council recommends that the Office of Management and Budget include information in the executive budget identifying major asset acquisitions when the acquisition is through a lease arrangement rather than a purchase; and that state agencies and institutions have available for review during their audit all appropriate working papers documenting their decision on whether to lease or purchase major assets or services. The Council recommends House Bill No. 1054 to require every state agency and institution to prepare a written analysis documenting the decision to acquire an asset as a result of a lease and to require the director of the budget to include in the executive budget a list of all proposed asset acquisitions through lease arrangements when the value of the asset is at least \$10,000.

The Council recommends House Bill No. 1055 to repeal the authority for state agencies and institutions to maintain bank accounts in institutions other than the Bank of North Dakota.

The Council recommended that the State Auditor's office proceed with performance audits of the Department of Human Services (third-party liability), Commissioner of Agriculture's agriculture mediation and farm credit counseling programs, Superintendent of Public Instruction, and Workers Compensation Bureau.

The Council accepted the annual reports of accounts receivable written off at the State Hospital, Developmental Center at Grafton, and the human service centers for the years ended June 30, 1993, and June 30, 1994. The Council

recommends House Bill No. 1056 to change the date the Department of Human Services is to present a detailed report to the Legislative Audit and Fiscal Review Committee on the status of the accounts receivable for that fiscal year to September 1 after the close of each fiscal year.

The Council received the Comprehensive Annual Financial Reports for the years ended June 30, 1992, and June 30, 1993. The Council decided to accept reports resulting from single audits of the North Dakota University System, if presented.

The Council recommends that the Industrial Commission direct the Bank of North Dakota to appropriately reflect on its records the North Dakota real estate trust deficit of approximately \$23 million during the 1993-95 biennium.

LEGISLATIVE MANAGEMENT COMMITTEE

The Council reviewed legislative rules and makes a number of recommendations intended to clarify the rules and expedite the legislative process. Among the recommended rules changes are: (1) authorize the Chief Clerk of the House and Secretary of the Senate to exercise general supervision over all Legislative Assembly employees; (2) prohibit legislative guests from remaining on the floor from 30 minutes before the house convenes to when the house recesses for that calendar day; (3) allow any member to request the division of a question without an immediate show of support by other members; (4) require any vote for reconsideration to be by verification vote; (5) provide that the house would no longer need to act on "reports" of the Delayed Bills Committee; (6) extend the 21-legislative-day limit for measures to be in committee to 30 legislative days, provide that the limit apply only to bills in the house of origin, and extend the 48th legislative day deadline for reporting measures from the other house to the 55th legislative day; (7) allow a committee to recommend that a measure be placed on the calendar for second reading immediately after approval of an amendment; (8) provide that after adoption of joint rules no joint rule may be amended or suspended without a vote of two-thirds of the members-elect of the appropriate house; (9) allow legislators' names to be placed on bills introduced at the request of executive agencies or the Supreme Court; (10) provide that three-day conference committees meet on Monday, Wednesday, or Friday and two-day conference committees meet on Tuesday or Thursday; and (11) reduce the number of bills printed from 800 to 500 copies.

The Council recommends Senate Bill No. 2071 to provide for rules of interpretation to be used in determining the effective dates of measures enacted by the Legislative Assembly. Basically, this recommendation is to statutorily adopt the rules used by the Legislative Council in determining effective dates since 1987.

The Council reviewed rules to implement annual legislative sessions in place of biennial sessions, and makes no recommendation to adopt those rules.

The Council reviewed the number and compensation of Legislative Assembly employees. The Council recommends the employment of a total of 57 House employees and 51 Senate employees which represents 21 fewer House employees and eight fewer Senate employees than in 1993. The Council approved plans to invite bids from private secretarial services to provide stenographic services in lieu of the Legislative Assembly employing stenographers and typists during the session. The Council recommends that the compensation of certain legislative session employees be increased to recognize a supervisory technical level and a supervisory nontechnical level, recognize required knowledge, and establish a differential between three-day committee clerks and two-day committee clerks. The Council recommends that session employees receive increments to the basic daily wages, at \$1 per day for each session employed by the Legislative Assembly, subject to a total increment of \$10 per day.

The Council approved a contract with The Michie Company, the publisher of the North Dakota Century Code, to provide a CD-ROM edition of the North Dakota Century Code, the decisions of the Supreme Court of North Dakota from January 1929, the decisions of the Court of Appeals of North Dakota from November 1987, and the North Dakota Administrative Code.

The Council reviewed the legislative information services available and established fees based on the cost of printing or mailing various legislative documents.

The Council continued the Legislator's Automated Work Station system for use during the 1995 session, and a pilot project whereby four legislators would use laptop personal computers to determine the feasibility of enhancing the

system. The Council approved arrangements for the session. Among the changes, the Council determined that legislators could receive an additional ream of stationery on request; a legislator would need the approval of the appropriate majority or minority leader if the legislator requested more than three sets of the journals to be distributed without charge; the stenographers and leaders' secretaries would use personal computers and the committee clerks would use computer terminals for preparing legislative documents; and training provided to certain employees would be expanded.

The Council supervised the continuing renovation of the legislative wing of the State Capitol and approved the replacement of the committee hearing monitor system and a project to enhance the acoustics of the Brynhild Haugland Room.

NATURAL RESOURCES COMMITTEE

The Council studied the state's hunting laws to determine changes that can be made to improve the relationship between hunters and private landowners including the issuance of gratis permits. The Council recommends Senate Bill No. 2072 to revise the North Dakota gratis and landowner preference hunting license system; Senate Bill No. 2073 to provide that nonresidents may be allocated not more than one percent of the licenses and permits for each sex and species of deer issued in a unit or subunit in the first lottery and that nonresidents may participate on the same basis as residents in a subsequent lottery for licenses and permits available after the first lottery; and Senate Bill No. 2074 to provide that if property leased by the Game and Fish Department is leased from the United States, the director of the Game and Fish Department is to deduct from payments in lieu of taxes due to the county the amount paid to that county by the United States or any agency or instrumentality of the United States in lieu of real estate taxes on that property.

The Council studied the feasibility and desirability of removing the environmental health functions and responsibilities of the Department of Health and Consolidated Laboratories from that department and establishing a department to handle all environmental functions and responsibilities. The Council recommends Senate Bill No. 2075 to transfer administration of the commercial feed; insecticide, fungicide, and rodenticide; and fertilizer and soil conditioner laws from the Department of Health and Consolidated Laboratories to the Commissioner of Agriculture; House Bill No. 1057 to designate the Department of Health and Consolidated Laboratories the primary state environmental agency; House Bill No. 1058 to rename the Department of Health and Consolidated Laboratories the Department of Health and Environment; and House Bill No. 1059 to rename the State Health Council the Health and Environment Council and reconstitute the Health and Environment Council.

The Council studied the problems associated with solid waste management and the operation and effect of solid waste management districts and solid waste management plans. The Council recommends Senate Bill No. 2076 to require the Department of Health and Consolidated Laboratories to certify persons to conduct testing required under North Dakota Century Code Chapter 23-29 and to prohibit solid waste management facility permitholders and solid waste transporter permitholders from penalizing any person regarding that person's conditions of employment because of the results of the testing; House Bill No. 1060 to add a representative of each Indian reservation within a solid waste management district to the governing board of the district; House Bill No. 1061 to allow political subdivisions to establish solid waste management authorities and to authorize the governing body of an authority to borrow money and issue evidences of indebtedness to finance solid waste management facilities and resource recovery projects; and Senate Bill No. 2077 to make permanent the sales tax exemption for machinery or equipment used directly in the recycling of tangible personal property. The Council received information from the Department of Transportation on road surfacing materials used by the department and reviewed the North Dakota solid waste management plan.

The Council received annual reports from the Land Reclamation Research Center.

The Council received from the Office of Management and Budget a comprehensive solid waste management plan that assesses the ability of each state agency to reduce the amount of solid waste it generates and increase the amount of recycled products it uses.

REGULATORY REFORM REVIEW COMMISSION

The Council reviewed the operation and effect of North Dakota telecommunications law. The Council received information concerning the telecommunications industry in the state and proposed federal legislation. The Council recommends Senate Bill No. 2078 to provide that the law requiring providers of public telephones to allow a consumer to use access code numbers to obtain operator services is not subject to the law removing public telephones from telecommunications regulation and Senate Bill No. 2079 to reenact the establishment of the Regulatory Reform Review Commission.

SOVEREIGN IMMUNITY COMMITTEE

The Council addressed the abolition of the doctrine of sovereign immunity by the North Dakota Supreme Court. The Council recommends Senate Concurrent Resolution No. 4014 to amend the Constitution of North Dakota to reinstate the doctrine of sovereign immunity and Senate Bill No. 2080 to establish procedures for bringing claims against the state for personal injury or property damage and to place limitations on the liability of the state.

TAXATION COMMITTEE

The Council studied the structure and balance of the tax system. The Council also obtained a consultant study of the tax system on a historical basis and on the basis of regional comparison with neighboring states. The Council recommends Senate Concurrent Resolution No. 4015 to direct the Legislative Council to study the property tax assessment system of the state, with emphasis on potential benefits to the system from improved technology and sharing of resources among political subdivisions and the state and Senate Bill No. 2081 to allow a taxing district to levy the same amount in tax years 1995 and 1996 as the taxing district was eligible to levy in tax year 1994.

The Council studied but makes no recommendation regarding tax preferences.

The Council studied but makes no recommendation regarding sales, use, motor vehicle excise, and aircraft excise taxes.

The Council studied individual income taxes, with emphasis on determining a unified method of determining individual income taxes which is simple to administer and understand, contains a minimal number of exemptions and credits, and is approximately revenue neutral. The Council recommends House Bill No. 1062 to eliminate the long-form individual income tax return.

The Council monitored the property and sales tax exemptions and payments in lieu of taxes provisions enacted by House Bill No. 1520 during the 1994 special legislative session. The Council recommends Senate Bill No. 2082 to provide that payments in lieu of taxes allowed for new industries be equalized for foundation aid program purposes; House Bill No. 1063 to allow a project operator to apply for a property tax exemption for a new industry up to one year after the commencement of project operations; and Senate Concurrent Resolution No. 4016 to direct a Legislative Council study of tax preferences, with emphasis on property tax preferences that may be granted at the discretion of political subdivisions or that were created as economic development incentives.

WORKERS COMPENSATION COMMITTEE

The Council studied the feasibility and desirability of replacing the workers' compensation permanent partial impairment benefit system with a permanent partial disability system and of requiring that the medical basis for certifying disability be established by medical evidence supported by objective medical findings and a study of the workers' compensation system, including the cost and delivery of medical care, the cost of rehabilitation, legal fees, previous legislation, premium structure, alternate insurance concepts and the impact on the fund of those concepts, administration and staffing of the bureau, the number of injured workers receiving social service benefits, and employer and employee fraud. The Council recommends that the Workers Compensation Bureau introduce its bill proposing changes to the permanent partial impairment benefit system as an agency bill because of the technical nature of the bill. The Council makes no other recommendation as the result of its studies of the workers' compensation system.

Report

of the

North Dakota Legislative Council

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



FIFTY-FOURTH LEGISLATIVE ASSEMBLY
1995

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January 3, 1995

Honorable Edward T. Schafer
Governor of North Dakota

Members, 54th Legislative
Assembly of North Dakota

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

Major recommendations include proposals to expand services to children and families, establish a welfare reform demonstration project, improve child support enforcement, establish veterans' homes in the western and northeastern parts of the state, construct an addition to the law enforcement training facility, remove statutory requirements for biennial reports by state agencies, eliminate the long form for individual income taxes, eliminate the office of county superintendent of schools, provide health insurance reforms to improve access to health care, improve the state foundation program for schools, establish an International Trade Coordinating Council, and provide limits on civil actions against the state.

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,

Senator Corliss Mushik
Chairman, North Dakota
Legislative Council

CM/TS

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

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 that 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 as recommended by the majority and minority leaders, respectively. The Lieutenant Governor, as President of the Senate, appoints three senators from the majority and two from the minority as recommended by the majority and minority leaders, respectively.

The Legislative Council is thus composed of 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 Administrative Rules Committee, the Employee Benefits Programs 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. The Council 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. Unification of the state's judicial system 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 that have been approved by the voters.

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

The Legislative Council has permitted the legislative branch to be on the cutting edge of technological innovation. North Dakota was one of the first states to have a computerized bill status system in 1969 and, beginning in 1989, the Legislator's Automated Work Station system has allowed legislators to access legislative documents at their desks in the House and Senate.

Perhaps of most value to citizen legislators are committees that permit members to keep up with rapidly changing developments in complex fields. Among these are the Budget Section, which receives the executive budget prior to each legislative session. The Administrative Rules Committee allows legislators to monitor executive branch department rules and regulations. Other subjects that have been regularly studied include school finance, health care, property taxes, 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 adopted under state statutes.
3. Whether court opinions or rules indicate unclear or ambiguous statutes.

The committee may make rule change recommendations to an adopting agency, formally object to an agency rule, or make recommendations to the Legislative Council for the amendment or repeal of enabling legislation serving as authority for the rules. North Dakota Century Code Section 65-02-08 requires that fee schedules for medical and hospital services proposed for adoption as administrative rules by the Workers Compensation Bureau must be submitted to and approved by the committee.

The Legislative Council delegated to the committee its authority under NDCC Section 28-32-02 to establish a procedure to distribute copies of administrative agency filings of notice of proposed rulemaking and to approve extensions of time for administrative agencies to adopt rules, and its responsibility under NDCC Section 28-32-15 to receive notice of appeal of an administrative agency's rulemaking action.

Committee members were Representatives Tom D. Freier (Chairman), LeRoy G. Bernstein, Steve Gorman, William E. Kretschmar, Ben Tollefson, and Gerry L. Wilkie and Senators Jayson Graba, Donna Nalewaja, and Jens Tennefos.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

ADMINISTRATIVE AGENCY RULES REVIEW

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 publication in the North Dakota Administrative Code (NDAC).

The committee's review authority is statutorily limited to rules assigned to the committee by the chairman of the Legislative Council. At the committee's request, the chairman of the Legislative Council assigned to the committee review of all rules published in the Administrative Code effective after October 1992 and all written complaints received by the committee concerning proposed or adopted rules. This allowed continuation of the rules review process initiated in 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 through 1993 Legislative Assemblies.
2. Whether the rules resulted from federal programs or are related in subject matter to any federal statute or regulation.
3. The rulemaking procedure followed in adopting the rules, e.g., a description of the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has filed a complaint with the agency concerning the rules.
5. Whether a written request for a regulatory analysis was filed by the Governor or a member of the Legislative Assembly as to whether the rule is expected to have an impact on the regulated community in excess of \$50,000. If a regulatory analysis was issued, a copy is to be provided to the committee.
6. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost of staff time used in developing the rules.
7. An explanation of the subject matter of the rules and the reasons for adopting the rules.

Current Rulemaking Statistics

The committee reviewed 3,235 rule changes that were made from November 1992 through October 1994. Table A tabulates the rule changes published in the Administrative Code and reviewed by the committee. The tabulation shows the number of rules amended, created, superseded, repealed, reserved, or redesignated for each administrative agency that appeared before the committee.

Committee members expressed the opinion that the volume of administrative rule changes made by administrative agencies has been increasing. Although rules differ in length and complexity, comparison of the number of administrative rules sections affected during biennial periods is one method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of sections of the North Dakota Administrative Code amended, repealed, created, superseded, reserved, or redesignated during each designated time period:

Time Period	Number of Sections
July 1979 - October 1980	1,440
November 1980 - August 1982	916
September 1982 - November 1984	1,856
December 1984 - October 1986	1,280
November 1986 - October 1988	2,681
November 1988 - October 1990	2,325
November 1990 - October 1992	3,079
November 1992 - October 1994	3,235

To aid the committee in its review of proposed or adopted rules, the Legislative Council staff prepares an administrative rules supplement containing all changes to rules, similar in style to bill drafts, i.e.,

changes are indicated by underscore and overstrike. The administrative rules supplement for the period November 1992 through October 1994 consisted of 3,809 pages of rule changes.

Most rule changes, by numbers of sections affected, are in response to recent statutory changes made by the Legislative Assembly. A substantial amount of rule changes, in terms of length or volume of rules, are mandated by changes to federal law or rules.

Any rule change made to implement a statutory change must be adopted within nine months after the effective date of the statutory change. It appears that agencies have become more current in promptly adopting rules after each legislative session in response to legislative changes. The committee considered and granted requests from six agencies—State Gaming Commission, Department of Health and Consolidated Laboratories, Department of Human Services, Commissioner of Insurance, Public Service Commission, and State Tax Commissioner—for extension of time to adopt rules relating to 11 different topics.

Workers Compensation Bureau Medical and Hospital Services Fee Schedules

All fees on claims for legal, medical, and hospital services rendered under NDCC Title 65 to any workers' compensation claimant must be in accordance with a schedule of fees adopted by the Workers Compensation Bureau. Fee schedules for medical and hospital services must incorporate cost-saving measures and must be submitted to and approved by the committee before submission to the Legislative Council for publication in the North Dakota Administrative Code.

The Workers Compensation Bureau presented a proposed medical and hospital service fee schedule in November 1993. The schedule contained an average increase of 7.2 percent over the fee schedule approved in 1992. The bureau selected this percentage because it reflected the increase in the state's average weekly wage during the period the 1992 schedule had been in effect. The proposed schedule also allowed the bureau to adjust certain procedures more or less than that percentage to correct for deficiencies in the data base on those procedures. A representative of the bureau described the proposed fee increase as helping alleviate complaints from the medical community, especially in certain instances in which fee levels were below rates allowed under Medicare.

Per diem amounts for each hospital in the state are determined based on the type of care provided at the facility and are based on reports as audited for Medicare purposes for each facility. Committee members expressed concern about the differences in reimbursement levels established for different hospitals proposed under the fee schedule.

Although the committee approved the fee schedule proposed to the committee, the committee requested that the Workers Compensation Bureau present any future changes in the fee schedule sufficiently in advance of their effective date to allow the committee adequate time in which to review the proposed changes (the committee had to approve the changes at its November meeting, when the changes were pre-

sent, in order for the changes to take effect January 1, 1994).

Formal Objections

The committee may file an objection to any portion of a rule the committee deems to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency. The objection must contain a concise statement of the committee's reasons for its action. Within 14 days after the filing, the adopting agency is to respond to the committee. After receipt of the response, the committee may withdraw or modify its objection. After the filing of an objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the portion of the rule objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court is to declare the portion of the rule objected to invalid and judgment is to be rendered against the agency for court costs.

State Tax Commissioner - Apportionment of Broadcaster Income

The State Tax Commissioner made changes effective in June and November of 1992 to NDAC Chapters 81-01.1-02, 81-02.1-02, 81-03-01.1, 81-03-04, 81-03-05.1, 81-03-09, 81-09-02, 81-09-03, and 81-11-01. In October 1992 the committee objected to these rules. The objection was described in detail in the 1993 Report of the Legislative Council. The objection was filed in the Legislative Council office on November 4, 1992, and the objection was published with the rules in the Administrative Code.

On November 13, 1992, the response of the State Tax Commissioner to the objection was received. The committee reviewed the response at the committee's July 22, 1993, meeting and received testimony from individuals supporting the objection with regard to apportionment of multistate television and radio broadcasting income. The committee withdrew its objection to all of the June and November 1992 rule changes of the State Tax Commissioner except for the objection to NDAC Section 81-03-09-38, relating to apportionment of income of multistate television and radio broadcasters.

Attorney General - Deceptive Pricing Practices

The Attorney General adopted rules effective January 1, 1994, creating NDAC Article 10-15, relating to deceptive acts or practices. At the May 1994 committee meeting, a representative of the North Dakota Retail Association expressed concerns over NDAC Section 10-15-01-06 which related to use of list price or similar comparisons by sellers. The committee objected to NDAC Section 10-15-01-06. The following objection was filed in the Legislative Council office on May 11, 1994:

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO SECTION 10-15-01-06 AS ADOPTED BY THE ATTORNEY GENERAL EFFECTIVE JANUARY 1, 1994.

The committee objects to this rule because the committee deems it to be unreasonable, arbitrary, or capricious. The committee believes this rule exceeds the intent of the Legislative Assembly by adopting a more stringent standard of conduct than the Legislative Assembly contemplated in the enactment of consumer protection laws. The committee also believes that a regulatory analysis should have been issued under North Dakota Century Code Section 28-32-02.2.

A copy of the objection was sent to the Attorney General on May 11, 1994. The objection was published with NDAC Section 10-15-01-06 in the Administrative Code. The Attorney General filed a response dated May 23, 1994. At its meeting on October 6, 1994, the committee heard the response of the Attorney General and received further comments from a representative of the North Dakota Retail Association. Differences of opinion persisted regarding application of the rule. The committee requested representatives of the office of the Attorney General and the North Dakota Retail Association to meet and attempt to resolve those differences and report to the committee.

At its meeting on November 10, 1994, representatives of the Attorney General and the North Dakota Retail Association reported to the committee that they had agreed on changes to the text of the rule. Because the rule cannot be amended by the committee, the Attorney General will begin a new rulemaking proceeding to make the agreed changes. The committee approved a motion to remove its objection to NDAC Section 10-15-01-06, in recognition of the agreement to amend the rule.

Informal Objections

Office of Management and Budget - Personnel Practices

Effective September 1, 1992, the Office of Management and Budget adopted NDAC Chapters 4-07-03 through 4-07-35, relating to personnel practices. In October 1992 the committee reviewed the rules and expressed concern that not all county commissioners were informed of the rule changes prior to adoption even though a number of county employees were affected. The committee approved a motion requesting the Legislative Council staff to send a letter to the Office of Management and Budget indicating that the committee objected to application of the September 1992 personnel rules to counties without notification to all county commissioners, requested that the Office of Management and Budget inform all county commissioners of the rule changes, and requested that the Office of Management and Budget report to the committee concerning these matters. A representative of the Central Personnel Division of the Office of Management and Budget informed the committee that at the committee's request the chairman of each board of county commissioners was notified of the rule changes.

Board of Nursing - Nurse Assistants

In October 1992 the committee reviewed rules

adopted by the Board of Nursing. The rules were NDAC Article 54-07 and related to nurse assistants. The rules were to become effective November 1, 1992. Committee members expressed concern that the rules would have an impact of more than \$50,000 on a regulated community and the required regulatory analysis had not been issued by the Board of Nursing. The committee requested that a regulatory analysis be prepared by the Board of Nursing regarding the nurse assistants rules. The Board of Nursing filed a regulatory analysis regarding these rules and the committee reviewed the analysis.

ADMINISTRATIVE AGENCIES PRACTICE ACT

Proposed Rulemaking Notice

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 the state. The Legislative Council is required to establish a procedure to allow any person to request and receive mailed copies of all rulemaking notice filings made by agencies. Notice filed on or before the last calendar day of the month must be mailed by the Legislative Council on the first business day of the following month. The Legislative Council may charge a fee for providing copies of the filings. Under its authority to establish a fee for this service, the committee determined that the charge for providing copies of these filings would continue to be \$50 per year, as it was during the previous biennium. This notice service presently has 18 subscribers.

Committee Review Authority

At its first meeting of each interim, the committee requests that the chairman of the Legislative Council assign the committee the duty of reviewing proposed and existing rules of administrative agencies. As described earlier in this report, the committee requested the chairman of the Legislative Council to continue the rules review process initiated in 1979. Committee members and the chairman of the Legislative Council observed that it seems pointless to require the committee to request authority to review administrative rules. The committee reviewed a bill draft that would have required the committee to review administrative rules and that made changes in laws governing committee authority to receive comments on administrative rules.

Reduction of Rules and Federal Rule Mandates

Committee members expressed frustration that the state adopts an extremely large volume of rules in response to federal requirements. Under federal requirements, a state agency must adopt rules creating nearly identical permit procedures for federally delegated programs. If a state agency were allowed to adopt permit or licensure procedures contained in existing related or similar rules when adopting new rules required by federal programs, it would reduce the volume of state rules. Federal agencies often have rules in existence which are no longer applicable or usable but these rules require states to

maintain rules that are no longer of any value. If federal agencies were to repeal rules that are no longer applicable or usable or allow state agencies to repeal state rules that are obsolete, it would reduce the volume of state rules. Another suggestion was that state agencies should be allowed to avoid compliance with certain federal rules if circumstances permit.

The committee considered a bill draft recommended by the Department of Health and Consolidated Laboratories which would require state agencies to review administrative rules they have adopted to eliminate rules adopted from federal environmental guidelines which are not relevant to North Dakota. It was suggested to the committee that such a requirement might eliminate a substantial amount of obsolete or useless material from the NDAC.

Legislative Veto Authority Over Administrative Rules

When it disagrees with the content of an administrative rule, the only option of the committee is to file an objection to the rule. The committee received information on authority in other states to overrule or “veto” an administrative rule when a committee or the legislature determines that an administrative rule does not comply with legislative intent. Authority to veto administrative rules exists in 25 states, but in none of these states does it appear there is any authority for a legislative committee to veto administrative rules. Any veto of rules is required to be by statute, joint resolution, or a resolution approved by one house of the legislature.

States require action of the full legislature to veto administrative rules to comply with the separation of powers principle of state constitutions or to comply with constitutional requirements that “laws” must be amended by action of both houses of the legislature and presented to the Governor. A 1983 United States Supreme Court decision, although not directly applicable to state authority, has influenced many state Supreme Courts. In **Immigration and Naturalization Service v. Chadha**, the United States Supreme Court decided that an administrative rule has the force of law and a “legislative veto” by one house of Congress was unconstitutional on the premise that it is equivalent to an amendment to statutory authority and must be done in the same manner as a statutory amendment.

Although North Dakota law does not expressly

provide “legislative veto” authority, enactment of a bill could overrule an administrative rule or amend or repeal the statutory authority for the rule.

Another relevant provision of North Dakota law is the requirement in NDCC Section 28-32-02 that the Attorney General must approve administrative rules as to legality before final adoption. The Attorney General may not approve any rule as to legality if the rule exceeds the statutory authority of the agency, is written in a manner that is not concise or easily understandable, or if procedural requirements of law relating to adoption of rules are not met.

Recommendations

The committee recommends House Bill No. 1023 to eliminate the need for the Administrative Rules Committee to request the approval of the chairman of the Legislative Council to study and review administrative rules. The bill provides that the Administrative Rules Committee is to review administrative rules adopted under NDCC Chapter 28-32. The bill also allows the committee to consider oral, as well as written, comments concerning administrative rules. The bill requires the committee to consider expression of dissatisfaction with administrative rules or related laws from any person, rather than only from a court or agency.

The committee recommends House Bill No. 1024 to require an agency to repeal or amend any rule that was adopted from federal environmental guidelines which is not relevant to state regulatory programs. The bill prohibits an agency from adopting rules from federal guidelines which are not relevant to state regulatory programs and requires an agency to seek a waiver from the United States Environmental Protection Agency from complying with those rules. If a waiver is not granted, the agency will be in a position in which the Environmental Protection Agency requires adoption of a rule and state law prohibits adoption of the rule. This conflict was described as being essential, because it is believed that the Environmental Protection Agency will not waive adoption of a rule unless state law prohibits adopting the rule. The bill also allows an agency to adopt by reference any applicable existing permit or procedural rules that are adaptable for use in new or existing programs.

The committee makes no recommendation with regard to legislative veto authority over administrative rules.

TABLE A

STATISTICAL SUMMARY OF RULEMAKING						
Agency	Amend	Create	Supersede	Repeal	Special	Reserved
Addiction Counseling Examiners, Board of	1	7				
Administrative Hearings, Office of	1	3				
Aeronautics Commission	1	3				
Agriculture, Commissioner of	49	12		54		
Animal Health, Board of	2	22				
Attorney General		11		110	1	
Audiology and Speech-Language Pathology	1	8				
Banking and Financial Institutions, Department of	10	39				
Centennial Commission (Repealed)				6		
Chiropractic Examiners, Board of	1	6				
Clinical Laboratory Practice, Board of	1					
Cosmetology, Board of	1					
Credit Review Board	6	3				
Dental Examiners, Board of	8					
Dietetic Practice, Board of	1					
Electrical Board	15					
Emergency Commission	1	115				
Engineers and Land Surveyors, Board of Registration for Professional	20					
Game and Fish Department	13	12		10		
Health and Consolidated Laboratories, Department of	266	244		117		193
Highway Patrol	2					
Historical Board	1					
Human Services, Department of	51	22			51	
Industrial Commission	43	2				
Insurance, Commissioner of	20	201			1	
Job Service North Dakota		10				
Labor, Commissioner of	7	7		11		
Management and Budget, Office of	6	15		2		
Medical Examiners, Board of	17	6				
Milk Stabilization Board	8					
Nursing, Board of	25	15		11		
Nursing Home Administrators, Board of Examiners for	16			4		
Personnel Board, State	15	5		3		
Pharmacy, Board of	1	13		1		
Plumbing, Board of	14	1		1		
Private Investigative and Security Board		1				

STATISTICAL SUMMARY OF RULEMAKING (continued)						
Agency	Amend	Create	Supersede	Repeal	Special	Reserved
Public Instruction, Superintendent of	8	18				
Public School Education	1	3				
Public Service Commission	123	23		32		
Real Estate Commission	5	2				
Retirement Board	33	13		2		
Secretary of State	1					
State Board of Funeral Service	18	17				
State Gaming Commission		211		329		
State Investment Board		1				
State Retirement and Investment Office		1				
Tax Commissioner	21	10			39	
Teachers' Fund for Retirement	10	1				
Transportation, Department of	28	36				
Veterans' Affairs, Administrative Committee on	1					
Water Commission	32	23		46		
Workers Compensation Bureau	11	46		107		
Total	916	1,188	0	846	92	193

Grand Total All Sections = 3,235

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

North Dakota Century Code (NDCC) Chapter 54-35.2 establishes the Advisory Commission on Intergovernmental Relations. The commission is directed by law to study local government structure, fiscal and other powers and functions of local governments, relationships between and among local governments and the state or any other government, allocation of state and local resources, and interstate issues involving local governments. The commission is required to report its findings and recommendations to the Legislative Council in the same manner as interim Legislative Council committees. The commission also is directed by law to administer grants to political subdivisions for projects to improve efficiency of local governments.

North Dakota Century Code Section 54-35.2-01 establishes the membership of the commission as 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 Legislative Council designates the chairman of the commission. All members of the commission serve a term of two years beginning July 1 of each odd-numbered year. Current members whose terms began on July 1, 1993, are Senators Bryce Streibel (Chairman) and Jim Dotzenrod; Representatives Jackie Brodshaug and Rex R. Byerly; League of Cities representatives Jeff Fuchs and Bill Sorensen; Association of Counties representatives Ernest Fadness and Susan Ritter; Township Officers Association representative Ken Yantes; Recreation and Park Association representative Randy Bina; and Governor's designee Al Hausauer.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

LOCAL GOVERNMENT EFFICIENCY PLANNING GRANTS

1991-92 Interim

The 1991 Legislative Assembly enacted Senate Bill No. 2346, which provided for local government efficiency planning grants to be administered by the commission and provided an appropriation from the state aid distribution fund of \$250,000 for these grants. The bill created NDCC Section 54-35.2-02.1, requiring the commission to administer the program of local government efficiency planning grants of up to \$25,000 per grant to county or city governments upon approval of plans intended to increase the efficiency of local government through restructuring county or city government, changing county boundaries including consolidation of counties, or consoli-

dating county and city services. The law requires a county or city seeking a planning grant to submit a preliminary plan for consideration by the commission. In approving a planning grant, the commission may impose any conditions it deems appropriate including requiring periodic reports or furnishing of matching funds.

During the 1991-92 interim, the commission adopted guidelines to govern its deliberations on planning grant applications and to provide grant applicants notice of the standards that would be applied in evaluating grant applications. The commission adopted a guideline that 50 percent matching funds would be required of a grant applicant, but if special need was demonstrated the matching contribution of the applicant could be reduced to 25 percent of the cost of the project. The matching fund requirement was adopted to ensure a strong level of local commitment to the grant project. The commission also adopted guidelines providing that:

1. Grant funds could be used for planning projects for future changes in government structure or function intended to increase efficiency.
2. Grant funds could not be used to fund projects that would be considered normal functions of government.
3. Grant funds could not be used to encourage any particular vote on a ballot measure such as a home rule proposal, but grant funds could be used for public education purposes in relation to elections so that voters could be fully informed of the facts before casting ballots.
4. The proposed project had to have some potential future benefit to other political subdivisions. The requirement of a benefit to other political subdivisions was adopted because the grant program was intended for innovative projects that might prove to be useful examples for future consideration and possible adoption by other political subdivisions.

The commission conducted two separate rounds of consideration of grant applications in the 1991-92 interim. The commission awarded local government efficiency planning grants to 15 grant applicants. The total amount awarded in grants in both grant rounds was \$198,558.34, leaving \$51,441.66 unexpended from the 1991-93 local government efficiency planning grant appropriation. Final reports were received for two of the grant projects and 13 projects were pending at the end of the interim.

1993 Legislative Action

In 1993 the Legislative Assembly enacted two bills affecting the local government efficiency planning grant program.

Senate Bill No. 2487 appropriated \$51,400 to the commission for local government efficiency planning grants. This amount was selected because it approximated the unexpended amount from the 1991-93 appropriation. A \$7,500 grant award made in 1992 was not claimed by the recipient but that amount was

not reappropriated because notice that the grant would not be claimed was not received until after the 1993 legislative session adjourned. Senate Bill No. 2487 also amended the objects for which grants could be provided. Grant awards were previously limited to cities or counties and the amendment allowed the commission to directly expend appropriated funds for research and studies of statewide significance.

Senate Bill No. 2357 provided that unexpended local government efficiency planning grant funds are to be redeposited in the state aid distribution fund. This bill was enacted as an emergency measure after research disclosed that unexpended grant funds would be deposited in the state general fund under general statutory authority.

1993-94 Interim

Thirteen grant projects were pending at the end of the 1991-92 interim and one of them went unclaimed. Of the remaining 12, 11 delivered final reports to the commission during the 1993-94 interim and one grant project is still in progress. During the 1993-94 interim, \$1,466.14 in unexpended grant funds was returned to the state by grant recipients who had completed their grant projects and this amount was deposited in the state aid distribution fund.

Senate Concurrent Resolution No. 4065 (1993) directed the Legislative Council to study establishment of statewide home rule. The Legislative Council did not give priority to this study resolution but did refer it to the attention of the commission. The commission took no action on this study topic.

Grant Project Reports

Renville, Bottineau, Burke, and Divide counties were jointly awarded a grant of \$16,066 in June 1992. The counties entered a joint agreement to reduce election expenses and increase efficiency in determining election results. The counties reported that each county reduced election costs by at least \$3,580 by using new tabulating equipment and agreeing to provide election backup hardware for neighboring counties, reducing the number of hours worked by election boards, combining precincts to reduce the number of election boards, and reducing the amount of time for election recounts in Renville and Bottineau counties. The new tabulating equipment also resulted in providing election results more quickly for the public and candidates. Representatives of the counties said the result was a savings to taxpayers in the four counties of more than \$14,000 in one election cycle and that additional savings would be realized by the four counties in future elections.

The city of Oakes was awarded grants of \$12,000 in November 1991 and \$6,917.34 in June 1992 for two related grant projects conducted under the leadership of the North Dakota League of Cities. The goal of the earlier grant project was to promote cooperative efforts among cities to investigate financing, intercommunications, instructional needs, and implementation strategies to determine how cooperative efforts could benefit cities. The second grant project was intended to focus on communications needs because the first grant project concluded that communication among cities is necessary for cooperative

efforts. The North Dakota League of Cities retained consultant services under both studies. The League of Cities report said the objectives of the first study were to determine how the League of Cities should collect and disseminate information for public officials, to develop a communications system for public officials, to meet the educational and technical needs of local government, and to accomplish the legislative goals of cities. Under the communications study, a survey of cities showed that a very high percentage of city officials believe there is a strong need for cities to be able to access a common data base. Other survey results were that city officials believe a communications network among cities is needed, current communication among cities is rated as fair or poor, and no more than 25 percent of cities have access to communications equipment other than the telephone.

McHenry County was awarded a grant of \$10,500 and Sargent County was awarded a grant of \$15,075, and both grant projects were conducted under the supervision of the North Dakota Association of Counties. These grant projects assisted in the establishment of the North Dakota Cooperative for Automation and Technology. The cooperative is intended to assist in joint planning and coordination of resources among counties to improve the efficiency of future computerization for counties. The cooperative established user groups for fiscal administration, justice and public safety, register of deeds services, social services, and transportation.

The Association of Counties reported that development, implementation, and coordination of standardized information management systems has great potential to improve the delivery systems of government by reducing the costs and improving the services of government. The stated role of the cooperative is to facilitate and coordinate plans to allow counties, cities, and school districts to work more closely together and share computers, programs, services, and other operational overheads.

The city of Carrington was awarded a grant of \$6,500 to examine the potential for consolidation of city offices. Carrington's city offices were located in several buildings in the city. The project was intended to be the beginning of a planning process on the restructuring of city government in Carrington. A consultant was hired to recommend options regarding housing of city services. The study examined space needs and future structure of city government and is being used by the city in its plans to renovate and combine city services and possibly county services. The grant project was completed and \$594.34 in unspent grant funds was returned and deposited in the state aid distribution fund.

Williams County was awarded a grant of \$12,500 to retain the services of a consultant for a county office collocation study. The study is being used by the board of county commissioners on a monthly basis and the county gained more space for social services staff without additional spending. It was reported that the county is looking at consolidation of county offices in a new light and anticipates consolidation of county offices will be accomplished over an extended period of time to avoid disruption.

The city of Grand Forks and Grand Forks County

were jointly awarded a grant of \$18,000 to study restructuring and consolidating county and city government. A portion of the study was devoted to examination of city and county home rule needs. The city of Grand Forks has a home rule charter but Grand Forks County does not. After the grant was awarded, a Grand Forks County home rule charter proposal was defeated in the June 1992 primary election. The defeat of the home rule charter altered the study plans. The city and county requested that the commission approve a change in the study under which the total cost would be \$24,000 and the local matching contribution would be reduced to \$6,000, or 25 percent of the total cost of the project. The commission refused the request because no special financial need was demonstrated, but the commission authorized use of the grant to provide equal matching funds for the cost of the changed study, up to the original project cost of \$36,000.

The city and county of Grand Forks retained services of consultants to conduct grant project studies. The studies were conducted in two phases. The first study examined the possibility of increased cooperation between the city and county in the areas of purchasing, data processing, planning, personnel, and elections. The city and county received recommendations in each of these areas and have made progress in implementing these recommendations since completion of the study project. The county is contracting with the city planning department for update of the county land use plan that is mandated by state law for solid waste planning. It is anticipated that the county will request the city planning department to update county zoning and subdivision regulations. These cooperative efforts are viewed as initial steps in a long-term goal of consolidation of services in the planning area. The city and county are working together to use existing training programs and establish joint programs for personnel. The county administrator and city personnel officer will retire at the end of 1994 and city and county officials are meeting to examine the possibility of consolidating the functions of these offices. Joint elections were held in June 1994 and were said to be of benefit to all participating political subdivisions. As a result of the study, the office of the sheriff and the city police department are being considered for collocation. This is viewed as an initial step toward sharing of justice and law enforcement services and emergency services which can improve services and reduce costs in the future. The city and county returned \$871.80 in unspent grant funds, which was deposited in the state aid distribution fund.

Richland County was awarded a grant of \$17,500 to analyze the organizational structure of the offices of several county elected officials to determine whether those offices could be combined. Richland County citizens studied home rule issues for several years before the grant application. The process of examining county government structure in Richland County involved residents from all areas of the county and led to adoption of a county home rule charter and this grant project. By coincidence, some county officials of lengthy service will be retiring at the end of 1994. Study of the structure of county government and

detailed interviews with affected county officials and employees were conducted under this grant project. The study recommended restructuring county government and combining several elected offices. Under the restructuring, Richland County will have an appointed auditor/director of finance and administration who will supervise four county government branches responsible for general administration, finance and accounting, data processing, and tax and property administration. This will combine five elected county offices into one appointed office to oversee county government administrative processes. County commissioners, the sheriff, and the state's attorney will remain elected officers.

Walsh County was awarded a grant of \$7,500 to fund a study commission examining all aspects of county government. The Walsh County study commission made recommendations to the board of county commissioners of Walsh County, including a proposal that the county auditor, treasurer, and register of deeds should be appointed rather than elected. This proposal was presented to Walsh County voters and defeated in November 1992. The study commission has continued to work on various county government issues as directed by the board of county commissioners and has not completed its study activities.

The city of Mandan and Morton County were awarded a grant of \$25,000 for a study of consolidation of city and county services. Before the grant project, the city of Mandan and Morton County had combined several services and these combinations worked well in the opinion of city and county representatives. The stated purpose of this study project was to consider combining a broader range of services and to investigate the possibility of collocating county and city departments.

The project focused on nine areas of city and county government, identified existing cooperative agreements, and attempted to identify areas in which cooperation could be instituted.

The Mandan and Morton County project surveyed elected and appointed officials on attitudes regarding the status of offices. The survey was intended to determine whether it would be feasible to change some elected offices into appointed offices. One elected official expressed interest in changing the office to an appointed office. Morton County scheduled public hearings to gauge public opinion and found a significant amount of public opposition to making the elected office an appointed office. The idea was not pursued.

When the report of Mandan and Morton County was presented, it was emphasized that county and city officials became very aware of the importance of early citizen involvement in the process of consideration of changes to local government offices and structure and that the need for citizen involvement necessitates a slow evolution process in local government. The county and city identified areas in which improvements can be made which will ultimately benefit the taxpayers, although the benefits of the study project may not become apparent for several years.

The city of Bismarck was awarded a grant of

\$25,000 for a joint study among the cities of Bismarck and Mandan, Burleigh and Morton counties, Bismarck and Mandan school districts, and Bismarck and Mandan park districts. The North Dakota Consensus Council, Inc., was the consultant and administrator of the grant project on behalf of the political subdivisions. The project was intended to develop an advocate for intergovernmental cooperation and strategies for local governments to meet future needs. The project established a joint service council consisting of representatives from each of the eight units of local government involved in the project.

Under this project, a conference was held in the fall of 1992 to bring together 70 elected and appointed officials, students, and interested citizens. The conference reviewed 149 joint governmental efforts in place within Burleigh and Morton counties and identified barriers to cooperative efforts and subjects for future cooperative efforts.

The eight entities involved in the grant project signed a joint powers agreement establishing the Mandan-Bismarck-Burleigh-Morton joint service network. The network established an investment pool among the eight political subdivisions in hopes that the group could obtain better rates of interest than an individual entity. The network intends to develop an automated and integrated tax program for assessment of property, generating tax receipts, and keeping records of delinquencies and payments. The program is intended to be designed for, and made available to, all medium-sized counties in North Dakota in cooperation with the North Dakota Association of Counties.

The political subdivisions involved in the grant project produced a videotape about collaboration efforts of North Dakota political subdivisions and a series of articles about local government structural changes possible under current state law. The project established joint purchasing and bidding among participating political subdivisions and found that more bidders and better prices were available than previously experienced. The project also focused on joint personnel issues, workers' compensation premium reduction and risk management, joint election services, and a process to develop a common vision for the future of Morton and Burleigh counties.

Audits of Grant Projects

At the final interim meeting of the commission, questions were raised about whether matching funds on a grant project were provided as promised. After deliberating on these questions, the commission approved a motion that the chairman request review by

the State Auditor of any grant projects in which the chairman believes questions exist regarding whether matching funds were properly provided. The chairman did not wish to single out any grant projects and requested that all grant projects be reviewed for the status of providing matching funds by grant recipients. All grant projects have been forwarded to the State Auditor for review.

1993-94 Grant Awards

The commission authorized a grant of \$24,999 to the North Dakota Association of Counties for a grant project sponsored by the city of Dickinson and Cass, Barnes, Stutsman, Wells, and Williams counties. The Association of Counties intends to establish a property tax task force. The task force is intended to examine automation of the process for reporting statements of full consideration and property transactions, electronic exchange of information between the state and counties to enhance the property tax data base, and the feasibility of electronic mail and other file transfers among the state Tax Commissioner, counties, and cities. It is anticipated that much of the work of this task force will be completed in 1995 and the commission asked that the results of the study be reported to an appropriate interim Legislative Council committee.

The commission authorized a grant of \$24,999 to the North Dakota League of Cities. The project is intended to establish a computer network among cities and the North Dakota League of Cities. At present, 102 of 364 cities have computers for some city functions and 21 cities have fax machines. Many of these cities have compatible equipment so an information network could be established among those cities and the North Dakota League of Cities. The method proposed to evaluate the feasibility of such a network is to employ a professional on the staff of the North Dakota League of Cities to help establish the network and evaluate it after one year.

Conclusion

The commission makes no recommendation regarding the local government efficiency planning grant program. Although statutory authority exists for the local government efficiency planning grant program, the commission makes no recommendation with regard to funding for continuation of the program.

The commission took no action on topics other than the local government efficiency planning grant program.

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned four studies. Senate Concurrent Resolution No. 4062 directed a study of the adequacy of current noxious weed laws, regulations, and control efforts. Senate Concurrent Resolution No. 4023 directed a study of the development of a noxious weed trust fund. House Concurrent Resolution No. 3049 directed a study of noxious weed laws to determine the feasibility and desirability of identifying purple loosestrife as a noxious weed and instituting appropriate methods of control or eradication. Senate Concurrent Resolution No. 4031 directed a study of problems relating to the use of contracts for the sale of agricultural commodities. The committee requested and received permission from the chairman of the Legislative Council to undertake an additional study regarding the testing of wheat protein content and ways in which consistent testing can be encouraged.

Committee members were Senators Dale Marks (Chairman), Bill L. Bowman, Layton Freborg, and Jerome Kelsh and Representatives Wesley R. Belter, Gerald T. Bodine, James Boehm, Andy Hagle, Eugene Nicholas, Earl Rennerfeldt, Don Shide, and Mark Sitz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

NOXIOUS WEED STUDY

Background

A weed can be described as any undesired, uncultivated plant that conflicts with, restricts, or otherwise interferes with land management objectives. Most weeds have several of the following characteristics:

1. Perennial in nature;
2. Continuous seed production;
3. Effective seed dispersal;
4. Ability of seed to remain dormant in soil for extended periods;
5. Ability to grow under adverse environmental conditions;
6. Ability to adapt to a variety of soil and climactic conditions;
7. Ability to effectively compete for soil moisture, nutrients, and sunlight; and
8. Genetic adaptability.

Once a plant has been classified as a weed, it can attain a "noxious" status by legislation or by the specific designation of another authority.

North Dakota Law

North Dakota statutes relating to the control of noxious weeds are found in North Dakota Century Code (NDCC) Chapter 63-01.1.

Weed Control Officials

Chapter 63-01.1 gives enforcement authority to the Commissioner of Agriculture and directs the commissioner to determine, after consulting with the North Dakota State University Extension Service,

which weeds are noxious.

County weed boards are designated as the control authorities for individual counties. Each board of county commissioners is charged with appointing a five- or seven-member county weed board and with establishing board member areas. Each county weed board is in turn directed to designate a county weed control officer. County weed boards are authorized to develop and compile a list of county noxious weeds. At a minimum, the list must include those weeds designated as noxious by the Commissioner of Agriculture. A board of county commissioners may also authorize the county weed board to engage in pest control.

Enforcement Powers

The Commissioner of Agriculture, a county weed board, or a county weed control officer may enter land without the consent of the landowner for the purpose of performing statutory duties. If land is found to be infested with weeds or pests, the county weed officer may require that the weeds or pests be controlled within the time specified. If the landowner does not comply with the directive, the county weed control officer may cause the work to be done and charge the expenses against the land as taxes to be levied the following year.

Duties of Public Landowners

With respect to publicly owned land, the Commissioner of Agriculture is to attempt the arrangement of a satisfactory noxious weed and pest control program. If the land is under the control of another state agency, the commissioner, upon failure of that agency to control weeds or pests, may authorize a county weed board to undertake control activities. That agency is to reimburse the county weed board for expenses incurred within 30 days of receiving a bill.

A federal agency having jurisdiction over land in the state is to set up a management program for controlling noxious weeds and, if appropriate, pests. If the federal agency does not control or set up a management program, the federal agency must provide the commissioner and the county weed authorities with a report "describing the methods used by the federal agency and showing cause why the federal agency is not controlling the noxious weeds or . . . pests." The Commissioner of Agriculture may hold a public hearing regarding the federal agency's failure or refusal to control the weeds or pests.

Penalties

North Dakota Century Code Section 63-01.1-08 provides a civil penalty for failure to comply with the weed control provisions. The penalty may not exceed \$50 for each day of violation, up to a maximum of \$2,500 per year. Accumulated penalties are a lien against the property. Any penalties collected are deposited with the treasurer of the political subdivision in which the penalty originated and credited to that subdivision's weed control fund. Penalties may be adjudicated by a court or by the county weed board after a hearing. A penalty imposed by a county weed

board may be appealed to the board of county commissioners.

Program Funding

A county weed board may levy up to two mills on the taxable valuation of all property in a county for the support of its efforts and, with approval of the board of county commissioners, may levy an additional two mills. If a county assesses more than three mills, at least one mill must be dedicated to leafy spurge control. A county must levy at least three mills for noxious weeds or leafy spurge control to be eligible for state cost-share dollars.

At least \$2,456,865 was appropriated to five state agencies for weed control during the 1993-95 biennium.

For the 1991-93 biennium, the Commissioner of Agriculture received a general fund appropriation of \$458,368, plus \$485,000 from the environment and rangeland protection fund, for noxious weed control. For the 1993-95 biennium, these amounts were raised to \$488,865 and \$585,000, respectively.

The Game and Fish Department used moneys from the sale of hunting and fishing licenses and federal matching dollars from the excise tax on hunting goods to fund weed control. For the 1991-93 biennium, the department's line item appropriation for weed control was \$145,000. This was increased to \$235,000 for the 1993-95 biennium.

The Board of University and School Lands set aside \$110,000 for its leafy spurge control program during the 1993-95 biennium. This money came from land rental payments and represents an increase of \$20,000 over the 1991-93 biennium.

The Department of Transportation set aside \$114,000 for the purchase of chemicals and \$918,000 for contract vegetation control during the 1993-95 biennium. This is approximately the same amount as that expended during the 1991-93 biennium.

The Parks and Tourism Department budgets approximately \$6,000 per biennium for weed control on its lands.

Testimony

Enforcement

According to testimony presented to the committee, only a handful of counties are enforcing the noxious weed laws. The lack of enforcement is due in part to liability concerns as well as social concerns. State's attorneys do not actively enforce noxious weed laws. Local weed boards often have difficulty enforcing the laws because the enforcement actions tend to be against friends and neighbors. When an action is brought against one landowner in a county, however, other landowners tend to realize that the county is serious about the enforcement of weed laws.

Another problem in controlling noxious weeds relates to inadequate income of the landowner. Although most landowners try to control noxious weeds, a landowner whose income is inadequate often reduces expenditures on weed control.

Biological Control

According to testimony presented to the commit-

tee, there were 200,000 acres of leafy spurge in the state in 1962, but approximately one million acres in 1990. One weapon being used in the fight against noxious weeds is biological control. It takes approximately five to seven years of research and development efforts before an insect species can be introduced as a potential host species. That process involves a complex relationship between the public and private sectors. For example, the United States Department of Agriculture Animal and Plant Health Inspection Service is responsible for the establishment of insectories and for the approval of nonnative species introduction, while the State Commissioner of Agriculture is responsible for coordinating the biological control program and the transfer of insects to landowners. Landowners participating in a biological control program must set aside a five-acre site for testing and research and must allow entry easements for a 10-year period.

Grazing Practices

According to testimony presented to the committee, the eastern and central portions of the state are heavily infested with leafy spurge. Although sheep and goats have not been widely used or promoted as methods to control weeds, research has shown that sheep will graze a variety of broadleaf weeds and that Angora goats do an excellent job of defoliating leafy spurge.

Grazing methods are more feasible than chemical applications in woody draws, around waterways, and in areas having high water tables. Although it may not be economically viable to use chemical control if there is too much leafy spurge infestation, a landowner can still profit by grazing animals. Grazing not only reduces leafy spurge but also increases grass production.

In the future, sheep and goat owners might lease their animals to other landowners for use on infested sites. Although the sheep market is good, interest in goats has waned, in part because of the loss of wool subsidies and the low price for mohair.

Grazing and chemical methods can be used concurrently. However, greater care must be taken in the simultaneous use of grazing and insects because grazing can eliminate the insect habitats.

Industry Perspective

According to testimony presented to the committee, leafy spurge root structures run at least 18 feet and the seeds have strong and long viability. The Environmental Protection Agency likely would not favor a chemical that eradicated spurge because the chemical would have to travel deep into the soil and remain there for at least seven to eight years.

Because the contamination of ground water is an ongoing concern, the Environmental Protection Agency requires that at least 120 tests be conducted before a product can be marketed. This generally takes seven to 10 years. The odds of finding a chemical miracle for the eradication of leafy spurge are low. Early detection, mapping, and the effective use of existing control methods were described as the best ways to control leafy spurge.

Committee Considerations

The committee considered a bill draft that would have appropriated \$110,000 for cost-share assistance, \$150,000 from the environment and rangeland fund and \$50,000 from the general fund for integrated weed management projects, and \$95,000 for the hiring of summer employees to assist the Commissioner of Agriculture with biological control, inspection, and enforcement efforts. The committee determined that noxious weeds in general and leafy spurge in particular have very significant economic impacts on the state's agricultural sector and that given limited funds, consideration must be focused on how those funds can best achieve the greatest results. The committee determined that the cost-share assistance program is the backbone of chemical weed control efforts in the state and therefore shifted funds from other programs to bolster the cost-share effort. Forty-one counties are eligible to receive state funding through this program. For the 1993-95 biennium, state cost-share funding was set at \$775,000. The committee revised the bill draft so that it would have created a noxious weed educational fund and would have appropriated \$50,000 to the fund for the purchase of services and material necessary for noxious weed and integrated pest management education programs. As revised, the bill draft also would have appropriated \$260,000 for the cost-share assistance program, \$30,000 for biological control training and the monitoring of sites, \$15,000 for the training of weed officers, and \$5,000 for the training of state and federal land managers. It is anticipated that the Commissioner of Agriculture will seek a similar level of funding for the cost-share program during the 1995-97 biennium. The \$260,000 recommended by the committee would be in addition to any other amount appropriated to the commissioner.

Testimony indicated that the Commissioner of Agriculture is developing state guidelines and a formula for the distribution of cost-share dollars. The guidelines are intended to establish consistency in weed control efforts statewide and the formula is intended to make the funding process more objective, so that a county weed board will be able to predict the level of state funding for which it will be eligible.

The committee determined that there is a need to fund educational outreach efforts with a revolving fund. The Commissioner of Agriculture intends to develop some educational programs and to contract with the Agricultural Extension Service to perform part of the educational work. A revolving fund would provide the commissioner with a source of revenue to fund the development of the programs which would be replenished with revenue from the sale of products to those taking the programs.

Recommendation

The committee recommends Senate Bill No. 2031 to create a noxious weed educational fund and appropriates \$50,000 to the fund for the purchase of services and materials necessary for providing noxious weed and integrated pest management educational programs. The bill also appropriates \$260,000 for the cost-share assistance program, \$30,000 for biological control training and the monitoring of sites,

\$15,000 for the training of weed officers, and \$5,000 for the provision of noxious weed management training to state and federal land managers.

NOXIOUS WEED MANAGEMENT TRUST FUND STUDY

Background

A noxious weed management trust fund is a grants program designed to assist counties, cooperative weed management groups, researchers, and educators in the coordination and management of large noxious weed infestations and in the prevention of future infestations. The Montana Legislature enacted this type of program in 1985.

Montana Trust Fund

The Montana Noxious Weed Management Trust Fund was initially funded by an appropriation of \$1 million and a one percent surcharge on retail sales of herbicides. In 1987 a 50-cent weed fee was imposed on all motor vehicles registered in the state and in 1989 this fee was increased to \$1.50. The vehicle weed fee, together with trust fund interest, generates approximately \$1.4 million annually. In 1987, 1989, and 1991 additional funding totaling \$450,000 was provided for biological control efforts.

In 1991 the Montana Legislature provided for the elimination of the one percent herbicide surcharge when the trust fund reached \$2.5 million. Moneys deposited in the trust fund may not be committed or expended until the principal reaches \$2.5 million, except in the case of a noxious weed emergency.

The Department of Agriculture is authorized to expend funds through grants and contracts to communities, weed control districts, and other entities it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county within which the project occurs has funded its own weed management program.

The Department of Agriculture is permitted to expend funds without restriction for:

1. Employment of a new and innovative noxious weed management project or the development of any noxious weed management project that may be established by local, state, or national organizations.
2. Cost-share noxious weed management programs with local weed control districts.
3. Special grants to local weed control districts to control significant noxious weeds newly introduced into a county.
4. Costs of collecting the surcharge.
5. Administrative expenses incurred by the Noxious Weed Management Advisory Council.
6. Any project recommended by the Noxious Weed Management Advisory Council, if the department determines the project will significantly contribute to the management of noxious weeds within the state.
7. Grants to the Agricultural Experiment Station and the Cooperative Extension Service for weed management research, evaluation, and education.

If a new and potentially harmful weed is discov-

ered growing in the state and is verified by the department, the Governor may declare a noxious weed emergency. In the absence of necessary funding from other sources, the department may allocate up to \$150,000 of the noxious weed management trust fund's principal to government agencies for emergency relief and for eradicating or confining the new noxious weed species.

Testimony

According to testimony presented to the committee, one of the greatest difficulties encountered in the control and eradication of noxious weeds is the inconsistent level of funding from state and local sources. It was suggested that a noxious weed trust fund would alleviate many of these funding concerns. If this type of program were to be viable in the state, public and private sector entities would have to lend their full support, and the number of personnel employed by the Commissioner of Agriculture's Weed Division would have to be increased.

North Dakota cannot implement a motor vehicle registration fee to fund noxious weed eradication and control efforts similar to the fee in Montana. Article X, Section 11, of the Constitution of North Dakota provides that revenue from motor vehicle registration and license taxes must be 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.

Conclusion

The committee makes no recommendation regarding the establishment of a noxious weed management trust fund. Some committee members supported a trust fund to provide a constant source of income for noxious weed control and eradication efforts. The committee determined, however, that it would be better to direct available funds toward ongoing weed control and eradication efforts, rather than segregate the funds as principal for a noxious weed management trust fund. A new trust fund would require additional sources of revenue to increase its principal. Unlike Montana, North Dakota does not have access to revenues from motor vehicle registration and license taxes for general weed control purposes. The committee determined that a constitutional amendment to allow the use of such revenues for purposes of noxious weed control and eradication would probably not meet with voter approval at this time.

PURPLE LOOSESTRIFE STUDY

Background

Purple loosestrife is an emergent aquatic plant of Eurasian origin. It became established in the estuaries of North America during the 1800s and has subsequently spread across mid-latitude North American wetlands. Purple loosestrife can grow to be two meters high and 1.5 meters wide. It is most easily identified during its long season of bloom (late June through early September) by its characteristic reddish-purple floral masses. Seed production is pro-

lific. A mature plant is capable of producing over two million seeds in a growing season. Seed dispersal takes place largely by drift in moving water, mud on aquatic birds and animals, trucks or offroad vehicles, and the cooling systems of outboard motors. Once established, purple loosestrife can survive with only 50 percent sunlight and appears to be adept at accommodating a wide variety of habitats.

Purple Loosestrife in North Dakota

Purple loosestrife has been noted in all areas of the state and especially so in alluvial floodplains and wet coulees. It tends to replace native wetland plant communities and ecologically impact dependent fauna. It has been found to displace and ultimately exclude desirable wildlife food plants and wetland habitats and thereby reduce the wildlife carrying capacity of a wetland. It also invades wetland pastures and wild hay meadows, reduces other desirable forage, and creates congestion and blockages in irrigation ditches and drainage canals.

The Natural Resources Division of the Game and Fish Department has developed containment strategies to minimize the spread and impact of purple loosestrife. These strategies include early detection by ground or aerial searches and local eradication followed by continued treatment and surveillance.

Current treatments include applying broad-spectrum herbicide, removing by hand, mowing, manipulating water levels, discing and reseeded with species able to outcompete the purple loosestrife, and burning. Biological control mechanisms are also being explored by researchers in this country and in Europe.

Regulation of Purple Loosestrife

The regulation of purple loosestrife in this country takes place by state noxious weed laws, seed laws, nursery laws, and administrative rules. There are no federal laws or rules that govern the plant. States that statutorily define purple loosestrife as a noxious weed include Arkansas, California, Idaho, Indiana, Louisiana, Minnesota, Missouri, Ohio, South Dakota, Washington, and Wisconsin.

The Minnesota Program

In 1987 Minnesota implemented the nation's first purple loosestrife program. The Department of Natural Resources is the lead agency in the effort to contain the spread of purple loosestrife. The plant was declared to be a noxious weed and its transportation into or out of the state was banned. Landowners were required to control plants growing on their land.

The Minnesota program has several components—public awareness, which involves the use of slide shows and printed materials, e.g., posters, brochures, and newsletters; computerized tracking of infestations; control of large infestations by aerial and ground spraying; and control of small infestations by spot treatment. The Minnesota program is funded by a \$3 surcharge on watercraft licenses.

Testimony

According to testimony presented to the commit-

tee, there are only limited instances of purple loosestrife in the state. Because of the small areas of infestation, serious eradication efforts should be initiated now due to the high cost of treatment—over \$1,000 per acre.

Before purple loosestrife may be placed on the state noxious weed list, evidence must show that it causes economic damage in the state. It may not be placed on the list just because it has the potential to cause economic harm or because it is causing economic harm to neighboring states and provinces.

Purple loosestrife is sold commercially at a retail price of approximately \$5 per plant. Some nurseries consider purple loosestrife to be their best selling perennial. The nurseries in the state sell only named cultivars (horticultural hybrids created especially for the nursery market) because they bloom better and longer, are easier to care for, have better color, and do not produce seeds.

However, even though purple loosestrife cultivars are sterile, they can be pollinated by a wild variety. Thus, care must be taken in selecting planting sites. It was suggested that purple loosestrife is not likely to spread in North Dakota as it has in other states because water levels are erratic and the soil is highly alkaline in this state. Neither situation promotes growth and propagation of the species.

The Commissioner of Agriculture has formed a steering committee to determine whether there are wild, uncontrolled populations of purple loosestrife in the state. If these populations are found, the commissioner indicated that consideration will be given to declaring purple loosestrife a noxious weed. If, on the other hand, the populations are not found, the commissioner indicated that voluntary control measures would be encouraged rather than imposition of stringent regulation.

Conclusion

The committee encouraged the Commissioner of Agriculture to undertake regulatory measures and ensure that purple loosestrife seed is not sold in the state. The committee also encouraged the commissioner to promote the use of voluntary measures for the purpose of aiding the eradication of purple loosestrife. The committee makes no recommendation regarding purple loosestrife.

AGRICULTURAL CONTRACTS STUDY

Background

A contract is a promise or a set of promises enforceable by law. The primary test of a contract involves the intention of the parties—has there been a meeting of the minds—to assume an obligation. The understanding of the parties is determined not only from the words of the contract, but from the situation, the acts and conduct of the parties, and the attendant circumstances. To be valid, there must be mutual assent, the parties must be capable of entering into a contract, there must be a time certain, and there must be consideration.

Agricultural Contracts

While agricultural contracts share all the basic

features of a regular contract, they also exhibit intricacies that place them in a separate class. They often involve the unique characteristics of certain commodities, including perishability, and are affected by the financial position of producers, market conditions, and other economic factors.

Some agricultural contracts are strictly buy-sell. The producer owns the crop and sells it to the processor. The title passes at the time of sale. At the other end of the continuum are service or bailment contracts. In these arrangements, the processor owns the seed, crop, or livestock, provides all the materials, and dictates all phases of production and harvest. The producer provides only the labor. The processor retains title at all times. In between these extremes are an infinite number of variations.

Minnesota Agricultural Contracts Task Force

In 1988 the Minnesota Department of Agriculture formed the Agricultural Contracts Task Force. The task force was charged with determining the extent of problems associated with the sale of agricultural commodities under contract. Its membership represented a broad spectrum of agricultural interests.

The members of the task force realized that limiting their efforts to a consideration of Minnesota's laws would not be sufficient. Many of the state's processors operated in other states and many of the state's producers sold their products in national and international markets. Despite these challenges, the task force recommended that:

1. Mandatory arbitration or mediation clauses should be required in agricultural contracts.
2. Statutory provisions should require the payment of court costs, attorneys' fees, and double or treble damages to a prevailing party.
3. Parent companies should be made responsible for the unfulfilled contracts of their subsidiaries.
4. Statutory provisions should allow a producer, who has made a large capital investment in buildings and equipment as part of a contract with a processor, to recapture the investment when a contractor terminates or cancels the contract.
5. Contracts should be written in plain language.
6. A covenant or promise of good faith and fair dealing should be part of every agricultural contract.
7. The Minnesota Department of Agriculture should provide an agricultural contracts ombudsman to disseminate information, investigate complaints, and provide or facilitate dispute resolution.

Testimony and Committee Considerations

Testimony indicated that agribusiness is shifting from a predominantly family farm status to one that relies heavily on vertical integration. This shift affects the status of family farmers and their working conditions. The poultry industry is vertically integrated and maintains extreme control of its operations. The same movement is seen in the hog industry and in the cattle industry. As this movement continues, farmers will find themselves increasingly in-

involved in agricultural production contracts. Because the parties can often include a small independent farmer and a large agricultural corporation, issues arise regarding the parties' bargaining positions and any inherent unfairnesses that might exist because of those positions.

With respect to the potato industry, perceived unfairnesses exist as a result of market forces. In the case of chipping potatoes, there is usually a requirement that the potatoes must chip to the company's satisfaction. When chipping potatoes are plentiful, standards are likely to be much more stringent than when the supply is scarce. Notwithstanding these claims, the committee was informed that in order for a company to survive, it must maintain good relations with the producers of the needed commodities. Thus, the companies opposed governmental intervention in the contracting process.

Testimony indicated that most farmers understand their contracts and they can choose whether to sign the contracts. Rather than implementing legislative requirements regarding contracts, it was suggested that the parties to a contract be provided with access to a third-party review system.

The committee considered a bill draft that would have provided that any party to an agricultural commodities contract could require all other parties to the contract to participate in mediation through the Agricultural Mediation Service. The bill draft would also have provided that if a contractor is a subsidiary of a parent entity, the parent entity is liable to a producer for the amount of any unpaid claim resulting from the contractor's failure to pay or perform according to the terms of the contract.

Proponents testified that mediation should be an option available to any party to a contract and that the mediation should occur within a defined format, such as the rules set forth by the Credit Review Board. They also testified that imposing liability on a parent company for unpaid claims against a subsidiary addresses the cause of numerous bankruptcy actions and further stated that the Legislative Assembly should not wait for problems to become overwhelming before taking legislative action.

Recommendation

The committee recommends House Bill No. 1025 to provide that any party to an agricultural commodity production contract may require all other parties to the contract to participate in mediation through the Agricultural Mediation Service, under rules of the Credit Review Board. The bill also imposes liability on a parent entity for the amount of any unpaid claim of a producer resulting from a subsidiary's failure to pay or perform according to the terms of the contract.

PROTEIN TESTING OF WHEAT STUDY

This study related to systems used in the testing of wheat protein content and how the consistent protein testing of wheat can be encouraged.

Background

Wheat is checked for protein level when it is delivered to a local elevator and a price, based on the

test result, is set at that time. When the wheat is shipped to its destination port, it is again tested to determine its protein level. Changes in moisture content, use of different protein testing machines, and simple variations in testing techniques often result in a finding of different protein levels. Because protein levels are price determinants, producers and elevators are subject to financial consequences of different protein levels.

Federal Law

The United States Department of Agriculture Federal Grain Inspection Service is authorized to test wheat for protein. Under rules adopted by the service, all official protein analyses must be performed in accordance with the procedures prescribed by the service and must be performed by authorized or licensed employees of the service at delegated or designated agencies.

United States Department of Agriculture - Federal Grain Inspection Service

In recent years, the Federal Grain Inspection Service has employed infrared reflectance devices for official protein determinations. In an effort to measure larger samples and reduce human error, the Federal Grain Inspection Service now requires that official tests be done using whole grain analyzers. Whole grain analyzers produce consistent results, require little maintenance and calibration, and training people to use them is relatively simple. Even though the price of a whole grain analyzer is costly (\$25,000) and its availability is not widespread, the Federal Grain Inspection Service has determined that changing to the use of the whole grain analyzer at this time is an important long-term move that will reduce variations in test results.

Testimony and Committee Considerations

Testimony indicated that grain testing is more of an art than a science. If grain buyers do not use the testing procedures outlined by the Federal Grain Inspection Service, if sampling methods are not conducted accurately, or if testing equipment is not properly calibrated and used, sampling errors will occur.

Elevators in North Dakota have limited shipping options. The state cannot tell federal officials what to do. However, it was suggested that concerted action by a number of states may encourage federal officials to engage in research and education efforts with respect to grain protein grading, sampling, and inspection.

The committee considered a resolution draft that would have urged the Federal Grain Inspection Service to disseminate useful information about technological and regulatory changes affecting the grading of wheat and would have encouraged the use of contractual provisions that require the acceptance of first official grades as the price and quality determinants at destination ports.

The committee determined that the only way to guarantee consistent pricing of wheat is to guarantee the test results, regardless of whether the tests are

conducted at the country elevators, the destination ports, or both. The committee realized that issues related to test variances have national and even international implications and that discussions regarding the testing procedures need to involve the appropriate federal agencies and divisions.

Recommendation

The committee recommends House Concurrent Resolution No. 3001 to urge the Federal Grain Inspection Service to disseminate useful information about technological and regulatory changes affecting the grading of wheat and to encourage the use of first official grades at destination ports.

BUDGET SECTION

The Legislative Council's Budget Section is referred to in numerous statutes contained in the North Dakota Century Code or the Session Laws of North Dakota. Although there are statutory references to the Budget Section, it is not created by statute. The Budget Section is an interim committee appointed by the Legislative Council. By tradition the membership of the Budget Section consists of the members of the Senate and House Appropriations Committees, the majority and minority leaders and their assistants, the Speaker of the House, and the Lieutenant Governor (who is designated a member of the Budget Section by statute).

Budget Section members were Senators Harvey D. Tallackson (Chairman), Judy L. DeMers, William G. Goetz, Ray Holmberg, Tish Kelly, Elroy N. Lindaas, Evan E. Lips, Tim Mathern, Corliss Mushik, Pete Naaden, Gary J. Nelson, David E. Nething, Rolland W. Redlin, Larry J. Robinson, Russell T. Thane, Dan Wogsland, James C. Yockim; Representatives Rocky Bateman, Rick Berg, Rex R. Byerly, Ron Carlisle, Rick Clayburgh, Jack Dalrymple, Loren DeWitz, Tom D. Freier, Gereld F. Gerntholz, Steve Gorman, Roy Hausauer, John M. Howard, Robert Huether, Lee Kaldor, Joe Kroeber, Richard Kunkel, Bruce Laughlin, Bob Martinson, Ronald Nichols, Bill Oban, Doug Payne, Barbara Pyle, Rod St. Aubyn, Francis J. Wald, Janet Wentz, Gerry L. Wilkie; and Lt. Governor Rosemarie Myrdal.

The Budget Section submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

One of the responsibilities of the Budget Section is to review the executive budget presented to the Legislative Assembly during the 1994 organizational session. In addition, the following duties, assigned to the Budget Section by statute, resolution, or Legislative Council directive, were acted on by the Budget Section during the 1993-95 biennium:

1. North Dakota Century Code (NDCC) Section 15-10-12.1 requires the Budget Section to review and act upon 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 that 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 Board of Higher Education with the approval of the Budget Section.
3. 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) itemized statement requirements

for claims against the state; (2) departmental payroll procedures; (3) use of electronic funds transfer systems for payment of departmental payrolls; (4) rules on standardized voucher forms and disapproval of claims; and (5) state employee compensation withholding.

4. 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 in which 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.
5. North Dakota Century Code Section 54-35.2-02.1(3) requires the Advisory Commission on Intergovernmental Relations to report annually to the Budget Section on planning grants distributed to counties and cities.
6. 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.
7. North Dakota Century Code Section 57-01-11.1 requires that, upon Budget Section request, the Tax Commissioner submit 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.
8. House Bill No. 1575 (1991 Session Laws Chapter 404) requires any North Dakota ethanol plant receiving production incentives from the state to file with the Budget Section a statement certified by a certified public accountant indicating whether the plant produced a profit in the preceding fiscal year after deducting payments received under the incentive program.
9. House Bill No. 1001 (1993 Session Laws Chapter 1) authorizes the Insurance Commissioner, subject to Budget Section approval, to distribute income deposited in the insurance tax distribution fund to fire departments during the 1993-95 biennium.
10. House Bill No. 1001 (1993 Session Laws Chapter 1) requires the Attorney General to report to the Budget Section any deficiency appropriation to be introduced to the 1995 Legislative Assembly to reimburse the state bonding fund for the purpose of providing defense services to eligible state employees.
11. House Bill No. 1002 (1993 Session Laws Chapter 2) authorizes the director of the Department of Human Services, subject to Budget Section approval, to transfer appropriation authority to correlate fiscal and staff resources with the flow

- of clients between community-based programs and institutions.
12. House Bill No. 1005 (1993 Session Laws Chapter 5) authorizes the director of the Office of Management and Budget, subject to Budget Section approval, to transfer appropriation authority among the various divisions of the department.
 13. House Bill No. 1007 (1993 Session Laws Chapter 7) requires the Adjutant General to report to the Budget Section on funds received and spent for the Veterans Cemetery.
 14. House Bill No. 1012 (1993 Session Laws Chapter 12) provides a contingent appropriation of up to \$1 million of special funds to the Game and Fish Department, subject to Budget Section approval, for the operations of the Game and Fish Department during the 1993-95 biennium.
 15. House Bill No. 1018 (1993 Session Laws Chapter 18) requires the Office of Management and Budget to report to the Budget Section after August 1, 1994, on amounts provided by state agencies and institutions for salary increases during the second year of the biennium.
 16. House Bill No. 1028 (1993 Session Laws Chapter 529) requires the Information Services Division to report to the Budget Section regarding the implementation of the telephone access line and radio communications access surcharges, expenditures for specialized telecommunications equipment, and the status of the appropriation from the telecommunications services account for the communications impaired.
 17. House Bill No. 1518 (1993 Session Laws Chapter 493) requires the Tax Commissioner, the executive director of Job Service North Dakota, and the director of the Department of Economic Development and Finance to report to the Budget Section on the new jobs training program.
 18. Senate Bill No. 2005 (1993 Session Laws Chapter 26) requires the Land Reclamation Research Center to report to the Budget Section in October 1994 regarding additional reclamation research needed to reduce regulatory costs and on appropriations needed for the 1995-97 biennium.
 19. Senate Bill No. 2014 (1993 Session Laws Chapter 35) requires the Department of Transportation to report to each meeting of the Budget Section on the department's progress in matching federal highway construction funds and on the department's plan to complete a four-lane highway system throughout the state.
 20. Senate Bill No. 2017 (1993 Session Laws Chapter 38) requires the Industrial Commission to report to the Budget Section on changes in the Housing Finance Agency.
 21. Senate Concurrent Resolution No. 4027 requires the study of methods to improve the development of biennial revenue estimates.
 22. Pursuant to a Legislative Council directive, the Budget Section is to receive a report from the Department of Health and Consolidated Laboratories regarding the cost and feasibility of establishing a state repository for medical documents.

The Budget Section did not receive requests or reports:

1. From the State Forester for approval to spend moneys in the State Forester reserve account for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding.
2. From the Game and Fish Department for approval of a comprehensive statewide land acquisition plan or land acquisitions of more than 10 acres or exceeding \$10,000.
3. From the Department of Human Services for approval to terminate the food stamp program or energy assistance program as a result of a decrease in the rate of federal financial participation.
4. From the Emergency Commission for approval of transfers from the state contingency fund in excess of \$500,000.
5. From state agencies or institutions for money from the capital improvements preliminary planning revolving fund.
6. To approve cash flow financing to offset projected state financial deficits.
7. To approve a transfer of funds from the budget stabilization fund to the general fund due to a decrease in general fund revenues.
8. From the director of the budget to reduce state agency and institution budgets by a percentage sufficient to cover estimated losses caused by initiative or referendum action.
9. From the University of North Dakota to expend funds available for the expansion of the Oxford House.
10. From the Board of Higher Education for approval to enter into a lease purchase agreement with the Seed Department to acquire title to Hastings Hall on the North Dakota State University campus.
11. From the Department of Human Services for approval to fund human service center programs in a different manner than prioritized as of April 24, 1993.¹
12. From the Department of Human Services for approval to begin alternative programs at the State Hospital.
13. From the Department of Human Services to report anticipated general fund deficiencies due to reductions in State Hospital income or Medicaid grant funding or for approval to continue spending at a level that would require a deficiency appropriation from the 1995 Legislative Assembly.
14. From state agencies for approval to transfer appropriation authority between the grants line item and the grants to state agencies line item.
15. From the Developmental Center at Grafton for approval to provide services under contract with a governmental or nongovernmental person.
16. From the Workers Compensation Bureau for approval to establish a casualty insurance organization to provide extraterritorial workers' compensation insurance.
17. From the Board of Higher Education for approval to convey property to Ramsey County.

18. From the director of the Department of Transportation for approval to transfer appropriation authority among the various divisions of the department.
19. To approve a transfer of appropriation authority from the Legislative Council to the Children's Services Coordinating Committee.
20. From the Department of Corrections and Rehabilitation to approve a transfer of appropriation authority among the various divisions of the department.
21. From the Department of Human Services for approval to spend money available in the traumatic brain injury fund.

¹ Section 4 of House Bill No. 1002, as passed by the Legislative Assembly and vetoed by the Governor, authorized the director of the Department of Human Services, subject to Budget Section approval, to transfer appropriation authority among the various divisions of the department and authorized the Department of Human Services, subject to Budget Section approval, to fund human service center programs in a different manner than prioritized

as of April 24, 1993. An Attorney General's opinion dated May 25, 1993, stated that the portion of the veto relating to the department needing Budget Section approval to spend the funds in a different manner than prioritized by the Legislative Assembly was void. Therefore, that portion of the section remains in effect.

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 1993-95 biennium, federal block grant moneys under the Omnibus Budget Reconciliation Act of 1981.

STATUS OF THE STATE GENERAL FUND

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

Actual revenue collections through September 1994 were \$36.8 million more than the original legislative estimate. A comparison of actual collections through September 1994 to the original legislative forecast is as follows:

Revenue Type	Original Legislative Forecast	Actual Collections Through September 1994	Variance	Percentage (Variance/Original Legislative Forecast)
Sales tax	\$281,175,050	\$286,710,709	\$ 5,535,659	2
Motor vehicle excise tax	37,990,000	49,579,236	11,589,236	30.5
Individual income tax	152,164,000	168,600,252	16,436,252	10.8
Corporate income tax	52,815,000	64,682,486	11,867,486	22.5
Oil tax	44,373,034	33,149,248	(11,223,786)	(25.3)
Coal tax	27,873,000	29,341,268	1,468,268	5.3
Other	<u>142,481,431</u>	<u>143,623,439</u>	<u>1,142,008</u>	<u>1</u>
Total	<u>\$738,871,515</u>	<u>\$775,686,638</u>	<u>\$ 36,815,123</u>	<u>5</u>

The July 1, 1993, general fund balance was originally estimated by the 1993 Legislative Assembly to be \$12,766,325. However, the actual July 1, 1993, general fund balance was \$19,763,191, after transferring \$8,660,000 to the regional rural development revolving loan fund, pursuant to 1991 House Bill No. 1046. Based on WEFA's July 1994 revised revenue estimate and actual revenue collections through September 1994, the June 30, 1995, general fund balance is estimated to be \$48,075,926. Due to an unanticipated increase in revenues, the revised estimate is \$39,152,028 greater than the \$8,923,898 originally estimated for the June 30, 1995, general fund balance.

HIGHER EDUCATION

Higher Education Buildings

The Budget Section, pursuant to NDCC Section 15-10-12.1, approved the use of North Dakota State University lands for the construction of the Elling Recreational Complex in Fargo at an estimated cost

of \$770,000 to be funded through private and other funds. The Budget Section also approved North Dakota State University's request to construct an aquaculture facility at the Carrington Research Center at an estimated cost of \$411,000 for construction and operation for two years and to construct a technology transfer center at the Williston Research Center at an estimated cost of \$500,000. Both projects will be funded through private, federal, and other funds. The Budget Section also approved the use of University of North Dakota lands for the construction of a rural technology center in Grand Forks and the expenditure of \$3.5 million of federal funds for construction of the center.

Although the transfer did not require Budget Section approval, the Budget Section heard a report on the potential transfer of United States Air Force property to Dickinson State University. The property consists of four acres of land and two buildings, a 10,000-square-foot facility serving as the BX/commissary, and a 24-unit housing complex consisting of

18 two-bedroom and six 1-bedroom apartments. The commissary building will require remodeling at an estimated cost of \$55,000. Upon conveyance of the property, Dickinson State University plans to utilize general fund appropriations to pay the \$55,000 remodeling costs and annual operating costs of \$40,000.

Tuition Rates

In accordance with NDCC Section 15-10-18, the Budget Section approved the nonresident tuition rates proposed by the Board of Higher Education for the 1993-94 academic year.

In accordance with a reciprocity agreement with Minnesota, tuition rates for Minnesota students are 125 percent of the North Dakota resident tuition rates. Students from South Dakota, Montana, Saskatchewan, and Manitoba pay 150 percent of the

North Dakota resident tuition rates at North Dakota State University and the University of North Dakota. At North Dakota's four-year regional universities and two-year institutions, students from contiguous states and provinces, other than Minnesota, pay the same rate as students from Minnesota. Nonresident students not from Minnesota or another contiguous state or province pay 267 percent of the North Dakota resident tuition rate.

Because of the reciprocity agreement with Minnesota, the Budget Section does not approve nonresident tuition rates for Minnesota students. The nonresident tuition rates, as approved by the Budget Section, for the 1993-94 academic year, along with the previously approved rates for the 1992-93 academic year, and the related increases, are as follows:

	1992-93 Actual Rates	1993-94 Approved Rates	1993-94 Increase	Percentage Increase
<u>University of North Dakota and North Dakota State University:</u>				
Undergraduate:				
Resident	\$ 1,860	\$ 1,986	\$ 126	6.8
Nonresident*	4,968	5,300	332	6.7
Minnesota	2,328	2,482	154	6.6
Contiguous state/province*	2,790	2,978	188	6.7
Graduate:				
Resident	\$ 2,070	\$ 2,196	\$ 126	6.1
Nonresident*	5,544	5,862	318	5.7
Minnesota	2,592	2,744	152	5.9
Contiguous state/province*	3,120	3,294	174	5.6
Other:				
Law (Resident)	\$ 2,280	\$ 2,406	\$ 126	5.5
Law (Minnesota)	2,850	3,006	156	5.5
Law (Nonresident)*	6,072	6,422	350	5.8
Resident Medical School	8,160	8,310	150	1.8
Nonresident Medical School*	21,804	22,188	384	1.8
Minnesota Medical School	10,206	10,388	182	1.8
Physical therapy - New students	1,860	3,400	1,540	82.8
Physical therapy - Continuing students	1,860	2,300	440	23.7
<u>Minot State University:</u>				
Undergraduate:				
Resident	\$ 1,530	\$ 1,656	\$ 126	8.2
Nonresident*	4,080	4,420	340	8.3
Minnesota	1,908	2,070	162	8.5
Contiguous state/province*	1,908	2,070	162	8.5
Graduate:				
Resident	\$ 2,076	\$ 2,202	\$ 126	6.1
Nonresident*	5,544	5,878	334	6.0
Minnesota	2,592	2,752	160	6.2
Contiguous state/province*	2,592	2,752	160	6.2
<u>Dickinson State University, Mayville State University, and Valley City State University:</u>				
Undergraduate:				
Resident	\$ 1,530	\$ 1,606	\$ 76	5.0
Nonresident*	4,080	4,286	206	5.0
Minnesota	1,908	2,006	98	5.1
Contiguous state/province*	1,908	2,006	98	5.1
<u>Two-year colleges:</u>				
Undergraduate:				
Resident	\$ 1,452	\$ 1,502	\$ 50	3.4
Nonresident*	3,876	4,010	134	3.5
Minnesota	1,812	1,878	66	3.6
Contiguous state/province*	1,812	1,878	66	3.6

* Required Budget Section approval

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Pursuant to NDCC Section 54-35.2-02.1(3), the Budget Section heard a report from the Advisory Commission on Intergovernmental Relations on planning grants distributed to counties and cities during the 1993-95 biennium. For additional information, please refer to the Advisory Commission on Intergovernmental Relations report regarding its activities.

OFFICE OF MANAGEMENT AND BUDGET

Pursuant to NDCC Section 54-14-01.1, the Budget Section received a report from the Office of Management and Budget regarding the following budget office statutory duties:

1. The requirement for itemized statements before payment of claims against the state;
2. Departmental payroll procedures;
3. Use of electronic funds transfer systems for payment of departmental payrolls;
4. Standardized voucher forms and disapproval of claims; and
5. Withholding from state employee compensation.

Pursuant to NDCC Section 54-14-03.1, the Budget Section received a report from the Office of Management and Budget on irregularities discovered during the preaudit of claims and areas in which more uniform and improved fiscal practices are desirable. The report indicated that the Office of Management and Budget reviewed temporary salary adjustments and found agency errors as the cause for several one-time adjustments. It also indicated that the Office of Management and Budget has requested an audit from the State Auditor to review the revenues and appropriation for the Veterans Home due to an overexpenditure in the salaries and wages line item.

North Dakota Century Code Section 54-44.1-07 provides that the Legislative Council is to prescribe the form in which budget data is presented to the Legislative Assembly. The Legislative Council has assigned this responsibility to the Budget Section. Pursuant to Legislative Council directive, the Budget Section approved the Office of Management and Budget's request to change the 1995-97 budget documents as follows:

1. To consolidate the Information Services Division line item into the operating expense line item.
2. To use three-ring binders for the multivolume budget publication that is provided to each Appropriations Committee and to make fewer than 20 copies of this multivolume budget publication.

The Budget Section did not approve the Office of Management and Budget's request to eliminate the funding source by line item in the budget request documents.

Pursuant to NDCC Section 54-44.1-07, the Budget Section requested the Office of Management and Budget to ask all state agencies and institutions to include, to the extent possible, service efforts and accomplishments in the 1995-97 budget request forms

and to use this information to support the executive budget when it is presented to the 1995 Legislative Assembly. The Office of Management and Budget developed a program-based performance budgeting pilot project to incorporate service efforts and accomplishments in the budget process.

The Budget Section received several reports from the Office of Management and Budget on the proposed form of appropriations bills for pilot project agencies. The Budget Section approved the Office of Management and Budget's development of program-based performance budgets for pilot project agencies, but did not approve the Office of Management and Budget's proposal to consolidate the Department of Human Services appropriations bill from 10 subdivisions to four. The Budget Section requested that the Department of Human Services budget be presented to the 1995 Legislative Assembly in the same form as was presented to the 1993 Legislative Assembly.

Pursuant to NDCC Section 54-44.1-07, the Budget Section supported the Office of Management and Budget's proposal to prepare the appropriation bills for elected officials in 11 separate bills rather than one consolidated bill in order to improve the efficiency of the appropriations process for elected officials.

Pursuant to 1993 House Bill No. 1005, Section 2, the Budget Section approved the Office of Management and Budget's request to transfer appropriation authority of \$5,596 from the Office of Management and Budget - Central Operations, Information Services Division line item, to the Office of Management and Budget - Facility Management, Information Services Division line item.

Pursuant to 1993 House Bill No. 1018, Section 3, the Budget Section received a report from the Office of Management and Budget on state agency and institution salary increases given during the second year of the 1993-95 biennium. Only five state agencies did not give a salary increase of at least three percent, effective July 1, 1994. All but 19 agencies funded the raise through money appropriated in the salaries and wages line item.

ENHANCED AUDIT PROGRAM

Pursuant to NDCC Section 57-01-11.1, the Budget Section received a report from the Tax Commissioner on the progress made in collecting additional tax revenues under the enhanced audit program and on settlements of tax assessments.

The enhanced audit program was established in 1983 and allowed the Tax Department to hire additional auditors to more effectively collect taxes. For the period July 1, 1993, to March 30, 1994, the Tax Department received \$22.65 million in audit-related collections, \$8.7 million of which were related to the enhanced audit program. The Tax Department reported that since the inception of the enhanced audit program on July 1, 1983, the Tax Department has collected nearly \$204 million as a result of audit activity, \$73.4 million of which is attributable to the enhanced audit program.

DEPARTMENT OF HUMAN SERVICES

Appropriation Transfers

Pursuant to 1991 Senate Bill No. 2002, Section 5, the Budget Section approved transfers of 1991-93

Funding Source	Department-wide and Managerial Support	Economic Assistance	Medical Assistance	Vocational Rehabilitation	Field Services and Program Development	Human Service Centers	State Hospital	State Developmental Center
General fund	\$ 1,492,743	\$ 1,349,115	\$ 2,350,885	\$ 6,240	\$(353,572)	\$(5,116,607)	\$ (928,804)	\$ 1,200,000
Other funds	<u>(1,492,743)</u>	<u>(8,302,630)</u>	<u>4,602,630</u>	<u>(15,808)</u>	<u>(96,861)</u>	<u>5,305,412</u>	<u>1,200,000</u>	<u>(1,200,000)</u>
Total	<u>\$ 0</u>	<u>\$(6,953,515)</u>	<u>\$ 6,953,515</u>	<u>\$(9,568)</u>	<u>\$(450,433)</u>	<u>\$ 188,805</u>	<u>\$ 271,196</u>	<u>\$ 0</u>

Also, in accordance with Section 5 of 1991 Senate Bill No. 2002, the Budget Section granted the Department of Human Services request to make additional transfers of appropriation authority between the various subdivisions of the Department of Human Services, as needed to complete the 1991-93 biennium. Pursuant to this approval, the Department of Human Services transferred general fund moneys of \$664,811 from the State Hospital to the Developmental Center.

Pursuant to 1993 House Bill No. 1002, Section 6, the Budget Section approved the Department of Human Services request to transfer four full-time equivalent (FTE) authorized positions from the Developmental Center to regional human service centers as a result of the transfer of developmentally disabled clients from the Developmental Center to the regional human service centers.

The Budget Section received reports from the Department of Human Services on the status of the budget for long-term care and the expenditure of targeted savings amounts generated through reductions within the department. An additional \$11.9 million was required to fund long-term care costs during the 1993-95 biennium. Approximately \$2 million was available through savings in Medicaid costs and \$300,000 through savings in other economic assistance programs, due to a decreased number of economic assistance cases. The balance was made available through targeted savings reductions within the department.

The Department of Human Services also presented a report on wait times and authorized and filled FTE positions at human service centers. October 1993 wait times were compared to October 1992 and were either improved or unchanged for all eight regions of the state. For the eight regional human service centers, the total number of authorized FTE positions for July 1993 was 799.65. As of July 1992, the number of authorized FTE positions was 764.9. The total number of filled FTE positions for July 1993 was 699.38, compared to 667.73 for July 1992.

The Budget Section also received reports from the Department of Human Services on the new organizational chart for the department, a new program for accountability and cost efficiency implemented within the department, and an operation/productivity analysis of the State Hospital conducted by the department.

biennium appropriation authority among the various divisions of the Department of Human Services. The cumulative effect of the transfers during this interim is summarized as follows:

NORTH DAKOTA NATIONAL GUARD

Pursuant to 1993 House Bill No. 1007, a representative from the North Dakota National Guard presented a report to the Budget Section on funds received and spent for the Veterans Cemetery. The report indicated that over 200 veterans are buried at the cemetery and contributions from private and corporate sources have totaled \$269,000 through March 1994.

GAME AND FISH DEPARTMENT

House Bill No. 1012 (1993) provided a contingent appropriation of up to \$1 million of special funds to the Game and Fish Department, subject to Budget Section approval, for the operations of the Game and Fish Department during the 1993-95 biennium. The July 1, 1993, balance in the game and fish operating fund was sufficient to allow for Budget Section approval of the entire contingent appropriation. The department indicated that the \$1 million would be used in the following manner:

Salaries and wages	\$ 170,000
Information services	50,000
Operating expenses	290,000
Equipment	280,000
Capital improvements	120,000
Grants	<u>90,000</u>
Total	<u>\$1,000,000</u>

INFORMATION SERVICES DIVISION

Pursuant to 1993 House Bill No. 1028, the Budget Section received a report from the Information Services Division regarding the implementation of the telephone access line and radio communications access surcharges, expenditures for specialized telecommunications equipment, and the status of the appropriation from the telecommunications services account for the communications impaired. The report indicated that for the first operating year of the relay service, the access surcharge was based on eight cents per telephone access line and radio communications service number. This resulted in a \$75,000 surplus. Consequently, the Public Service Commission set the surcharge at four cents per telephone access line and radio communications service number for the second operating year of the relay service. The program has averaged 2,800 calls and 14,000 minutes of billable service each month.

NEW JOBS TRAINING PROGRAM

Pursuant to 1993 House Bill No. 1518, the Budget Section received reports from the Tax Commissioner, the executive director of Job Service North Dakota, and the director of the Department of Economic Development and Finance on the new jobs training program, which assists community economic development by providing incentives to businesses to locate and expand within the state through government-assisted new jobs training. The Job Service North Dakota report indicated that as of June 15, 1994, five preliminary agreements had been signed with employers interested in using the new jobs training program, but the following concerns regarding utilization of the program had been expressed:

1. The requirement to increase the base employment level by 10 percent or two employees, whichever is greater, creates problems for larger firms expanding employment.
2. The requirement that every employee participating in the new jobs training program be paid an income at least equal to 120 percent of the federal poverty level for a family of four creates problems.
3. North Dakota's open records law concerns some employers considering using the new jobs training program.

The report received from the Tax Commissioner indicated that questions regarding the definition of a "new job" have delayed implementation of the new jobs credit.

DEPARTMENT OF TRANSPORTATION

At each meeting of the Budget Section, reports were received from the Department of Transportation on the department's progress on matching federal highway construction funds and on the department's plan to complete a four-lane highway system throughout the state. During 1992 and 1993, the department borrowed from the federal government a total of \$7.5 million, that needed to be repaid by March 30, 1994. A five percent contractor tax was enacted by the Legislative Assembly to provide funds to pay back this loan. The federal Office of Management and Budget proposed a rule that came into effect January 1, 1994, which would not have allowed the proceeds of the five percent contractor tax to be used to match federal funds. As a result, the Budget Section urged the Legislative Council chairman to communicate with the federal Office of Management and Budget to convey the Budget Section's support of the North Dakota Department of Transportation's efforts to maintain the contractor tax in effect until all amounts borrowed prior to March 30, 1994, are repaid. The Department of Transportation repaid money borrowed from the federal Highway Administration through a \$7.5 million loan from the Bank of North Dakota. The loan from the Bank of North Dakota will be repaid through the collection of the five percent contractor tax. As projected, the contractor tax will raise approximately \$2.7 million during the 1994 construction season.

Due to the harsh winter of 1993-94, overtime expenditures for the Department of Transportation

exceeded budgeted amounts by approximately \$400,000. The department reduced expenditures in other areas to compensate for this unanticipated increase. The 1993 Legislative Assembly approved House Bill No. 1399 that provides a contingent motor vehicle fuel tax increase of up to three cents per gallon based on the amount of annual federal highway matching funds available to North Dakota in excess of \$84 million during the 1993-95 biennium as follows:

Federal Highway Matching Funds	Motor Vehicle Fuel Tax Rate (Per Gallon)
\$0 - \$90,000,000	17¢
\$90,000,001 - \$103,500,000	18¢
\$103,500,001 - \$117,000,000	19¢
\$117,000,001 or more	20¢

The motor vehicle fuel tax was increased by one cent, from 17 cents to 18 cents per gallon beginning December 1, 1993, as a result of federal fiscal year 1994 highway construction funds allocated to North Dakota totaling \$99.4 million. The department reported that the additional one-cent motor vehicle fuel tax allowed the Department of Transportation to receive all available federal funds for the 1993-95 biennium. For fiscal year 1995, the Department of Transportation expects to receive \$99 million in federal surface transportation funds, approximately \$400,000 less than the amount received in 1994.

Due to a lack of funds, the Department of Transportation was not able to undertake any four-lane highway construction projects during the 1993-95 biennium. The department has held discussions with the city of Ray regarding the location of the proposed four-lane highway and has continued in the planning and design process for the expansion of Highway 2 from two lanes to four lanes. The expansion of Highway 2 from two lanes to four lanes is completed 15 miles northwest of Minot and 14 miles northeast of Williston. The section of road which is still two lanes is 99.6 miles in length.

REVENUE ESTIMATING STUDY

Background

Senate Concurrent Resolution No. 4027 directed a study to determine methods to improve the development of biennial revenue estimates, to review recently implemented practices in other states, and to consider a process for legislative review of estimates during the legislative session. The process currently used to develop North Dakota's revenue estimate is as follows:

1. The Tax Department provides current statistical data to WEFA on taxable sales and purchases for the various North Dakota economic sectors, adjusted gross incomes, oil prices and production, and other relevant economic data.
2. WEFA has an economic model for the North Dakota economy. It is formulated by adjusting WEFA's United States economic model to fit North Dakota's economy. The statistical information provided by the Tax Department and other agencies is incorporated into WEFA's

North Dakota model. Economic projections for North Dakota are then calculated based on all of the input data in the model. WEFA provides a revenue forecast for the upcoming biennium in February of each year, prior to the legislative session, with updates in June, October, and February during the legislative session.

3. The WEFA projections are forwarded to the Tax Department and the Office of Management and Budget. The Tax Department inputs the information received from WEFA into the Tax Department model that calculates tax collections for the various tax types based on North Dakota's tax laws.
4. The Office of Management and Budget uses WEFA's information and the Tax Department's estimates to formulate its revenue projections for developing the executive budget.

Findings

The Legislative Council conducted a survey and presented a report on the revenue estimating processes used in other states. The executive branch has the primary authority for development of a revenue estimate in most states (nine of the 13 states surveyed). Three states place the primary responsibility with a consensus group, and one state shares the responsibility between the legislative and executive branches. Seven of the 13 states do not require a separate legislative revenue estimate. All states surveyed use outside consultants in some capacity. Five states make use of a revenue oversight committee. Ten states track revenue collections on a monthly basis, and three of the surveyed states track revenue collections on a daily basis.

The Budget Section also received staff reports on the rainy day funds in the states of Oklahoma, Mississippi, and North Dakota, and other states' use of their university system in the revenue estimating process.

The Legislative Council staff also presented information on the revenue estimating processes in North Dakota, Montana, South Dakota, and Mississippi. In North Dakota, the House and Senate Appropriations Committees hold a joint hearing during the legislative session on the revisions to the revenue forecast. The individual Appropriations Committees then vote on the revised revenue forecast and once both committees have adopted the same forecast, the Legislative Council staff uses the revised forecast in the budget status system. The state of Montana has an interim Revenue Oversight Committee comprised of 12 legislators which reviews an executive revenue forecast and a legislative revenue forecast and chooses one of the two forecasts to be introduced in the form of a resolution. The resolution is heard before both the House and Senate Taxation Committees and is voted on by the full House and Senate. The state of South Dakota has a Joint Appropriations Committee that hears the revenue forecast and has historically held the appropriations hearings. The Joint Appropriations Committee adopts the revenue forecast and no formal action is taken by the full Senate or House. The state of Mississippi utilizes consensus forecasting and has a Joint Legislative Budget Committee comprised of five House members and five Senate

members which receives and approves the revenue forecast and prepares the budget recommendation.

The Budget Section also received comments on the revenue estimating study from the State Tax Commissioner and the director of the Office of Management and Budget, who both support the use of consensus revenue forecasting in North Dakota but do not believe the use of a consensus group or panel of economic advisors would necessarily lead to a more accurate revenue forecast.

Recommendation

The Budget Section recommends that the chairmen of the House and Senate Appropriations Committees, with the assistance of the Legislative Council staff, arrange for joint Senate and House Appropriations Committee hearings to be held during the legislative session to obtain information to assist the Legislative Assembly in determining whether adjustments are necessary to the executive budget revenue projections. The Budget Section also recommends that these meetings include members of the Finance and Taxation Committees. Input is anticipated from representatives from the agriculture, energy, manufacturing, and construction industries.

MEDICAL RECORDS REPOSITORY

Senate Concurrent Resolution No. 4013 called for a study of the feasibility of establishing a state repository for medical documents and the Legislative Council passed a motion requesting the Department of Health and Consolidated Laboratories to study the feasibility of such a repository and report its findings to the Budget Section. Two methods of managing a central document repository were examined by the Department of Health and Consolidated Laboratories. The first was a traditional document handling system that would require storing copies of all documents and maintaining a microfilm record of each document stored. The second method would use a computer-based imaging system which would allow documents to be scanned and stored in the computer system and would eliminate the need to store a copy of the actual document.

Startup expenses for the traditional document handling system were estimated to be \$7,000 to \$10,000 and annual operating expenses were estimated to be \$93,000 to \$198,000, depending on the level of personnel coverage. The startup expenses for a computer-based imaging system were estimated to be approximately \$50,000 to \$75,000 and annual operating costs approximately \$69,000.

The Department of Health and Consolidated Laboratories reported to the Budget Section that businesses in the state were interested in pursuing the establishment of a medical records repository on a fee for service basis if the volume of business was large enough to support the operating costs. The Budget Section took no action regarding the study of the feasibility of establishing a state repository for medical documents.

1993-95 BIENNIUM REPORT ON COMPLIANCE WITH LEGISLATIVE INTENT

The Budget Section received a staff report entitled *1993-95 Biennium Report on Compliance with Legis-*

lative Intent. The Legislative Council staff conducted visitations with agency administrators and fiscal personnel and discussed compliance with legislative intent, agency changes, budget concerns, staffing changes, and other areas regarding each agency's operations and appropriations.

The report included information regarding the appropriation to the Office of Management and Budget - Central Operations, which included \$199,000 for state membership dues. As stated in the report, the Office of Management and Budget paid all membership dues for the first year of the biennium, except those due the Advisory Commission on Intergovernmental Relations. At the time the report was presented to the Budget Section, the Office of Management and Budget did not plan to pay dues to the Advisory Commission on Intergovernmental Relations, although \$10,000 was appropriated for that purpose. The appropriation to the Office of Management and Budget - Central Operations also included \$40,000 for dues payable to the Education Commission of the States. Although the dues were only adequate to cover one year of the biennium, the Education Commission of the States offered to allow the state to maintain its membership for fiscal year 1995 without paying any additional dues. At the time the report was presented to the Budget Section, the Governor had notified other member states of North Dakota's intent to withdraw from the Compact for Education. However, NDCC Chapter 15-64 requires legislative involvement by the repeal of the compact before North Dakota can withdraw.

The Budget Section passed a motion requesting that the chairman of the Legislative Council send a letter to the Governor expressing the Budget Section's strong objection to the actions of the Governor and the Office of Management and Budget to discontinue the state of North Dakota's membership in the Advisory Commission on Intergovernmental Relations and the Education Commission of the States. At a later meeting of the Budget Section, the Office of Management and Budget reported that dues payable to the Advisory Commission on Intergovernmental Relations and the Education Commission of the States were paid as appropriated and no action would be taken by the Governor or the Office of Management and Budget to discontinue North Dakota's membership in the Education Commission of the States.

The Budget Section also received a staff report on executive compliance with legislative mandates. The report provided information on possible actions to require an executive agency to comply with legislative directives for the expenditures of appropriated funds. North Dakota Century Code Section 54-44.1-12 authorizes the director of the Office of Management and Budget to control the rate of expenditures of all departments and agencies of the executive branch through a system of allotments or reductions. North Dakota Century Code Section 54-44.1-13.1 gives the director of the Office of Management and Budget authority to reduce money available to all departments, agencies, and institutions to cover estimated losses caused by initiative or referendum action. However, in most cases, there is no statutory authority for the impoundment of appropriated funds

or the elimination of programs mandated by statute.

Actions to require continuation of a program an executive official refuses to continue could be finalized only by a decision of the North Dakota Supreme Court. An Attorney General's opinion does not require an official to act, and a district court opinion could be appealed. The methods to get the issue before the Supreme Court could either be through a district court action or through a proceeding under the original jurisdiction of the Supreme Court. In the exercise of its original jurisdiction, the Supreme Court may issue writs of mandamus, certiorari, or injunction. North Dakota Century Code Section 32-34-01 provides that a writ of mandamus may be issued by the Supreme Court and district court to compel the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station. Chapter 32-33 governs the writ of certiorari and provides that it is to be granted by the Supreme Court or district court when an officer, board, tribunal, or inferior court has exceeded its jurisdiction and when such a writ is necessary to prevent miscarriage of justice. North Dakota Century Code Section 32-06-02 authorizes an injunction to be granted in certain enumerated cases such as when it appears that the plaintiff is entitled to the relief demanded and such relief consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the plaintiff. Criminal action could be brought against an official, under the provisions of NDCC Section 12.1-11-06, which provides that any public servant who knowingly refuses to perform any duty imposed by law is guilty of a Class A misdemeanor.

BANK OF NORTH DAKOTA

The Budget Section heard a report by a representative of the Bank of North Dakota on the possible sale of Bank bonds and on the North Dakota real estate trust. The reason for the proposed bond issue was to more accurately manage the Bank's long-term assets and liabilities. The North Dakota real estate trust has incurred a \$23 million loss that may have to be recognized in the Bank's accounting records. For additional information on the North Dakota real estate trust, please refer to the report of the Legislative Audit and Fiscal Review Committee.

The Budget Section requested information from the Bank of North Dakota on the status of a loan made to Fish N' Dakota. The Bank's representative was unable to provide information due to confidentiality requirements that prohibit the Bank of North Dakota from revealing information regarding specific loans.

A representative of the Industrial Commission presented a report on the commission's development of a conflict of interest policy for its members. At the time of the presentation, the conflict of interest policy was not completed, but the Budget Section was informed that it would address the use of state-owned property, private interests in matters before the commission, prohibition of the use of confidential information for personal gain, loans at the Bank of North Dakota and Housing Finance Agency, employ-

ment issues, definitions regarding family involvement, and a compilation of current laws which may affect how an employee of the commission does his or her job.

The Budget Section also received a report from a representative of the Bank of North Dakota on the PACE loan program.

EMERGENCY COMMISSION

In developing proposals for the form of appropriation bills for pilot project agencies, the Office of Management and Budget proposed adding language to appropriation bills which would restrict Emergency Commission powers to approve transfers of appropriation authority to a percentage of the total amount appropriated. To address questions relating to the authority of the Emergency Commission, the Budget Section requested a staff report on the authority of the Emergency Commission to approve transfers of appropriation authority. As stated in the report, many of the statutory provisions pertaining to the Emergency Commission were originally drafted in 1915 and should be updated to correspond to the current practices of the Emergency Commission. Although current statutory provisions refer to transfers between funds, actual transfers approved by the Emergency Commission are normally between line items within an appropriations bill.

Recommendation

The Budget Section recommends Senate Bill No. 2032 relating to the powers and duties of the Emergency Commission which provides the following:

1. Statutory references to "contingency fund" are replaced with "contingencies appropriation" to reflect the practice of appropriating money to the Office of Management and Budget to provide for state contingencies as a contingency line item, not as a fund.
2. Statutory provisions referring to Emergency Commission authority to approve transfers between funds are amended to include authority to approve transfers of spending authority between line items, to reflect the practice of the Emergency Commission.
3. Statutory provisions restricting meetings of the Emergency Commission to take place only between legislative sessions are removed due to the fact that the Emergency Commission may be required to meet during a legislative session.
4. A new provision is added prohibiting transfers of money or spending authority which would eliminate or make impossible the accomplishment of a program or objective funded by the Legislative Assembly, unless the transfer has been previously approved by the Budget Section of the Legislative Council.

FEDERAL FUNDS

The Budget Section heard a staff report on the status of 1993-95 federal funds available to North Dakota state agencies and institutions and on anticipated federal funds available for the 1995-97 biennium. Total federal funds appropriated for the 1993-95 biennium are \$1.27 billion. Total federal

funds anticipated for the 1993-95 biennium are \$1.23 billion, which is \$48.6 million less than appropriated. The largest variance between federal funds appropriated and anticipated for the 1993-95 biennium was a negative variance of \$78.8 million for the Department of Transportation. The variance was attributable to a difficulty in precisely estimating federal funds for the upcoming biennium when the budget was prepared. Additional authority was provided to allow for the receipt of additional federal funds if they became available.

For the 1995-97 biennium, \$1.21 billion in federal funds has been included by state agencies and institutions in budget requests. This amount does not include additional amounts to be requested with optional adjustments to the 1995-97 budget requests.

TOUR GROUPS

Budget Section members, along with the Budget Committee on Government Finance, the Budget Committee on Government Services, the Budget Committee on Human Services, and the Budget Committee on Home and Community Care, conducted budget tours during the 1993-95 biennium.

The memorandums on visitation are available in the Legislative Council office and will be submitted to the Appropriations Committees during the 1995 legislative session.

The Budget Committee on Human Services, Senator Russell T. Thane, Chairman, visited the Southeast Human Service Center, Williston Research Center, Northwest Human Service Center, and UND-Williston.

The Budget Committee on Government Services, Representative Clarence Martin, Chairman, conducted visitations of the State Hospital, South Central Human Service Center, North Central Human Service Center, Harmony Center, Dickinson State University, Badlands Human Service Center, and Dickinson Research Extension Center.

The Budget Committee on Home and Community Care, Senator Aaron Krauter, Chairman, conducted visitations of the Developmental Center and the Veterans Home.

The Budget Committee on Government Finance, Representative Roy Hausauer, Chairman, conducted visitations of the Missouri River Correctional Center, Roughrider Industries, State Penitentiary, Bismarck State College, and State Industrial School.

The Budget Section's eastern tour group conducted visitations of Valley City State University, State College of Science, North Dakota State University, Mayville State University, School for the Blind, University of North Dakota, and North Dakota Mill and Elevator.

The Budget Section's north central tour group conducted visitations of Camp Grafton, UND-Lake Region, School for the Deaf, Lake Region Human Service Center, NDSU-Bottineau, State Forest Service, Hahn's Bay Recreation Area, International Peace Garden, State Fair Association, Minot State University, and North Central Research Center.

The Budget Section adopted the tour group reports, which included the following recommendations, observations, and concerns:

1. The Budget Section's eastern tour group requested that the Budget Section support and recommend to the Legislative Assembly the needs-based budgets submitted by the institutions of higher education.
2. The Budget Section's eastern tour group expressed concern about the poor condition of the infrastructure system and buildings within the higher education system due to a lack of funding provided for maintenance and repairs.
3. The Budget Section's eastern tour group requested that the Budget Section support the initiatives of the North Dakota Mill and Elevator, including the conversion of part of the mill from durum milling to spring wheat milling and the expansion of markets for the mill's products.
4. The Budget Section's eastern tour group expressed concern that the School for the Blind is not depositing its rental revenue in the general fund as directed in the legislative intent section contained in 1993 House Bill No. 1003.
5. The Budget Section's north central tour group indicated its support for the School for the Deaf's request to purchase computer equipment, auditory trainers, and extended fire protection systems in the 1995-97 biennium.
6. The Budget Section's north central tour group expressed concern regarding the lack of adequate reimbursement from the Bureau of Indian Affairs and Indian Health Service for addiction treatment services provided for Native Americans.
7. The Budget Section's north central tour group expressed concern regarding the lack of funds appropriated to agricultural research centers for equipment purchases despite the need to replace equipment at all agricultural research centers in the state.
8. The Budget Committee on Human Services expressed concern because of the negative impact of implementing human service center funding formulas under consideration by the Budget Committee on Government Services if a transitional period is not provided.

OTHER ACTION

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

1. An analysis of the 1993 Legislative Assembly changes to the recommended appropriations in the executive budget.
2. Statistical information on the 1993-95 biennium appropriations and historical appropriations statistics.
3. A comparison of appropriations for the 1993-95 biennium and appropriations for the 1991-93 biennium.
4. An analysis of one-time general fund impacts contained in the 1993-95 legislative budget.
5. Information on measuring performance and results through the use of service efforts and accomplishments.
6. The authority of the Governor to veto items in appropriation bills.
7. The balances in the North Dakota Future Fund,

Inc., PACE fund, and Technology Transfer, Inc.

8. The authority of the Emergency Commission to transfer money from the North Dakota Future Fund, Inc., to the PACE fund.

The Budget Section heard a report from a representative of Job Service North Dakota on options available for implementing the authority provided in the capital projects legislation contained in 1993 House Bill No. 1020. House Bill No. 1020 provided Job Service North Dakota with borrowing authority of up to \$1,735,000 for the construction or acquisition of a new office building in Grand Forks. The report was presented to inform the Budget Section that Job Service North Dakota was considering remodeling its facility in Grand Forks and adding additional parking, rather than purchasing or constructing a new building. The estimated cost to remodel the building is \$500,000.

The Budget Section heard a report from a representative of the Mental Health Association of North Dakota on funding of mental health services by the Department of Human Services. Targeted savings reductions within the department reduced human service center funding by six percent. The major concerns of the Mental Health Association were the six percent reductions for human service center funding, the transfer of FTEs from the human service centers to the department's central office, and a \$5,000 reduction in the budget of the Grand Forks Social Club.

The Budget Section heard reports from representatives of the Office of Management and Budget on improvements to the capital budget process, the 95 percent agency budget request guidelines released by the Office of Management and Budget as directed by the Governor, the revenue forecasting contract with WEFA, and the possibility of changing from WEFA to a different revenue forecasting company. A representative of the Office of Management and Budget requested the Budget Section to determine if the Office of Management and Budget should review and explain the executive recommendation at the beginning of each Appropriations Committee hearing. The Budget Section determined that the chairman of each Appropriations Committee should make the determination as to whether or not the Office of Management and Budget should review and explain the executive recommendation at the beginning of each appropriations hearing.

The Budget Section heard a report from a representative of the Legislative Audit and Fiscal Review Committee on the committee's acceptance for filing of the single audit report and the audit report of the Department of Human Services for the two-year period ended June 30, 1992.

The Budget Section heard reports by representatives of the North Dakota Long Term Care Association on additional funding needed to support nursing home facilities in North Dakota. The 1993 Legislative Assembly appropriated a total of \$179.4 million for long-term nursing care for Medicaid-eligible persons in long-term care facilities. Of the total appropriated, \$45.6 million was from the general fund. The Department of Human Services provided additional funds through savings within the department

to increase the total available for long-term nursing care for the 1993-95 biennium to \$191.2 million, \$49.5 million of which was from the state general fund. The increased costs for long-term nursing care were attributable to changes in the federal Medicaid matching percentage, an increase in Medicaid caseload, a larger than originally anticipated inflation adjustment, and adjustments to reimbursement percentile limitations necessary to reflect actual costs.

The Budget Section heard a report by a representative of the Protection and Advocacy Project on the availability of federal funds for the protection and advocacy of individual rights (PAIR) program. The Protection and Advocacy Project was eligible to receive \$200,000 per biennium to serve people with disabilities who were previously ineligible for these services. The Budget Section requested the committee chairman to support the Emergency Commission's approval of the receipt of these funds.

The Budget Section heard a report by a representative of the Board of Animal Health on contract veterinary services during the 1993-95 biennium. The 1993 Legislative Assembly terminated a veterinary position at the Board of Animal Health and replaced it with an appropriation of \$25,000 to be used for contract veterinary services. The Game and Fish Department has approached the Board of Animal Health with the prospect of contracting with the board for veterinary services required by the Game and Fish Department. The Board of Animal Health intended to use the remainder of the contract veterinary money, about \$20,000, along with any contract fee obtained from the Game and Fish Department, to hire a veterinarian under contract for the remainder of the biennium.

The Budget Section heard a report by a representative of Municipal Consultants, Indianapolis, Indiana, on potential uses of the facilities at the Developmental Center at Grafton. Municipal Consultants has conducted studies and developed a marketing plan for the Developmental Center at Grafton.

The Budget Section heard a report on the status of the Children's Services Coordinating Committee's plans to establish local planning boards in each of the eight regions of the state, pursuant to 1993 Senate Bill No. 2016, Section 2. The following objectives were adopted by the Children's Services Coordinating Committee:

1. The organization of regional children's services coordinating committees in all eight regions of the state.
2. The organization of tribal children's services coordinating committees on all four Indian reservations in the state.
3. Development of community plans for the regional and tribal children's services coordinating committees.
4. Establishment of a process to be used in monitoring and evaluating programs.
5. Establishment of uniform data collection and distribution procedures in each county.
6. The development of procedures for accessing administrative match dollars.

The Budget Section received reports from ethanol plants receiving production incentives from the state

as required by 1991 House Bill No. 1575. The 1991 legislation requires that the statement filed with the Budget Section be certified by a certified public accountant and indicate whether the plant produced a profit in the preceding fiscal year after deducting payments received under the incentive program. A letter was received from the Alchem, Ltd., plant in Grafton and presented to the Budget Section. A letter was also received from the Archer Daniels Midland plant in Walhalla. However, this letter was not received in time for presentation at the October meeting of the Budget Section. Both letters indicated that the plants did not produce a profit during the preceding fiscal year, after deducting payments received under the incentive program. The Budget Section also received a report from a representative of the American Coalition for Ethanol on incentive payments received by ethanol plants. Pursuant to 1993 House Bill No. 1016, plants receive incentive payments of 40 cents per gallon for each gallon of ethanol produced and sold in North Dakota, up to a maximum of 4,562,500 gallons per year. The 1993 Legislative Assembly appropriated \$3,650,000 from the highway tax distribution fund to the Agricultural Products Utilization Commission for the purpose of providing production incentive payments to ethanol plants during the 1993-95 biennium.

In accordance with Section 3 of 1993 House Bill No. 1001, the Budget Section approved a request by the Insurance Department to make an additional distribution of \$62,500 to fire departments from the insurance tax distribution fund.

In accordance with the requirements of 1993 House Bill No. 1001, the Budget Section received a report from a representative of the Attorney General's office on a deficiency appropriation to be introduced in 1995 to reimburse the state bonding fund for state employee defense expenses. The total amount anticipated for state employee defense expenses for the 1993-95 biennium is \$136,500.

In accordance with Section 7 of 1993 Senate Bill No. 2005, the Budget Section received a report from a representative of the North Dakota State University Land Reclamation Research Center on additional reclamation research needed to reduce unnecessary and duplicative regulatory costs involved in the reclamation process and on general fund appropriations needed for the 1995-97 biennium. The 1993-95 biennium budget of \$1.4 million included \$289,000 from the state general fund. For the 1995-97 biennium, the needs-based budget directed by the State Board of Higher Education would require a general fund appropriation of \$309,000. However, the 95 percent budget requested by the Governor would reduce the general fund appropriation to \$275,000.

In accordance with 1993 Senate Bill No. 2017, the Budget Section received a report from a representative of the Industrial Commission on changes in the Housing Finance Agency as a result of 1993 House Bill No. 1240. House Bill No. 1240 authorized local housing authorities, organized under North Dakota Century Code Chapter 23-11, to administer federal Housing and Urban Development rental assistance certificates and vouchers in the local housing au-

thorities' respective jurisdictions. The Industrial Commission previously had this authority. At the time the report was presented, 33 counties had indicated their intent to assume administration of the rental assistance certificates and vouchers under the provisions of House Bill No. 1240. The 33 counties represented approximately 95 percent of the 2,819 authorized rental assistance certificates and vouch-

ers administered by the Housing Finance Agency.

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 FINANCE

The Budget Committee on Government Finance was assigned four studies. Senate Concurrent Resolution No. 4064 directed a study of the desirability and necessity of state agency biennial reports. Senate Concurrent Resolution No. 4063 directed a study of the feasibility of establishing a women's correctional facility off the State Penitentiary grounds. Senate Concurrent Resolution No. 4073 directed a study of the economic impact of permitting Roughrider Industries to compete with the private sector. Senate Concurrent Resolution No. 4075 directed a study of training for law enforcement, correctional, emergency medical assistance personnel, and other emergency service providers. The committee was also assigned the responsibility of monitoring the status of state agency and institution appropriations.

Committee members were Representatives Roy Hausauer (Chairman), Merle Boucher, Ron Carlisle, Steve Gorman, Lyle L. Hanson, John M. Howard, Elwood Thorpe, and Terry M. Wanzek and Senators William G. Goetz, Tony Grindberg, Aaron Krauter, Evan E. Lips, Duane Mutch, Pete Naaden, Donna Nalewaja, David O'Connell, Ken Solberg, Bryce Streibel, Harvey D. Tallackson, Steven W. Tomac, and Herb Urlacher.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

STATE AGENCY REPORTS

Background

Senate Concurrent Resolution No. 4064 directed a study of the desirability and necessity of requiring various state agencies to prepare and publish annual or biennial reports, including an analysis of the cost of preparing, printing, and distributing the reports. The study was also to determine if it would be more feasible to place all state agency report requirements in one section of the North Dakota Century Code (NDCC). The resolution stated that the contents of the required reports may be of limited assistance to the Governor and Legislative Assembly and much of the information may be available from other sources. The resolution added that some reports may not be necessary and it may be more practical, efficient, and effective for all reporting requirements to be contained in one section of the Century Code.

The committee reviewed a list of approximately 120 reports that are required by statute to be submitted to the Legislative Assembly, the Legislative Council or its committees, or to the Governor. North Dakota Century Code Section 54-06-04 provides that all reports that are required to be submitted annually or biennially to the Governor and to the Office of Management and Budget must meet the minimum requirements and guidelines established by a board created in NDCC Section 54-06-04. The board consists of the superintendent of the State Historical Board, State Librarian, and the director of the Office of Management and Budget.

Findings

The committee reviewed the results of a staff survey of state agencies and institutions on report requirements, including the value of the reports and the cost of preparing the reports. The responses to the survey indicated that there are 47 different reports required by statute. There were an estimated 42,527 copies of the reports printed, of which 3,069 remained undistributed. The estimated biennial cost of preparing the reports was \$293,478, of which \$128,903 was due to the formal report requirement and \$164,575 would have been incurred regardless of the formal report requirement. The biennial cost for printing the reports was \$71,711, of which \$64,826 relates to commercial printers, \$6,285 relates to Central Duplicating, and \$600 is other printing costs. Of the 47 responses to the survey, 33 indicated that the reports should be continued, 13 indicated the reports should not be continued, and one did not indicate a preference as to the continuance or discontinuance of the reports.

The total biennial cost of the reports of \$293,478 was comprised of \$207,736 of general fund moneys and \$85,742 of other funds. The printing costs of \$71,711 were comprised of \$26,746 from the general fund and \$44,965 of other funds. The cost of requiring the formal reports consisted of \$69,128 from the general fund and \$59,775 of other funds. The costs incurred even if formal reports were not required consisted of \$138,608 from the general fund and \$25,967 of other funds. The survey indicated that by eliminating the biennial report requirements the savings to the general fund would be \$69,128.

The committee received information from nine of the 13 agencies recommending that the report requirements be eliminated. The majority of agencies indicated that the reports are not useful tools for the general public, the Governor, or the Legislative Assembly and that most of the information contained in the biennial reports is available from other documents distributed by the agencies and institutions.

The committee also received information from individuals and agencies supporting the continuance of the biennial report requirements. The testimony indicated that the biennial reports are a valuable source of information regarding the history of state agencies and institutions. It was suggested that the biennial report requirements be strengthened, improved, and enforced in order to make biennial reports more useful. In many instances biennial reports are the only source of historic information on state agencies and institutions.

Recommendation

The committee recommends House Bill No. 1026 to repeal NDCC Section 54-06-04 relating to the biennial report requirements. The bill deletes the requirements for 47 biennial reports. The committee recommends the bill because the members concluded the biennial report requirements are unnecessary.

WOMEN'S CORRECTIONAL FACILITY

Background

Senate Concurrent Resolution No. 4063 directed a

study of the feasibility and desirability of establishing a women's correctional facility off the State Penitentiary grounds. The resolution stated the study was to be conducted in order to determine if it would be feasible to use the present women's correctional facility on the grounds of the State Penitentiary for other purposes and house the female inmates off the grounds.

The committee reviewed background information on the present female State Penitentiary facility. The present facility is a 40-bed medium/minimum security unit constructed during the 1985-87 biennium. The Department of Corrections and Rehabilitation has been averaging 20 state female inmates and 15 to 20 federal female inmates. The annual cost of operating the existing women's facility is \$465,000, of which \$365,000 relates to fixed costs. Female inmates at the State Penitentiary currently share some common facilities and programs with the male inmates.

Findings

The committee reviewed information from the Department of Corrections and Rehabilitation on the advantages and disadvantages of locating a women's correctional facility off the State Penitentiary grounds. The advantages were as follows:

1. Improved inmate safety;
2. Improved rehabilitation programs;
3. Better use of staff; and
4. Improved access to recreation/programming.

The disadvantages of having a separate women's correctional facility were:

1. Added building construction and maintenance costs; and
2. Added personnel, operating, and equipment costs.

The committee identified the following possible sites for a women's correctional facility:

1. Cedar Grove unit at the Developmental Center at Grafton.
2. Forensic unit at the State Hospital in Jamestown.
3. United States Coast Guard station at LaMoure.
4. Kathryn Elementary School at Kathryn.
5. A vacant hotel in Linton.

The committee received reports from the Budget Committee on Government Services and the Budget Committee on Home and Community Care regarding the possible use of the forensic unit at the State Hospital or the Cedar Grove unit at the Developmental Center. The report from the Budget Committee on Government Services indicated that the State Hospital would not support locating a women's correctional facility on the State Hospital grounds because of the appearance it would give that the state is associating mental illness with felonious behavior. The Budget Committee on Home and Community Care did not take any action regarding the use of the Cedar Grove unit at the Developmental Center as a women's correctional facility, but the committee did indicate that there is potential for using the facility as a women's correctional facility if necessary.

The Department of Corrections and Rehabilitation presented information on the capacity and cost of

a new facility for female inmates. The cost estimates were based on a facility with a capacity of 50 inmates. It was estimated that a 50-bed facility would be sufficient if federal inmates are not accepted. The cost to build a new 50-bed minimum security female correctional facility was estimated to be approximately \$2.25 million. It was estimated that personnel costs for a new facility or a renovated facility would range from \$218,000 per year to \$615,000 per year. In comparison, the annual cost of operating the current women's facility is \$465,000, of which \$365,000 relates to fixed costs.

The committee received information on the estimated cost of converting the Cedar Grove unit at the Developmental Center at Grafton to a women's correctional facility. The cost was estimated to be approximately \$2,035,650 to renovate the Cedar Grove unit at Grafton. The operating costs were estimated to be approximately \$682,000 per year to operate the Cedar Grove unit as a women's correctional facility. It was suggested by the Department of Corrections and Rehabilitation that the state does not currently have enough female inmates to justify a separate women's correctional facility. The department indicated that until there are between 100 and 150 female inmates, it is cost prohibitive to have separate but equal programs and facilities. The committee received information on a Supreme Court ruling that stated that North Dakota cannot contract with another state for housing its female inmates because the state has a male correctional facility and it must therefore also provide a female correctional facility.

Because federal requirements mandate access to certain programs for both male and female inmates, duplicated programs would be needed if the female inmates were located off the State Penitentiary grounds. Currently, the state saves an undeterminable amount of funds by having male and female inmates at one location. The cost savings are the result of not having to maintain duplicate programs at a men's facility and at a women's facility.

The committee considered the possibility of contracting with regional correctional centers to house female inmates. It was determined that if both male and female inmates were housed at a regional center, the same concerns would exist that presently exist at the State Penitentiary. The same programs offered at the State Penitentiary would also need to be duplicated and made available to the female inmates at the regional correctional facilities.

The committee also considered the possibility of contracting with the private sector for the housing of minimum security female inmates. The cost of contracting with the private sector ranged from \$38.75 per day to \$40 per day or \$14,144 to \$14,600 per year per inmate. The contracts would provide for 24-hour a day supervision, food, shelter, some medical and dental exams, and programs and services including general equivalency diploma, drug testing, counseling, and psychological services. The Department of Corrections and Rehabilitation indicated that it could not necessarily contract all female inmates out to private centers because of the ability of judges to sentence inmates to a specific institution such as the

ROUGH RIDER INDUSTRIES STUDY

Background

State Penitentiary or the Missouri River Correctional Center. The committee determined that by providing that judges sentence inmates to the Department of Corrections and Rehabilitation instead of a specific institution, it would allow the department to pursue contracting with the private sector for female inmates, if the need developed.

As a part of the women's correctional facility study, the committee toured the State Penitentiary and the Missouri River Correctional Center.

The committee also received testimony by the Department of Corrections and Rehabilitation on changing the name of the State Industrial School to the State Youth Correctional Center; deleting NDCC Chapter 12-51 relating to the Missouri River Correctional Center and having all statutory references pertaining to the State Penitentiary also apply to the Missouri River Correctional Center; updating the statutes relating to the Department of Corrections and Rehabilitation, State Penitentiary, State Industrial School, or any of its related facilities; and incorporating the Uniform Juvenile Court Act into the sections of the North Dakota Century Code pertaining to the State Industrial School.

Recommendations

The committee recommends that a separate women's correctional facility not be constructed. The committee determined that based on the cost estimates of constructing a new female correctional facility or renovating an existing facility into a women's correctional facility, it is not feasible to proceed with a separate women's correctional facility at this time. The committee also determined that until the state has between 100 and 150 female inmates, it is not cost efficient to have a separate women's correctional facility. Because of this, the committee thought it would be more efficient to allow the Department of Corrections and Rehabilitation to pursue contracting, if necessary, with the private sector for the housing of minimum security female inmates.

The committee recommends House Bill No. 1027 to require judges to sentence inmates to the Department of Corrections and Rehabilitation rather than to the State Penitentiary or the Missouri River Correctional Center. The bill also provides for the name of the State Industrial School to be changed to the State Youth Correctional Center; deletes NDCC Chapter 12-51, relating to the Missouri River Correctional Center, and changes all statutory references pertaining to the State Penitentiary to also include the Missouri River Correctional Center since the center will continue to operate under the State Penitentiary; and incorporates the Uniform Juvenile Court Act into the sections of the code pertaining to the State Industrial School. The committee recommends the bill because it gives the Department of Corrections and Rehabilitation the ability to determine the placement of all inmates. The committee determined that if the Department of Corrections and Rehabilitation is provided the ability to place all inmates, it can pursue contracting, if necessary, with the private sector for the housing of female minimum security inmates.

Senate Concurrent Resolution No. 4073 directed a study of the cost effectiveness and economic impact of permitting Roughrider Industries to manufacture and sell products that may be produced and sold by the private sector. The study was to review the mission of Roughrider Industries, correctional industries in other states, and the cost components and pricing structure of prison manufactured products. The resolution stated that there may be alternative methods of rehabilitation available to the state rather than permitting Roughrider Industries to continue or expand its present operations.

North Dakota Century Code Chapter 12-48 provides for the director of the Department of Corrections and Rehabilitation to attempt to employ all inmates of the Penitentiary. The employment may include maintaining the Penitentiary and its grounds, working at the industries established at the Penitentiary or at other state institutions, maintaining state buildings and grounds, or working on the construction and improvement of the state's public highways. The program is to be based on what is of the greatest benefit to and in the best interest of the state of North Dakota, the State Penitentiary, and the inmates of the institutions.

Findings

The committee reviewed an analysis of Roughrider Industries fiscal year 1993 revenues, expenses, and net profit. The analysis included the adjustments necessary to make Roughrider Industries net profit comparable to a private sector business. The analysis indicated that for fiscal year 1993 Roughrider Industries had total revenues of \$1.5 million and a net profit of \$96,801. After adjusting the \$96,801 profit for costs incurred by the private sector but not incurred by Roughrider Industries and for costs incurred by Roughrider Industries but not incurred by the private sector, the equivalent private sector profit would be \$39,558. Costs incurred by the private sector but not by Roughrider Industries include rent, higher hourly labor rates, health insurance premiums, workers' compensation premiums, taxes, and depreciation. Costs incurred by Roughrider Industries but not incurred by the private sector include security expenses, higher staff training costs, disciplinary costs, less productive labor, and higher levels of nonproductive labor and supervisors.

The committee reviewed information on the marketing practices of Roughrider Industries. Roughrider Industries attempts to identify products and markets that are not in direct competition with private sector businesses within the state. Some of the best opportunities for Roughrider Industries are in out-of-state markets; however, there is a federal law that prohibits prison-made goods from being sold across state lines. Roughrider Industries indicated that the United States Department of Justice has established a program called the private sector/prison industry enhancement (PIE) program providing for prison

industry products to be sold out of state if certain requirements are met by the prison industry. The following requirements would need to be met before products could be sold out of state:

1. Wages paid inmates working on the products must be comparable to those in the private sector.
2. Inmate employment cannot result in the loss of private sector jobs.
3. Inmates who participate in the program must do so on a voluntary basis and agree to wage deductions for payroll taxes and workers' compensation taxes.

Roughrider Industries personnel indicated that all of the requirements can be met under present law except the workers' compensation provision. Currently, 37 states are involved in the program and have inmates covered by workers' compensation.

The committee reviewed information presented by Roughrider Industries personnel regarding the PIE program. Roughrider Industries has met with businesses throughout the state regarding the possibility of doing subcontracting for some of the businesses. Due to the federal law that prohibits any product made in whole or in part by a prison industry from crossing state lines, some of the potential subcontracting work cannot be pursued. Roughrider Industries personnel informed the committee that if workers' compensation coverage was provided to the inmates and Roughrider Industries was allowed to participate in the PIE program, it could then become a subcontractor for businesses within the state which sell finished products across state lines.

The committee reviewed information on prison industry programs in North Dakota, South Dakota, Montana, Minnesota, and Wyoming. The information included the products and services provided by each of the state's prison industries and markets available to the industries. As a part of the study, the committee toured the Roughrider Industries facilities.

Recommendations

The committee recommends House Bill No. 1028 to allow Roughrider Industries to be able to participate in the workers' compensation program and thereby provide workers' compensation coverage for Penitentiary inmates employed in the PIE program. Roughrider Industries would be required to reimburse the Workers Compensation Bureau for the amount of claims charged against the classification of inmates employed in the PIE program which exceed the amount of premiums paid for that classification. The bill also provides that Roughrider Industries may secure private insurance to cover any excess claims. The committee recommends the bill to authorize Roughrider Industries to consider expanding to potential out-of-state markets and reduce its direct competition with private sector businesses within this state. The committee included a two-year expiration date in the bill with the intent that within two years the program would be reevaluated.

LAW ENFORCEMENT, CORRECTIONS, AND EMERGENCY MEDICAL SERVICES PERSONNEL TRAINING PROGRAMS

Background

Senate Concurrent Resolution No. 4075 directed a study of the methods for funding state, county, and city law enforcement, correctional, and emergency medical technician training facilities and programs and the feasibility and desirability of establishing centralized training for law enforcement, correctional, emergency medical assistance personnel, and other emergency service providers. The 1993 Legislative Assembly appropriated \$1.4 million for training of law enforcement and related officials, of which approximately \$685,000 was from the state general fund and approximately \$735,000 was from federal and other funds. In addition, \$5.3 million was appropriated for fire tax distribution payments to local fire departments to use on equipment, training, or other purposes as determined by the local fire departments.

The 1981 Legislative Assembly created the North Dakota Peace Officers Standards and Training (POST) Board. The POST Board is composed of a group of individuals appointed by the Attorney General based on nominations received from the North Dakota Chiefs of Police Association, North Dakota Peace Officers Association, North Dakota Sheriffs and Deputies Association, North Dakota League of Cities, and North Dakota Association of Counties. The POST Board is responsible for developing and implementing standards for all peace officers in this state.

Findings

There are approximately 1,600 licensed peace officers in the state, all of which must enforce the law uniformly. Uniform law enforcement requires uniform training. The three types of training relating to law enforcement officials in the state are indoctrination or basic training, general training, and specialized training.

The committee toured the Law Enforcement Training Academy, which consists of two classrooms, dorm rooms (40 beds), and a dining hall. The academy is under the supervision of the Highway Patrol and conducts training for all law enforcement agencies in the state. The Law Enforcement Training Academy provides training that meets the certification requirements established by the POST Board. The Law Enforcement Training Academy provides basic and advanced training approximately 50 weeks per year for all law enforcement officers at no charge to them or their agencies for tuition, room, or board. In the past two years 4,220 hours of training were provided to 1,642 officers.

The committee considered the possibility of consolidating the Highway Patrol and Bureau of Criminal Investigation training programs. It was thought that by consolidating the training programs it would improve communications, delivery of services, and reduce duplication of efforts and services.

The committee considered a bill draft that would have statutorily required the Highway Patrol and

Bureau of Criminal Investigation training programs to be combined into one training program. The committee received testimony from the Bureau of Criminal Investigation and the Highway Patrol regarding the possibility of using a written memorandum of agreement to merge the training programs rather than the bill draft that would have statutorily combined the programs. The testimony indicated that based on an Attorney General's opinion statutory changes are not necessary for the merger of the two training programs. The committee decided to support the voluntary merger through the written memorandum of agreement instead of the merger required in the bill draft.

The committee reviewed information on expanding the existing Law Enforcement Training Academy in order to provide additional classrooms, dormitories, office space, and a multipurpose room to accommodate the increased training needs for peace officers throughout the state. The committee considered a \$1 surcharge on motor vehicle registrations for a two-year period in order to generate the \$1.4 million needed for an addition to the Law Enforcement Training Academy. The committee also identified two alternatives to an addition to the existing Law Enforcement Training Academy. One of the alternatives was to construct a new training facility adjacent to the National Guard Armory in Bismarck and have the new academy share classrooms and other facilities with the National Guard. The committee also considered the possibility of constructing a new academy on land owned by the Department of Corrections and Rehabilitation. The committee thought that if a new training academy were to be located elsewhere the existing academy could be transferred to Bismarck State College for use by the college.

The committee determined that it would be more economical to build an addition to the existing facility at a cost of \$1.4 million as opposed to the estimated cost of \$2.6 million to construct a new facility at a different location. The committee concluded that in order to keep administrative costs at a minimum all training facilities should be located in one building. In addition, by maintaining the training programs in one building weapons do not have to be transported between buildings. The committee also determined that it would be more advantageous to enact a \$2 surcharge on motor vehicle registrations for one year instead of the proposed \$1 surcharge for two years. This would allow for construction to begin sooner because the revenues would be collected earlier.

The committee received information on law enforcement claims received by the North Dakota Insurance Reserve Fund. The total number of claim losses processed by the North Dakota Insurance Reserve Fund since 1986 has been 133, at a cost of approximately \$1.2 million.

Recommendations

The committee recommends that the Legislative Council support and recommend the continued operation of the combined training facilities and programs of the Bureau of Criminal Investigation and Highway Patrol. Based on the Attorney General's opinion stating that statutory changes are not neces-

sary to combine the training programs, the committee supports the Bureau of Criminal Investigation and the Highway Patrol in their proposal to voluntarily merge the training programs.

The committee recommends that the Highway Patrol capital budget request include \$1.4 million for an addition to the Law Enforcement Training Academy. The committee recommends that the building be included in the agency's capital budget request in order for it to go through the executive budget hearing process and possibly be included in the executive budget.

The committee recommends House Bill No. 1029 to establish a \$2 surcharge on motor vehicle registrations for one year. The surcharge would be effective for vehicle registrations beginning after December 31, 1995, and ending December 31, 1996. The bill also appropriates the \$1.4 million to be generated from the \$2 surcharge to the Highway Patrol for the purpose of a building addition for law enforcement training. The committee recommends the bill as the most economical way of establishing increased law enforcement training opportunities for peace officers throughout the state.

MONITORING THE STATUS OF APPROPRIATIONS

Background

Since the 1975-76 interim, a Legislative Council interim committee has been assigned the responsibility of monitoring the status of major state agency and institution appropriations. The Budget Committee on Government Finance was assigned this responsibility for the 1993-94 interim. The committee's review focused on the 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 aid to families with dependent children (AFDC) program and medical assistance. The committee also heard a staff report on agency compliance with legislative intent for the 1993-95 biennium.

Status of Appropriations of Major Agencies

To assist the committee in fulfilling its responsibility of monitoring the status of major appropriations, the 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. Overview of utility expenditures at the higher education and charitable and penal institutions.
4. Foundation aid program payments.
5. Medical assistance and AFDC payments.

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

1. For the period July 1, 1993, through July 31, 1994, the general fund expenditures for AFDC and medical assistance totaled \$64.9 million or

approximately \$5.1 million less than the appropriation of \$70 million, and \$2.4 million less than the department's March 1994 estimate of \$67.3 million.

- The 1993 Legislative Assembly appropriated

\$396.5 million from the state general fund for foundation aid program payments during the 1993-95 biennium. The following are schedules of per-pupil payments, tuition fund payments, and weighted units for each year of the biennium:

**Foundation Aid Program - 1993-95 Biennium
(Amounts stated in millions)**

	1993-95 Biennium Appropriation	1993-94 Fiscal Year Appropriation	Actual Obligations 1993-94 Fiscal Year	Variance Appropriation Over (Under) Actual Payments	Remaining Appropriation 1994-95 Fiscal Year	Estimated Obligations 1994-95 Fiscal Year	Remaining Balance for May 1, 1995, Distribution
Per-pupil payments	\$404.84	\$197.94	\$196.88	\$ 1.06	\$207.96	\$206.90	\$ 1.06
Less: Mill levy deduction	43.92	21.49	21.53	(0.04)	22.39	22.43	(0.04)
Total per-pupil payments	\$360.92	\$176.45	\$175.35	\$ 1.10	\$185.57	\$184.47	\$ 1.10
Transportation payments	35.60	17.80	17.42	0.38	18.18	17.30	0.88
Total general fund - foundation aid program	<u>\$396.52</u>	<u>\$194.25</u>	<u>\$192.77</u>	<u>\$ 1.48</u>	<u>\$203.75</u>	<u>\$201.77</u>	<u>\$ 1.98</u>

	Original Legislative Estimates for 1993-94	Actual Payments for 1993-94	Original Legislative Estimates for 1994-95	Adjusted Estimates for 1994-95
Per-pupil payments	\$1,570	\$1,570	\$1,636	\$1,662*
Tuition fund payments	192	198	192	192
Total payments	<u>\$1,762</u>	<u>\$1,768</u>	<u>\$1,828</u>	<u>\$1,854</u>
Weighted units	<u>125,331</u>	<u>125,074</u>	<u>125,745</u>	<u>125,745</u>

* Includes additional \$26 per pupil estimated for the separate May 1, 1995, foundation aid payment distributed pursuant to Sections 8 and 13 of 1993 House Bill No. 1003. An estimated \$1.23 million from the \$3.27 million appropriated for school district restructuring and a \$1.98 million balance estimated for the foundation aid program will be combined for an estimated total \$3.21 million available for May 1, 1995, distribution.

- Total expenditures at the charitable and penal institutions for the first year of the 1993-95 biennium were \$64.5 million, \$3.6 million less than the estimated expenditures of \$68.1 million. Total revenues for the same period were \$30.6 million, \$900,000 less than the estimated revenues of \$31.5 million. In total, the possible state general fund fiscal impact is a positive \$2.5 million.
- For the first year of the 1993-95 biennium the average monthly student, resident, and inmate population at the charitable and penal institutions averaged 1,847.23, 48.27 fewer than the estimated population of 1,895.5. The average monthly full-time equivalent (FTE) positions for the same institutions totaled 1,610.5, 112.57 FTE fewer than the authorized total of 1,723.07.
- Total expenditures at the institutions of higher

education for the first year of the 1993-95 biennium were \$200.3 million, \$6.7 million less than the estimated expenditures of \$207 million. Total income for the same period was \$86.1 million, \$500,000 more than the estimated income of \$85.6 million. In total, the possible state general fund fiscal impact is a positive \$6.8 million.

Status of the State General Fund

The committee and the Budget Section heard reports by the Office of Management and Budget regarding the status of the state general fund. At the committee's last meeting, the projected June 30, 1995, general fund balance was \$43.7 million, \$34.8 million more than the June 30, 1995, ending general fund balance of \$8.9 million estimated by the 1993 Legislative Assembly. The Budget Section report

contains a summary of the Office of Management and Budget reports.

Agency Compliance with Legislative Intent

The staff prepared a report on state agency compliance with legislative intent for the 1993-95 biennium. Copies of the report are on file in the Legislative Council office. The report is based on the staff analysis including visitations with agency administrators regarding compliance with legislative intent included in the agencies' 1993-95 appropriations. The report also includes changes made to agency operations since the beginning of the 1993-95 biennium, budget concerns, staffing changes, the status of selected states' special funds, higher education enrollments, and possible deficiency appropriation requests.

TOUR GROUPS

The committee conducted budget tours of the State Penitentiary, Missouri River Correctional Center, Roughrider Industries, Law Enforcement Training Academy, Bismarck State College, and the State Industrial School. On the tours, the committee heard of institutional needs for capital improvements and any problems the institutions or other facilities may be encountering during the interim. The Budget

Section report contains a summary of all of the budget tours conducted by the budget tour groups and other committees.

OTHER ACTION

The committee also received reports on:

1. The possible sale of the University of North Dakota Rehabilitation Hospital.
2. Higher education proposed capital projects included in the long-term plans of the institutions.
3. The Americans with Disabilities Act requirements for public facilities, including possible penalties for noncompliance and alternative ways to comply with the requirements.
4. The Centennial Trees Commission's study regarding the commission's change from a state agency to a nonprofit organization.

The committee also received memorandums on oil tax revenues, oil production, and oil market prices. For fiscal year 1994, oil and gas production tax collections were \$11.5 million, \$3.7 million less than the estimated collections of \$15.2 million. Oil extraction tax collections were \$14.6 million, \$5.9 million less than the estimated collections of \$20.5 million. The following table summarizes the quarterly oil prices:

	July- September 1993	October- December 1993	January- March 1994	April- June 1994	July- September 1994	October 1994
Legislative estimate (WEFA March 1993 estimate)	\$18.26	\$18.73	\$19.71	\$19.04	\$19.68	\$20.65
Actual average posted prices	15.23	13.90	12.18	15.17	16.17	15.51
Over (under)	<u>\$(3.03)</u>	<u>\$(4.83)</u>	<u>\$(7.53)</u>	<u>\$(3.87)</u>	<u>\$(3.51)</u>	<u>\$(5.14)</u>

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Budget Committee on Government Services was assigned three studies. Senate Concurrent Resolution No. 4002 directed the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent, including changes in the role of the State Hospital, expanded community services, and the development of partnerships between the public and private sectors. Section 21 of 1993 House Bill No. 1002 provided that the Legislative Council receive reports from the Department of Human Services on the effectiveness of the clubhouse project in Minot and on the department's recommendations regarding the continuation or expansion of funding for the project for the 1995-97 biennium resulting from a Department of Human Services review of the clubhouse project. Section 24 of 1993 House Bill No. 1002 provides that the Legislative Council receive reports from the Department of Human Services on alternatives for a formula to allocate funding to human service centers.

Committee members were Representatives Clarence Martin (Chairman), Lyle L. Hanson, James A. Kerzman, Joe Kroeber, Doug Payne, Rod St. Aubyn, G. O. Sveen, Elwood Thorpe, and Janet Wentz and Senators Dale Marks, David E. Nething, Larry J. Robinson, Bob Stenehjem, Russell T. Thane, and

James C. Yockim.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

MONITORING SERVICES FOR THE MENTALLY ILL AND CHEMICALLY DEPENDENT

Senate Concurrent Resolution No. 4002 directed the Legislative Council to monitor the continued development of a continuum of services to the mentally ill and chemically dependent, including changes in the role of the State Hospital and expanded community services, and to receive status reports from the Department of Human Services and private providers on the development of a partnership between the public and private sectors for providing alcohol and drug abuse treatment services throughout the state.

Background

The following schedule presents a historical comparison of funding provided for mental health services of the Department of Human Services, including the central office, the State Hospital, and human service centers:

	1987-89 Biennium	1989-91 Biennium	1991-93 Biennium	1993-95 Biennium
Central office	\$ 448,793	\$ 739,000	\$ 3,760,322	\$ 2,661,414
State Hospital	45,068,477	50,404,873	53,976,393	50,588,353
Human service centers	11,094,519	15,027,949	17,068,938	25,400,934
State Hospital downsizing funding pool				2,000,000
Total all funds	\$56,611,789	\$66,171,822	\$74,805,653	\$80,650,701
Less estimated income	<u>16,037,061</u>	<u>18,261,517</u>	<u>23,388,992</u>	<u>29,650,047</u>
General fund	<u>\$40,574,728</u>	<u>\$47,910,305</u>	<u>\$51,416,661</u>	<u>\$51,000,654</u>

The following schedule compares the average number of seriously mentally ill persons served at the regional human service centers during the 1989-91 biennium, 1991-93 biennium, and for the first year of the 1993-95 biennium:

Regional Human Service Center	1989-91	1991-93	Fiscal Year 1994
Northwest	312	317	316
North Central	448	400	430
Lake Region	200	184	205
Northeast	551	529	685
Southeast	932	800	890
South Central	656	488	505
West Central	537	459	508
Badlands	<u>275</u>	<u>246</u>	<u>303</u>
Total	3,911	3,423	3,842

State Hospital Review

The 1993 Legislative Assembly appropriated \$50.6 million to the State Hospital for the 1993-95 biennium, \$32.9 million of which is from the general fund. The State Hospital is authorized 659.2 full-time equivalent (FTE) positions, 58 fewer FTE positions than the 717.2 FTE positions authorized for the 1991-93 biennium. The State Hospital is licensed for 327 beds. Representatives of the State Hospital presented information to the committee on State Hospital populations, concerns, and needs as follows:

1. State Hospital admissions have decreased in recent years as follows:

Fiscal Year	Admissions
1990	2,304
1991	1,791
1992	1,677
1993	1,614
1994	1,610

2. The number of patients at the State Hospital is expected to range from 220 to 260 patients during the 1993-95 biennium. The average number of patients in fiscal year 1994 was 231, 36 fewer patients than the fiscal year 1993 average number of patients of 267.
3. Sixty-three percent of State Hospital admissions are to the chemical dependency unit and 30 percent of State Hospital admissions are Native American individuals.
4. The cost of clozaril (a drug used for treating the seriously mentally ill) and the number of patients being treated with clozaril is increasing, as well as the cost of other pharmaceuticals which will negatively impact the State Hospital's budget.
5. Capital improvement needs at the State Hospital include:
 - a. The demolition of the ABC building, the Nine West building, and the Seven West building.
 - b. Removal of asbestos in various State Hospital buildings.
 - c. Construction of utility and pedestrian tunnels.
 - d. Renovation of the nursing education building and the employees building.
 - e. Various curb, gutter, and road repairs.

Regarding additional uses for available State Hospital facilities, the committee learned that the State Hospital is considering the following programs for future implementation at the State Hospital:

1. Psychiatric nursing home.
2. Long-term residential adolescent treatment.
3. Long-term treatment for chronic alcoholics.

At the request of the Budget Committee on Government Finance and the Budget Committee on Home and Community Care, which are studying the feasibility of establishing a women's correctional facility and an additional veterans' home respectively, the committee reviewed the potential for locating either of these facilities on the State Hospital grounds. The committee learned that the State Hospital is opposed to locating a women's correctional facility on the State Hospital grounds due to the appearance that the state is associating mental illness with felonious behavior; however, the State Hospital is not opposed to locating a veterans' home at the State Hospital. The committee learned that the cost to renovate a building at the State Hospital for use as a veterans' home may be excessive.

The committee's consensus regarding locating a women's correctional facility or a veterans' home at the State Hospital was that neither be given further consideration for locating on the State Hospital grounds. See the reports of the Budget Committee on Government Finance and Budget Committee on Home and Community Care for further information on the women's correctional facility and the veterans' home studies.

The committee learned that the chemical dependency unit at the State Hospital is licensed for 56 beds and has an average 90 percent occupancy. For fiscal year 1993, the chemical dependency unit treated approximately 638 patients. The State Hospital

supports a public/private partnership in providing chemical dependency services throughout the state and the Heartview Foundation in Mandan and St. Joseph's Hospital in Minot have submitted proposals to the State Hospital to provide additional addiction services in their regions. However, after discussions between the private providers and the State Hospital regarding the difficult types of patients the providers would be serving in the local communities, no further action has been taken on the proposals.

The Department of Human Services reported on vacant positions at the State Hospital. The committee learned that of the 659.2 FTE positions authorized, 591.55 positions were filled leaving 67.65 positions vacant. Of the 67.65 vacant positions, approximately 20 positions are either being recruited or being considered for advertisement. The majority of the vacancies are mental health care specialists, nurses, social workers, psychologists, and other therapists.

The committee recommended that the Budget Section, if requested by the Department of Human Services in accordance with Section 6 of 1993 House Bill No. 1002, which provided that the department may begin optional uses for State Hospital facilities if approved by the Budget Section, approve the development of a psychiatric skilled nursing facility at the State Hospital. The Department of Human Services did not request approval from the Budget Section for this program during the 1993-94 interim.

Community Services

The Department of Human Services presented reports to the committee regarding the implementation of community services for the mentally ill and chemically dependent and regional human service center directors and staff testified on the implementation of these services. The directors and staff of the regional human service centers expressed the following comments and concerns regarding community services:

1. Access to services is often difficult for residents in the outlying communities of the regions.
2. If alcohol and drug abuse treatment services are entirely privatized, private treatment facilities may choose not to provide services to chronically addicted individuals due to the difficulty in treating these types of individuals.
3. There is a lack of services for individuals with fetal alcohol syndrome and fetal alcohol effects and their families.
4. The West Central Human Service Center is considering cooperative programming with the Heartview Foundation to provide alcohol and drug abuse treatment services to adults and adolescents on an outpatient basis.
5. There is a lack of prevention and early intervention services.
6. The lack of psychiatric services in local communities is a concern.
7. There is need for more control over the number of involuntary admissions to the State Hospital from each region.
8. There is a lack of appropriate treatment for sexual abuse victims and perpetrators.

The Department of Human Services presented the following schedule of vacant positions at the regional human service centers:

Regional Human Service Center	Budgeted FTE Positions	Actual FTE Positions	Vacant FTE Positions
Northwest	66.5	58.5	8
North Central	96.85	84.6	12.25
Lake Region	63.25	53	10.25
Northeast	118.3	110.3	8
Southeast	161.75	149.75	12
South Central	83.5	68.5	15
West Central	131.25	122.5	8.75
Badlands	<u>82.25</u>	<u>72.5</u>	<u>9.75</u>
Total	<u>803.65</u>	<u>719.65</u>	<u>84</u>

The committee learned that of the 84 vacant positions, 59 positions were planned to be filled.

The committee reviewed, for each regional human service center, the 1993-95 biennium requested seriously mentally ill and chemically dependent increases (decreases) compared to the 1991-93 biennium, the increases (decreases) approved by the 1993 Legislative Assembly, and the current status of each item. The committee learned that the total requested increase for all regional human service centers for the 1993-95 biennium was \$9.7 million, \$8.3 million of which was from the general fund and included 65.75 new FTE positions. The 1993 Legislative Assembly approved a total increase of \$8.5 million, \$6 million of which was from the general fund, and 59.75 new FTE positions. The majority of the funding and FTE

increases approved by the 1993 Legislative Assembly related to the effect of the downsizing of the State Hospital on local community program needs.

The committee reviewed regional human service centers' seriously mentally ill and chemically dependent program needs for the 1995-97 biennium. The committee reviewed the 1993-95 appropriations provided for seriously mentally ill programs at the regional human service centers, which were as follows:

Regional Human Service Center	1993-95 Budget
Northwest	\$ 2,420,947
North Central	2,583,406
Lake Region	1,262,932
Northeast	3,758,425
Southeast	4,504,045
South Central	4,150,926
West Central	4,649,068
Badlands	2,071,185
Total	<u>\$25,400,934</u>
General fund	\$14,617,018
Other funds	10,783,916
Total	<u>\$25,400,934</u>

The committee learned that the 1995-97 increases identified for seriously mentally ill and chemically dependent treatment programs (without considering employee salary increases) total \$7.9 million, \$6.7 million of which is from the general fund. The following schedule lists the identified increases by human service center:

Human Service Center/Service Need	FTE	1995-97 Biennium Estimated Cost		
		General Fund	Special Funds	Total Funds
Northwest Human Service Center:				
A social worker III for family therapy and adult mentally ill	1	\$ 74,256		\$ 74,256
Psychiatric services (includes medication and contracting of additional psychiatric time)		200,000		200,000
Case management for seriously mentally ill	4	89,123	\$ 180,945	270,068
Activity therapist for partial care and extended care	1	67,517		67,517
Total Northwest Human Service Center	<u>6</u>	<u>\$ 430,896</u>	<u>\$ 180,945</u>	<u>\$ 611,841</u>
North Central Human Service Center:				
<u>Psychiatric Services</u>				
Full-time psychiatrist in addition to the current contracts for psychiatric service	1	\$ 162,500	\$ 162,500	\$ 325,000
<u>Addiction Services</u>				
Addicted women with children program for residential and primary addiction treatment		360,000		360,000
Addiction counselor II*	1	62,743		62,743
Case manager II*	1	57,096		57,096
<u>Long-Term Semi-Independent Residential Facility*</u>				
Registered nurse II	1	59,873		59,873
Extended care coordinator I for the mentally ill	1	65,770		65,770
Case manager II for the mentally ill	1	57,096		57,096

Human Service Center/Service Need	FTE	1995-97 Biennium Estimated Cost		
		General Fund	Special Funds	Total Funds
Community home counselor II	6	\$ 239,054		\$ 239,054
Facility cost		88,200		88,200
Total North Central Human Service Center	<u>12</u>	<u>\$1,152,332</u>	<u>\$ 162,500</u>	<u>\$1,314,832</u>

* Certain service costs for this program may be reimbursable under Medicaid if the staff are employees of the human service center.

Lake Region Human Service Center:

Additional residential services (6 to 8 semi-independent apartments)	1	\$ 340,000	\$ 40,000	\$ 380,000
Psychological services (Rolla)		17,550	17,550	35,100
Expand outreach (Rolla)	1.5	61,000	42,000	103,000
1 FTE social worker III, .5 FTE support staff				
Medications for clients		10,000		10,000
Total Lake Region Human Service Center	<u>2.5</u>	<u>\$ 428,550</u>	<u>\$ 99,550</u>	<u>\$ 528,100</u>

Northeast Human Service Center:

Regional intervention services administrator, seriously mentally ill case manager II, registered nurse III, and alcohol and drug counselor II	4	\$ 346,597	\$ 26,088	\$ 372,685
Short- and long-term psychiatric hospitalization as a local alternative to State Hospital placement		200,000		200,000
Seriously mentally ill residential services to serve 32 additional individuals		1,100,000		1,100,000
Psychiatric services with .5 FTE or by contract	.5	156,000	104,000	260,000
Seriously mentally ill clubhouse project		150,000		150,000
Other staff services for seriously mentally ill clients - Case manager aides	2	99,510		99,510
Clinical psychologist II	1	56,680	56,680	113,360
Dual diagnosis program (mentally ill/mentally retarded)	4	106,361	159,541	265,902

Alcohol and Drug Services

Establish alcohol and drug treatment for developmentally disabled population and expand alcohol and drug low-intensity treatment through Grafton outreach office	1	\$ 53,929	\$ 23,112	\$ 77,041
Add a case manager to provide followup services for alcohol and drug clients	1	17,968	53,904	71,872
Expand alcohol and drug crisis residential services by the equivalent of 4 beds		120,000		120,000
Alcohol and drug counselor II	1	58,926	25,254	84,180
Expand Rhinelander coordinator position from half time to full time plus program expansion	.5	33,608	11,203	44,811
Psychosocial club adjustment to reflect higher costs of providing service		10,000		10,000
Add support services staff at the Ruth Meiers Adolescent Treatment Center	2	89,548		89,548
Total Northeast Human Service Center	<u>17</u>	<u>\$2,599,127</u>	<u>\$ 459,782</u>	<u>\$3,058,909</u>

NOTE: When preparing the 1995-97 budget request, the Northeast Human Service Center will include a request to convert currently funded temporary and contracted staff to permanent state FTEs.

Southeast Human Service Center:

Provide case management services to severely chemically dependent/mentally ill population in projected single room occupancy facility and/or elsewhere— One case manager II for the mentally ill	1	\$ 40,467	\$ 17,343	\$ 57,810
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	1995-97 Biennium Estimated Cost		
	\$ 15,000	\$ 15,000	
Increase funding for supportive apartments rent and/or deposits	90,000	\$ 10,000	100,000
Increase crisis residential services for seriously mentally ill and seriously mentally ill/chemically dependent to 24-hour coverage			
Total Southeast Human Service Center	<u>1</u>	<u>\$ 145,467</u>	<u>\$ 27,343</u> <u>\$ 172,810</u>
South Central Human Service Center:			
Addition of alcohol and drug case managers for long-term addicts	2	\$ 135,000	\$ 30,000 \$ 165,000
Addition of parent aides	2	70,000	15,000 85,000
Addition of seriously mentally ill case manager	1	67,500	15,000 82,500
Addition of representative payee services		7,000	7,000
Addition of a 10-bed long-term seriously mentally ill residential facility		500,000	100,000 600,000
Increase funding for psychosocial center		50,000	50,000
Increase in transportation to meet the needs of clients		20,000	20,000
Contracted psychiatric time (equivalent of .5 FTE)		90,000	70,000 160,000
Total South Central Human Service Center	<u>5</u>	<u>\$ 939,500</u>	<u>\$ 230,000</u> <u>\$1,169,500</u>
West Central Human Service Center:			
Counselor aide to assist addiction clients who have special needs (e.g., brain trauma, organic brain syndrome, chronic addiction, etc.), 1 to be located at West Central Human Service Center and 1 at Standing Rock Indian Reservation	2	\$ 80,000	\$ 80,000
Registered nurse for additional consultation/education at long-term care facilities and case management of geropsychiatric cases	1	74,500	74,500
Residential services (6 beds) for emotionally disturbed late adolescents/young adults		280,000	\$ 90,500 370,500
Additional money management services		30,000	30,000
Additional medication assistance		10,000	10,000
Total West Central Human Service Center	<u>3</u>	<u>\$ 474,500</u>	<u>\$ 90,500</u> <u>\$ 565,000</u>
Badlands Human Service Center:			
.5 FTE nurse		\$ 33,418	\$ 33,418
Additional staffing for crisis bed		12,000	12,000
1 FTE sexual abuse treatment specialist		80,182	80,182
Protective payee - Contract		32,000	32,000
Long-term care - 8 beds		289,000*	289,000
Psychosocial enhancement		50,000	50,000
Total Badlands Human Service Center	<u>0</u>	<u>\$ 496,600</u>	<u>\$ 0</u> <u>\$ 496,600</u>
* Some of these costs would be offset by direct client payments to the provider. If possible, this would be a contract with a private, nonprofit organization.			
Grand total - Regional human service centers	<u>46.5</u>	<u>\$6,666,972</u>	<u>\$1,250,620</u> <u>\$7,917,592</u>

Tour Groups

During the interim, the Budget Committee on Government Services functioned as a budget tour group of the Budget Section and visited the State Hospital; South Central Human Service Center; West Central Human Service Center; Northeast Human Service Center; North Central Human Service Center; Badlands Human Service Center; the psychosocial rehabilitation centers in Jamestown (Progress Enterprises), Bismarck (Dacotah Learning Center),

Grand Forks (Friendship Place), Minot (Harmony Center), and Dickinson (Prairie Rose Activity Center); Heartview Foundation in Mandan; Dickinson State University; Dickinson Research Extension Center; and other private mental illness and chemical dependency provider facilities. The committee heard about 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 Coun-

cil office and will be submitted in report form to the Appropriations Committees during the 1995 legislative session.

Other Reports

During the committee's review of the Heartview Foundation's alcohol and drug abuse treatment services, the committee learned that the Heartview Foundation's facility is approximately 60 percent vacant and that Heartview has been attempting to attract an organization to occupy the space with programs compatible to Heartview's. The committee learned that Heartview, in order to better serve its clients and to be more accessible, is opening branch offices in Hazen and Bismarck. The committee also learned that the Heartview Foundation is interested in providing cooperative services with the state of North Dakota to better serve North Dakota residents.

The committee reviewed the Department of Human Services case management fees for seriously mentally ill treatment programs and other programs.

The committee heard other reports from mental health advocacy groups, private providers, and clients on services for the mentally ill and chemically dependent in North Dakota. Major needs and concerns expressed in the reports include:

1. Concern regarding the reduction in services to the seriously mentally ill that may occur due to the Department of Human Services targeted six percent savings during the 1993-95 biennium.
2. Concern regarding the shifting of funding to other department needs by the Department of Human Services of moneys provided by the Legislative Assembly for mental health services.
3. Concern regarding a proposed unified budget for the Department of Human Services for the 1995-97 biennium which may result in less accountability by the department. The unified budget would consolidate the State Hospital, Developmental Center, and human service centers into one appropriations subdivision and would allow the department to shift funds from one entity to another.
4. The need for additional outreach services.
5. The need to give local human service centers the flexibility to spend funds to meet the individual needs of clients.

Recommendation

The committee recommends House Concurrent Resolution No. 3002 to direct the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent, including changes in the role of the State Hospital, expanded community services, and a review of the clubhouse projects in Minot and Grand Forks. The clubhouse project review portion of this recommendation is explained in the following section of this report.

CLUBHOUSE PROJECT REVIEW

Section 21 of 1993 House Bill No. 1002 provided that, during the 1993-95 biennium, the Department

of Human Services was to conduct or contract for a review of the clubhouse project in Minot to determine the effectiveness of the program. The section further provided that the department, by July 1, 1994, was to report to the Legislative Council or its designated committee on the effectiveness of the project and to provide recommendations regarding the continuation or expansion of funding for the project for the 1995-97 biennium.

Background

Clubhouse projects provide seriously mentally ill individuals the opportunity to work in an accepting and supporting atmosphere to rebuild self-confidence, work, and social skills. The individual selects a work unit in which the person will work with other members and staff. Potential work units of clubhouse projects are the maintenance unit, clerical unit, resource unit, business unit, restaurant/snack bar unit, and others. An individual can progress from a work unit to transitional employment in which the individual may work approximately 20 hours per week for up to six months, to supported employment, and finally to full-time employment, if appropriate.

In North Dakota, the clubhouse project began during the 1991-93 biennium. The 1991 Legislative Assembly appropriated \$150,000 from the general fund to begin a clubhouse demonstration project in Minot on October 1, 1991. The clubhouse project in Minot was developed as a program of the Harmony Center (a psychosocial rehabilitation center) and provides prevocational skills training for seriously mentally ill individuals. The clubhouse project trains individuals through a work environment in kitchen and clerical skills to prepare them for employment.

The 1993 Legislative Assembly, in House Bill No. 1002, appropriated \$150,000 from the general fund to continue the clubhouse project for the 1993-95 biennium in Minot and appropriated \$75,000 from the general fund to begin a clubhouse project in Grand Forks for the second year of the 1993-95 biennium. The Grand Forks clubhouse project is planned to be developed at the Friendship Place, the psychosocial rehabilitation center in Grand Forks.

Each regional human service center operates a psychosocial rehabilitation center through contracts with private, nonprofit organizations. The purpose of the psychosocial rehabilitation centers is to provide companionship and offer recreational activities for individuals with serious mental illness.

Review by the Department of Human Services

To conduct the clubhouse project review, the Department of Human Services created a Clubhouse Project Review Oversight Task Force made up of representatives from the central office of the Department of Human Services, the regional human service centers, and the psychosocial rehabilitation centers. The department, through its task force, contracted with Dr. Gary Bond of Purdue University, Indianapolis, Indiana, to conduct the clubhouse project review which included an evaluation of the clubhouse project in Minot and comparative evaluations of the programs operated at Friendship Place in Grand

Forks and Progress Community Center, which is the psychosocial rehabilitation center in Jamestown.

The committee encouraged the Department of Human Services, in its review of the clubhouse project, to include a cost analysis comparison of participants in partial care, day treatment, or other programs to the cost analysis of the clubhouse project in Minot and other psychosocial rehabilitation centers included in the study.

Consultant Evaluation and Recommendations

The consultant's review included evaluating clients at the Harmony Center and North Central Human Service Center in Minot, Friendship Place and Northeast Human Service Center in Grand Forks, and Progress Community Center and the South Central Human Service Center in Jamestown. The evaluation involved staff of the human service centers and psychosocial rehabilitation centers and 471 clients in Minot, Grand Forks, and Jamestown, of which 271 were interviewed.

The consultant's conclusions of the clubhouse evaluation included:

1. The psychosocial rehabilitation centers serve a very disabled population, generally more disabled than human service center clients not participating in the psychosocial rehabilitation center programs.
2. All three psychosocial rehabilitation centers provide the principles of psychosocial rehabilitation centers and serve important functions not duplicated within human service centers.
3. Both the psychosocial rehabilitation centers and the human service centers have an impact on client outcomes, but the impact may not be seen over a short period of time.
4. Psychosocial rehabilitation center members have outcomes as good as or better than clients receiving human service center services only.
5. Outcomes for Harmony Center members differed little from those of the other two psychosocial rehabilitation centers (Friendship Place in Grand Forks and Progress Community Center in Jamestown).
6. Harmony Center's vocational services have been disappointing:
 - a. Compared to expectations for the clubhouse model, Harmony Center has done relatively little to facilitate entry into competitive employment for its members.
 - b. Harmony Center apparently does not have systematic ways to help members keep community jobs.
 - c. Harmony Center's prevocational work units have not demonstrated their utility.
7. Harmony Center has departed from clubhouse standards as articulated by Fountain House which establishes standards for clubhouse centers.
8. Program costs for all North Dakota psychosocial rehabilitation centers are exceedingly modest by national standards. The following schedule presents the estimated state costs per client per day at the psychosocial rehabilitation centers included in the evaluation:

Harmony Center	\$11.28
Friendship Place	\$12.83
Progress Community Center	\$ 6.09

9. The level of interagency cooperation between psychosocial rehabilitation centers and human service centers needs to be improved.
10. During 1993, none of the psychosocial rehabilitation centers attracted many new members who began attending on a regular basis. Psychosocial rehabilitation centers appear to be selective in whom they attract.

The consultant's recommendations resulting from the clubhouse project review include:

1. The clubhouse programs at Minot and Grand Forks should be continued for sufficient time to allow for a fair test of the adequate implementation of the clubhouse model in North Dakota.
2. Each local psychosocial rehabilitation center and human service center, in consultation with staff from the Division of Mental Health Services, should establish performance standards for evaluating the success of the clubhouse.
3. The clubhouse model should not be expanded beyond Minot and Grand Forks until the model has proven itself in North Dakota.
4. Budgeting for the psychosocial rehabilitation centers should be tied closely to program objectives.
5. The psychosocial rehabilitation center model should be continued in North Dakota.
6. The psychosocial rehabilitation centers should examine their policies about how actively they seek out new members and if all clients feel equally welcome. Human service centers should examine their referral policies to psychosocial rehabilitation centers.
7. Psychosocial rehabilitation centers should consider expanding the role of clients as paid staff members.
8. The Harmony Center should request a site visit from Fountain House to enhance the center's attainment of clubhouse standards.
9. Harmony Center should develop systematic ways to help members keep community jobs.
10. The Division of Mental Health Services and the psychosocial rehabilitation centers should continue efforts to collect, analyze, and report program evaluation data on an ongoing basis.
11. The Division of Mental Health Services should continue to explore other employment models, especially those that avoid prevocational work units.
12. The Division of Mental Health Services should facilitate ways to increase the cooperation between the psychosocial rehabilitation centers and the regional human service centers.

Department of Human Services Recommendation

The Department of Human Services Clubhouse Review Oversight Task Force recommended that the clubhouse programs at Minot and Grand Forks be continued for sufficient time to allow for a fair test of the adequate implementation of the clubhouse model

in North Dakota and that proper and adequate funding be provided for the two clubhouse projects as well as the psychosocial rehabilitation centers in all eight regions.

Other Reports

The committee heard other reports from mental health advocacy groups, private providers, and clients on the effectiveness of the clubhouse project. Comments, concerns, and needs expressed include:

1. The clubhouse project in Minot has been effective in reducing hospital stays for the mentally ill in the Minot area who attend the clubhouse project.
2. There is a need for a Fountain House site visit at the Harmony Center's clubhouse project.
3. Potential funding reductions or elimination of funding for the clubhouse projects for the 1995-97 biennium in the human service center budget requests are concerns.
4. The clubhouse evaluation did not include a comparison between the cost of partial care programs at human service centers to the clubhouse project costs as requested by the committee.
5. Although the report indicates that the Harmony Center's clubhouse project is not succeeding in placing individuals in employment, other benefits are received by the mentally ill involved in the clubhouse project, including improved self-esteem and self-worth.

Biennium

1993-95 and
1991-93

Human Service Centers' Appropriations

Included as a separate subdivision of the Department of Human Services appropriations bill. The appropriations for the eight regional human service centers were consolidated into one appropriation subdivision; however, the budget was built on the past expenditures of each center plus increments based on each center's identifiable needs. The Legislative Assembly, through legislative intent, did make specific changes identifiable to each center.

1989-91
1987-89
1985-87
1983-85

Included within the Department of Human Services consolidated appropriation; however, the budgets were built on the past expenditures of each center plus increments based on each center's identifiable needs. The Legislative Assembly, through legislative intent, did make specific changes identifiable to each center.

1981-83

Included a separate subdivision for each human service center. The budget request and appropriation were based on the individual needs of each center.

The 1993 Legislative Assembly considered various human service center allocation formulas; however, none of the formulas were adopted. The formulas considered were based on the Department of Human Services originally proposed formula that determined funding levels by assigning various percentages to the following factors for each human service center: population, population under the poverty level, outreach services, population density, client caseload, and essential services.

Human Service Center Funding Formula Alternatives Developed by the Department of Human Services

The Department of Human Services organized a

Recommendations

The committee recommends that the Legislative Assembly continue the clubhouse programs at Minot and Grand Forks for sufficient time to allow for a fair test of the adequate implementation of the clubhouse model in North Dakota and provide proper and adequate funding for the two clubhouse programs and the eight psychosocial rehabilitation centers.

The committee recommends, as part of the study resolution (House Concurrent Resolution No. 3002) to monitor services for the mentally ill and chemically dependent during the 1995-96 interim referred to earlier in this report, a review to determine the effectiveness of the clubhouse projects in Minot and Grand Forks and the desirability of developing clubhouse programs in other regions in the state.

HUMAN SERVICE CENTERS FUNDING FORMULA

Section 24 of 1993 House Bill No. 1002 provides that the Department of Human Services, during the 1993-95 biennium, study and develop alternatives for a formula to allocate funding to human service centers and to periodically report to the Legislative Council or its designated committee on its findings and recommendations.

Background

The following schedule presents how the Legislative Assembly has historically appropriated funds to the human service centers:

committee consisting of representatives of the regional human service centers, the Developmental Center at Grafton, the State Hospital, and vocational rehabilitation. The task force recommended that the formula be kept simple and that the following factors be included in the formula:

1. A minimum allocation for each region.
2. The population of each region.
3. The number of people living in poverty in each region.

The committee considered the following four alternative funding formulas developed by the department's task force:

1. Formula No. 1 includes factors of population, population living in poverty, outreach, density

per square mile, unduplicated clients, and essential services (the same formula proposed by the department during the 1993 Legislative Assembly).

2. Formula No. 2 includes a population factor only.
3. Formula No. 3 includes a population factor of 50 percent and a population living in poverty factor of 50 percent.
4. Formula No. 4 includes a population factor of 75 percent and a population living in poverty factor of 25 percent.

In addition to the formula distribution, a minimum allocation of \$2.5 million is provided to each human service center under each of the alternatives and each alternative includes "set asides" that were not included in the formula. The "set asides" are programs unique to a human service center or for human service center programs that have a state-wide impact.

The following schedule provides a comparison of the funding that would have been provided to each human service center had the various formulas been in effect for the 1993-95 biennium:

Human Service Center	Current	Funding That Would Have Been Provided Had the			
	1993-95 Biennium	Following Formula Been in Effect for the 1993-95 Biennium			
	Funding	Formula 1	Formula 2	Formula 3	Formula 4
Northwest	\$ 6,689,309	\$ 6,732,584	\$ 5,028,800	\$ 5,080,929	\$ 5,054,865
North Central	8,962,292	9,366,513	9,772,887	9,730,236	9,751,561
Lake Region	6,103,270	7,031,018	6,059,465	7,291,619	6,675,542
Northeast	12,316,459	11,363,141	12,288,014	11,655,351	11,971,683
Southeast	13,208,835	12,667,573	14,619,021	13,659,362	14,139,192
South Central	8,534,437	8,418,628	7,727,058	7,956,902	7,841,980
West Central	13,051,141	12,612,552	13,689,643	13,568,798	13,629,220
Badlands	6,877,778	7,551,512	6,558,633	6,800,324	6,679,478
Total	<u>\$75,743,521</u>	<u>\$75,743,521</u>	<u>\$75,743,521</u>	<u>\$75,743,521</u>	<u>\$75,743,521</u>

Upon an analysis of the funding formula alternatives, the committee determined that:

1. Formula No. 1 most closely resembles current budgets.
2. Formula No. 2 reduces funding for the four more rural regions and provides more funding to the four more urban regions.
3. Using poverty as a factor in Formula Nos. 3 and 4 mitigates the effect of a pure population formula as in Formula No. 2.

The department's task force recommended to the committee that the formula be kept simple, that it include a minimum allocation for each region, and that it include a factor for population and poverty.

The committee reviewed a plan to phase in over two bienniums Formula No. 3 which includes a population

factor of 50 percent and a poverty factor of 50 percent and proposed Formula No. 4 which includes a population factor of 75 percent and a poverty factor of 25 percent. At the committee's request to consider an option of phasing in the formulas, the department developed a phase-in plan that would provide consistent increases or decreases over four years for each human service center depending on the impact of the formula. Regions 1, 4, 6, and 8 (Williston, Grand Forks, Jamestown, and Dickinson) under both formulas would experience funding reductions while Regions 2, 3, 5, and 7 (Minot, Devils Lake, Fargo, and Bismarck) would receive funding increases. The schedule below presents the increases (decreases) to current 1993-95 biennium funding for each human service center under the phase-in plan for Formula No. 3 and Formula No. 4:

Human Service Center	Formula No. 3 (50 Percent Population and 50 Percent Poverty Factors)		Formula No. 4 (75 Percent Population and 25 Percent Poverty Factors)	
	Annual Increase (Decrease) for Four Years	Cumulative Four-Year Increase (Decrease)	Annual Increase (Decrease) for Four Years	Cumulative Four-Year Increase (Decrease)
Northwest - Williston	\$(201,047)	\$(804,190)	\$(204,305)	\$(817,223)
North Central - Minot	95,993	383,971	98,659	394,634
Lake Region - Devils Lake	148,544	594,174	71,534	286,136
Northeast - Grand Forks	(82,638)	(330,554)	(43,097)	(172,388)
Southeast - Fargo	56,316	225,264	116,295	465,179
South Central - Jamestown	(72,192)	(288,767)	(86,557)	(346,228)
West Central - Bismarck	64,707	258,829	72,259	289,040
Badlands - Dickinson	(9,683)	(38,727)	(24,788)	(99,150)
Total	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>

The Department of Human Services recommended that the factors of population and poverty be taken into account as benchmarks against which to judge the equity of funding among regions, rather than instituting a statutorily mandated formula. However, if the Legislative Assembly chooses to adopt a formula, the Department of Human Services recommended that the phase-in period be extended beyond four years to ease the impact on the regions that would lose funding.

Other Reports

The committee reviewed other states' systems of allocating funding between state hospitals and local mental health programs. The committee learned that South Dakota and Minnesota provide separate appropriations for their state hospital operations and for local mental health centers while Montana provides one appropriation for both the State Hospital and local mental health centers.

The committee heard reports from representatives of the human service centers regarding the proposed funding formulas. Comments made include:

1. Although there is merit in using population and poverty factors as benchmarks against which to judge funding equity among regions, a mandated formula is not needed.

2. The responsibility and authority for the allocation of state resources rests with the Legislative Assembly; therefore, any allocation formula would restrict the Legislative Assembly's ability to appropriately fund service priorities for all residents of the state.
3. A formula may not include all the variables affecting allocations of resources.
4. Concern was expressed regarding the level of services which would be provided in a region that would be adversely affected by a funding formula and how needed services in those regions would be provided.

Recommendation

The committee recommends that the proposed human service center funding formulas be rejected and that the Department of Human Services, the executive budget office, and the Appropriations Committees analyze the human service center budget requests using a needs assessment process that includes a comparison of the needs of persons in the eight regions, current services available from all sources, and the level of services needed to meet the unmet needs in each region and that the Legislative Assembly should attempt to provide funding to human service centers to make basic and essential services available and accessible in each region.

BUDGET COMMITTEE ON HOME AND COMMUNITY CARE

The Budget Committee on Home and Community Care was assigned four study areas. Senate Concurrent Resolution No. 4048 directed a study of the long-term care needs of veterans with an emphasis on the use of state and other existing facilities for providing long-term care for veterans. House Bill No. 1032 directed the Department of Human Services to study the nursing home property cost reimbursement system and report periodically to the Legislative Council on the progress of the study and any findings and recommendations. The Legislative Council assigned responsibility for receiving these reports to the committee.

Sections 19 and 20 of 1993 House Bill No. 1002 required the Department of Human Services to develop a ratesetting system for basic care facilities and report to an interim committee regarding the department's recommendations for the system to be implemented on July 1, 1995. Section 25 of 1993 House Bill No. 1002 directed the Department of Human Services to develop, during the 1993-95 biennium, a management information system to accumulate information for presentation to members of the 1995 Legislative Assembly regarding the costs and utilization of the service payments to the elderly and disabled (SPED) program. The Legislative Council assigned the study responsibility for these two areas to the committee.

Committee members were Senators Aaron Krauter (Chairman), John Andrist, Bill L. Bowman, Elroy N. Lindaas, and Harvey Sand and Representatives Audrey Cleary, James O. Coats, William E. Gorder, Howard Grumbo, Dale L. Henegar, and Robert Huether.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

STUDY OF VETERANS' LONG-TERM CARE NEEDS

Senate Concurrent Resolution No. 4048 directed a study of the long-term care needs of veterans with an emphasis on state and other existing facilities that could be used for providing long-term care for veterans. Some of the reasons cited for the study were the increased life expectancy and the need for home and institutional services for approximately 64,000 North Dakota veterans, the current Veterans Home in Lisbon has a capacity of 150 beds and a waiting list for admittance, alternatives to long-term nursing home care for veterans exist including respite care, basic care, and congregate care, and the state has a number of facilities that may be better utilized by providing long-term care to veterans.

Background

1993 Legislative Assembly Considerations

During the 1993 Legislative Assembly several bills were considered relating to long-term care for veterans—Senate Bill Nos. 2090, 2091, 2092, and 2272. These bills would have provided for a western

North Dakota veterans' home, an additional 20 skilled nursing care beds at the Veterans Home in Lisbon, the statutory establishment of a veterans' home in western North Dakota at a location to be determined by the Administrative Committee on Veterans Affairs, and the placement of the Cedar Grove building at the Developmental Center at Grafton under the control of the Administrative Committee on Veterans Affairs to be used as part of the veterans' home. These bills were not approved and additional study was recommended.

Related Statutory Provisions

North Dakota Century Code (NDCC) Section 37-18.1-01 provides for the establishment of an Administrative Committee on Veterans Affairs consisting of three ex officio nonvoting members and 15 voting members. The ex officio members are the Adjutant General, the center director of the Veterans Administration, and the executive director of Job Service North Dakota. The 15 voting members are appointed by the Governor for three-year terms, consisting of three members representing each of the following five organizations:

1. The American Legion.
2. Veterans of Foreign Wars.
3. Disabled American Veterans.
4. Veterans of World War II, Korea, and Vietnam (AMVETS).
5. Vietnam Veterans of America.

Administrative Committee on Veterans Affairs responsibilities include:

1. Formation of a subcommittee responsible for supervision and governance of the Veterans Home.
2. Formation of a subcommittee responsible for supervision and governance of the Department of Veterans Affairs.
3. Appointment of the commandant of the Veterans Home and the commissioner of the Department of Veterans Affairs.
4. The presentation of matters needing attention and action to appropriate state boards, agencies, and departments and the North Dakota Veterans Coordinating Council.

North Dakota Century Code Chapter 37-15 relates to the establishment of the Veterans Home in Lisbon and includes the following:

1. A requirement that the Veterans Home is to provide domiciliary and long-term care for eligible veterans and spouses.
2. Provision for supervision of the Veterans Home by the Administrative Committee on Veterans Affairs.
3. Establishment of Veterans Home admission requirements, which include that a person be a resident of North Dakota and that the person meet the requirements of the Administrative Committee on Veterans Affairs and be approved by the board of admissions of the Veterans Home. Veterans' spouses may be admitted.
4. Establishment of the following priority listing for Veterans Home admissions when a waiting

list for admission is necessary:

- a. Veterans with service-connected disabilities.
- b. American ex-prisoners of war.
- c. Wartime veterans with nonservice-connected disabilities.
- d. Wartime veterans.
- e. Discharged North Dakota National Guard members who became disabled in the line and discharge of duty.
- f. Veterans with nonservice-connected disabilities.
- g. Veterans.
- h. Spouses.
- i. Surviving spouses.

1991 Veterans Home Addition

The 1989 Legislative Assembly authorized the issuance of bonds for an addition to the Veterans Home for a 38-bed nursing home wing and other improvements at a total cost of \$3.6 million, financed with \$1.4 million of bonds and \$2.2 million from a United States Veterans Administration state home grant. The facility was constructed during the 1989-91 biennium, opened in November 1991, and has a related debt balance of approximately \$1.2 million. The facility houses 38 residents in a skilled nursing home setting, and all beds are occupied. In October 1994, 111 of the 112 basic care beds at the Veterans Home in Lisbon were occupied.

Veterans Home Funding

The 1993-95 appropriation for the Veterans Home totals \$6.2 million, of which \$2.45 million is from the general fund. A total of 77.31 full-time equivalent (FTE) positions are authorized for the 1993-95 biennium. The sources of funding for the operation of the basic care part of the facility are from Veterans Administration funds, patient collections, and general fund appropriations. Sources of funding for the operation of the skilled nursing unit are from federal Veterans Administration funds, Medicare, Medicaid, and patient collections.

The Veterans Administration pays a per diem for the care of needy veterans. The current rate is \$15.11 per day for care in the basic care unit and \$35.37 per day for nursing home care. These rates are adjusted annually and are uniform throughout the nation.

State and Federal Requirements for Veterans' Homes

The committee was informed of the following items regarding veterans' homes:

1. **Certificate of Need.** The 1993 Legislative Assembly amended NDCC Chapters 23-01 and 23-17.2 to provide the State Health Council with specific authority to regulate the expansion of long-term care facilities and services through the certificate of need process. This authority includes the expansion of services or the physical plant of a long-term care facility or any conversion of beds from any license or category to any other category of long-term care. A provision of Chapter 23-17.2 was repealed which had previously exempted state agency construction projects that were estab-

lished through legislative procedure from the certificate of need requirements.

2. **Veterans' Per Diem.** The United States Veterans Administration has established a "state home program" providing per diem payments as assistance for veterans in recognized state facilities for basic and nursing home care. The payments are the same throughout the nation, are needs based, and are adjusted annually. To expand the number of individuals eligible for the state home program, the state is required to petition the Veterans Administration for approval to expand coverage. These payments are only available to veterans receiving services in facilities identified as a state veterans' home or a unit of a state veterans' home. The current payments are \$15.11 per day for basic care and \$35.37 per day for skilled care.

Veterans' per diem payments are available to a limited number of veterans in veterans' homes, up to approximately four percent of the total veteran population in the state. North Dakota has approximately 64,000 veterans and a four percent limit would allow for a maximum of 256 veterans to be eligible for per diem payments, unless a waiver is obtained. Currently, there are 150 veterans' home beds in North Dakota and an additional 106 beds could be approved without exceeding the Veterans Administration limit. Representatives of the Veterans Home indicated a request to increase the limit would probably be approved if the need were established.

3. **Veterans' State Home Grant Program.** The United States Veterans Administration also has a grant program for construction of state home facilities which assists states in constructing or acquiring state home facilities for domiciliary, nursing home, or hospital care by providing a grant of up to 65 percent of the estimated cost of the facility, including equipment. The state must apply for these funds, the funds are limited, and funds are available on a competitive basis. Funding for a state project could possibly receive federal funding for the 1995-96 federal fiscal year.

Long-Term Care Work Group

The Department of Human Services and the Department of Health and Consolidated Laboratories formed a long-term care work group to review long-term care needs of the citizens of North Dakota and develop recommendations for the provision of future services. The work group's participants included representatives from the American Association of Retired Persons, Silver-Haired Education Association, Office of Indian Affairs, University of North Dakota Research Center for Gerontology, Department of Human Services, Department of Health and Consolidated Laboratories, North Dakota County Social Service Board Directors Association, University of North Dakota Office of Rural Health, North Dakota Long Term Care Association, North Dakota Hospital Association, and North Dakota Administrative Committee on Veterans Affairs.

The long-term care work group's recommendations were adopted by the State Health Council and are summarized as follows:

1. Nursing facility beds
 - Additional nursing facility beds will not be approved for licensure or certification unless capacity within that region of the state falls below 60 nursing facility beds per 1,000 population age 65 and above.
2. Basic care beds
 - Additional basic care beds may be approved based upon the relative needs and merits of each proposal.
 - Approvals for additional basic care bed capacity may not exceed five percent of the statewide total of licensed basic care beds in any six-month period.
 - Existing nursing facilities will be permitted to convert beds to basic care if the need for basic care beds is demonstrated through the certificate of need process.
 - Preference will be given to applications from regions of the state with basic care bed capacities of less than the statewide maximum standard of 15 beds per 1,000 elderly population.
 - The statewide bed capacity cannot exceed 15 basic care beds per 1,000 elderly population.
 - The department will use North Dakota State University Census Data Center population projections, based upon 100 percent of the 1980-90 migration rates, as the basis for determining bed capacity to population ratios.
 - Facilities not licensed as hospitals or long-term care facilities, found to be operating as basic care facilities by the department prior to January 1, 1995, may be permitted to be licensed as basic care facilities if the need for basic care beds is demonstrated through the certificate of need process.

Testimony

Veterans' Testimony

Representatives of the North Dakota Administrative Committee on Veterans Affairs testified that they supported, in priority order, the establishment of a veterans' basic care facility in western North Dakota, a veterans' facility at the Cedar Grove facility in Grafton, and a 20-bed addition to the nursing home unit at the Veterans Home in Lisbon. Veteran service officers from western North Dakota testified in support of a veterans' facility in western North Dakota.

North Dakota Long Term Care Association Testimony

Representatives of the Long Term Care Association, including nursing home operators, testified in opposition to additional nursing care beds in North Dakota. Reasons for the opposition include that North Dakota far exceeds the national average for nursing care beds per 1,000 of elderly persons and state funds are insufficient for existing nursing homes.

As an alternative it was suggested the United States Department of Veterans Affairs be encouraged, through its community nursing home contract program, to contract with existing nursing homes to provide care to veterans as a cost-effective and flexible method of meeting the long-term care needs of an aging veteran population. This alternative, it was suggested, could provide veterans long-term care close to their homes and families and utilize existing nursing homes. There are currently 200 vacant beds at nursing homes in North Dakota and nursing homes statewide have a 96 percent occupancy rate. This compares with an 85 percent occupancy rate for basic care facilities.

Nursing home administrators testified against expansion of the nursing care unit at the Veterans Home in Lisbon because of the availability of vacant nursing home beds in surrounding community nursing homes and problems those facilities were already experiencing in recruiting staff.

State and Other Existing Facilities

Cedar Grove Building

The committee received information regarding the possible use of state and other existing facilities for long-term care for veterans. The committee toured the Cedar Grove building at the Developmental Center in Grafton and received information from the Department of Human Services regarding the potential costs of operating the facility as a veterans' nursing care facility. The Department of Human Services presented information that to convert the Cedar Grove building to a 60-bed nursing care facility would result in operating costs of approximately \$4.5 million per biennium funded as follows:

Cedar Grove Proposed Nursing Care Facility

Funding Source	Amount
Private pay (42% of residents)	\$1,280,638
Veterans' payments	1,084,242
Federal Medicaid funds	483,906
State general fund	1,638,528
County Medicaid matching funds	<u>26,276</u>
Total biennial operating costs	<u>\$4,513,590</u>

State Hospital

The Budget Committee on Government Services, as part of its study responsibilities, toured the State Hospital and reviewed its buildings for possible alternative uses, including a veterans' home. It was reported to the committee that because of excessive costs to remodel buildings for use as a veterans' home, the Budget Committee on Government Services recommended further consideration not be given to the use of State Hospital buildings as a veterans' home.

Alternative Veterans' Basic Care Facilities

The committee determined the appropriate level of care to be provided in any additional veterans' facilities should be limited to basic care. At the request of the committee, representatives of the Veterans Home provided cost estimates for a new 60-bed western veterans' basic care home and a 60-bed basic

care veterans' facility at the Cedar Grove building at the Developmental Center in Grafton. The committee reduced the cost estimate for a western facility from \$5,039,992 proposed by the Veterans Home to \$3 million as part of its recommendations. The

committee believes \$3 million represents a more appropriate cost estimate.

The following is a summary of the projected costs of the 60-bed western veterans' home and the 60-bed Cedar Grove facility:

Facility Construction/Alteration Costs

	<u>New 60-Bed Facility</u> 1995-97 Biennium	<u>Cedar Grove Facility</u> 1995-97 Biennium
Cost details:		
Building costs/ alterations	Based on \$50,000/bed for a 60-bed unit	\$ 200,000
Site development		
Major equipment (laundry and kitchen)		
Small equipment (beds, desks, tables, etc.)		
Total construction costs including equipment	<u>\$3,000,000</u>	<u>\$ 200,000</u>
Funding sources:		
65% state home grant - Veterans Administration	\$1,950,000	\$ 130,000
35% state matching funds - Loan from veterans' postwar trust fund	1,050,000	70,000
Total	<u>\$3,000,000</u>	<u>\$ 200,000</u>

Construction of a new facility could begin early in the 1995-97 biennium and could be completed with the facility operational on July 1, 1997. Renovations/alterations of the Cedar Grove facility are estimated to cost between \$150,000 to \$200,000. Possible alterations include installation of therapy tubs and a

separate entrance.

Startup Costs

These costs would allow for the oversight of construction for a new facility, recruitment of staff, and staff training prior to a facility opening:

	<u>New 60-Bed Facility</u> 1995-97 Biennium (Operational July 1, 1997)	<u>Cedar Grove Facility</u> 1995-97 Biennium (Operational July 1, 1996)
Detail:		
Administrator - 24 months/ 12 months	\$ 88,351	\$44,176
Director of nursing - 12 months	<u>38,200</u>	<u>38,200</u>
Total	<u>\$126,551</u>	<u>\$82,376</u>
Funding sources:		
65% state home grant - Veterans Administration	\$ 82,258	\$53,544
35% state matching funds - Veterans' postwar trust fund	44,293	28,832
Total	<u>\$126,551</u>	<u>\$82,376</u>

Biennial Operating Costs of a Veterans' Basic Care Facility

	<u>New 60-Bed Facility</u>		<u>Cedar Grove Facility</u>	
	1997-99 Biennium	Daily Cost Per Resident (60 Residents)	1997-99 Biennium	Daily Cost Per Resident (60 Residents)
Salaries and wages - 21.8 FTEs	\$1,210,844	\$27.65	\$1,210,844*	\$27.65
Operating expenses	484,395	11.06	484,395*	11.06
Equipment	27,995	.64	27,995	.64
Loan principal and interest payments	163,577	3.73	0	
Total costs	<u>\$1,886,811</u>	<u>\$43.08</u>	<u>\$1,723,234*</u>	<u>\$39.35</u>
Funding sources:				
Veterans' per diem	\$ 661,818	\$15.11	\$ 661,818	\$15.11
Recipient payments	576,600	13.17	576,600	13.17
General fund	<u>648,393</u>	<u>14.80</u>	<u>484,816</u>	<u>11.07</u>
Total	<u>\$1,886,811</u>	<u>\$43.08</u>	<u>\$1,723,234</u>	<u>\$39.35</u>

* There is potential for savings in several areas including maintenance, food service, laundry, and utilities. The amount of savings is unidentified and would be dependent upon contracts that would be established with the Developmental Center.

Basic Care Facility Cost Summary

	<u>New 60-Bed Facility</u>		<u>Cedar Grove Facility</u>	
	1995-97 Biennium	1997-99 Biennium	1995-97 Biennium	1997-99 Biennium
Grand total of all estimated costs	\$3,126,551*	\$1,886,811	\$1,143,993**	\$1,723,234
Funding sources:				
Veterans Administration - State home grant	\$2,032,258		\$ 183,544	
State matching funds - Veterans' postwar trust fund	1,094,293		98,832	
Veterans' per diem		\$ 661,818	330,909	\$ 661,818
Recipient payments		576,600	288,300	576,600
General fund or other state sources		648,393	242,408	484,816
Total	<u>\$3,126,551*</u>	<u>\$1,886,811</u>	<u>\$1,143,993**</u>	<u>\$1,723,234</u>

* Consists of construction and startup costs.

** Consists of alteration costs (\$200,000), startup costs (\$82,376), and operating costs (\$861,617) beginning July 1, 1996.

Testimony Regarding a Western Veterans' Home

The committee received testimony from representatives of several communities, the Department of Health and Consolidated Laboratories, and veterans' organizations regarding alternative sites for a veterans' care facility.

Representatives of the Beach Western Veterans Home Committee testified in support of locating the western North Dakota veterans' facility in the former Golden Valley Hospital in Beach. Representatives from the Crosby community also testified in support of locating a veterans' home in Crosby. Other persons also had an interest in the possibility of location of a veterans' home in their communities.

Representatives of the State Department of Health and Consolidated Laboratories provided the committee with information regarding the structural changes necessary to upgrade the former Golden Valley County Hospital building in Beach to meet current nursing

home standards. The committee learned the building lacks many of the areas necessary to support a long-term chronic population, including handicapped accessible bathrooms, congregate dining, activity space, and an adequate ventilation system. Representatives of the Veterans Home reviewed the Beach facility and determined major structural changes would be needed to meet Veterans Administration requirements including new laundry and kitchen facilities. In addition, Veterans Administration room size requirements would limit the number of beds in the building to between 12 and 14 beds. Another concern is the potential for asbestos in the building and the related removal costs.

Representatives of the North Dakota Long Term Care Association and the Administrative Committee on Veterans Affairs jointly reviewed some nursing homes for the possibility of leasing a portion or all of a home for use as a veterans' nursing care wing. The Administrative Committee on Veterans Affairs re-

viewed homes in Minot and Dickinson that might be available for use as a veterans' home. It was learned one obstacle to converting an existing home is the relocation of current residents to accommodate converting to a veterans' home. At the last committee meeting, the Administrative Committee on Veterans Affairs reported it was interested in continuing to explore the possibility of converting an existing home or wing for use as a basic care veterans' home. The facilities reviewed earlier were reviewed for use as a nursing care facility and those homes may not be available for use as a veterans' basic care home.

Budget Tours

The committee toured the Developmental Center in Grafton and the Veterans Home in Lisbon as its budget tour responsibilities assigned by the chairman of the Budget Section. During the tour of the Developmental Center, the committee toured the Cedar Grove facility and learned that it is a 96-bed facility, with 55 residents and is accessible by tunnel to food services, laundry, health care, and therapy services.

The committee learned the Grafton community has received a grant to study the feasibility of alternative uses of buildings at the Developmental Center, which have been prioritized as follows:

1. Veterans' home/veterans' satellite clinic.
2. Adaptive equipment center/light industrial manufacturing.
3. Housing/residential/handicapped facility.
4. Alzheimer's center/chronic brain syndrome center.
5. Food processing center.
6. Educational entity/professional services.

Individuals from the Grafton area testified in support of using the Cedar Grove facility as a veterans' care facility or regional veterans' medical center.

The committee learned there are approximately 42,000 veterans in northwestern Minnesota and 17,000 veterans in northeastern North Dakota, or almost 59,000 veterans who could be served at a Cedar Grove veterans' medical center. As a result of deinstitutionalization, a large number of the center's residents have been placed in community facilities which has resulted in the availability of the Cedar Grove building. The committee learned the original cost of the Cedar Grove building was \$2.9 million and the June 30, 1994, undepreciated balance was approximately \$1.5 million.

The committee learned the Veterans Home would like authorization for an addition, including 20 skilled nursing care beds, eight offices, and a laundry facility. These recommended facilities would be an addition to the existing 38-bed skilled nursing care unit. The committee learned the case mix resident index for the Veterans Home in October 1994 was 1.5, the statewide average. The skilled nursing care unit has a waiting list of between 40 to 50 persons. Approximately one-half of the residents at the Veterans Home have substance abuse problems and many residents have significant mental health and psychosocial needs. The residents of the Veterans Home receive medical services from the Veterans Hospital in Fargo. Veterans Home residents, com-

munity leaders, and veterans testified in support of additional skilled nursing care beds at the Veterans Home. The Veterans Home has requested, in its 1995-97 budget request, \$447,000 from the Soldiers' Home fund to upgrade the air-conditioning system at the home.

Recommendations

The committee recommends Senate Bill No. 2033 regarding veterans' basic care facilities summarized as follows:

1. **Western North Dakota Veterans' Home.** The bill authorizes the acquisition or construction of a western North Dakota veterans' home at a cost not to exceed \$3 million, including up to \$1,050,000 from a loan from the veterans' postwar trust fund and \$1,950,000 from a Veterans Administration state home grant.
2. **Western Veterans' Home Site Selection.** The bill provides that the western veterans' home site selection is to be determined by the Administrative Committee on Veterans Affairs, subject to either approval of the 54th Legislative Assembly or the Budget Section during the 1995-96 interim in the event a site cannot be selected for consideration during the 1995 Legislative Assembly.
3. **Cedar Grove Facility.** The bill provides for a Cedar Grove basic care veterans' home, including renovations costing \$200,000 with up to \$70,000 from a loan from the veterans' postwar trust fund and \$130,000 from a Veterans Administration state home grant. Startup costs of \$82,376 for the first year of the 1995-97 biennium are appropriated, of which \$28,832 is from the veterans' postwar trust fund and \$53,544 is from Veterans Administration state home grant funds.
4. **Cedar Grove Operations.** The bill appropriates a total of \$861,617, of which \$242,408 is from the general fund, for operations of the Cedar Grove basic care veterans' home for the second year of the 1995-97 biennium.
5. **Cedar Grove Administrative Control.** The bill transfers administrative control of the Cedar Grove building at the Developmental Center from the Department of Human Services to the Administrative Committee on Veterans Affairs for use as a state basic care veterans' home.
6. **Western Veterans' Home Site Selection Criteria.** The bill provides authorization for an additional veterans' home in western North Dakota with site selection to be based on the following criteria:
 - a. Availability of adequate physician and medical services.
 - b. Distance from a regional Veterans Administration medical facility.
 - c. Distance from a hospital other than a regional Veterans Administration medical facility.
 - d. Availability of an existing facility that may be renovated at a reasonable cost to meet Veterans Administration standards.
 - e. Location in an area where there are veterans

needing the services.

- f. Availability of public transportation.
- g. Availability of recreational and cultural activities.
- h. Availability of adequate fire protection.
- i. Site compliance with existing zoning regulations.
- j. Lack of noise, chemical, and other hazardous conditions.
- k. Availability of community site incentives.

The committee expects the Administrative Committee on Veterans Affairs to select a site for a basic care facility for veterans in western North Dakota prior to the 1995 Legislative Assembly and to report its site recommendation to the Legislative Assembly. If a site cannot be selected for consideration during the 1995 Legislative Assembly, the committee recommends that the site selection be subject to Budget Section approval before acquisition or construction of the facility begins.

PROPERTY COST REIMBURSEMENT STUDY

House Bill No. 1032 (1993) directed the Department of Human Services to continue its study of the Medicaid property cost reimbursement system for nursing homes which began during the 1991-92 interim. The department was directed to continue a nine-member advisory committee consisting of departmental staff, at least three representatives of the long-term care industry, and three legislative members appointed by the chairman of the Legislative Council.

Current Method of Property Cost Reimbursement

Except for the provisions of 1993 House Bill No. 1032, nursing home property cost reimbursement is based on depreciation of the cost of a facility limited to the lowest of the following:

1. Current reproduction costs.
2. Price paid by the purchaser.
3. Fair market value of the facility.
4. Seller's cost basis less accumulated depreciation plus recapture depreciation.

Current rules also provide for recapture of depreciation reimbursement paid for Medicaid patients since 1984 to the extent that the facility sold for more than the undepreciated value of the facility.

1993 House Bill No. 1032

House Bill No. 1032 provided an exception to the current reimbursement methods discussed earlier for five facilities purchased between July 1, 1985, and January 1, 1991. These facilities' basis for depreciation purposes is not limited by the previous owner's cost basis but instead real property depreciation reimbursement is based upon current reproduction cost of the assets depreciated on a straight line basis over the assets' useful lives to the date of acquisition by the buyer and increased by one-half of the percentage increase in the consumer price index from the date of acquisition by the seller to the date of sale to the buyer, or the purchase price paid by the buyer, whichever is lower.

1991-92 Committee Directives to the Department of Human Services

The Budget Committee on Long-Term Care, during the 1991-92 interim, provided the following suggestions to the Department of Human Services as it studied nursing home property cost reimbursement:

1. Review the current property cost reimbursement system, including the identification of its strengths and weaknesses as it relates to existing facility ownership, change of ownership situations, and sale and leaseback arrangements.
2. Review other states' property cost reimbursement systems, including the obtaining of information on the fiscal impact to other states of their systems, including a state with rate equalization, one with a fair rental system indexed to bond rates, and one at the federal limit that allows the property basis to be adjusted by changes in the consumer price index.
3. Consider alternative property cost reimbursement systems, including a continuation of the system authorized under House Bill No. 1031 and the level allowed by federal law, with consideration given to allowing facility sales after January 1, 1991.
4. Consider the fiscal impact of alternative property cost reimbursement systems on nursing homes.
5. Consider the fiscal impact of proposed and selected alternative property cost reimbursement systems on total Medicaid reimbursement, including federal, state, and county costs for the 1993-95 biennium.
6. Identify any related statutory changes required to implement a revised property cost reimbursement system and address the appropriateness of statutory or administrative rule changes.

1991-92 Testimony

Representatives from the North Dakota Long Term Care Association testified on the strengths and weaknesses of the property cost reimbursement system. The current system reimburses property costs based on historical costs except for nursing home sales limited by the previous owner's cost, fair market value, and current reproduction costs. The strengths and weaknesses of the current property cost reimbursement system are summarized as follows:

Strengths of the Current System

- A. Simple to administer and understand as it has been in place for a number of years.
- B. Appears to contain reimbursement rates that provide savings to taxpayers.
- C. Property costs are reimbursed except as limited by change of ownership.
- D. Meets the Health Care Financing Administration efforts to discourage nursing home transfers and to limit program costs.

Weaknesses of the Current System

- A. Does not react to sales in a reasonable manner because of limiting interest and depreciation reimbursement to the previous owner's level.
- B. Recapture of depreciation prevents some facili-

ties from being sold, even in what may be emergency situations.

- C. Does not provide a return on investment for facility owners.
- D. Provides no incentives to the provider to refinance the provider's present debt at lower interest rates except to save costs for the state and the private pay resident. (The Department of Human Services subsequently implemented rules to encourage, where appropriate and cost effective, the refinancing of nursing home debt by providing reimbursement for refinancing costs in certain situations.)

Department of Human Services Property Cost Study Advisory Group Reports

At each committee meeting, the committee received Department of Human Services reports on the status of the advisory committee's study of property cost reimbursement. The advisory committee engaged a consultant, Myers and Stauffer, Certified Public Accountants, Boise, Idaho, to provide financial information and to project fiscal impacts of alternative property cost reimbursement systems for property models based on cost-based reimbursement systems and on appraisal-based rental systems.

To assist in the development of the appraisal-based rental systems, the Department of Human Services engaged another consultant, Marshall and Stevens, Inc., Edina, Minnesota, to conduct appraisals of selected nursing care facilities in North Dakota. Onsite appraisals were completed at 21 of the 82 nursing facilities in North Dakota. These appraisals were then used to develop estimated values of the remaining facilities to be used as a basis for appraisal-based rental systems.

Department of Human Services Property Cost Study Advisory Group Recommendations

The property cost study advisory group's recommendations were adopted by the committee and with some changes were recommended in Senate Bill No. 2034 summarized in the committee's recommendation. Senate Bill No. 2034 made changes to the recommendations in the areas of interest expense (subject to Department of Human Services rule rather than limited to 90 percent of allowable property basis), depreciation (movable equipment depreciated over a composite useful life rather than an appraiser's estimated remaining life), and property cost limits (provide a per bed rather than per day limit excluding land and movable equipment).

Recommendations

The committee recommends Senate Bill No. 2034 regarding the nursing home property cost payment system that requires the Department of Human Services to include in its nursing home ratesetting system a payment mechanism for real and personal property providing for depreciation and related interest costs that:

1. Recognizes, to the extent allowable by the federal government, the valuation of assets limited to the lowest of:

- a. Purchase price.
 - b. Fair market value.
 - c. Seller's cost basis, increased by one-half of the increase in the consumer price index from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation, plus recapture depreciation.
 - d. Seller's cost basis, increased by one-half of the increase in the Dodge construction index from the date of acquisition by the buyer, less accumulated depreciation, plus recapture depreciation.
2. Recognizes depreciation on land improvements, buildings, fixed equipment, and other fixed equipment over the estimated useful or remaining life of the asset determined by a qualified appraiser and recognizes depreciation on movable equipment, valued at the lower of purchase price or appraised value, over a composite remaining useful life determined from the seller's fixed asset records.
 3. Eliminates recapture of depreciation when a facility is sold if the facility has been owned 20 years or longer, and if the facility has been owned more than 10 years but less than 20 years depreciation recapture is reduced by 10 percent times the number of years the facility is owned after the 10th year.
 4. Provides for an interest expense limitation determined by the Department of Human Services and established by rules.
 5. Establishes a per bed property cost limitation based on an annually adjusted North Dakota average nursing facility replacement cost per bed, excluding land and movable equipment and considering single and double occupancy construction.
 6. Recognizes increased lease costs of a nursing home operator to the extent the costs are related to the ownership of the facility, are charged to the lessee, and would be allowable had they been incurred directly by the lessee.

BASIC CARE STUDY

House Bill No. 1002 (1993), Section 19, required the Department of Human Services to develop a ratesetting system for rates for all basic care facility residents including rate equalization provisions for private and public pay residents. The system is to be effective July 1, 1995, and Section 20 of House Bill No. 1002 requires the Department of Human Services to report to the Legislative Council or an interim committee of the Legislative Council on the development of the ratesetting system including any legislation considered necessary for the establishment of the ratesetting system. The Budget Committee on Home and Community Care was assigned the responsibility to receive these reports from the Department of Human Services.

Background - 1993 Legislative Assembly

Basic Care Program

The 1993 Legislative Assembly provided funding for a state basic care program in the amount of

\$2,866,117 from the general fund. This was estimated to continue the current funding of the program at 50 percent state funds and 50 percent county funds at the 70th percentile until January 1, 1995, and then fund a state basic care program at 70 percent state funds and 30 percent county funds at the 90th percentile. State matching of general assistance (county poor relief) costs continues until January 1, 1995.

The state basic care and expanded SPED program statutory provisions included in 1993 House Bill No. 1002 are summarized as follows:

1. An eligible beneficiary is defined as either an aged or disabled or blind person who is either eligible to receive benefits under Title XIX of the Social Security Act or who was receiving benefits under Title XVI before the effective date of Section 17 of House Bill No. 1002.
2. Based on a functional assessment, an eligible beneficiary must have either health, welfare, or safety needs or be impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry.
3. The department is to supplement, within the limits of legislative appropriations, income of an eligible person receiving basic care services and issue payment to basic care facilities for services provided.
4. County agencies are to determine eligibility for benefits under the program and provide case management, conduct initial and ongoing functional assessments, and pay one-half of the costs of county administration.
5. Resident for purposes of the program is defined as:
 - a. A person not living in an institution but who lives in the state and who intends to remain in the state permanently;
 - b. A person living in an institution outside the state who was receiving a benefit under Chapter 50-01 upon the effective date of the Act;
 - c. A person placed in an out-of-state institution by a county agency or department while the person was incapable of indicating intent; and
 - d. A person living in an in-state institution who has lived in that institution for at least 30 days and who was not placed in that institution by another state.

The 1993 Legislative Assembly also passed House Bill No. 1031, which changed the definition of a basic care facility to:

1. Provide that a basic care facility is a facility providing room or board to five or more individuals requiring health, social, or personal care services but not requiring regular 24-hour medical or nursing services;
2. Provide that services available at a basic care facility include leisure, recreational, and therapeutic activities, supervision of nutritional needs, and medication administration; and
3. Provide restrictions on admissions of residents to basic care facilities by providing that a basic care facility may admit and retain only an

individual for whom the facility provides, either directly or through contract, appropriate services to meet the individual's highest practicable level of functioning.

Department of Human Services Testimony

The Department of Human Services reported a task force, including basic care administrators, the North Dakota Long Term Care Association, the American Association of Retired Persons, county social service board directors, and Department of Human Services employees, was formed to provide recommendations to assist the department in developing a ratesetting system for residents in basic care facilities. The department recommended that any changes necessary be developed by administrative rule and be effective July 1, 1995.

The advisory committee recommends the basic care ratesetting methodology include the following provisions beginning July 1, 1995:

1. Reimbursement of basic care facilities for direct care costs, up to a maximum of the 90th percentile.
2. Reimbursement of indirect costs, up to a maximum of the 75th percentile.
3. Reimbursement of allowable property costs.
4. Allowance for a three percent operating margin.
5. Allowance for an efficiency incentive, similar to that provided nursing homes, of 70 percent of the difference between a facility's actual indirect costs and the maximum limit, up to \$2.60 per patient per day.
6. Allowance of annual inflationary adjustments.
7. Exemption of basic care facilities with all private pay patients from the ratesetting requirements.

The department estimates the basic care system would cost a total of \$5.5 million for the 1995-97 biennium, of which \$3.9 million would be from the state general fund and \$1.7 million would be paid by counties. This compares to the 1993-95 biennium cost of basic care of \$3.8 million, of which \$2.1 million is from the state general fund and \$1.7 million is from county funds.

The Department of Human Services provided information regarding the impact to counties of projected basic care and general assistance costs for the 1995-97 biennium as compared to optional supplementation and general assistance costs incurred by counties for the 1993-95 biennium. As of January 1, 1995, counties will pay 30 percent of basic care costs and 100 percent of general assistance costs. The information indicates counties will spend \$2.5 million for the 1995-97 biennium, compared to \$2.24 million for the 1993-95 biennium, an increase of \$221,000.

Recommendations

The committee recommends House Bill No. 1030 regarding basic care facility rates that would provide that the Department of Human Services basic care facility ratesetting system would apply only to facilities that receive payments from the state or any political subdivision. This exempts facilities that only have private pay patients from the ratesetting requirements.

The committee expressed support for the Department of Human Services proposed basic care ratesetting system for the 1995-97 biennium.

SERVICE PAYMENTS TO THE ELDERLY AND DISABLED (SPED) STUDY

House Bill No. 1002 (1993) directed the Department of Human Services to develop, during the 1993-95 biennium, a management information system to accumulate information for presentation to the 1995 Legislative Assembly regarding the costs and utilization of the SPED program. The information developed is to include client utilization, length of stay in the program, cost of services provided, and reasons for cases closed. The committee was assigned responsibility to receive reports from the Department of Human Services regarding the development of this system and on the costs and utilization of the SPED program.

Background

1993-95 Appropriation

The 1993 Legislative Assembly appropriated a total of \$6,594,000 to fund the SPED program for the 1993-95 biennium consisting of \$6,348,234 from the general fund and \$245,766 of county funds. Section 16 of House Bill No. 1002 provided for a five percent county match to reimburse the Department of Human Services for payments made under the SPED program, effective January 1, 1994. The total amount provided for the 1993-95 biennium of \$6,594,000 was projected to serve 1,135 clients per month at an average monthly cost of \$242.

The 1993 Legislative Assembly provided statutory provisions relating to an expanded SPED program. The program was funded for the 1993-95 biennium in the amount of \$605,125 from the general fund for the period beginning on September 1, 1994.

SPED Program Summary

North Dakota Century Code Chapter 50-06.2, entitled "Comprehensive Human Service Programs", provides for the provision of the following services to individuals who, on the basis of functional assessments, are determined eligible:

1. Homemaker services.
2. Chore services.
3. Respite care.
4. Home health aide services.
5. Case management.
6. Family home care.
7. Personal attendant care.
8. Adult family foster care.
9. Such other services as the Department of Human Services determines to be essential and appropriate to sustain individuals in their homes and communities and to delay or prevent institutional care.

Section 50-06.2-03 requires the Department of Human Services, within the limits of legislative appropriations and at rates determined by the department, to reimburse qualified service providers for the provision of these services.

The services are provided to persons who, on the

basis of functional assessments, income, and resources, are determined eligible for the services in accordance with rules adopted by the state agency. Resources do not include the person's primary home and the first \$50,000 in assets.

Expanded SPED Program

The 1993 Legislative Assembly expanded the SPED program. The expanded SPED program was funded for the 1993-95 biennium in the amount of \$605,125 from the general fund. To be eligible for the expanded SPED program individuals must either be a supplemental security income recipient or supplemental security income eligible and in need of supervision or a structured environment. The expanded SPED program is for individuals who are not as severely impaired in the activities of daily living as SPED recipients.

Under the provisions of the expanded SPED program counties are to contract with a qualified service provider for the provision of the services, determine eligibility for benefits, periodically redetermine eligibility of persons receiving benefits, and provide case management services to eligible beneficiaries.

Summary of SPED and Expanded SPED Program Services

The SPED and expanded SPED programs provide reimbursement to qualified service providers for the provisions of in-home services to the elderly and physically disabled. Services available under the SPED and expanded SPED programs include the following:

1. Adult day care.
2. Adult family (foster) care.
3. Chore services.
4. Family home care.
5. Homemaker service.
6. Home health aide service.
7. Nonmedical transportation.
8. Personal attendant care.
9. Case management services.

Department of Human Services Reports

The committee regularly received reports from the Department of Human Services regarding the SPED program, including information regarding costs, reasons for case closures, program eligibility, utilization, the availability of in-home services in North Dakota, and recipient's length of stay on the SPED program.

At the last meeting of the committee, the department reported that expenditures for the 1993-95 biennium for the SPED program are projected to exceed the adjusted appropriation of \$6,465,671 by \$179,530. The committee learned the primary reasons for SPED program closures are admission to a nursing home or a swing bed unit or the death of the recipient. The department is exploring options to reduce SPED program expenditures for the remainder of the biennium.

The committee also learned the department is developing a computer program to retrieve information regarding recipient's length of stay on the SPED program and the information should be available to

members of the 1995 Legislative Assembly. It was reported during the six-month period ending September 1994 case closures averaged 47 per month, for a total of 281 case closures. The case closures included 124 clients who entered a nursing facility or swing bed, 61 clients who died, and 37 clients who were no longer eligible.

The committee learned the 1995-97 biennium budget for the SPED program requested by the department totals \$4,721,933, of which \$4,485,836 is from the general fund and \$236,097 is matching county funds. This represents a total reduction from the 1993-95 adjusted appropriation of \$1,743,738. The department's request for the expanded SPED pro-

gram is \$1,423,266 and the 1993-95 appropriation for this program is \$605,125, so the increase is \$818,141, all from the general fund.

Committee Recommendation

The committee supports the SPED program as a cost-effective alternative to more expensive institutional care and supports funding for the program during the 1995-97 biennium to continue the 1993-95 caseloads, adjusted for inflationary increases. The amount requested by the Department of Human Services for the 1995-97 biennium under its 95 percent general fund budget request is \$4.7 million, a \$1.9 million reduction from the 1993-95 appropriation.

BUDGET COMMITTEE ON HUMAN SERVICES

The Budget Committee on Human Services was assigned four studies. Senate Concurrent Resolution No. 4067 directed a study of methods to assist single parents and children in becoming independent of the social service system. Senate Concurrent Resolution No. 4010 directed a study of the standardization of eligibility criteria for economic and medical assistance programs. Senate Concurrent Resolution No. 4049 directed a study of the need for optional Medicaid services and House Concurrent Resolution No. 3043 directed a study of the medical assistance eligibility population to determine if there is a need for a more equitable distribution of medical assistance reimbursement to providers.

Committee members were Senators Russell T. Thane (Chairman), Judy L. DeMers, Jay Lindgren, Tim Mathern, and James C. Yockim and Representatives Merle Boucher, Rex R. Byerly, Audrey Cleary, Loren DeWitz, Gereld F. Gerntholz, Eliot Glassheim, Lee Kaldor, James A. Kerzman, Bruce Laughlin, Doug Payne, Jim Poolman, Gary Porter, Cathy Rydell, and Ken Svedjan.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

WELFARE REFORM STUDY

Senate Concurrent Resolution No. 4067 directed a study of methods to assist single parents and children in becoming independent of the social service system. Senate Concurrent Resolution No. 4010 directed a study of the feasibility and desirability of standardizing income and asset criteria for economic and medical assistance programs. At an early meeting the committee decided its study of these two areas would be addressed by a welfare reform study.

Background

The Department of Human Services has responsibility for several economic assistance programs including aid to families with dependent children (AFDC), food stamps, low-income home energy assistance program (LIHEAP), various child care, job opportunities and basic skills (JOBS), and medical assistance (Medicaid) programs. These programs provide benefits in the form of cash, coupons, or vendor payments to or on behalf of eligible persons and households based upon needs. Each program has separate income and asset eligibility requirements that can often result in persons being eligible for one program and not for another.

The following is a summary of fiscal year 1993 statistics regarding the North Dakota Department of Human Services major economic assistance programs:

Program	Eligible Persons	Fiscal Year	Major Asset/Income Eligibility	
		1993	Program Expenditures	Requirements
			Asset Limit	Income Limit
AFDC	31,000	\$ 27,800,000	\$1,000/family	Up to 185% of standard of need
Food stamps	74,000	\$ 36,000,000	\$3,000/elderly \$2,000/other families	Varies by household, \$1,512/month-family of four
Low-income home energy assistance	45,000	\$ 7,700,000	\$6,000/household	150% of nonfarm poverty levels
Medicaid	68,000	\$272,600,000	\$3,000/person plus \$25/person after two persons	Varies by eligibility category

The following schedule provides information regarding the length of time North Dakota AFDC families are on assistance:

Percentage of AFDC Recipients by Length of Time on Assistance

Category	Percentage of AFDC Recipients by Length of Time on Assistance			
	0-6 Months	7-12 Months	13-18 Months	19 Months and Longer
July 1994 caseload	37%	18%	10%	35%
Cases closed - July 1994	45%	20%	7%	18%

Welfare Reform

The committee asked the Department of Human Services to develop suggestions for the committee's consideration regarding changes to the welfare system that address the standardization of eligibility

criteria for economic assistance programs and to provide quality programs to reduce barriers and economic problems to assist clients to achieve self-sufficiency and avoid a return to assistance programs.

In response to the committee's request, the Department of Human Services formed a welfare reform task force to review the current economic assistance programs and to assist the department in developing recommendations for a plan of streamlining, standardizing, and simplifying departmental economic assistance programs. Membership of the task force included departmental staff, county social service staff, welfare recipients, representatives of senior citizen organizations, and legislators. The committee chairman received approval from the chairman of the Legislative Council to appoint two committee members to the task force and the Department of Human Services appointed an additional committee member.

The task force recommended the department's welfare reform effort be targeted toward four economic assistance programs—AFDC, food stamps, LIHEAP, and Medicaid.

The following is a summary of the concepts, goals, principles, and program objectives used in the development of the Department of Human Services welfare reform proposal presented to the committee:

Welfare Reform Concepts

1. "Bundle" maintenance, food, energy, and housing assistance into a single client cash payment. Medical needs would be met by the current Medicaid program.
2. Include aggressive child support programs, a strategy for universal employment and training services, child care during receipt of income supplement, transitional child care, and transitional medical care.
3. Develop a social contract concept including time limited benefits and detailing the obligations of the department and clients.
4. Develop a three-tiered benefit system that would provide benefits on a short-term, mid-term, or long-term basis depending upon individual client circumstances:
 - a. The short-term tier of the program would be for up to 24 months, during which participants would work toward self-sufficiency. Individuals would be provided an income supplement, child care assistance, medical benefits, vocational or other training, and employment counseling. If employment did not bring an individual to a minimal acceptable level at the end of 24 months, community employment could be made available to allow the participant to earn any further income supplements.
 - b. The mid-term tier of the program, from 24 to 42 months, would be geared to individuals determined to require a substantial investment in time and effort in overcoming employment barriers. Community work experience would be made available to those unable to find work, with a reduction in benefits over time.
 - c. The long-term tier of the program would be designed to assist individuals for whom employment is not feasible or for whom an undetermined time and effort must be expended before gainful employment can be

achieved.

5. Provide case management as a pivotal function in assessing employment needs and employability.

Welfare Reform Goals

1. Provide for the uniform and consistent treatment of income and assets in determining eligibility.
2. Create a uniform method of budgeting and computing benefits, a consistent certification period for the receipt of benefits, and uniform reporting requirements.
3. Provide necessary child care to allow participants to meet their educational and employment goals.
4. Provide universal employment and training to bring individuals out of poverty.

Welfare Reform Principles

1. Simplify, streamline, and standardize the income maintenance and support system.
2. Design a system on a broad-based approach to meet minimum requirements, focusing exclusively on need.
3. Recognize every person has the right to economic security, basic health care, and education and a corresponding duty to take affirmative action toward maximizing self-sufficiency and independence.
4. Allow individuals and families access to a comprehensive package of basic health care benefits.
5. Provide benefits based on a social contract delineating the responsibilities of the client and the duties of the public agency.
6. Allow the retention of a reasonable level of assets in determining eligibility for assistance.
7. Guide eligibility and benefit determination by a uniform budget methodology.
8. Provide time limited benefits, except in instances of disability or hardship.
9. Replace the numerous programs that currently serve the needy with one family-focused, client-oriented comprehensive program.
10. Pursue efforts to achieve self-sufficiency in the context of plans that establish attainable goals.
11. Engage the private business sector as an essential part in program development and operation.
12. Adjust wages to levels reasonably anticipated to afford a subsistence compatible with decency and health.
13. Base outcome evaluation upon achievement of a stated goal.
14. Tailor work and training incentives to make work more rewarding than assistance.
15. Require both parents to be responsible for the support of their children.
16. Require universal child support enforcement cooperation and provide coverage to all North Dakotans.
17. Require individuals and families to relocate, if necessary, to pursue employment training and employment opportunities.
18. Commit to the preservation and strengthening

of the family structure.

Welfare Reform - Employment and Training Objectives

1. Provide unemployed and underemployed applicants, recipients, and child support obligors access to a comprehensive system of services and resources designed to help them become employed.
2. Assess and refer applicants and recipients to appropriate services as soon as possible for orientation and the development of a social contract.
3. Provide programmatic flexibility to enable services to be tailored to individual needs.
4. Target available employment opportunities in North Dakota.

Welfare Reform - Child Care Objectives

1. Provide for a single, unified child care program for low-income families employed or in education or training based on a sliding fee scale.
2. Make child care benefits available for families with income up to 185 percent of poverty and require eligible households to pay a portion of the cost of child care.

Welfare Reform - Child Support Enforcement Objectives

1. Adopt the Uniform Interstate Family Support Act to assist in the establishment and enforcement of child support orders across state lines.
2. Revoke professional licenses and other licenses held by persons who refuse to pay ordered child support.
3. Require North Dakota employers to notify child support officials of new employees within seven days of the start of employment.
4. Establish a central receiving and disbursement center for all child support cases in North Dakota.
5. Consider medical coverage for children when child support orders are established.
6. Require absent parents who are unemployed or underemployed to be referred to an appropriate training or employment program.

Welfare Reform Proposal

Proposal Development

The committee received progress reports from the Department of Human Services at meetings in Bismarck and Williston regarding welfare reform and provided input and suggestions to the department as the welfare reform project was developed. Committee members on the task force also provided input in the development of the project. The committee, as discussed later, recommends Senate Bill No. 2035 requiring the Department of Human Services to seek a federal waiver for the welfare reform demonstration project. This bill represents the committee's support of the welfare reform project.

County Social Services, Welfare Client, and Health Care-Related Testimony

Directors of county social service boards provided

input to the Department of Human Services in the development of the welfare reform proposal and shared their concerns and expectations with the committee. Representatives of the Region V welfare reform work group had concerns with the welfare reform proposal that are summarized, with the department's responses, as follows:

1. Financial benefits should be issued based on client's actual financial history rather than projections. (The budgeting method will be based on the current AFDC program and use actual financial histories and will exempt some households from monthly reporting.)
2. Necessary support staff should be available to assist clients in learning the skills necessary for self-sufficiency. (Services for the demonstration project must be developed within existing resources as cost neutrality constraints must be met over the life of the demonstration project.)
3. The role and caseload standards of the family independence manager are concerns. (The welfare reform project managers are not expected to provide specialized services but will be expected to assess a family's strengths and weaknesses, develop the social contract, make appropriate referrals, and oversee the progress made toward the conditions of the social contract.)
4. Efforts to move clients toward employment self-sufficiency should begin when the client's child reaches six months of age. (Clients with young children will be allowed to volunteer for participation in the program but care for infants is more costly and finding child care providers is difficult.)
5. Quality control should be ensured. (Departmental quality control personnel will follow the same rules as an eligibility worker in determining compliance for demonstration cases.)
6. The financing and county share of costs incurred in the welfare reform demonstration projects are concerns. (The state will provide 50 percent of the nonfederal costs of county administration and the costs of development and implementation of automated systems will be shared 50 percent federal and 50 percent state.)

The committee received testimony at meetings in Fargo, Williston, and Bismarck from welfare recipients regarding their concerns with the current welfare system. Recipients encouraged a stronger child support enforcement effort, increased opportunities for education and training for welfare recipients, and development of jobs that provide sufficient salaries to allow clients to become independent of welfare.

At each of the committee's meetings the committee received progress reports from committee members who were also members of the North Dakota Health Task Force regarding items under consideration that could potentially provide health insurance coverage to welfare recipients who are in transition to employment.

Proposal Summary

The Department of Human Services, in August 1994, submitted a proposal for a welfare reform

demonstration project to the United States Department of Health and Human Services. The demonstration project is entitled "The Training, Education, Employment, and Management (TEEM) Project." The proposal was submitted under Section 1115 of the Social Security Act and Section 17 of the Food Stamp Act. The main focus of the project is to promote individual and family self-sufficiency, to encourage individual responsibility, and preserve and strengthen the family structure. The welfare reform proposal currently has nine counties under consideration as county demonstration sites—Adams, Cass, Ransom, Richland, Sargent, Steele, Stark, Stutsman, and Traill.

The following is a summary of the TEEM project:

1. Require the development of a social contract to identify family and Department of Human Services responsibilities.
2. Use a case management approach to help the family achieve self-sufficiency.
3. Provide eligible households a single cash grant, combining AFDC, food stamp, and LIHEAP benefits.
4. Provide cash benefits rather than food stamp coupons, a provision referred to as "food stamp cash out."
5. Provide for the standard treatment of income and resources.
6. Emphasize employment and training, incorporating the provisions of the current JOBS program and seeking authority to expand eligible JOBS program recipients to include caretakers between ages 25 and 35.
7. Allow nonpaid work for a public or private nonprofit agency in return for a client's assistance payment to allow recipients to obtain work experience.
8. Require recipient participation in the early periodic screening, diagnosis, and treatment (EPSDT) program.
9. Expand child support efforts to require noncustodial parents to share in the financial support of their children.
10. Adjust benefits for two-parent families, eligible for benefits because of the unemployment of the primary wage earner, and eliminate the 100-hour work limitation for AFDC-Unemployed Parent (AFDC-UP) eligibility.
11. Provide for an independent project evaluation, including monitoring the reform's implementation and evaluating the recipient's length of time on assistance and recipient recidivism.

Cost Estimates

The proposal is for a five-year demonstration project affecting nearly 1,600 cases in the nine counties. The

proposal projects the federal government will save approximately \$500,000 during the five years, while the state will have additional costs of \$89,000. North Dakota is expected to realize savings when the project is implemented statewide. The Department of Human Services has included in its 1995-97 budget request approximately \$1.5 million from the general fund for administrative costs, grants, payments to counties, and computer development costs related to the welfare reform demonstration project.

Other States' Welfare Reform Efforts, Program Waiver Requirements, and Federal Welfare Reform Efforts

The committee received information on the Vermont family independence project, the Iowa self-employment investment demonstration project, and Minnesota's self-employment investment program. These programs make available the necessary training and loans to assist welfare clients in becoming self-employed. The committee made no recommendation regarding the use of these programs in North Dakota.

The committee also learned that several states have demonstration projects approved by the United States Department of Health and Human Services relating to AFDC programs, which require a Section 1115 waiver of the Social Security Act. Section 1115 waivers are required to:

1. Achieve more efficient, effective use of public funds;
2. Reduce the dependency of assistance recipients;
3. Improve living conditions and increase incomes of recipients;
4. Provide opportunities for public service employment, training, employment incentives, or other related activities;
5. Include voluntary recipient participation;
6. Allow the waiver or disregard of income requirements up to one-half of earned income;
7. Include an evaluation component; and
8. Limit federal funding to what would have been paid under the AFDC program, a federal cost neutrality factor.

The committee also received status reports regarding federal welfare reform proposals under consideration by Congress. The committee was advised of two significant welfare reform proposals, President Clinton's and Representative Robert Matsui's. The state's welfare reform proposal differs significantly from the federal welfare proposals in that it goes beyond the AFDC program, affecting additional programs as well. The following is a comparison of the major provisions of the North Dakota welfare reform proposal and the two federal proposals:

Welfare Reform Comparison

Proposed Change	Included In		
	North Dakota Proposal	President Clinton Proposal	Representative Matsui Proposal
Combine AFDC, food stamps, and energy assistance into one cash payment	Yes	No	No
Coordinate eligibility criteria between programs	Yes	No	No
Time limited benefits	Yes	Yes	No
Expand JOBS program	Yes	Yes	Yes
Work program for individuals at end of benefit period, if necessary	Yes	Yes	No ¹
Aggressive child support enforcement ²	Yes	Yes	Yes
Social contract	Yes	Yes	No
Child care enhancements	Yes	Yes	Yes

¹ Although the Matsui proposal does not mandate that states create a work program, additional JOBS funding provided could be used by the states for subsidized employment or to create publicly funded jobs.

² Some of the similarities in the aggressive child support enforcement provisions include the suspension or revocation of occupational or professional licenses for the nonpayment of child support (considered but not recommended by the committee for North Dakota), the suspension of a motor vehicle operator's license for delinquent child support, requiring employers to report newly hired employees, and acknowledgment of paternity.

Considerations and Recommendations

The committee considered several bill drafts suggested by the Department of Human Services regarding welfare reform. The committee considered but chose not to recommend a bill draft that would have required a court, when considering a contempt citation against a child support obligor, to consider suspending an obligor's motor vehicle operator's license. The committee also considered but chose not to recommend a bill draft that would have provided for the suspension of professional and occupational licenses for delinquent child support.

The committee recommends the following bills:

1. **Senate Bill No. 2035 - Welfare reform demonstration project.** This bill requires the Department of Human Services to seek a federal waiver to establish a welfare reform demonstration project to:

- a. Provide for uniform and consistent treatment of income and assets in determining eligibility.
- b. Create a uniform method of budgeting and computing benefits, a consistent certification period for the receipt of benefits, and uniform reporting requirements.
- c. Provide for necessary child care to allow participants to meet educational and employment goals.
- d. Provide for universal employment and training to bring individuals out of poverty.

Senate Bill No. 2035 also requires the Department of Economic Development and Finance, Job Service North Dakota, county social service boards, and other state or local government agencies to cooperate with the Department of Human Services to ensure the success of the welfare reform project and requires the Department of Human Services to report on a regular basis to a Legislative Council interim committee during the 1995-96 interim.

2. **House Bill No. 1031 - Motor vehicle operator's license suspension.** This bill relates to suspension and nonrenewal of a motor vehicle operator's license for delinquent child support and:

- a. Requires the Department of Human Services to notify the director of the Department of Transportation, for the purpose of motor vehicle operator's license suspension, of individuals who have child support in arrears of either \$1,000 or more or three months of child support, and have not made satisfactory arrangements with the department for payment of arrears.
- b. Allows for a 30-day notice period, to allow for an appeal, prior to the Department of Human Services providing a person's name to the director of the Department of Transportation for license suspension.
- c. Requires the Department of Transportation to suspend the motor vehicle operator's license of a person who has entered into an arrangement for payment of child support arrears and has failed to comply.
- d. Allows the director of the Department of Transportation to issue a temporary work permit.
- e. Provides that the license suspension or nonrenewal not be a public record. The bill does not provide for the suspension of com-

- mercial motor vehicle operator's licenses.
3. **House Bill No. 1032 - Voluntary acknowledgment of paternity.** This bill provides assistance in establishing paternity in birthing hospitals, provides for the effect of a voluntary acknowledgment of paternity, establishes related hospital responsibilities, allows the Department of Human Services to withhold Medicaid payments from any hospital failing to comply after providing at least a 30-day notice to the hospital, and allows for the vacating of paternity acknowledgments under certain circumstances.
 4. **Senate Bill No. 2036 - Child support receipt and distribution center.** This bill establishes the Department of Human Services as the child support payment center, allows the department to collect interest at a reasonable rate on unpaid child support, modifies existing child support orders to require payments to be made to the department rather than to clerks of court, continues to require clerks of court to send notices of child support arrears to the child support obligor, and is effective on the date the United States Department of Health and Human Services notifies the Department of Human Services of the certification of the statewide automated child support enforcement information processing system.
 5. **House Bill No. 1033 - Purchase or use of game and fish license or permit illegal.** This bill makes it unlawful for any person to purchase or use a hunting, fishing, or trapping license or permit if the person has accumulated child support arrears of \$1,000 or more and has failed to comply with arrangements made with the Department of Human Services for payment of the arrears. The bill also requires the Department of Human Services to notify the Game and Fish Department of persons with child support arrears of \$1,000 or more, after providing a 30-day notice to the persons to allow for an appeal. The Game and Fish Department would be required to include in its hunting and fishing proclamations a statement that it is illegal to purchase or use a hunting, fishing, or trapping license or permit when having child support arrears of \$1,000 or more.
 6. **House Bill No. 1034 - Employer reporting requirement.** This bill requires employers of 25 or more employees to report to the Department of Human Services the hiring of each full-time employee within 30 days of hiring for the purpose of child support enforcement. The bill also requires an employer to mail a copy of the employee's W-4 form or other documentation and provides that an employer's failure to report may result in criminal charges.
 7. **House Concurrent Resolution No. 3003 - Child support enforcement study.** This resolution directs the Legislative Council to study methods to improve the cost effectiveness and efficiency of the Department of Human Services child support collection system. The resolution also calls for the Legislative Council

to review the roles of clerks of court, regional child support enforcement units, and the Department of Human Services in providing a coordinated and effective child support enforcement program.

OPTIONAL MEDICAID SERVICES - COUNTY POOR RELIEF STUDY

The committee was assigned Senate Concurrent Resolution No. 4049, which directed a study of the need for optional medical assistance (Medicaid) services and the impact of discontinuing the state funding of those services. Optional Medicaid services are those services not required as part of a state's Medicaid program but are provided at the state's discretion and are eligible for federal financial participation. As a part of this study, the committee reviewed the county poor relief and residency statutes.

Background

The committee learned North Dakota provides the following optional services in its Medicaid program:

1. Optometric services.
2. Private duty nursing.
3. Dental services.
4. Physical therapy.
5. Occupational therapy.
6. Prescribed drugs.
7. Diagnostic, screening, and preventive services.
8. Intermediate care facilities for the mentally retarded (ICF/MR).
9. Emergency hospital services.
10. Transportation services.
11. Medicaid waivers.

These services are funded for the 1993-95 biennium at a total cost of approximately \$48.4 million, of which \$12.2 million is from the general fund. The federal financial participation rate for the Medicaid program was at 72.21 percent for federal fiscal year 1993, 71.13 percent for federal fiscal year 1994, and originally projected to be 69.93 percent through July 1995. However, the actual federal matching percentage for federal fiscal year 1995 is expected to be 68.73 percent, a drop of 1.2 percentage points, which has a potential general fund impact for the last nine months of the 1993-95 biennium of \$2.6 million. A one percentage point change has a general fund impact of \$3 million per year. The preliminary estimate of federal financial participation for federal fiscal year 1996 is 69.06 percent.

Department of Human Services Testimony

The committee learned the Department of Human Services:

1. Was reviewing optional services to determine if limits are necessary and appropriate to control utilization and to reduce the cost of the program without affecting the quality of care provided recipients.
2. Implemented a \$2 copayment charge on Medicaid physician office visits, excluding children and institutional residents. The copayment provisions are intended to provide a limited financial savings to the Medicaid program and to control the utilization of physician visits.

3. Developed a "lock in" program for the Medicaid program which identifies recipients with high medical usage, reviews high usage cases, and, if necessary, requires individuals to receive services from either a single physician or a single pharmacy to monitor usage.
4. Provided information on the federal requirements of providers of Medicaid services, requirements relating to provider reimbursement, cost-sharing or copayment provisions, and other limits that the state may apply to optional Medicaid services.
5. Implemented on January 1, 1994, a managed care freedom of choice waiver that is expected to achieve savings by requiring children and adult caretakers to select a primary care provider to direct the basic health care services and needs for each recipient.

The committee received the following information from the Department of Human Services:

1. Cost information on Medicaid services provided, by county, based on the residence of the recipient and the location of the Medicaid provider. The report indicated for the fiscal year ending June 30, 1993, a total of \$194.6 million was spent for Medicaid services statewide, including \$43.9 million from the general fund. The amount spent from the general fund, based on a recipient's county of residence, ranged from \$22,704 in Billings County to \$5.4 million in Cass County.
2. Information on Department of Human Services expenditures for human services programs for the 1991-93 biennium. A total of \$793.2 million was spent, including \$175 million from the general fund and \$45.1 million of county funds.
3. The general fund share of optional Medicaid services excluding drugs, ICF/MR, and dental services for the 1993-95 biennium is \$2.8 million. Because of increased Medicaid participants and cost increases, the department's September 1994 estimate of these costs for the 1995-97 biennium was \$3.1 million from the general fund.

Other Reports and Information

County Poor Relief Statutes

The Legislative Council staff provided information regarding North Dakota county poor relief statutory provisions contained in North Dakota Century Code Chapters 50-01 and 50-02. North Dakota Century Code Sections 50-01-19 and 50-01-20 allow counties to recover the cost of aid to a poor person from his or her father, mother, or adult children and to also require relatives to provide either material relief or employment to an individual seeking aid from the county. The committee learned that in Burleigh County, for example, efforts are made to have adult children assist in the cost of burial for an indigent parent and the county attempts to recover costs from recipients' estates. For other types of general assistance, children or parents of recipients do not assist the county in the poor relief costs.

North Dakota courts have not addressed the question of the constitutionality of North Dakota's poor relief statutes but other jurisdictions have addressed the question and found similar provisions to be constitutional. It appears the extent to which poor relief benefits will be provided to an eligible person depends on the resources available in a county and the type of relief determined to be appropriate by the county social service board.

Medicaid Waivers

The committee received information regarding the requirements to obtain a waiver from Medicaid laws and regulations and other states' recent activity regarding optional Medicaid services. The Health Care Financing Administration division of the United States Department of Health and Human Services requires waivers to be cost or budget neutral. It was learned during 1992, 23 states reduced the number of optional services provided Medicaid recipients.

Medicaid Provider Taxes

The committee received information regarding Medicaid provider taxes and donations and learned federal regulations severely limit the use of donations in states' Medicaid programs. The committee makes no recommendations regarding the use of provider taxes and donations.

County Medicaid Matching

The committee also received information regarding the statutory changes necessary to remove the county matching requirements for Medicaid and the potential impact of eliminating the county contribution for Medicaid costs and reducing the state aid distribution payments to counties summarized as follows:

1. North Dakota Century Code Section 50-24.1-03 requires counties to pay 15 percent of the nonfederal share of the Medicaid program, an estimated cost of approximately \$8.4 million for calendar year 1994.
2. Counties receive approximately \$12 million per calendar year from the state aid distribution fund.
3. Counties are not required to participate in the costs of Medicaid services at the regional human service centers or the intermediate care facilities for developmentally disabled persons.
4. Federal regulations require states to pay at least 40 percent of the nonfederal share of Medicaid expenditures but do not require local governments to provide a minimum contribution.
5. The North Dakota Association of Counties testified in opposition to any reduction in state aid distribution payments and testified that the elimination of county Medicaid matching and state aid distribution payments to counties would have varying effects on individual counties. In addition, statutory mill levy limits would have to be increased to allow for mill levy increases necessary to fund services previously funded from state aid distribution moneys.

Emergency Room Care

The committee received information from a representative of the St. Alexius Medical Center's Emergency and Trauma Center regarding the use of emergency department services summarized as follows:

1. According to a national report, the cost of care provided in an emergency department to persons not in need of emergency care is estimated at \$277 per visit, emergency room visits are expected to increase nationally by three percent per year, and the typical chronic patient serviced in the emergency department is 34 times more costly to treat than a primary care patient.
2. One of five emergency department patients are admitted to a hospital in Bismarck, compared to one in 10 admitted at the Hennepin County Emergency Center in Minneapolis, indicating emergency departments in Bismarck are used more appropriately.
3. Providing services in an emergency department for nonemergency patients lacks a referral process to ensure that adequate and appropriate followup medical services are provided, which may result in additional inappropriate and more costly visits to the emergency department.

County Social Service Board Testimony

Directors of county social service boards presented testimony regarding the need for optional Medicaid services summarized as follows:

1. If the state discontinues funding optional Medicaid services, each county will need to develop plans to address the needs within the county, clients will suffer because of the loss of federal Medicaid funding if the services are provided as a county program, and the potential additional county cost will be \$14.8 million.
2. The county share of social service budgets has increased from a total of \$13.9 million in 1983 to approximately \$25.2 million in 1994.

The committee also received information regarding county funding of social service costs which included, for each county, projected 1994 human service expenditures, special property tax levies dedicated for human services, personal property replacement funds allocated for these purposes, and additional funds provided for human services from county general funds.

The committee asked the North Dakota County Social Service Board Directors Association to review North Dakota Century Code Chapters 50-01 and 50-02, receive input from the Department of Human Services, and provide the committee with recommendations for changes to the county poor relief and residency provisions contained in these chapters. One section of particular concern to the association was North Dakota Century Code Section 50-01-13, which requires counties to promptly provide the poor medical attention and hospitalization. County directors expressed concern that this section could result in significant county liabilities for medical costs if optional Medicaid services were not adequately funded. The repeal of that section and the association's other recommendations became the basis for a bill

recommended by the committee.

Recommendations

The committee recommends Senate Bill No. 2037 regarding statutory poor relief and residency provisions summarized as follows:

1. Changes statutory references from "poor relief" to "county general assistance".
2. Removes statutory references in North Dakota Century Code Section 23-06-03 that place, in certain situations, an indigent's burial responsibility on a tenant or owner of a premises in which a death occurs.
3. Replaces specific county poor relief recordkeeping requirements with a requirement that administrators of county general assistance maintain reasonable records.
4. Allows, rather than requires, county social service boards to make individuals able to work seek employment before receiving county general assistance.
5. Defines county of residence for general assistance purposes as the county the person is living in other than on a temporary basis.
6. Defines residency in the state for county general assistance as provided for in North Dakota Century Code Chapter 50-24.5 with residency lost if a person is absent from the state one year or longer or receives public assistance from another state.
7. Provides that if a person on assistance moves to another county the original county is to provide related records to the new county of residence.
8. Provides if residency is uncertain the county in which the person lives is to provide county general assistance until residency is determined. (Previously, residence for poor relief was provided for in North Dakota Century Code Chapter 50-02, which this bill repeals. That chapter provided that if no assistance or poor relief has been provided an individual, residence is gained by living one year in the state and county residence determined by a person living in a county for one year. If a person has not lived in a county for one year, the person's residence for general assistance purposes is the county in which the person has resided the longest. If assistance or poor relief has been provided (Section 52-02-05) the person's residence is determined based on the county the person lived in prior to the assistance.)
9. Changes a county's representation on the multicounty social services governing board from a population-based ratio to a method determined by all counties in the multicounty district.
10. Creates a new chapter to North Dakota Century Code Title 50 to include the provisions currently in Chapter 50-01 relating to county social service board members, qualifications, terms of office, and compensation. The related provisions in Chapter 50-01 are repealed. The bill also changes the maximum amount that may be received as per diem by county social service board members from \$35 to \$45 per day.

11. Requires the Department of Human Services, with the cooperation of county agencies, to develop a method to be used to determine the appropriate share of basic care assistance costs to be paid by each county. House Bill No. 1002 (1993) provided that the state is to pay 70 percent of basic care costs beginning January 1, 1995, and the counties pay 30 percent. Prior to that date, the state and the counties each pay 50 percent.
12. Repeals North Dakota Century Code Chapter 50-02, which provides for residence for poor relief purposes and creates new sections in Chapter 50-01 for that purpose.

The committee makes the following recommendations regarding the funding of optional Medicaid services:

1. The committee supports the continuation of the state funding of optional Medicaid services.
2. The committee recommends the state, during the 1995-97 biennium, maintain a consistent level of funding for optional Medicaid services, adjusted for caseload increases and inflationary costs.
3. The committee encourages the 1995 Legislative Assembly to give early consideration to the funding of optional Medicaid services in the budgeting process because of the impact on counties, service providers, and clients.

MEDICAL ASSISTANCE POPULATION STUDY

The committee was assigned House Concurrent Resolution No. 3043 which directed a study of the Medicaid-eligible population to determine if there is a need for a more equitable distribution of Medicaid

reimbursement to certain providers in the state who, because of a disproportionate share of Medicaid clients and because Medicaid reimbursement rates are lower than other health care insurance payment rates, may be experiencing financial difficulties.

Background

The committee learned for fiscal year 1993 there were approximately 68,000 persons eligible for Medicaid in North Dakota. The committee learned that 13 counties had a Medicaid-eligible population exceeding 10 percent of the county's total population based on the 1990 population census. Statewide, 10.1 percent of the population was eligible for Medicaid and 35 percent of the persons eligible for Medicaid were age 10 and under. Because Medicaid may pay as little as 50 percent of a medical provider's billing for some services, providers in areas of the state that have a high concentration of Medicaid-eligible persons may be experiencing financial difficulties as a result. The Medicaid program receives a federal financial participation rate of 68.73 percent for the current federal fiscal year. The state pays 85 percent of the nonfederal share and counties pay 15 percent.

Medicaid Information

The committee received information from the Department of Human Services regarding county Medicaid matching costs for fiscal year 1993. County costs ranged from a low of \$95,570 in Billings County to a high of \$23.4 million in Cass County. The committee received information comparing Medicaid payments received by provider to provider billings for the fiscal year ending June 30, 1993, summarized as follows:

Major Provider Category	Total Amounts Billed	Total Medicaid Payments	Percentage Medicaid Payments are of Amounts Billed
Hospitals	\$16,021,829	\$12,662,299	79
Physician services	\$ 7,425,428	\$ 3,617,226	48.7
Dental services	\$ 2,528,716	\$ 1,919,297	75.9
Pharmaceuticals	\$ 3,264,619	\$ 3,070,103	94
Optometric services	\$ 953,633	\$ 647,308	67.9

The committee received information regarding the participation of medical providers in the state's Medicaid program summarized as follows:

Medical Provider	Number of Providers in North Dakota	Number of Providers Participating	Percentage of Providers Participating
Hospitals	50	50	100
Physicians	1,150	1,150	100
Dentists	289	258	89
Pharmacies	232	231	99.6
Optometrists	113	113	100

Although these numbers indicate that most providers participate in the Medicaid program, some may do so on a limited basis and may not be accepting any new Medicaid patients.

Hospital Medicaid Reimbursement

Disproportionate Share Payments

The committee learned the federal government requires states to make additional payments to certain hospitals that have a disproportionate share of Medicaid patients in comparison to the average Medicaid patient level for hospitals in the state. After eligible hospitals are identified, the Department of Human Services has three options to calculate the payments:

1. The Medicare formula.
2. A formula based on the comparison of a hospital's Medicaid utilization rate to the average rate.
3. Any alternative formula that pays as much as No. 1 or No. 2.

The Department of Human Services provides an additional payment for four hospitals in the state—Rolla, Watford City, Stanley, and Devils Lake.

North Dakota is a low disproportionate share state and as a result is allocated, from the Medicaid program, a minimum amount of \$1 million per year for disproportionate share payments. North Dakota has allocated the payments under method 2 discussed above. In addition, the department received federal approval to make disproportionate share payments to the State Hospital based on the Medicare formula. For fiscal year 1994, the state allocated \$50,000 of the \$1 million to the four impacted hospitals with the remainder or \$950,000 allocated to the State Hospital. The State Hospital's 1993-95 budget anticipated receiving \$950,000 per year in disproportionate share payments. The \$50,000 annual allotment is added to the diagnostic-related group (DRG) payments provided each of the four facilities, providing an increment to regular Medicaid payments for services provided, ranging from four percent for the Rolla Hospital to one percent for the Stanley Hospital.

The Department of Human Services is anticipating receiving approximately \$1.1 million in federal hospital disproportionate share payments for federal fiscal year 1995 and plans to increase the amount provided to disproportionate share hospitals to \$200,000 per year or \$400,000 for the 1995-97 biennium, with the remaining \$900,000 per year or \$1.8 million for the biennium allocated to the State Hospital. As a result, the disproportionate share funding available to eligible hospitals is planned to be increased from \$50,000 per year to \$200,000.

Hospital Medicaid Reimbursement System

As the result of committee concerns regarding the

hospital Medicaid reimbursement system, the Department of Human Services formed a committee, including representatives of the North Dakota Hospital Association, to analyze the present system and to make recommendations to improve the hospital Medicaid payment process. Committee member concerns included whether the existing payment system provides equitable treatment of hospitals participating in the Medicaid program.

The existing system provides Medicaid payments to hospitals based on a DRG methodology and places all acute care hospitals in North Dakota into one of five groups based on factors such as cost, type of patients receiving services, and hospital size. Each group's base rate was established in 1987 at the average cost of providers within each group. The base rate is multiplied by the appropriate DRG relative weight for the service provided to arrive at the Medicaid payment made to the hospital.

The committee learned the department was considering several options regarding hospital Medicaid reimbursement including reducing the number of hospital groups from five to either one or two or the possibility of establishing a single base rate for the 30 smallest hospitals. The department's final recommendations for any changes to the hospital Medicaid reimbursement system were not completed at the time the committee concluded its work but should be available at the start of the 1995 Legislative Assembly.

Recommendations

The committee encourages the Department of Human Services and the North Dakota Hospital Association to continue to study hospital Medicaid reimbursement methods and also encourages the Department of Human Services to continue to recognize, through the disproportionate share payment process, the needs of facilities and providers serving a large percentage of Medicaid recipients.

BUDGET TOURS

While conducting meetings in Williston and Fargo, the committee conducted a tour of the Southeast Human Service Center and the Northwest Human Service Center and conducted a budget tour of the Williston Research Center and the University of North Dakota -Williston. On the tours, the committee heard of institutional needs for capital improvements and any problems institutions or other facilities may be encountering during the interim.

BUDGET COMMITTEE ON YOUTH SERVICES

The Budget Committee on Youth Services was assigned four studies. Senate Concurrent Resolution No. 4055 directed the Legislative Council to study the provision of services for children for the purpose of developing a seamless delivery system for children's services in North Dakota. House Concurrent Resolution No. 3057 directed the Legislative Council to study the problems of and resources available to meet the needs of North Dakota youth age 17 through 21 who are released from the foster care or court system. Section 6 of Senate Bill No. 2016 appropriated \$120,000, \$80,000 of which is from the general fund, to the Legislative Council for the purpose of hiring a consultant to assist with an interim study of children and youth services. Section 7 of Senate Bill No. 2016 directed the Legislative Council to receive reports from the Children's Services Coordinating Committee on the status of the implementation of the state children's services plan as outlined in Senate Bill No. 2016.

Committee members were Senators Larry J. Robinson (Chairman), Barb Evanson, and David E. Nething and Representatives James A. Berg, Merle Boucher, Jackie Brodshaug, Moine R. Gates, Dennis Johnson, Richard Kunkel, Clarence Martin, Diane Ness, Cathy Rydell, Orville Schindler, and Allan Stenehjem.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

NORTH DAKOTA CHILDREN'S SERVICES STUDY

Two resolutions and two sections of a bill directed the Legislative Council to study children and youth services in North Dakota. Senate Concurrent Resolution No. 4055 directed the Legislative Council to study, using the Children and Adolescents at Risk (CAAR) report as a guide, the provision of services for children, including child care, education, health, corrections, foster care, and other services involving the well-being of children for the purpose of developing a seamless delivery system for children's services in North Dakota. House Concurrent Resolution No. 3057 directed the Legislative Council to study the problems of and resources available to meet the needs of North Dakota youth age 17 through 21 who are released from the foster care or court system. The resolution directed the Department of Human Services, the Division of Juvenile Services, the Department of Public Instruction, and the Board of Higher Education to provide such assistance and information to the Legislative Council as it may request in conducting the study. Section 6 of Senate Bill No. 2016 appropriated \$120,000, \$80,000 of which is from the general fund, to the Legislative Council for the purpose of hiring a consultant to assist with an interim study of children and youth services in the state. Section 7 of Senate Bill No. 2016 directed the Legislative Council to receive reports from the Children's Services Coordinating Committee on the status of the implementation of the state children's

services plan as outlined in Senate Bill No. 2016.

Background

CAAR Commission Report

The 1986 CAAR Commission report resulted from an executive branch study, under the direction of Lt. Governor Ruth Meiers, of the North Dakota system of delivering services to children and adolescents at risk. The report includes 120 recommendations for the development of a comprehensive and coordinated delivery system of quality services to children and adolescents at risk in North Dakota. The report recommended the establishment of an interagency children's coordinating cabinet to promote the coordination, policy development, and program development of children's services at the state level. This recommendation resulted in the 1987 Legislative Assembly creating the Children's Services Coordinating Committee. The committee consists of representatives of the Governor, Attorney General, Board of Higher Education, Superintendent of Public Instruction, Department of Human Services, Department of Health and Consolidated Laboratories, Job Service North Dakota, Department of Corrections and Rehabilitation, Office of Management and Budget, Department of Vocational and Technical Education, Governor's Commission on Children and Youth, Indian Affairs Commission, and a member at large. In 1992 the Children's Services Coordinating Committee prepared a report entitled *CAAR Revisited*, which provides the current status of the recommendations of the 1986 CAAR Commission report.

Families First

During the 1987-89 biennium, the Children's Services Coordinating Committee received a grant from the Annie E. Casey Foundation to establish a system of providing services to children at risk in their homes. The grant was provided for a period of five years, beginning in 1988 and ending in 1993. The plan proposed to establish eight Families First regional corporations in the state. During the 1989-91 biennium, two regional Families First pilot projects were established, one in Grand Forks and one in Devils Lake. Each pilot project organized a Families First board consisting of representatives of agencies and organizations in each region that provide services for children. The Families First pilot projects provided case management and early intervention and prevention services to families with a child in out-of-home placement, families where a child is at risk of out-of-home placement, and families with an identified problem. The Families First pilot projects, under the Annie E. Casey Foundation, were completed in 1993.

1993 Legislative Assembly

The 1993 Legislative Assembly, in Senate Bill No. 2016, provided that each of the eight regions of the state establish a local planning board consisting of representatives from local children's services agencies to coordinate children's services in that region.

The bill provided that each local planning board, based on the concept of the Families First pilot projects in the Grand Forks and Devils Lake regions and in cooperation with the Department of Human Services, should consider the following in developing comprehensive, coordinated children's services in that region:

1. Merging Families First programs and other similar programs with family preservation services of other regional human service agencies.
2. Selecting and prioritizing available children's services that are most beneficial to that region.
3. Raising sufficient local funds to match available grants for the purpose of providing the children's services identified by the local planning board.

Senate Bill No. 2016 also provided that the Children's Services Coordinating Committee assist each of the eight regions of the state to establish a local planning board to coordinate children's services in that region and monitor the coordination of the services being provided in each region during the 1993-95 biennium. The bill provided \$987,000, \$550,000 of

which is from the general fund, for grants to the regions. Regions 3 and 4 (Devils Lake and Grand Forks) were to receive no less than \$250,000 and the remaining six regions were to receive \$75,000 each. The remaining \$287,000, \$100,000 of which is from the general fund, could be disbursed among the eight regions at the discretion of the Children's Services Coordinating Committee.

State Agency Children's Services Programs

The committee reviewed major state agency children's services programs provided during the 1991-93 and 1993-95 bienniums and the estimated number of children served by those programs. The committee learned that excluding elementary and secondary education programs, state agencies estimated spending during the 1993-95 biennium a total of \$336 million, \$68.4 million of which is from the general fund, for children's services programs. The following schedule presents major state agency children's services programs and estimated expenditures for the 1993-95 biennium:

Agency/Program	General Fund	Federal Funds	Other Funds	Total Funds
Attorney General				
Child sexual abuse investigation and prosecution team	\$ 108,302	\$ 278,491		\$ 386,793
District Courts				
Juvenile court services	\$ 5,279,965			\$ 5,279,965
Department of Health and Consolidated Laboratories				
Maternal and child health services	\$ 1,421,462	\$ 1,889,916		\$ 3,311,378
Family planning		273,556	\$ 528,109	801,665
Women, infants, and children (WIC) supplemental food		19,593,280		19,593,280
Total Department of Health and Consolidated Laboratories	\$ 1,421,462	\$ 21,756,752	\$ 528,109	\$ 23,706,323
Department of Public Instruction				
School lunch	\$ 1,100,000	\$ 19,500,000		\$ 20,600,000
School breakfast		1,600,000		1,600,000
Special milk		125,000		125,000
Summer food service		675,000		675,000
Child and adult care food		20,000,000		20,000,000
Neglected and delinquent youth programs		192,000		192,000
Chemical health	19,940			19,940
Day treatment	Funding reflected under Department of Corrections and Rehabilitation			
Drug free schools and communities		3,929,870		3,929,870
School-age child care		60,000		60,000
Special needs educational programs	3,039,855	1,899,000	\$ 3,761,145	8,700,000
Total Department of Public Instruction	\$ 4,159,795	\$ 47,980,870	\$ 3,761,145	\$ 55,901,810
Department of Corrections and Rehabilitation				
Case management	\$ 1,570,000	\$ 465,000		\$ 2,035,000
Intensive supervision	530,000			530,000
Jobs and vocational skills development	230,000			230,000
Intensive in-home treatment	106,000			106,000
Day treatment	626,715			626,715
Industrial School educational programs	548,267	111,000	\$ 28,000	687,267
Total Department of Corrections and Rehabilitation	\$ 3,610,982	\$ 576,000	\$ 28,000	\$ 4,214,982
Children's Services Coordinating Committee				
Families First Region 3 case management and early intervention and prevention programs	\$ 7,500	\$ 27,500	\$ 52,000	\$ 87,000

Agency/Program	General Fund	Federal Funds	Other Funds	Total Funds
Families First Region 4 case management and early intervention and prevention programs	\$ 25,000	\$ 20,000	\$ 246,341	\$ 291,341
Total Children's Services Coordinating Committee	\$ 32,500	\$ 47,500	\$ 298,341	\$ 378,341
Department of Human Services				
Aid to families with dependent children (AFDC)	\$10,291,585	\$ 30,638,437	\$12,091,784	\$ 53,021,806
AFDC unemployed parent	1,449,407	4,247,051	305,029	6,001,487
Medicaid	21,258,772	61,903,143	3,207,814	86,369,729
Developmental disabilities	2,920,264			2,920,264
Foster care	5,782,929	8,248,616	3,040,676	17,072,221
Child care and development block grant		4,217,822		4,217,822
Job opportunities and basic skills child care	1,203,173	3,521,249	253,277	4,977,699
Transitional child care	220,349	646,734	46,385	913,468
At risk child care		Funding included under child care and development block grant		
Crossroads		200,000		200,000
Food stamps		34,975,168		34,975,168
Low-income home energy assistance		4,616,676		4,616,676
Governor's Council on Human Resources Children and Youth Committee	13,000			13,000
Children's trust fund			190,000	190,000
Child protection services	1,500,000	1,500,000		3,000,000
Child and adolescent unit at the State Hospital	564,986		2,750,000	3,314,986
Children and adolescent at risk consultation service	352,861			352,861
Drug free schools and communities		700,000		700,000
Prevention resource centers		600,000		600,000
Crippled children's services/children's special health services	757,399	1,003,994		1,761,393
Independent living	124,080	319,358		443,438
Intensive in-home family services	506,883	1,908,513		2,415,396
Wraparound services	50,000	150,000	22,222	222,222
Parent aide services	551,840	800,000	150,204	1,502,044
Prime time day care		480,529		480,529
Unaccompanied minors		775,896		775,896
Day treatment		Funding reflected under Department of Corrections and Rehabilitation		
Respite care	42,545	109,915		152,460
Human service center programs:				
Manchester House - Bismarck	472,000	499,154	48,028	1,019,182
Ruth Meiers House - Grand Forks	560,814	383,631	159,471	1,103,916
Oppen Family Guidance Center	17,072	263,731	87,500	368,303
Other human service center programs	5,182,714	6,803,375	445,290	12,431,379
Total Department of Human Services	\$53,822,673	\$169,512,992	\$22,797,680	\$246,133,345
Grand total	\$68,435,679	\$240,152,605	\$27,413,275	\$336,001,559

The committee reviewed family preservation services provided by counties and regional human service centers. The committee learned that family preservation services include intensive in-home, parent aides, prime time child care, wraparound, respite care, Crossroads, and family-focused and prevention services. The committee learned that the various types of family preservation services offered varies among the regions and counties primarily due to priorities established by human service centers and counties.

The committee reviewed the number of children placed out of state for treatment services and the cost of the out-of-state services. The committee learned that in 1993, 54 children were placed in out-of-state treatment facilities. The total cost of services for these children in calendar year 1993 was \$1.4 million. The committee learned that North Dakota has five residential treatment centers that can serve 64 children but is in need of a facility that can serve the more violent and aggressive children.

The committee reviewed current public transportation programs operating in North Dakota. The committee learned that the Department of Transportation currently provides \$1.3 million per year, \$700,000 of federal funds and \$600,000 of state public transportation funding, for 46 public transit projects in North Dakota. In addition, the committee learned that Bismarck-Mandan, Fargo-West Fargo, and Grand Forks receive a combined total of \$1.7 million of federal transit funds per year for their city bus systems. The committee learned that the 46 existing transit systems can be utilized for children's services to the extent the services can accommodate the needs of children's programs in their normal course of operation or through special arrangements.

The committee reviewed state children's programs that could obtain additional federal funding if additional state matching funds were available. The committee learned that the federal programs affecting children which would provide additional federal funds if additional state matching funds were avail-

able were foster care, adoption assistance, medical assistance, and AFDC, under the Department of Human Services, and the arts in education program under the Council on the Arts.

The committee reviewed the Board for Vocational and Technical Education's school-to-work program. The committee learned that the board has received a \$200,000 federal planning grant to develop a school-to-work program in North Dakota. The program would involve partnerships between education, parents, students, and business and industry to assist students to focus earlier on a career path.

The committee reviewed the history of the Families First projects in Grand Forks and Devils Lake. The committee learned that the Region 3 Families First project served a total of 370 families and 1,065 children and Region 4 served 320 families and 834 children. The committee learned that over the five-year grant period, the Annie E. Casey Foundation provided approximately \$3.8 million to the state of North Dakota for the Families First pilot projects. The committee learned that although the project is now completed, the Annie E. Casey Foundation has indicated it would be interested in pursuing further projects in North Dakota if the state develops a system to improve services to children and families.

The committee reviewed parenting education services provided by the North Dakota State University (NDSU) Extension Service. The committee learned that the NDSU Extension Service provides a variety of parenting education information through newsletters, brochures, workshops, and through a toll-free telephone line.

The committee reviewed current public health nursing services provided in North Dakota. The committee learned that the Fargo Community Health Department provides public school nursing services. The committee also learned that the Fargo Kiwanis Club sponsors a home visiting program in which volunteers provide home visits to families with a newborn to answer questions and provide any needed information. The committee also learned that a number of hospitals in North Dakota provide home visiting services for newborns.

The committee reviewed the cost of custody and care and treatment programs in North Dakota. The committee learned that for the fiscal year ending June 30, 1994, custody, care, and treatment costs for persons at the State Penitentiary, State Industrial School, State Hospital, Ruth Meiers House, Manchester House, private residential treatment facilities, and for other persons served by the Department of Human Services totaled \$71.8 million, \$47.5 million of which is from the general fund. This total does not include treatment costs paid under the Medicaid program.

Regional and Tribal Children's Services Coordinating Committees

The committee received reports from the Children's Services Coordinating Committee on the establishment of regional and tribal children's services coordinating committees across the state. The committee learned that in Region 3 (Devils Lake) and Region 4 (Grand Forks) the Families First boards, which oper-

ated under the Annie E. Casey Foundation grant, have been named the regional children's services coordinating committees in those regions. The committee learned that the remaining six regional children's services coordinating committees have been organized, have received their funding allocation of \$75,000 each, and have each hired a coordinator.

The committee learned that due to the immense needs of children and families on the Indian reservations, and due to the need for better coordination of children and family services on the reservations and in regions which serve reservations, the Children's Services Coordinating Committee asked that a tribal children's services coordinating committee be organized on each Indian reservation. The committee learned that the Children's Services Coordinating Committee provided the \$100,000 of general fund moneys appropriated to the Children's Services Coordinating Committee to use at its discretion to the tribal children's services coordinating committees (\$25,000 each) for planning and to hire a coordinator.

The committee learned that the Children's Services Coordinating Committee's objectives to complete by June 30, 1995, include:

1. Complete the organization of regional children's services coordinating committees in all eight regions.
2. Organize tribal children's services coordinating committees in each of the four tribal nations.
3. Develop community plans and programs by regional children's services coordinating committees and tribal children's services coordinating committees.
4. Establish a process to monitor and evaluate regional and tribal programming.
5. Cooperate with "Kids Count" in data collection and dissemination in each county.
6. Access and manage administrative matching dollars through the refinancing strategy that allows the regional and tribal children's services coordinating committees to generate funding by matching federal funds with current spending of local agencies and organizations through the Department of Human Services.

Consultant Services

Pursuant to Section 6 of Senate Bill No. 2016, which provided \$120,000, \$80,000 of which is from the general fund, for the purpose of hiring a consultant to assist with the children's services study, the committee contracted with the Child Welfare League of America, Inc., to assist it in its study of children's services in North Dakota. The consultant's proposal included providing an assessment of the service needs of North Dakota's children and families and an assessment of the best ways to deliver services to children and families in North Dakota. The consultant gathered information and statistics on services provided to North Dakota's children and families and on the needs of North Dakota's children and families by conducting:

1. Interviews with members of the Children's Services Coordinating Committee, staff of state agencies administering children's programs, advocacy group representatives, legislators,

county social service staff, tribal council members, tribal social services staff, local law enforcement staff, public school personnel, private providers of children's services, parents, and children.

2. Public hearings in each region and on each Indian reservation.
3. Surveys of state agencies, county social services, tribal social services, human service centers, public health districts, regional children's services coordinating committees, public schools, and advocacy groups.
4. A representative sample telephone survey of parents.

As a result of the consultant's preliminary findings that indicated a lack of civil and criminal action in child sexual abuse cases, the lack of treatment services for child sexual abuse victims, perpetrators, and their families, and the lack of training for professionals involved in the investigation and prosecution of child sexual abuse, the committee asked the consultant to conduct a more indepth study of child sexual abuse in North Dakota. Pursuant to the committee's request, the consultant gathered more information and statistics regarding child sexual abuse in North Dakota by conducting:

1. Interviews with representatives of the North Dakota State's Attorneys Association, County Judges Association, Trial Lawyers Association, the United States Attorney's Office, human service centers, law enforcement personnel, county social services staff, Supreme Court representatives, domestic violence program representatives, and representatives of other state agencies, advocacy groups, and private providers involved in child sexual abuse investigations and treatment services.
2. Surveys of state's attorneys regarding information on child sexual abuse cases and human service centers regarding child sexual abuse treatment programs.

Consultant Findings

The consultant's findings regarding North Dakota children's services were reported to the committee. The findings were based on information gathered through the consultant's interviews, meetings, and public hearings conducted in each region and on each Indian reservation in North Dakota and on the parent telephone survey and written surveys. Major findings include:

Effective Parenting

1. Based on the parent telephone survey, 73 percent believe that raising children today is more difficult than when they were children and 76 percent believe childhood today is more difficult than when they were children.
2. There is a need for more early assistance programs for parents.
3. North Dakota provides minimal training in parenting skills to children and families.
4. Based on the parent telephone survey, 64 percent responded that parenting training on discipline and communications would be helpful to

them when dealing with their children and 47 percent responded that a neighborhood parent support group would be helpful when dealing with their children.

5. Based on the parent telephone survey, 82 percent responded that a voluntary home visiting program would be a good idea for North Dakota.
6. Hawaii has implemented "Healthy Start," a voluntary home visiting program for newborns, in which 95 percent of families with newborns have participated and during a three-year evaluation of the program, 99 percent of families showed no signs of child abuse or neglect.

Too Early Childbearing

1. Based on 1988 information, 9.7 percent of female teenagers in the United States become pregnant and approximately 46 percent of these pregnancies result in abortions.
2. Between 1961 and 1991, the rate of out-of-wedlock births to live births in North Dakota grew by 900 percent, from 25 per 1,000 in 1961 to 225 per 1,000 in 1991.
3. In 1992, 30 percent of the North Dakota out-of-wedlock births were to mothers 19 or younger and 67 percent of the out-of-wedlock births were to mothers 24 or younger.
4. While Native Americans make up four percent of the state's population, 30 percent of out-of-wedlock births in 1992 were to Native Americans.
5. In 1993, 63 percent of male high school seniors reported having had sexual intercourse, while 66 percent of female high school seniors reported having had sexual intercourse.

Early Childhood Development and Education

1. In 1990, 69 percent of women with children under the age of six were working outside of the home and 79 percent of women with children between the ages of six and 17 were working outside of the home.
2. Based on the parent telephone survey, the most frequently identified serious problem facing North Dakota's children and families is the inadequate supervision of children.
3. In the survey of the school superintendents, 44 percent of the respondents indicated supervision issues were a significant unmet need for students in their districts.
4. Comments made during interviews and at the public hearings indicated confusion regarding child care licensing terminology and child care assistance programs eligibility and application processes.

School-Based Social and Health Services

1. Based on the parent telephone survey, 39 percent responded that school systems should provide a wider range of services for children and families.
2. Based on the parent telephone survey, 7.5 percent indicated they had no health insurance.
3. Based on survey responses of 14 public health districts, 85,000 children are being served by

those districts, while an estimated 72,000 additional children are in need of services.

Access to Services

1. In every public hearing held across the state, both parents and professionals in rural and urban areas said that lack of information about services available and reliable transportation to services are major impediments to receiving services.
2. Based on the parent telephone survey, 16 percent indicated that transportation to and from services is not available.
3. Based on the parent telephone survey, 31 percent indicated that a long distance had to be traveled to receive services.
4. State and federal funding is available for public transportation programs in North Dakota.

Child Protection and Safety

1. Child abuse and neglect reports increased in North Dakota by 49 percent between 1988 and 1993 (from 3,169 to 4,707).
2. Probable cause reports increased from 1,403 in 1988 to 2,120 in 1993.
3. Based on a survey of North Dakota state agencies, 33 counties provide intensive in-home family services and 47 counties provide parent aide services. The estimated unmet need for intensive in-home family preservation services is \$424,000 per year while the estimated unmet need for parent aide services is \$612,000 per year.
4. Comparing the number of children clients at human service centers to the number of 15-minute units of service provided to children at human service centers, children are not receiving their proportionate share of services at the regional human service centers.
5. State funding mechanisms for county child abuse and neglect investigations are outdated and do not provide an incentive for the counties to provide prevention services to children and families.
6. Major findings relating to the child sexual abuse study in North Dakota include:
 - a. The rate of North Dakota child abuse and neglect reports that allege sexual abuse is 20 to 30 percent less than the national average.
 - b. Some categories of mandated reporters of child abuse and neglect are not clearly described in the law and mandated reporters do not consistently receive training on their reporting responsibilities.
 - c. North Dakota does not require criminal background checks to be completed on out-of-home child care providers which could result in a person convicted of a sexual offense working with children.
 - d. The coordination of child sexual abuse investigations by child protective services staff and law enforcement personnel does not occur on a consistent basis statewide.
 - e. The percentage of child sexual abuse reports that are substantiated varies widely by region.
 - f. North Dakota lacks training programs for

child protective services workers and law enforcement personnel on conducting child sexual abuse investigations.

- g. In fiscal year 1993, state's attorneys did not file juvenile court deprivation petitions on approximately 70 percent of the children who were allegedly sexually abused by caretakers.
- h. In fiscal year 1993, 450 child sexual abuse reports were made in North Dakota and in 179 of these cases, probable cause of child sexual abuse was determined by child protective services; however, 102 of these cases were not referred to state's attorneys for consideration of filing of criminal charges.
- i. North Dakota lacks a data system to determine whether or not charges are filed on probable cause child sexual abuse cases referred to state's attorneys or the dispositions of the criminally charged cases.
- j. Based on responses of 19 state's attorneys surveyed, criminal charges were filed on 56 percent of alleged perpetrators who were caretakers in 1993 and on 78 percent of alleged perpetrators who were noncaretakers.
- k. Many state's attorneys have had little or no training relating to the prosecution of child sexual abuse cases.
 1. In fiscal year 1993, 76 probable cause child sexual abuse cases involved caretakers as alleged perpetrators, criminal charges were filed in 24 of these cases, and as a result, eight prison sentences and five probation orders were issued.
- m. Many prison sentences for child sexual abuse offenders are less than three years in length, not allowing enough time for completion of the sex offender treatment program at the State Penitentiary.
- n. As of June 1994, 55 percent of sexual offenders incarcerated at the State Penitentiary were not court-ordered into treatment.
- o. North Dakota law currently allows a maximum of five years supervised probation which is not an adequate amount of time to monitor the treatment of many child sexual abuse perpetrators.
- p. Child sexual abuse assessment and treatment services vary significantly among the regions and in many instances do not meet the level of need.

Adolescence and the Transition to Adulthood

1. In 1992, 32 percent of high school students in North Dakota reported using cigarettes in the past 30 days and 44 percent reported having had five or more alcoholic drinks in the past 30 days.
2. The two most common causes of death of 15- to 19-year-olds in 1992 were traffic accidents (41 percent) and suicide (30 percent).

Domestic Violence

1. In 1993, 5,774 incidents of domestic violence

- were reported to crisis intervention centers in North Dakota, a 17 percent increase over 1992.
2. In 1993 approximately 4,300 children were witnesses of domestic violence in North Dakota.

Intensive Treatment Services

1. The average number of children per month in foster care family homes has increased from 377 in 1988 to 523 in 1993.
2. The number of children per month in residential child care facilities and group homes increased from 178 in 1988 to 233 in 1993.

Expand Federal Financial Participation

1. Additional federal funds may be available with little or no state matching funds required to pay for a portion of the costs of children's services in North Dakota, especially in the areas of health, child abuse, and mental health services.
2. Based on survey responses, local agencies may have available funding to use as match for federal funds and may be serving individuals eligible for federal reimbursement.

Children in Poverty

1. While 28 percent of North Dakota's population is under 18 years of age, 34 percent of this population lives in poverty.
2. While 14 percent of North Dakota's white children live in poverty, 54 percent of North Dakota's Native American children live in poverty.
3. From 1983 to 1993, average AFDC benefits in North Dakota increased by 13 percent, from \$311 to \$351, but during the same period, inflation rose by 49 percent.

Continuing Education and Training

1. Due to the difficult demographic and social problems facing families, children, and communities today, human services staffs need to receive adequate training on current methods and procedures for serving these groups.
2. While the NDSU Extension Service provides much ongoing training for family and children's services personnel, only minimal training services are provided on the Indian reservations.

Native American Issues

1. While Native American children comprise seven percent of all children in North Dakota, they comprise a much higher percentage of the children experiencing serious difficulties. Native Americans comprise 28 percent of children in juvenile detention, 36 percent of admissions to the State Industrial School, 32 percent of the children in foster care, and 39 percent of all admissions to the State Hospital.
2. Although the percentage of Native Americans served at the state's institutions is relatively high, only 11 percent of children served by human service centers are Native American, which indicates few Native American children and families are receiving early intervention services.
3. While North Dakota is one of the nation's lead-

ers in providing family preservation services, these types of services are not available on the Indian reservations.

4. Although North Dakota's children ranked second nationally according to a 1994 "Kids Count" report, if North Dakota's Native American children were the only children in a newly created 51st state, they would rank 51.

Other Findings

The committee reviewed Head Start programs in North Dakota. The committee learned that North Dakota Head Start serves 2,473 children on four Indian reservations and in 32 counties.

The committee reviewed a Minnesota apprenticeship program. The committee learned that the Minnesota program provides grants to businesses to offer apprenticeship opportunities for students in grades 7 through 12 in professions that traditionally have not had apprenticeship programs.

The committee reviewed commercials and public service announcements from the state of Maine. The committee learned that the Maine Department of Human Services produced and played commercials and public service announcements to assist families in raising their children and selecting child care facilities. The committee also learned that the Maine Department of Human Services produced and distributed a parenting information magazine.

The committee heard other reports from state agency representatives, advocacy groups, private providers, and other interested persons on the needs of children and families in North Dakota. Major needs and concerns expressed in the reports include:

1. Concern that the CAAR teams established by the 1991 Legislative Assembly have not been fully implemented.
2. There is a need for more prevention and early intervention programs in North Dakota.
3. There is a lack of services for children under the age of five years.
4. Services should be targeted toward families rather than individuals.
5. Jurisdictional boundaries cause problems for agencies delivering services to children on Indian reservations.
6. There is a lack of child psychiatric services.
7. Services are fragmented on the Fort Berthold Indian Reservation because four regional human service centers and five counties provide services on this reservation.
8. There is a lack of treatment services for child sexual abuse victims, perpetrators, and their families.
9. A treatment center for emotionally disturbed and physically and sexually abused children is needed.
10. Training for child care professionals is needed.
11. More licensed infant care, evening care, and before and after school child care services are needed.
12. Adequate compensation for child care providers is needed.
13. The increasing number of children being placed into the foster care system from the Indian

- reservations is a concern.
14. Treatment services are needed for children with fetal alcohol syndrome and fetal alcohol effects.
 15. Children's lack of respect for parents and authority is a concern.
 16. Human service center outreach services on Indian reservations are lacking.
 17. The failure of parents to be involved in their children's activities is a concern.
 18. The lack of public transportation systems in North Dakota is a concern.
 19. Under North Dakota's current delivery system, children have to fail before they receive state services.

Consultant Recommendations

1. Effective parenting.

- a. Expand parenting education programs statewide.
 - The Children's Services Coordinating Committee should oversee the implementation of this initiative with the Department of Public Instruction serving as a lead agency. Regional and tribal children's services coordinating committees and parents should be an integral part of the planning process.
 - All state and local planning efforts should be built on existing parent education programs.
 - Parent education for adults should be made available at schools and other community-based facilities.
 - Parent education instruction should be made available to all students beginning at the middle school level.
 - Churches, public service messages, obstetricians, pediatricians, and others should encourage parents to attend parent education programs. A catalog identifying the availability of programs should be developed for each region.
- b. Implement a statewide voluntary home visiting program available to all parents in North Dakota with children 0 to 5 years of age.
 - The Children's Services Coordinating Committee should begin planning for the program that should build on existing home visiting services in North Dakota and include the early childhood tracking program. The Children's Services Coordinating Committee should present an implementation schedule to the Legislative Assembly early in 1995.

2. Too early childbearing.

- a. Assist parents to help their children avoid early childbearing.
 - The parent education and student health curriculum included in recommendation No. 1 should incorporate practical materials on

20. There is a lack of youth work opportunities on the Indian reservations.
21. There is concern regarding the current Department of Human Services policy requiring parents to relinquish custody of their severely emotionally disturbed children in order for these children to receive services.

Recommendations

The following schedule presents the major recommendations of the consultant and the committee's action resulting from each recommendation:

Committee Action

The committee recommends Senate Bill No. 2041 to provide that the regional and tribal children's services coordinating committees conduct parenting education programs in their regions and reservations.

The committee recommends Senate Bill No. 2042 to provide that the Department of Health and Consolidated Laboratories make available the services of a public or community health nurse to all newborn children and their families. The bill provides that the services may be provided by contract with a local health district or other health care provider. Upon parental approval, the home visiting services must include two visits with the newborn child at the child's home, bimonthly visits for high-risk newborns for up to one year, and when appropriate, case management and direct nursing services and periodic wellness checks in the home for up to five years.

The committee recommends Senate Bill No. 2041 to provide that the regional and tribal children's services coordinating committees conduct parenting education programs.

Consultant Recommendations

adolescent sexuality and family life issues which parents can use.

- The Children’s Services Coordinating Committee and regional and tribal children’s services coordinating committees should encourage parents to participate in the program.
- b. Teach youth to avoid too early childbearing.
- Expand voluntary health education to all children in schools and strengthen the health curriculum for grades 9 through 12 to include matters relating to reproductive health including sexual abstinence, too early childbearing, parenting, and healthy relationships. Schools should be required to provide such instruction although participation should be voluntary and require parental consent.
 - Young people should be recruited to serve as peer counselors as part of the schools’ efforts to prevent teen pregnancy. The counselors can link sexually active and pregnant teens to various health resources, including adult counselors.
 - The Children’s Services Coordinating Committee, with the Departments of Public Instruction and Health and Consolidated Laboratories serving as the lead agencies, should promote statewide public education activities aimed at discouraging too early, out-of-wedlock parenthood.
- c. Use school-based public health nurses to assist with teen pregnancy issues.
- With assistance from the Departments of Health and Consolidated Laboratories and Public Instruction, public health districts and local school districts should develop protocols to assist school nurses to secure resources for pregnant and parenting teens and their families. General practitioners, obstetricians, and pediatricians should be enlisted to help with this initiative. Other young parents who are not in school should also be eligible for this assistance.
- d. Make child care available for parenting teens.
- The Department of Public Instruction, working with local schools and the regional and tribal children’s services coordinating committees, should identify, develop, and assist in making child care services available to assist teen parents to stay in school.
 - Child care options should be readily available at or near the school site so teens can complete school. Teen parents should be expected to work in the centers as part of their parental obligation, an excellent opportunity for students to learn effective parenting skills.

Committee Action

The committee recommends Senate Bill No. 2046 to provide that each public school district formulate and implement health education and life skills programs. In the formulation and implementation of each program, the public school district, through meetings open to the general public, is to seek input and participation in the development and implementation of the program from local health officials, health care providers, parents, educators, and other members of the community. Student participation in the programs is voluntary. The bill also provides that the Superintendent of Public Instruction is to adopt guidelines for the health education and life skills programs.

The committee also recommends Senate Bill No. 2041 to provide that the regional and tribal children’s services coordinating committees conduct public education efforts regarding the needs of children and families and services for children and families.

The committee recommends Senate Bill No. 2042 to provide that the Department of Health and Consolidated Laboratories provide for the services of a public or community health nurse to students enrolled in public schools in North Dakota. The services may be provided by contract with a local health district or other health care provider and the services must include health readiness exams, health screenings, health education, services for special needs students, assisting pregnant and parenting teens to access available services and resources, staff wellness activities, inservice training and meetings, first aid, health policies, and health fairs. The bill also requires schools to provide appropriate facilities for the provision of these health services.

The committee recommends Senate Bill No. 2044 to establish a program within the Department of Human Services to provide financial assistance to assist teen parents attending school to purchase child care services to enable them to remain in school. (The Department of Human Services currently operates the Crossroads program which provides financial assistance to teen parents for purchasing child care services to allow them to remain in school; however, the program is not established by statute. The Department of Human Services 1995-97 budget request includes \$300,000 of federal funds for this program.)

Consultant Recommendations

Committee Action

3. Early childhood development and education.

- a. Ensure quality, licensed child care providers.
 - Enact a state licensing authority for children’s programs, administered by the Department of Human Services and located in each regional human service center which would be responsible for licensing child care, foster homes, and children’s group care and institutional facilities. The licensing authority would serve as a liaison for fire inspections, health and safety, and law enforcement clearances and would develop automated payment systems that would balance parental decisionmaking with ensuring accurate and timely payments to caregivers. The licensing authority should be staffed with professionals with field experience in children’s programs and training in child development.
 - Clarify regulations to ensure that local officials have the authority to close child care facilities in emergency situations.
 - Eliminate the category of “registered” day care homes and use one set of standards for child care licensing. The Department of Human Services should develop a phased plan over a two-year period to move appropriate “registered” homes into the “licensed” category.
 - The Department of Human Services should develop a single eligibility determination process to simplify ease of access to child care resources irrespective of the public funding source.
 - Priorities should be given to licensing school-based child care programs and adding slots for protective child care, prime time day care, infant care, and nontraditional hours of care.
- b. Establish child care programs at schools across the state.
 - School-based child care, including before and after school care, should be developed in every public elementary school.
 - Under the supervision of professional child care staff, middle and secondary school students and elders should be enlisted as child care workers at all schools.
- c. Expand Head Start.
 - As part of the state’s child care expansion efforts, the Departments of Human Services and Public Instruction should create a Head Start consortium including Head Start directors, the Department of Public Instruction, the Department of Human Services, and tribal agencies to develop a statewide Head Start expansion plan for three- and four-year-olds, with the goal of enrolling all eligible children by the year 2000. A major function of the consortium will be designating a

The committee recommends Senate Bill No. 2043 to establish a child care licensing authority in each regional human service center for licensing child care facilities. The bill also expands the number of child care providers that would need to be licensed beginning July 1, 1997, from the current requirement of a provider who cares for six or more children at any one time to all child care providers unless the provider is a relative or a person caring for children from no more than one family other than their own. Currently, counties license child care providers and this bill would transfer that responsibility from the counties to the state.

The committee recommends Senate Bill No. 2046 to establish a before and after school child care program in the Department of Public Instruction that would offer grants and technical assistance to public school districts for the purpose of establishing before and after school child care programs for children in kindergarten through grade 6.

The committee asked the Legislative Council chairman to encourage North Dakota’s Congressional Delegation to support a request for a state Head Start coordinator. The committee also encouraged the Children’s Services Coordinating Committee to request approval and funding for a state Head Start coordinator.

Consultant Recommendations

central planning entity responsible for securing additional resources to support expansion, site acquisition, and appropriate employee salaries and benefits.

- The Legislative Assembly should request that the North Dakota Congressional Delegation advocate for the allocation of a state-wide Head Start coordinator.

4. School-based social and health services.

- School-based public health nurses should be placed in all schools and should serve as a principal means for improving services to children and families.
- The Children's Services Coordinating Committee, with the Departments of Public Instruction and Health and Consolidated Laboratories serving as the lead agencies, and with full involvement by local public health districts and schools, should develop a plan for locating public health nurses in all North Dakota public schools. These agencies should further develop a protocol for health readiness examinations and continuous health monitoring that are made available to all children.
- Improve the coordination of maternal and child health.
- By the 1995 legislative session, the Departments of Human Services, Public Instruction, and Health and Consolidated Laboratories should complete the maternal and child health services plan requested by the 1993 Legislative Assembly and develop protocols for the coordination of maternal and child health functions, including an integrated eligibility determination process. To the extent possible, consistent definitions should be developed across programs for family size, periods of eligibility, and services to teens.

5. Access to services.

- Create regional family resource centers in each region and on each reservation. The regional and tribal children's services coordinating committees should make this effort a priority and consider designating their own staffs to coordinate the effort.
- Establish a statewide transportation network.
- The Children's Services Coordinating Committee, in conjunction with regional and tribal children's services coordinating committees and with assistance from the Department of Transportation, should develop a transportation plan for meeting the needs of children and families who would otherwise be unable to access health and social services. The Children's Services Coordinating Committee should identify and maximize funding opportunities in current federal programs which allow payment for transpor-

Committee Action

The committee recommends Senate Bill No. 2042 to provide that the Department of Health and Consolidated Laboratories provide for the services of a public or community health nurse to every student enrolled in public schools in the state. The services may be provided by contract with a local health district or other health care provider and the services provided must include health readiness examinations, health screenings, health education, services for special needs students, assisting pregnant and parenting teens to access available services and resources, staff wellness activities, inservice training and meetings, first aid, health policies, and health fairs. The bill also requires schools to provide appropriate facilities for the provision of these health services.

The committee recommends Senate Bill No. 2041 to provide that the regional and tribal children's services coordinating committees serve as or designate an information and referral family resource center, under the direction of the Children's Services Coordinating Committee, to inform children and families of available services.

The committee recommends Senate Bill No. 2041 to provide that the Children's Services Coordinating Committee and the regional and tribal children's services coordinating committees develop transportation plans for meeting the needs of children and families who would otherwise be unable to access health and social services and that the Children's Services Coordinating Committee take all steps necessary to maximize federal funds, including seeking a waiver when federal regulations may otherwise make federal funds less desirable to the state.

Consultant Recommendations

tation, including seeking federal waivers when necessary.

Committee Action

6. Child protection and safety.

a. Strengthen the legal protection system.

— Under juvenile court sponsorship, expand the guardian ad litem program to all regions to strengthen advocacy for children who are victims of child abuse and domestic violence and children who are under the supervision of the Division of Juvenile Services.

— County social service departments should be permitted by law to seek a restraining order or other means for ordering suspected perpetrators out of the home in child abuse and neglect situations.

— Amend the current statute to permit access to data systems and confidential information among public sector agencies to facilitate services for children and families requiring help from more than one agency.

— Permit juvenile courts to enforce parental involvement in the treatment and restitution orders regarding their deprived, unruly, or delinquent children.

— Allow parents to voluntarily place their children, without loss of custody, for a period of up to six months in order to receive needed services.

— Improve the system of addressing child sexual abuse in North Dakota.

(1) More clearly describe mandated reporters of child abuse and neglect.

(2) Require initial and ongoing training for mandated reporters.

(3) Develop child abuse and neglect reporting protocols between local county social services and all schools, hospitals, human service centers, and law enforcement agencies.

(4) Require the completion of criminal background checks on all out-of-home child care providers, including foster care families, group home staff, and staff of residential child care facilities and residential treatment facilities.

(5) Develop a statewide program to increase public awareness about child sexual abuse.

The committee recommends Senate Bill No. 2038 that expands the juvenile court guardian ad litem program, allows the sharing of confidential information among public agencies on children and families being served, requires parents to be involved in their child's treatment, and allows the Department of Human Services and county social services departments to remove, by court order, suspected perpetrators from the home in child abuse and neglect situations.

The committee recommends Senate Bill No. 2044 to establish a program within the Department of Human Services to provide out-of-home treatment services for severely emotionally disturbed children. Before a child may be placed in the program, the juvenile court must determine that the placement is in the best interest of the child. The bill further provides that the department may not require a parent or legal guardian to transfer legal custody of the child in order to have the child placed in the program when the sole reason for the placement is the need to obtain services for the child's emotional or behavioral problems.

The committee recommends Senate Bill No. 2039 that expands the number of mandated reporters of child abuse and neglect; requires training for mandated child abuse and neglect reporters; requires training for professionals involved in treating child sexual abuse victims, perpetrators, and their families including psychologists, social workers, and counselors; requires child sexual abuse case training for attorneys, including state's attorneys and judges; requires the Department of Human Services to provide, in each region, child sexual abuse assessment and treatment services for victims, perpetrators, and their families; requires background checks on all out-of-home child care providers; and requires the Department of Human Services to develop a statewide program to increase public awareness of child sexual abuse and to encourage the reporting of suspected abuse.

Consultant Recommendations

Committee Action

- (6) Require a minimum number of training hours in the area of child sexual abuse for new law enforcement officers.
- (7) Provide training on the dynamics of child sexual abuse and on statutory changes for all district and juvenile court judges and staff.
- (8) Require each human service center to provide child sexual abuse assessment and treatment services for victims, adolescent and adult perpetrators, and family members.
- (9) Require providers of child sexual abuse treatment to participate in specialized training and continuing education provided by the Department of Human Services.
- (10) Explore the maximum use of funding sources and the availability of a sliding fee scale to ensure the child sexual abuse victims, perpetrators, and their family members have access to treatment services, despite their ability to pay.
- (11) Training provided for the judiciary and other components of the legal system on child sexual abuse should include information on child sexual abuse treatment, especially the assessment and treatment of sexual offenders.
- (12) The Department of Human Services should institute an administrative appeals process permitting parents involved in child welfare cases to question and challenge government intervention into their families. Information about this appeals process should be given to all parents receiving services or being investigated at the initial point of involvement with the child welfare system.
- (13) Reconsider the probable cause determination and level of evidence used to substantiate reports of child abuse and neglect.
- (14) Lower the level of evidence required in juvenile court deprivation cases from the current "clear and convincing" to "a preponderance of the evidence".
- (15) Establish a multidisciplinary child sexual abuse team in each region or multicounty area which will be responsible for investigating and prosecuting all child sexual abuse cases in its area.
- (16) Provide joint statewide training for all multidisciplinary child sexual abuse teams.
- (17) Establish a state level multidisciplinary child sexual abuse steering committee to develop model protocols, coordinate

The committee recommends Senate Bill No. 2045 that lessens the level of evidence needed in child deprivation cases; requires the Department of Human Services to notify the subject of a suspected child abuse or neglect report of the department's complaint and appeals process in writing during the department's initial assessment; changes child abuse and neglect terminology used by the Department of Human Services from "probable cause" to "services required" and "investigations" to "assessments"; replaces the state child protection team with a state child protection committee that is responsible for developing model protocols for use by persons involved in child sexual abuse reports and cases, coordinating training for persons involved in child sexual abuse reports and cases, providing assistance to local child protection teams, and determining whether reported institutional child abuse and neglect has actually occurred; expands the membership and duties of local child protection teams; discontinues the current child sexual abuse investigation and prosecution team within the Attorney General's office; provides that assistant Attorneys General provide assistance and training in child sexual abuse cases, serve on local child protection teams, assist in the assessment of child sexual abuse reports, assist state's attorneys in juvenile court deprivation cases and in the prosecutions of child sexual abuse cases when requested by a state's attorney, and conduct juvenile court deprivation proceedings and child sexual abuse prosecutions when requested to do so by the state's attorney review board; and establishes a state's attorney review board to review child sexual abuse cases when requested by a social worker, law enforcement officer, or local child protection team and decide whether an assistant Attorney General should file criminal charges or a juvenile court deprivation petition.

Consultant Recommendations

training, and provide technical assistance to regional or multicounty multidisciplinary child sexual abuse teams.

- (18) The Attorney General's office should replace state's attorneys as the state's agent in providing legal representation in civil child protection matters. Criminal matters should remain with state's attorneys.
 - (19) Amend the law to allow up to 10 years' probation for offenders convicted of sexual crimes against children since long-term treatment is often required.
 - (20) Explore the use of established transportation systems, such as ones currently in place for the aged, for persons needing child sexual abuse treatment services.
 - (21) The Department of Human Services should conduct an immediate review of all 1993 child sexual abuse cases with findings of probable cause to determine if these children are currently at risk of sexual abuse.
 - (22) Develop and maintain a comprehensive statewide data collection system for child sexual abuse cases.
 - (23) Permit the court to take into consideration danger to the community or to family members when setting bail in criminal cases.
 - (24) The Supreme Court should assure that criminal cases involving a child victim or witness are handled without delay.
 - (25) Conduct a review of the courts' use of and compliance with alternative testimony rules.
 - (26) Further study the range of dispositional alternatives available to judges in sentencing child sexual abuse offenders.
 - (27) Study the disposition of cases in which convicted sex offenders on probation or parole do not attend court-ordered treatment.
- b. Establish child and family services as a priority in human service centers.
- The Department of Human Services should establish a children and family unit within each human service center.
 - The Department of Human Services should establish clear expectations and lines of

Committee Action

The committee recommends Senate Bill No. 2040 that extends the allowable length of probation for persons found guilty of a sexual offense against a minor for an additional five years, from five to 10 years for felony convictions, and an additional two years, from two to four years, for misdemeanor convictions. The bill also allows judges to sentence convicted sex offenders to a treatment program.

The committee recommends Senate Bill No. 2041 to provide that the Children's Services Coordinating Committee and the regional and tribal children's services coordinating committees develop transportation plans for meeting the needs of children and families who would otherwise be unable to access health and social services.

The committee recommends Senate Concurrent Resolution No. 4001 to direct the Legislative Council to study dispositional alternatives available to judges in cases involving sexual offenses against children, the disposition of cases involving perpetrators who do not attend court-ordered treatment, and the courts' use of and compliance with alternative testimony provisions.

The committee recommends Senate Bill No. 2044 to require the Department of Human Services to provide a children and family unit in each regional human service center to provide early intervention services to children and families identified as having protection, safety, and other concerns to help avoid institutional or out-of-home services for these children and families. The bill provides that service priority at these children and family units must be given to children and families

Consultant Recommendations

accountability between the Department of Human Services and the children and family units of the human service centers.

- Children and families served by county social services and the Division of Juvenile Services should receive priority services at human service centers since both are legal client groups of the state.
- The Department of Human Services should allocate all new funding to human service centers' children's programs proportional to the populations of the children in each region and should reallocate current funding to human service centers to more accurately reflect the needs of children, considering the child population and the amount of child poverty in each region.
- The CAAR teams should be fully implemented in each region.
- c. Increase the state's share of cost to counties for child protection services.
 - The Legislative Assembly should revise the current state child welfare funding formula so it includes a full array of social services needed by abused and neglected children.

7. Adolescence and the transition to adulthood.

- a. Reduce teen behavior that is self-destructive.
 - Lower the blood alcohol content level for youth under the age of 21 to be charged with driving while under the influence from .10 percent to .02 percent.
 - Introduce smoking cessation programs in school health curricula and consider financing the cost of the program through a cigarette health cost use fee.
 - Provide increased suicide prevention training to teachers, school public health nurses, and others who work with young people.
- b. Assist young people in foster care to achieve independence.
 - The Department of Public Instruction and local school districts should intensify efforts to provide vocational training, integration of academic and vocational instruction, and the creation of apprenticeship programs statewide.
 - The Department of Human Services should secure a federal waiver to apply independent living program funds to youth ages 18 through 21 who have been in the foster care system.
- c. Expand youth development and recreation programs.
 - The regional and tribal children's services

Committee Action

being served by county social services or the Division of Juvenile Services.

The committee recommends Senate Concurrent Resolution No. 4002 to direct the Legislative Council to study children's services during the 1995-96 interim which would include a review of the current method of allocating funds to counties for child abuse and neglect investigations.

The committee recommends Senate Bill No. 2047 that reduces the alcohol concentration level for individuals under the age of 21 to be charged with driving while under the influence from .10 percent to .02 percent and reduces the level for which individuals under the age of 21 will lose their hunting and motorboat operating privileges from .10 to .02 percent.

The committee recommends Senate Bill No. 2046 that requires each public school district to establish a voluntary tobacco usage cessation program pursuant to guidelines adopted by the Superintendent of Public Instruction. The bill requires the Department of Public Instruction to provide an annual training program for teachers on the identification and assessment of youth who may be potential suicide victims.

The committee recommends Senate Bill No. 2041 to provide that the regional and tribal children's services coordinating committees develop youth activity centers

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coordinating committees should identify and develop youth activities. Youth should be invited to be members of the committees and be involved in the planning of a local youth agenda.

- The Department of Public Instruction should conduct a thorough study of the availability of school resources to youth during hours when school is not in session.
- d. Expand job training and employment opportunities for young people who are not college-bound.
- The Departments of Public Instruction and Human Services should identify those programs and resources most needed by youth to provide a full array of job training options for youth.
- The regional and tribal children's services coordinating committees should work with local businesses and community agencies to identify and develop apprenticeship opportunities for youth.

8. Domestic violence.

- a. Establish safe haven community visitation centers throughout North Dakota.
- The Department of Human Services should establish no fewer than one visitation safe haven in each region for children involved in domestic violence and child protection matters.
- These visitation centers should have access to protective intervention from local law enforcement.
- Judges should be permitted to order visitation to take place at visitation centers when a child's safety is in question.
- b. Establish adequate numbers of children's advocates in domestic violence programs statewide.
- The Departments of Public Instruction and Human Services and regional children's services coordinating committees should support the North Dakota Council on Abused Women's Services and the abused adult resource centers to develop domestic violence program standards and provide resources to increase the number of victims served by 10 percent in each of the next three bienniums.

9. Intensive treatment services.

- a. Deepen the continuum of care in mental health, substance abuse, and sexual abuse treatment for parents and children.
- All treatment planning by human service centers, county social services, and juvenile justice should include parents both in the planning and as recipients of services to be provided.
- The Department of Human Services, in conjunction with the Division of Juvenile

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that involve youth in the planning and monitoring of center activities.

The committee recommends Senate Bill No. 2038 to establish within the Department of Health and Consolidated Laboratories a grant program for community visitation centers operated in cooperation with a domestic violence program. The bill also allows judges to order a parent's visitation with a child to occur at a community visitation center when a child's safety is in question.

The committee recommends Senate Bill No. 2038 to establish within the Department of Health and Consolidated Laboratories a program to provide grants to domestic violence programs for providing support services for children who are victims and witnesses of domestic violence.

The committee recommends Senate Bill No. 2044 to require the Department of Human Services to provide diagnostic crisis beds for children needing mental health, substance abuse, or sexual abuse treatment in each region of the state.

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Services, should establish three to 10 diagnostic crisis beds for children and youth in each human service center region and contract with private providers for the service when possible.

- b. Increase intensive in-home family preservation services.
 - All counties should be required to provide intensive in-home family preservation services to families who need it. A number of counties appear not to be participating because of the 10 percent required county match.
 - The Department of Human Services should expand its funding commitment in this service area to permit full availability in each county.
 - The Department of Human Services should meet with the state's four tribal councils and offer technical and other assistance in developing this much-needed service on each reservation.

10. Expand federal financial participation.

- a. Adopt as a state policy the maximizing of federal funds.
 - The Governor, through the Children's Services Coordinating Committee, prior to the 1995 legislative session should order a full review by every department to determine which federal funds are currently underutilized and what it would take to make them available to the state.
 - If regulations attached to federal money are not perceived to be in the best interests of the state, then the appropriate agency, working closely with North Dakota's Congressional Delegation, should seek a federal waiver or statutory change that would make them more responsive.
 - In securing any new federal funding, the Legislative Assembly should adopt a policy expressly prohibiting the use of federal funds to supplant general fund moneys by the executive branch without its explicit authority.
- b. Maximize Medicaid funding.
 - The Department of Human Services should create a new position devoted to exploring, developing, and implementing a broader use of the Medicaid program to help finance the costs of children and family services.
 - The Department of Human Services should consider broadening Medicaid eligibility requirements to include certain high-risk individuals, especially those involved with substance abuse.
 - The Department of Human Services should maximize Medicaid funds for treatment and case management for children in juvenile

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The committee recommends Senate Bill No. 2044 to require counties to provide intensive in-home family preservation services and to pay 10 percent of the cost of the services. The bill also requires the Department of Human Services to provide technical assistance to the Indian tribes to establish intensive in-home family preservation services on each Indian reservation.

The committee recommends Senate Bill No. 2041 to provide that the Children's Services Coordinating Committee take all steps necessary to maximize federal funds, including seeking a waiver when federal regulations may otherwise make federal funds less desirable to the state.

The committee approved the recommendation that in securing any new federal funding, the Legislative Assembly should adopt a policy expressly prohibiting the use of federal funds to supplant general fund moneys by the executive branch without its explicit authority.

The committee approved the recommendation that the Department of Human Services create a new position devoted to exploring, developing, and implementing a broader use of the Medicaid program to help finance the costs of children and family services.

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justice, mental health, and protective services.

- The Department of Human Services should explore obtaining additional funding under Part H, rehabilitative, home-based care for disabled children.

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11. Children in poverty.

- a. A long-term initiative should be undertaken to reduce the number of children in poverty.
- The Children's Services Coordinating Committee should prepare a written five-year plan for reducing childhood poverty in North Dakota.
 - All state agencies and regional and tribal children's services coordinating committees should, during tax return season, display materials and provide assistance to working parents who may be eligible for the federal earned income tax credit, child care credit, and newborn and health insurance credits.
 - Annual cost-of-living adjustments should be adopted by the Legislative Assembly for the AFDC program equal to the annual adjustment made for Social Security recipients.
 - The Legislative Assembly should consider strengthening its child support enforcement laws by conditioning the issuance of certain state licenses on fulfilling support payment obligations.
 - The state should provide child support enforcement assistance to non-AFDC families who are owed child support payments similar to the assistance provided to AFDC families who are owed child support payments.
 - The state should use a portion of its child support enforcement collections to help finance the proposed annual cost-of-living increase for the AFDC program.
 - Temporary assistance should be provided for child care and health care for AFDC recipients attempting to enter the workforce.
 - As the state moves toward welfare reform, the needs of children, as well as the goal of family self-sufficiency, should be the foremost consideration in guiding the particulars of welfare reform.
 - The state should consider a long-term funding initiative to help make available affordable housing for families who are low income, homeless, or disabled, or require temporary housing en route to independent living.

The committee recommends Senate Concurrent Resolution No. 4003 to direct the Legislative Council to study the feasibility and adaptability of a long-term funding initiative to make available housing for families who are low income, homeless, or disabled, or who require transitional housing to assist them toward independent living.

12. Continuing education and training.

- a. Establish a North Dakota child and family learning institute.
- The Children's Services Coordinating Committee should undertake a planning

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initiative that will lead to the creation of a child and family learning institute during the 1995-97 biennium.

- The Indian Affairs Commission and the tribal children's services coordinating committees should identify those professional and paraprofessional training programs needed on the reservations and the most cost-effective and culturally relevant options for implementation.

13. Native American issues.

- a. Tribal councils and the state, through the Children's Services Coordinating Committee and the tribal children's services coordinating committees, should enter into a multi-year planning and development process intended to improve conditions for Native American children and families. Specific benchmark objectives and joint training opportunities should be developed.
 - b. Special joint planning initiatives should be undertaken in the areas of child welfare, child health, and juvenile corrections.
- The Department of Human Services should devote a position for fulfilling the state's responsibilities under the Indian Child Welfare Act and serving in its special capacity to the Department of Human Services. The Indian Child Welfare Advisory Committee should develop a specific plan with the tribal councils on how best to address the child welfare issues of concern to both the tribes and the state.
 - The Department of Health and Consolidated Laboratories should offer technical assistance to the tribes, in a full partnership relationship, on children's preventive health services. The federal Indian Health Service should be invited to participate in the project.
 - The Department of Corrections and Rehabilitation should initiate a joint effort with the tribal children's services coordinating committees to reduce the number of arrests and placements of Native American juveniles. Attention should also be given to the development of services and programs designed to reduce delinquent behavior. In cases in which youth have been adjudicated delinquent, special efforts should be made at creating additional dispositional alternatives for the courts beyond the State Industrial School, such as family preservation services.

14. Organizational structure and governance.

- a. The Governor and Lieutenant Governor should serve as the principal executive branch officials overseeing the state's initiatives on behalf of children and families and should formally report on the progress of such efforts on a regular basis.

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The committee recommends Senate Bill No. 2041 that requires the Governor to report to the Legislative Assembly prior to each legislative session on the status of children and families and proposals for addressing the needs of children and families; requires the executive budget office to include a statement in the executive budget identifying the budgetary initiatives

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- The Governor should address the Legislative Assembly at the start of every legislative session to describe the status of the state’s children and families, and to present the executive branch’s proposed statutory and budgetary initiatives on behalf of children and families.
- The Governor should oversee, through the Children’s Services Coordinating Committee, a two-year planning process that produces a biennial report on the status of North Dakota’s children and families and on the administration’s plans for addressing their needs.
- The Governor should appoint a Governor’s children, youth, and families commission to advise the Children’s Services Coordinating Committee. This commission would serve as a permanent advisory group to the Children’s Services Coordinating Committee to provide a perspective from local communities. Membership of this commission should include two members of the regional children’s services coordinating committees, a tribal children’s services coordinating committee member, one member of the House of Representatives, one member of the Senate, two parents, an elected local school official, an elected county official, and two interested citizens.
- The Children’s Services Coordinating Committee should be assigned at least one full-time senior staff member to facilitate, track, and report on its overall activities.
- b. The Legislative Assembly should provide a permanent and continuous forum for policy development, priority setting, and oversight functions of all state-funded children and family services.
 - The Legislative Assembly should create, during each legislative session, a legislative committee on children and families, comprised of the chairs of the legislative committees with jurisdiction over children and family issues, in order to coordinate each session’s actions on bills affecting children.
 - During the interim, the Legislative Council should conduct periodic public forums to monitor how effectively state laws and resources are being implemented and deployed on behalf of children and families.
 - The Legislative Council should meet periodically with the Children’s Services Coordinating Committee to discuss children and family needs and to monitor the implementation of the Budget Committee on Youth Services recommendations.
- c. The Children’s Services Coordinating Committee should be the principal state vehicle for planning and developing children and family services statewide. The committee should:

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affecting children and families, including supporting documentation for the budgetary initiatives and draft legislation to implement the budgetary initiatives.

The committee recommends Senate Concurrent Resolution No. 4002 to direct the Legislative Council to study the implementation of the committee’s recommendations to enhance the children’s services delivery system in North Dakota, to monitor the efficiency and effectiveness of the children’s services delivery system, to monitor state agencies’ and other entities’ progress toward achieving the goals and objectives developed for North Dakota’s children’s services, and to review the coordination and collaboration among children’s service providers at both the state and local level and to receive reports from the Children’s Services Coordinating Committee on its progress toward meeting its goals and objectives for improving the status of children and families in North Dakota.

The committee recommends Senate Bill No. 2041 to add the following duties and responsibilities of the Children’s Services Coordinating Committee:

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- Establish quantifiable benchmark objectives to address the needs of children and families.
 - Collect and distribute data to enable objective discussion and priority decision-making on the needs of children and families.
 - Facilitate a biennial statewide planning process involving all state agencies serving children and families. This also should include the preparation of a two-year plan for each biennium to be presented to the Governor and Legislative Assembly.
 - Present to the Legislative Assembly a report on the equitable distribution of state and federal funds among the eight regions.
 - Maximize federal funds for children's services.
 - Adopt a quality assurance, monitoring, and evaluation capacity.
 - Develop a coordinated and multidepartmental process for assuring the ease and integration of state and federal funding, contracting, accounting, claiming, and blending of various funding streams so that local governments and private providers are minimally impeded from their primary task of hands-on services.
 - Establish a joint licensing and regulatory mechanism among state agencies enabling local providers to deal with a single state process for enforcing compliance with state and federal standards.
 - Develop and implement a fully computerized statewide case management, information, intake, and eligibility determination system.
 - Convene at least quarterly meetings with the regional and tribal children's services coordinating committees to review and coordinate activities and to offer technical assistance on planning and program issues including help with data through the University of North Dakota's Child Welfare Research Bureau.
- d. The regional and tribal children's services coordinating committees should serve as the principal vehicle for organizing state and federally supported services and activities for children and families at the local level. The regional and tribal committees should:
- Provide a regionwide planning process to produce a plan for addressing the needs of children and families every two years.
 - Serve as or designate an information and referral family resource center to ensure children and families learn about services more easily.

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1. Establish quantifiable benchmark objectives for children and family issues.
2. Collect, analyze, and distribute data to enable objective and priority decisions to be made to address the needs of children and families.
3. Facilitate a biennial statewide planning process.
4. Analyze the allocation of state and federal funds among all regions and report to the Legislative Assembly on the distribution of funds among regions.
5. Take all steps necessary to maximize federal funds.
6. Establish a quality assurance monitoring, and evaluation capacity to ensure that all state services are effective and efficient.
7. Develop a process for assuring ease of funding, accounting, claiming, contracting, and blending of various resources so that local governments and private providers are minimally impeded from their primary task of providing services.
8. After consulting with tribal governments, establish a joint licensing, regulatory, and contracting mechanism among state agencies to enable local providers to deal with a single state process for enforcing compliance with state and federal standards.
9. Develop and implement a fully computerized, statewide case management information and eligibility determination system.
10. Develop transportation plans for meeting the needs of children and families who would otherwise be unable to access health and social services.
11. Provide technical assistance on planning and program issues to the regional and tribal children's services coordinating committees.

The committee recommends Senate Bill No. 2041 to establish the regional and tribal children's services coordinating committees under the Children's Services Coordinating Committee and requiring the regional and tribal children's services coordinating committees to:

1. Provide a regionwide planning process.
2. Serve as or designate an information and referral family resource center under the direction of the Children's Services Coordinating Committee to inform children and families of available services.
3. Coordinate service agreements among providers and between different systems.

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- Coordinate service agreements among providers and between different systems within each region.
- Conduct public education activities on children and family services.
- Make recommendations to the state for the allocation of specific resources to address priority children and family program and service needs of the region.
- Work with each county social service commission to assure that children and families from all counties in the region are considered equally when allocating state and federal resources.
- Conduct and coordinate regional conferences on a wide variety of children and family issues.

The committee recommends Senate Bill No. 2041 to provide an appropriation of \$20 million, \$10 million of which is from the general fund, to the Children's Services Coordinating Committee for the 1995-97 biennium to begin implementation of the committee's recommendations. The committee asked the Children's Services Coordinating Committee to develop an implementation plan, including the allocation of funds, for the 1995-97 biennium, in cooperation

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4. Conduct public education efforts regarding the needs of children and families and services for children and families.
5. Conduct parenting education programs.
6. Make recommendations to the Children's Services Coordinating Committee for the allocation of specific resources to address the priority program and service needs of the region.
7. Develop youth activity centers.
8. Review allocations of state and federal resources for children and families in all counties in the region and make recommendations to the Children's Services Coordinating Committee for the equitable distribution of funding among all counties in the region.
9. Facilitate regional conferences and multidisciplinary workshops on children and family issues.
10. Provide a forum and process for issues of importance to Native Americans to be presented and integrated into the planning process.
11. Develop transportation plans for meeting the needs of children and families who would otherwise be unable to access health and social services.

with the regional and tribal children's services coordinating committees, for presentation to the Legislative Assembly by the start of the 1995 legislative session. The committee asked that the plan provide for the full implementation of the recommendations by the 1999-2001 biennium and include the extent to which the programs included in the recommended bills would be implemented during the 1995-97 biennium.

Estimated Cost of Recommendations
The schedule below lists the estimated cost of fully

implementing all of the committee recommendations during the 1995-97 biennium:

	General Fund	Federal Funds	Other Funds	Total Funds
Attorney General				
Assistant Attorneys General	\$ 245,209			\$ 245,209
Department of Public Instruction				
Public school life skills program (one-time expenditure to develop the program)	\$ 344,667			\$ 344,667
Public school health education program (one-time expenditure to develop the program)	664,082			664,082
School-based before and after school child care	9,280,800			9,280,800
School-based smoking cessation program	401,700			401,700
Training for public schoolteachers on identifying potential suicide victims	1,775,880			1,775,880
Total Department of Public Instruction	\$12,467,129	\$ 0	\$ 0	\$12,467,129
Department of Health and Consolidated Laboratories				
Home visiting program	\$ 2,027,910			\$ 2,027,910
Public school nurse program	10,338,840			10,338,840
Child visitation centers	400,000			400,000
Counseling for children victims and witnesses of domestic violence	521,000			521,000
Total Department of Health and Consolidated Laboratories	\$13,287,750	\$ 0	\$ 0	\$13,287,750
Children's Services Coordinating Committee				
Parenting education and family resource centers	\$ 1,496,000	\$ 500,000		\$ 1,996,000
Youth activity centers	400,000			400,000
Data distribution	200,000			200,000
Total Children's Services Coordinating Committee	\$ 2,096,000	\$ 500,000	\$ 0	\$ 2,596,000
Department of Human Services				
Child care for teen parents in school	\$ 50,000	\$ 50,000		\$ 100,000
State licensing authority for child care	1,120,000			1,120,000
Department of Human Services program to provide services for certain children without requiring parents to relinquish custody	3,741,624	3,741,624		7,483,248
Regional crisis beds for children	739,125	739,125		1,478,250
Additional family preservation services	840,000	1,050,000	\$210,000	2,100,000
Technical assistance to the Indian reservations for establishing family preservation services	42,000	42,000		84,000
Training for mandated reporters	564,000			564,000
Criminal background checks	345,560	120,915		466,475
Child sexual abuse public awareness program	55,000			55,000
Child protection committee staff	50,000			50,000
Child sexual abuse assessment and treatment services	1,529,613	1,869,527		3,399,140
Child sexual abuse treatment training	252,000			252,000
Total Department of Human Services	\$ 9,328,922	\$7,613,191	\$210,000	\$17,152,113
Total 1995-97 estimated cost of Budget Committee on Youth Services recommendations	\$37,425,010	\$8,113,191	\$210,000	\$45,748,201

COURT SERVICES COMMITTEE

The Court Services Committee was assigned four studies. House Concurrent Resolution No. 3020 directed a study of the data collection systems relating to the criminal justice and quasi-criminal civil systems in North Dakota, including law enforcement, prosecutors, and courts, and the data collection systems of other states. Senate Concurrent Resolution No. 4018 directed a study of the means of gathering data on sentencing in all felony cases and in all misdemeanor cases involving violations of North Dakota Century Code (NDCC) Chapters 12.1-17, 12.1-20, and 14-07.1. Senate Concurrent Resolution No. 4005 directed a study of the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction. Senate Concurrent Resolution No. 4043 directed a study of the feasibility and desirability of establishing a family court for the resolution of domestic relations cases for low-income persons.

Committee members were Representatives John Mahoney (Chairman), Grant C. Brown, Rick Clayburgh, William E. Kretschmar, and Al Soukup and Senators John Andrist, Dale Marks, Jim Maxson, and Wayne Stenehjem.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

COLLECTION OF SENTENCING DATA STUDIES

House Concurrent Resolution No. 3020 and Senate Concurrent Resolution No. 4018 were considered jointly by the committee.

Background

The two studies relating to the collection of sentencing data were proposed because there appeared to be a general lack of information regarding reporting of sentences imposed in both criminal and quasi-criminal civil cases. The proponents of the studies indicated that there is a general lack of information regarding plea bargaining and a great disparity in the sentences imposed by courts in the state and that the purpose of the studies would be to help establish uniformity in sentencing.

In most cases judges are accorded some discretion in the imposition of sentences for violations of North Dakota law. However, with respect to certain offenses involving armed offenders and the unlawful manufacture, delivery, or possession of controlled substances, mandatory terms of imprisonment must be imposed. In addition, when a mandatory term of imprisonment is prescribed as a penalty for the unlawful manufacture, delivery, or possession of a controlled substance, the court may not defer imposition of a sentence nor suspend any part of a specified mandatory term, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of the Controlled Substances Act and that extenuating or mitigating circumstances exist which justify a suspension.

Criminal Justice Data Collection in North Dakota

North Dakota Century Code Section 12-60-07 provides that the Bureau of Criminal Investigation is the state central repository for collection, maintenance, and dissemination of criminal history record information. Each criminal justice agency is required to report to the bureau information regarding each felony and reportable offense. Reportable offenses include:

1. Class A and Class B misdemeanor offenses for issuing checks or drafts without sufficient funds or credit and issuing checks or drafts without an account (NDCC Sections 6-08-16 and 6-08-16.1).
2. Class A misdemeanor offenses included under the Criminal Code (NDCC Title 12.1).
3. Class A and Class B misdemeanor offenses under the Uniform Controlled Substances Act, or involving imitation controlled substances or use of alcoholic beverages or controlled substances at the Penitentiary (NDCC Chapters 19-03.1 and 19-03.2 and Section 12-47-21).
4. Class B misdemeanor offenses for simple assault, indecent exposure, criminal mischief, tampering with or damaging a public service, theft of services, and prostitution (NDCC Sections 12.1-17-01, 12.1-20-12.1, 12.1-21-05, 12.1-21-06, 12.1-23-05, and 12.1-29-03).
5. Class A misdemeanor offenses for various gaming offenses (NDCC Sections 53-06.1-16 and 53-06.1-16.1).
6. Class A misdemeanor offenses for violations of weapons laws (NDCC Title 62.1).
7. Municipal ordinance violations equivalent to the misdemeanors listed above.

Each criminal justice agency that makes an arrest for a reportable offense is required to furnish to the Bureau of Criminal Investigation the fingerprints, charges, and descriptions of the person arrested. The prosecuting attorney is also required to notify the bureau of all charges filed and whether charges were not filed in criminal cases for which the bureau has a record of an arrest. After a court pronounces sentence for a reportable offense, and if the person being sentenced has not been fingerprinted with respect to that case, the prosecuting attorney is required to ask the court to order a law enforcement agency to fingerprint that person. The law enforcement agency is then required to forward the fingerprints to the bureau. Each prosecuting attorney having jurisdiction over a reportable offense is required to furnish to the bureau all final dispositions of criminal cases for which the bureau has a record of an arrest or a record of fingerprints reported. The report of final disposition must include the following information:

1. Judgments of not guilty, judgments of guilty including the sentence pronounced by the court, discharges, and dismissals in the trial court.
2. Orders filed by a reviewing court which reverse or remand a reported conviction or which vacate or modify a sentence.
3. Judgments terminating or revoking a sentence to probation and any resentencing after a revocation.

The Attorney General is required to adopt appropriate rules for criminal justice agencies regarding the reporting, collecting, maintaining, and disseminating of criminal history record information. The Bureau of Criminal Investigation and other criminal justice agencies are required to disclose criminal history record information to a criminal justice agency that requests the information for its functions as a criminal justice agency or for use in hiring or retaining its employees; to a court on request, to aid in a decision concerning sentence, probation, or release pending trial or appeal; pursuant to a judicial, legislative, or administrative agency subpoena issued in the state; and as otherwise expressly required by law.

North Dakota law provides for a criminal justice training and statistics division within the Attorney General's office. One purpose of the division is to gather, analyze, and disseminate information regarding the state's criminal justice system. The director of the division, with the approval of the Attorney General, may request from the clerks of district courts, county courts, municipal courts, sheriffs, police departments, and state's attorneys all information necessary in ascertaining the condition of criminal activity in the state. Those officials are required to furnish any information requested by the director.

Among the duties of the division are to analyze data available from the division's information system and other criminal justice information systems and to compile appropriate periodic reports based on that data. In addition, further duties of the division are to assist state and local criminal justice agencies in the development of record systems and information systems and to coordinate the utilization of data that is generated by state and local record information systems.

There are no uniform requirements for reporting of quasi-criminal civil actions in North Dakota. However, there are various provisions relating to the reporting of nonidentifying data with respect to civil commitments and treatment of mentally ill patients.

Testimony and Committee Considerations

The committee received testimony from representatives of the Attorney General's office and the Bureau of Criminal Investigation regarding criminal justice recordkeeping responsibilities. The Bureau of Criminal Investigation, as well as other law enforcement agencies, collects significant amounts of criminal justice data. However, there has not been a comprehensive plan for improving the collection and sharing of the data. Thus, even if the data is collected, it is often incomplete and inaccessible to other law enforcement agencies because record collection systems are often incompatible.

The Bureau of Criminal Investigation has been involved in several projects relating to criminal justice data collection. The bureau has implemented an incident-based reporting system and North Dakota was the third state to have its data submission methodology approved by the Federal Bureau of Investigation. The bureau has also assisted in a project to acquire computer hardware and software

for state's attorneys' offices to facilitate the reporting of disposition data to the criminal history record system. In addition, the bureau has worked with jail administrators in developing a jail management package intended to interface with the state's attorneys' project.

The committee received testimony from representatives of victim advocacy groups relating to information collected and used by those groups. The testimony indicated that because of the lack of uniformity in the collection of criminal justice data, it is difficult to get an accurate picture of crime in the state and respond efficiently and appropriately to protect the public. Criminal justice data is often not accessible to the general public and agencies providing assistance to victims.

Committee members generally agreed that a uniform and integrated criminal justice information system would be of great benefit to criminal justice agencies, the courts, victim advocacy organizations, and policymakers. Because the Attorney General and Bureau of Criminal Investigation are generally responsible under current law to collect, maintain, and disseminate criminal history information, representatives of the Attorney General's office were requested to work with the other interested parties in developing a proposal for an integrated criminal justice information system.

The Attorney General organized a study group that recommended a bill draft that would have established a criminal justice information board consisting of up to 18 members to coordinate and assist the sharing of criminal justice information and to develop and implement new criminal justice information technologies. The board would have been under the direction of the Attorney General and the Attorney General or the Attorney General's designee would have been the chairman of the board. The cost of the proposed board and staff assistance for the board was estimated to be approximately \$360,000 for the 1995-97 biennium.

Proponents of the bill draft argued that the establishment of the criminal justice information board would be a good first step in a five-year process to implement a comprehensive criminal justice system. They contended that a comprehensive criminal justice information system would be beneficial not only to law enforcement entities, the courts, and victim advocacy organizations, but also the Legislative Assembly in developing legislation. Proponents of the bill draft testified that a comprehensive criminal justice information system may be necessary to implement requirements of federal legislation and that federal funds may be available to assist in the development of the system.

Opponents of the bill draft contended that creation of a new 18-member board is not politically feasible at this time. In addition, they argued that the Attorney General already has the authority to do what was provided for in the bill draft. Committee members generally agreed that because the Attorney General has the authority to accomplish the goals identified by the proponents of the bill draft, the establishment of a new board would not be necessary.

The committee considered a resolution draft that

would have directed the Legislative Council to monitor the development and operation of criminal justice information systems in North Dakota and to study policies and issues relating to confidentiality, dissemination, and retention of criminal justice information. In light of the rejection of the proposed bill draft, the committee determined that further study should be conducted with respect to the development and operation of criminal justice information systems. Committee members generally agreed that alternative methods for the establishment of a comprehensive criminal justice information system should be explored.

Recommendation

The committee recommends House Concurrent Resolution No. 3004 to direct the Legislative Council to monitor the development and operation of criminal justice information systems in North Dakota and to study policies and issues relating to confidentiality, dissemination, and retention of criminal justice information.

COURT UNIFICATION STUDY

Background

The study of the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction was proposed by the 1991-92 interim Court Services Committee for the purpose of reviewing problems that may arise as a result of 1991 House Bill No. 1517, which provided for the unification of the state's judicial system, and to further study methods of funding the court unification which is fair to all parties, including the state, counties, and users of the court system.

District Courts

Section 1 of Article VI of the Constitution of North Dakota provides:

The judicial power of the state is vested in a unified judicial system consisting of a supreme court, a district court, and such other courts as may be provided by law.

Section 8 of Article VI provides that the district court has original jurisdiction of all causes, except as otherwise provided by law, and such appellate jurisdiction as may be provided by law or by rule of the Supreme Court. Section 9 of Article VI provides that the state be divided into judicial districts by order of the Supreme Court. In 1979 the Supreme Court divided the state into seven judicial districts. In each judicial district there is a presiding judge who supervises court services in the district. The duties of the presiding judge, as established by the Supreme Court, include convening regular meetings of the judges within the district to discuss issues of common concern, assigning cases among the judges of the district, and assigning judges within the district in cases of demand for a change of judge.

Section 9 of Article VI provides that district judges must be chosen by the electors of the district for a term of office of six years. Section 10 of Article VI requires district court judges to be citizens of the United States and residents of North Dakota, to be

learned in the law, and to possess any additional qualifications prescribed by law.

County Courts

The 1981 Legislative Assembly enacted legislation providing for one county court in each county instead of the multilevel system of county courts, county justice courts, and county courts of increased jurisdiction as existed at that time. The 1981 legislation also provided that county judges must be law trained and full time and provided for the assumption by the state of many district court expenses.

County courts have jurisdiction over civil cases involving \$10,000 or less; criminal misdemeanors, infractions, and traffic cases; small claims cases involving \$3,000 or less; probate; testamentary, guardianship, and mental health commitment proceedings; appeals from municipal courts; and any other cases as assigned by the presiding district judge of the judicial district in which the county is located.

1991 Court Unification Legislation

The 1991 Legislative Assembly enacted House Bill No. 1517, which established a single trial court of general jurisdiction. The unification of the court system is to be accomplished through the elimination of county courts and the creation of additional district court judgeships from county court judgeships. In 1991 there were 53 district and county court judges. Under unification the total number of district court judgeships must be reduced to 42 before January 1, 2001. The Supreme Court has begun eliminating judgeships and by January 2, 1995, the number of judgeships will be reduced to 48. The primary implementation date for consolidation of trial courts is January 2, 1995, the day after the completion of the terms of all present county court judges.

Court Funding

Section 2 of Article IX of the Constitution of North Dakota provides that "all fines for violation of state laws and all other sums which may be added thereto by law" must be used for the benefit of the common schools trust fund. North Dakota Century Code Section 29-27-02.1 provides:

All statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund. When any bail bond or other property or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be paid over to the treasurer of the county whose officers originally instituted the action and credited to the general fund of the county. In the event that the attorney general of the state of North Dakota originally instituted the action, the bail bond, money, or other property forfeited must be paid over to the proper state official and credited to the state school fund.

Expenses of the county courts are funded by the counties. Bail forfeitures and fees collected for ser-

vices performed by a county court and a district court are deposited in the general fund of the county. Except for salaries and expenses of district court clerks (which are funded by the counties), district courts are funded by legislative appropriations. The 1993 Legislative Assembly appropriated almost \$20 million for the support of district courts for the 1993-95 biennium.

Testimony and Committee Considerations

Reduction of Judgeships

The Supreme Court reported its progress in reducing the number of judgeships pursuant to the goals established by the 1991 court unification legislation and the amendments made by the 1993 Legislative Assembly. Although the reduction in the number of judgeships is ahead of schedule, concern was expressed regarding the feasibility of further reductions. In judicial districts encompassing the larger cities there has been an increase in population and caseloads. Concern also was expressed with respect to the impact of outside factors on the judicial caseload such as the federal crime bill and the possibility of implementing a death penalty in North Dakota. The Chief Justice of the Supreme Court testified that further reductions in the number of judgeships could be made if the reductions were in the right place; however, a judgeship would not be vacated if the reduction was not appropriate.

Venue and Jury Pool Selection

The committee received testimony from representatives of the Supreme Court indicating that the Supreme Court's Court Services Administration Committee identified venue and jury pool selection as areas that may require further legislative action after implementation of court unification. Venue, the place where a suit should be heard, could be a problem because of the reduction in the number of judgeships. A related problem concerns inadequate jury pools in counties with small populations. One solution that was identified for the jury pool problem would be to expand the area for jury pool selection beyond county lines and possibly include an entire judicial district.

The committee considered a resolution draft that would have directed the Legislative Council to study the unification of the judicial system, including a study of venue statutes. The committee concluded that continued study of the unification of the trial courts is necessary because additional problems are likely to arise after implementation of the unification. In addition, the committee generally agreed that although the Supreme Court could address venue concerns through its rulemaking powers, a legislative review of venue statutes would be appropriate.

Appeals of Noncriminal Traffic Violations

A person cited for a noncriminal traffic violation may request that a district judge, a municipal judge, or a person appointed by a district judge hear the issue of commission of the violation. If the hearing officer finds that the person committed the violation,

the person may appeal to the district court for trial anew.

An opinion of the Attorney General indicated that if the initial hearing was held before a district judge, a person could appeal the decision to the district court. The committee received testimony concerning apparent confusion regarding the appeal process. One district judge testified that noncriminal traffic violations should be addressed through an administrative process rather than through the courts. Others expressed an interest in allowing appeals of noncriminal traffic violations to the Supreme Court.

The committee considered three bill drafts relating to appeals of noncriminal traffic violations. One bill draft would have allowed an appeal of a noncriminal traffic violation from a municipal judge or magistrate or other qualified person appointed by the presiding judge of the judicial district to the district court only. The second bill draft would have allowed for an appeal from the initial hearing to the district court and ultimately to the Supreme Court. The third bill draft would have allowed an appeal from the initial hearing to the district court only if the initial hearing was held before an official not licensed to practice law in the state.

Although there was discussion regarding prohibiting appeals, committee members generally agreed that an appeal should be allowed from the initial determination that a person committed a noncriminal traffic offense. Committee members and others expressed concern that district judges not be excluded from the definition of "official" for purposes of holding the initial hearing. Committee members were particularly concerned with rural areas where there are limited judicial resources, and generally agreed that district judges should be available to preside over the initial hearings of noncriminal traffic appeals in certain cases.

Court Unification Funding

The committee received testimony from a representative of the North Dakota Association of Counties indicating that the Association of Counties is studying the cost of court unification and assessing the impact of the unification on the counties. The committee discussed the allocation of forfeitures and fees collected for services performed by a county court and a district court. Although the committee reached no conclusion, the committee recognized the need to work with the counties to determine the effect of unification on the counties and the fiscal impact upon the state.

Recommendations

The committee recommends House Concurrent Resolution No. 3005 to direct the Legislative Council to study the unification of the judicial system, including a study of venue statutes.

The committee recommends Senate Bill No. 2048 to provide that a person cited for a noncriminal traffic violation may appeal to the district court from the initial hearing held before a municipal judge, a magistrate, or other qualified person, including a district judge appointed by the presiding judge of the judicial district.

FAMILY COURT STUDY

Background

The study of the feasibility and desirability of establishing a family court was the result of a proposal developed by a district court judge to resolve domestic relations cases for low-income families.

Domestic Relations Cases in North Dakota

District courts exercise general jurisdiction over most causes, including domestic relations cases. Until January 2, 1995, county courts can exercise concurrent jurisdiction with district courts with respect to domestic violence protection order proceedings.

In 1991 domestic relations cases represented approximately 57 percent of the district court caseload in North Dakota. In addition, juvenile cases represented about 10 percent of the total district court caseload.

North Dakota Family Court Law

Between 1965 and the repeal of the North Dakota family court law in 1991, district judges in counties having a population exceeding 10,000 were permitted to establish family courts. The purpose of the family court was "to protect the rights of children and to promote the public welfare and the welfare of children by preserving, promoting, and protecting family life and the institution of matrimony and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies."

Family courts were not widely used. Only one family court remained in existence beyond 1979.

In counties where a family court was established, a civil action instituted in divorce or separation cases could not be filed unless either family court jurisdiction in that case had been waived by court order or a petition had been filed with the clerk of the district court. Under the family court system, at the time of the hearing on the petition or at any time after the petition had been filed, the court was authorized to refer the parties to the court's family court counselor for a conference to attempt to effect a reconciliation of the spouses or an amicable settlement of the issues of the controversy. The conference was informal and could involve, with the consent of both of the parties to the proceeding, the aid of physicians, psychiatrists or other specialists, scientific or social experts, or the pastor or director of any religious denomination to which the parties belonged. No statement made by either party in the course of the conference could be used in evidence in any action without the consent of that person.

Under the family court system, no action could be filed for divorce or separation within a 90-day period after filing of the petition. If, after the expiration of the 90-day period, the controversy between the spouses had not been resolved, either spouse was permitted to institute proceedings for divorce or separation.

Testimony and Committee Considerations

The committee reviewed North Dakota domestic relations laws and the laws of several states that have established family courts.

The committee received testimony indicating that the previous family court system failed, in part, because of insufficient resources for counseling and because it was not established uniformly throughout the state. A person not wanting to go through the family court procedures could file for divorce in a county that had not adopted the family court provisions.

Because the North Dakota Rules of Civil Procedure are based on the federal rules, which are not designed to address domestic relations cases, the rules tend to promote an adversarial process that often complicates domestic relations cases. Proponents of the establishment of a family court contended that a family court using informal procedures would promote cooperation between the parties and reduce the adversarial nature of the process.

The State Bar Association of North Dakota appointed an ad hoc committee to study the establishment of a family court system. The ad hoc committee found that two problems with the current court system are the issuance of interim orders and the divergent practices and procedures in effect throughout the state. Requiring more judicial intervention early in a divorce process and establishing specific timeframes for discovery were identified as possible solutions to make the divorce process less painful. The ad hoc committee proposed a pilot project to allow a court to resolve domestic relations issues in a more informal setting. The ad hoc committee also proposed rule changes to address case management procedures. The ad hoc committee identified three statutory changes to improve the domestic relations procedure. The changes would have removed statutory references to interim orders and provided that those orders be made according to the North Dakota Rules of Court.

Committee members generally agreed with the representatives of the State Bar Association ad hoc committee that changes are necessary in the handling of domestic relations cases. In addition, committee members expressed support for the concept of using the resources already in place rather than overhauling the entire system for the handling of domestic relations cases. Committee members generally supported the proposals by the ad hoc committee. The proposals had not been submitted to the Supreme Court as of the last committee meeting. Committee members were concerned with the uncertainty surrounding the status of the proposals and were reluctant to recommend any statutory changes before action by the Supreme Court.

Conclusion

The committee makes no recommendation with respect to the establishment of a family court, but supports the efforts of the State Bar Association ad hoc committee and its proposed rule and statutory changes.

EDUCATION FINANCE COMMITTEE

The Education Finance Committee was assigned three studies. Section 11 of 1993 House Bill No. 1003 directed the Legislative Council to study education finance issues, including the use of nonproperty factors in financing education, the quality of education, legal action in this state regarding education finance issues, and the effect of any 1993 North Dakota legislation that relates to education financing. House Concurrent Resolution No. 3013 directed the Legislative Council to study accreditation standards utilized by the Department of Public Instruction, including those set forth in the constitution or statutes of this state. House Concurrent Resolution No. 3026 directed the Legislative Council to study the loss of employment by teachers and administrators as a result of school district reorganizational, cooperative, and restructuring programs, including the possibility of changes in retirement benefits for those teachers and administrators.

Committee members were Representatives Diane Ness (Chairman), Rick Berg, David Drovdal, Lee Kaldor, George J. Keiser, Richard Kunkel, and Carolyn Nelson and Senators Layton Freborg, William G. Goetz, Bonnie Heinrich, Ray Holmberg, Jerome Kelsh, David O'Connell, and James C. Yockim.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

EDUCATION FINANCE STUDY

This committee combined the study of accreditation standards with the study of education finance issues.

Background

Foundation Program Initiation

A foundation program designed to provide financial assistance to local school districts has been in effect in this state since 1959, when the Legislative Assembly enacted a uniform 21-mill county levy and provided a supplemental state appropriation to ensure that school districts would receive 60 percent of the cost of education from nonlocal sources. This initial program reflected a recognition that property valuation demographics and educational needs varied from school district to school district. The Legislative Assembly embraced the broad policy objective that some higher cost school districts in the state must continue to operate regardless of future school district reorganization plans. Taking into account the financial burdens suffered by the low valuation/high per student cost school districts, the Legislative Assembly adopted a system of weighted aid payments that favored schools with lower enrollments and higher costs. Because higher costs were incurred by districts that provided high school services, the program also included a higher weighting factor for the allocation of aid to those districts.

The 1970s

For the next several years, the foundation aid

program remained essentially unchanged. However, as federal and state courts began to consider whether the level of spending for a child's elementary and secondary school education should depend upon the wealth of the child's school district, the Legislative Assembly found it necessary to address a growing crisis in the field of education funding and responded by increasing the sophistication of its foundation aid system.

In 1973 the Legislative Assembly more than doubled the per student foundation aid level and replaced the flat weighting factor with one that recognized four classes of high schools. Minor adjustments were made to the elementary weighting factors as well. School districts, however, continued to experience declining enrollments, and consequently declining revenues. Therefore, in 1975 the Legislative Assembly provided that no district could receive less in foundation aid in any one year than that district would have received based on its previous year's enrollment.

The 1980s

Per student payments continued to rise during the late 1970s and in 1980 the next major development regarding education finance occurred—the approval by the voters of initiated measure No. 6. This measure imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax were to be used to make possible the state funding of elementary and secondary education at a 70 percent level. To meet this goal, the 1981 Legislative Assembly allocated 60 percent of the oil extraction tax revenues to the school aid program. Initiated measure No. 6 also provided for a tax credit that made the 21-mill levy inapplicable to all but the owners of extremely high value properties. The Legislative Assembly eliminated the levy altogether and increased state education aid to compensate for all revenues that would have been derived from the levy.

Discussions concerning education funding continued throughout the early years of the decade. The 1981-82 interim Educational Finance Committee conducted a detailed study of the 70/30 funding concept. This concept contained an equalization factor designed to provide fair treatment to districts with different costs and assessed property valuation profiles. The mechanism in the 70/30 concept provided for the computation of a 30 percent equalization factor to be used as the basis for determining each district's state funding entitlement. A local mill levy would raise an amount sufficient to pay 30 percent of the cost of education in each district and the state would provide the remainder.

While proponents viewed it as an approach that featured a comprehensive equalization mechanism and which considered each district's own expenditure levels in determining the amount of state aid to which the district was entitled, opponents argued that it rewarded high spending districts and penalized those that had operated on restricted budgets. The interim committee did not recommend the concept.

The 1983-84 interim Education "A" Committee studied the financing of elementary and secondary schools. The committee explored weighting factors and considered increasing the mill deduct to 40 mills and the excess mill levy grant concept, but only recommended an increase in per student aid.

The 1989-90 interim Education Finance Committee considered several proposals, including utilizing income factors and in lieu of tax revenues in determining a method of distributing education dollars. Although the committee recognized the need for changes in the state's education funding system, the committee could not reach an agreement with respect to the mechanics. The committee concluded that the state's financial health had to be better understood before alternative funding methods could be pursued.

The 1990s

The 1991-92 Education Finance Committee began its work on the premise that the existing education funding formula was rigid and a discussion of equal educational opportunity could not take place until a way was found to equalize educational spending. The committee studied the effects of a funding formula that included all sources of wealth and revenue in order to measure a school district's ability to support education, incorporated enrollment factors, required a minimum level of local effort, and provided additional dollars for categories of students falling below the statewide averages for per student expenditures.

The committee concluded that equalization means the process of compensating for differences in order to reach equality and equity means there must be a direct and close correlation between a district's tax effort and the educational resources available to it, i.e., districts must have substantially equal access to similar revenues per student at similar levels of effort. The committee found that equalizing the amount of education dollars available is not enough and that achieving equal educational opportunity may very well require an unequal distribution of dollars. The committee could not arrive at a definition of equal educational opportunity and therefore did not recommend a change in the funding of education.

State Litigation

In 1989 a lawsuit was initiated to declare the state's system of financing public schools unconstitutional. The complaint in **Bismarck Public School District No. 1 v. State of North Dakota** charged that disparities in revenue among school districts have caused corresponding disparities in educational uniformity and opportunity which are directly and unconstitutionally based upon property wealth.

On February 4, 1993, after hearing 35 witnesses and receiving over 250 exhibits, the district court issued 593 findings of fact and 32 conclusions of law. Among the more substantive conclusions were:

1. Under Article VIII, Sections 1 and 2, of the Constitution of North Dakota, the financing of public elementary and secondary education is a state responsibility in that the Legislative Assembly is irrevocably mandated to "make provi-

sion for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control."

2. Article VIII, Section 2, of the Constitution of North Dakota imposes a duty on the Legislative Assembly to "provide for a uniform system of free public schools throughout the state" Such a duty is a continuing duty requiring the maintenance of such a uniform system even as conditions of life and state change over the years.
3. The constitutional standard of equal protection proscribes any system that makes the quality of a child's education a function of district wealth rather than the wealth of the state as a whole.
4. Despite the fundamental character of education under the Constitution of North Dakota, the school financing system classifies its recipients on the basis of the taxable wealth of a school district as measured by its taxable valuation per student and tax revenue generated from in lieu of property tax sources in violation of the equal protection and uniform system provisions of the Constitution of North Dakota.
5. The school financing system violates Article VIII, Section 2, of the Constitution of North Dakota, which requires the Legislative Assembly to provide for a "uniform system of free public schools throughout the state"
6. The dependency of the state on the vastly disparate tax bases of school districts to finance its constitutional obligation makes the definition of a "uniform" education a function of the tax base of school districts rather than constitutionally permissible criteria related to education.
7. The taxable wealth of a school district is a constitutionally impermissible factor in the funding of a "uniform" system of free public schools.
8. State and local governmental action drew the school district boundary lines that determined how much local wealth each school district would contain.
9. State sources of revenue are inadequate to remedy the unconstitutional defects of a school financing system based on widely varying school district tax bases.

Although the court stated that the "equal protection and education provisions of the North Dakota Constitution do not impose requirements of absolute uniformity or equality" and that "unequal expenditures are constitutionally permissible if not related to the taxable wealth of school districts, if more resources are needed for some children to achieve an equal education opportunity than are needed by other children, and if based on legitimate cost differences among districts," the court listed these "constitutionally objectionable features" of the school financing system:

- (a) disparities in current revenue per pupil that are the result of variations in school district taxable wealth;
- (b) the 22 mill deduct in the foundation formula which fails to equalize for variations in district wealth because the deduct is below the state average school

tax rate for current revenue and leaves much of the school millage outside of the foundation formula; (c) the low level of foundation educational support which fails to ensure substantial equality of resources for children in similarly situated school districts; (d) the use of cost weightings that are inaccurate and unjustifiably benefit districts with large amounts of taxable wealth; (e) the flat grant allocation of tuition apportionment which ignores the vast differences in taxable wealth among school districts and operates as a minimum guarantee for wealthy districts; (f) the features of [t]he transportation aid program that exacerbate existing resource disparities by reimbursing some, often wealthy, districts for more than the actual cost of transportation to the district and require other, often poorer, districts to fund a substantial share of transportation costs from other revenue sources; (g) the features of the special education funding program that exacerbate existing resource disparities by giving higher spending districts an advantage in obtaining state reimbursement of special education costs and require school districts to fund a large share of the extra costs of special education programs from the disparate tax basis of school districts; (h) the features of state aid for vocational education that exacerbate existing resource disparities; (i) the state system for funding school facilities under which the sole source for funding school facilities is the unequal taxable wealth of school districts; (j) the payment of state aid to wealthy districts that maintain large ending fund balances; and (k) the failure of the state to ensure that resource differences among school districts are based on factors relevant to the education of North Dakota children rather than on the unequal taxable wealth of North Dakota school districts. (footnote omitted)

The North Dakota school financing system was declared to be in violation of Article VIII, Sections 1 and 2, and Article I, Sections 21 and 22, of the Constitution of North Dakota and the Superintendent of Public Instruction was directed to prepare and present to the Governor and the Legislative Assembly during the 1993 session plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

Proposal by the Superintendent of Public Instruction

In response to the district court's order, during the 1993 session the Superintendent of Public Instruction presented "A Plan Providing Educational Equity for North Dakota Students" to the Legislative Assembly. The plan included recommendations to:

1. Raise the per student payment to \$3,134;
2. Fund special education by dividing the 13 disability categories into three broad levels and assigning weighting factors to each;
3. Fund vocational education by assigning weight-

ing factors to high cost and moderate cost programs;

4. Provide transportation reimbursements based on six categories of density;
5. Provide state funding of education at the 70 percent level;
6. Establish a uniform county levy of 180 mills;
7. Distribute tuition apportionment in the same manner as foundation aid;
8. Provide that federal and mineral revenues in lieu of local property taxes and a district's excess fund balances become part of a guaranteed foundation aid amount;
9. Allow districts the option of levying 25 mills above the 180-mill uniform county levy;
10. Require that all land be part of a high school district and that districts having fewer than 150 students become part of a larger administrative unit; and
11. Provide \$25 million for a revolving school construction fund.

1993 Legislative Response

The 1993 Legislative Assembly dealt with education finance through two principal bills—1993 House Bill No. 1512 and House Bill No. 1003.

House Bill No. 1512

House Bill No. 1512 was introduced as a vehicle by which the Legislative Assembly could begin to consider factors highlighted by the district court in **Bismarck Public School District No. 1 v. State of North Dakota** and changes recommended by the Superintendent of Public Instruction in response to the court's order.

As introduced, House Bill No. 1512 imputed in lieu of tax dollars with discernible property values and then added varying percentages of the value to the total taxable valuation of a school district. By a gradual process, weighting factors would come to reflect the five-year average cost of education per student. A mill deduct was proposed to equal 30 percent of the statewide average school district general fund mill levy.

The bill provided for special education reimbursements according to severe, moderate, and mild categories of disabilities and increased the per student transportation payments to \$1.25 by the beginning of the 1996-97 school year. Caps were placed on the amount of transportation reimbursements that a district could receive.

The bill altered the distribution of the state tuition fund so that by July 1, 1996, the fund would have been distributed among the school districts of the state in the same proportion as the amount of foundation aid received by a district bears to the total amount of foundation aid distributed by the state.

The bill required the Superintendent of Public Instruction to review and prioritize all construction projects to determine, in addition to existing requirements, the current and projected use patterns, the utility and condition of the existing facilities, the appropriateness of the project's proposed scope, the existing and projected square footage per student, and the immediacy of construction needs.

Finally, the bill gradually reduced the size of school district interim funds so that by July 1, 1996, the interim funds could not have exceeded 50 percent of the annual appropriation for all purposes other than debt retirement and appropriations financed from bond sources. Among the bill's more controversial provisions were the ones requiring that every school district be part of a high school district by July 1, 1996, and requiring a school district to have a minimum of 150 students in full-time equivalent average daily membership. The bill passed the House but failed to pass the Senate.

House Bill No. 1003

As introduced, 1993 House Bill No. 1003 was the appropriations bill for the Superintendent of Public Instruction. The bill became the principal 1993 education funding enactment.

The bill set the state support for education at \$1,572 per student for the first year of the 1993-95 biennium and at \$1,636 for the second year and it raised the mill deduct from 21 mills to 23 mills for the 1993-94 school year and then to 24 mills for each year thereafter.

Weighting factors were set at 25 percent of the difference between the prior statutory amount and the five-year average cost of education per student for the first year of the biennium and at 50 percent of the difference for the second year.

State transportation payments were capped at 100 percent for the first year of the biennium and at 90 percent for the second year of the biennium. Any savings resulting from imposition of the 90 percent cap during the second year were to be used by the Superintendent of Public Instruction to increase the per student transportation payments available under North Dakota Century Code Section 15-40.1-16.

With respect to the statutory requirement that school districts charge tuition to nonresident students, the bill allowed an exception for school districts that admit nonresident students from other districts offering the same grade level services.

Finally, the bill directed the Legislative Council to appoint an interim committee for the purpose of conducting a study of education finance issues.

Appeal of Bismarck Public School District No. 1 v. State of North Dakota

The trial court decision in **Bismarck Public School District No. 1 v. State of North Dakota** addressed many of the issues that had been discussed for years by legislators and by interim committees. Of importance was the fact that if the lower court decision were appealed to the North Dakota Supreme Court, the lower court decision would be upheld only if four Supreme Court justices agreed with that decision. This super-majority requirement influenced legislators during the 1993 session and impacted the efforts of the Education Finance Committee during the early months of its study.

When the North Dakota Supreme Court issued its decision on January 24, 1994, only three justices supported the conclusion that the state's education funding system should be declared unconstitutional.

The court found three principal areas that needed attention—in lieu of revenues, mill deducts, and

transportation payments. The court addressed transportation statutes even though the 1993 Legislative Assembly had made changes in that area, because its review was limited to laws in existence at the time the case was heard by the lower court.

The Supreme Court decision contained no mandates. It did not require the district court to continue monitoring legislative activities and it did not require the district court to retain jurisdiction.

Significant language in the case was to be found in Chief Justice VandeWalle's dissenting opinion. He stated:

. . . the present funding system is fraught with funding inequities which I believe have not yet transgressed the rational-basis standard of review but which appear to me to be on a collision course with even that deferential standard.

Because three justices have already agreed that the state's system of funding education is unconstitutional, a future lawsuit on the subject would require the assent of only one more justice. If the Chief Justice becomes convinced that the funding inequities do transgress the rational basis standard, he could become the final justice necessary for a declaration of unconstitutionality.

Testimony - Committee Considerations and Recommendations

The committee was statutorily directed to study the use of nonproperty factors in financing education, as well as the quality of education, and in addition, the committee was also directed to study accreditation standards utilized by the Department of Public Instruction. The committee found that all of the issues it had been charged to study were inextricably tied to matters of finance. It therefore consolidated the issues set forth in Section 11 of 1993 House Bill No. 1003 with the directive of House Concurrent Resolution No. 3013 to study accreditation standards. The committee divided itself into two working groups of seven members each and it approached its studies from the dual perspectives of educational quality and educational equity.

The committee as a whole considered 38 drafts—35 of which were bill drafts and the remaining three were resolution drafts calling for Legislative Council studies. The drafts can best be categorized as issues relating to students and curriculum, teachers, school buildings, school districts, finances, and miscellaneous matters.

Students and Curriculum - Issues

The committee considered a bill draft that would have changed the state's minimum curriculum requirements for high schools. The bill draft, which was intended to expand course offerings, would have added a requirement that schools make available two units of the same foreign language and would have specified that two units of vocational education must be offered, in addition to two units in any course area not otherwise listed.

Foreign language is a university requirement, and most universities require two years of a foreign language prior to admission. Some committee members

expressed concern that smaller schools might have a difficult time meeting the increased curriculum requirement. However, the committee determined that schools could engage in cooperative activities to ensure that language courses, as well as vocational education courses, were made available and that telecommunications services could be used to deliver the courses.

The committee considered a bill draft that would have appropriated \$950,000 to the Superintendent of Public Instruction for the purpose of developing language arts skills for students in kindergarten through grade 12. The purpose of the bill draft was to recognize the need for teacher inservice training in at least one specific area of education. Opponents of the bill draft, however, pointed to a variety of other funding and substantive bills before the committee which related to the general area of teacher inservice training. The committee determined that the appropriation set by the bill draft could be better used if applied to broader causes.

The committee considered a bill draft that would have paralleled the Minnesota postsecondary options program. It would have allowed any public high school student in grade 11 or 12 to enroll in courses offered at institutions of higher education in the state and receive high school credit only or high school and postsecondary credit for the courses taken. The Superintendent of Public Instruction would have paid all associated costs, i.e., tuition, fees, textbooks, materials, equipment, and any other necessary charges related to the course, and then subtracted the costs from the next distribution of state funds to the school district. The purpose of this bill draft was to increase course offerings available to high school students. There was, however, concern that the students who would take advantage of the program would be those residing near institutions of higher education rather than those students who reside in more remote parts of the state (and arguably require greater access to course offerings); that the program would diminish student leadership at the high school level by removing students from the classrooms; that the program would reduce funding otherwise needed for the provision of advanced mathematics and science classes; that the program did not sufficiently address expectations of student performance; and that the program did not address the issue of university and college control regarding matters of student admission. The committee viewed the concept as meritorious and worth exploring but not at the level that justified a recommendation. Instead, the committee considered a resolution draft that would have directed the Legislative Council to study the feasibility and desirability of using institutions of higher education to provide educational options and opportunities to high school students.

The committee considered a bill draft that would have appropriated \$250,000 to the Superintendent of Public Instruction for the purpose of establishing two Governor's schools in addition to the one presently funded. One of the additional schools would offer programs in the areas of fine arts and communication and the other would offer programs in the areas of vocational education and entrepreneurship. The

intent was to provide another method by which enriched curricula could be made available to North Dakota students. The initial Governor's school provided advanced educational experiences to students from around the state and this bill draft was viewed as a way to continue that tradition.

The committee considered a bill draft that would have appropriated \$700,000 to the Superintendent of Public Instruction for the purpose of providing remedial, maintenance, and gifted elementary summer school programs. Some students tend to regress during the summer months and consequently have a very difficult time reentering the structured school process at the start of the following school year. Furthermore, school districts that must meet the needs of special needs students during the summer months absorb those costs with local funds. The purpose of the appropriation was to continue these programs and defray these costs.

Students and Curriculum - Recommendations

The committee recommends House Bill No. 1035 to change the minimum curriculum requirements for high schools by adding two units of the same foreign language, requiring two units of vocational education, and requiring two units in any other course areas not otherwise listed. The committee determined that this was a feasible method by which curriculum offerings could be expanded in even the smallest high schools.

The committee recommends House Concurrent Resolution No. 3006 to direct the Legislative Council to study the feasibility and desirability of using institutions of higher education to provide educational options and opportunities for high school students. The committee determined that this would be an excellent way to promote lifelong learning activities and involve all the state's resources in the education of students.

The committee recommends Senate Bill No. 2049 to appropriate \$250,000 for the purpose of establishing two additional North Dakota Governor's schools. The committee determined that the first Governor's school had provided a worthwhile academic experience in the area of mathematics to numerous North Dakota students and that such enrichment activities should be encouraged, continued, and expanded.

The committee recommends Senate Bill No. 2050 to appropriate \$700,000 for the purpose of providing remedial, maintenance, and gifted elementary summer school programs. The committee determined that numerous students could benefit from elementary summer school programs, but they are not now able to partake of programs because their school districts are unable to pay the accompanying costs.

Teachers - Issues

The committee considered a bill draft that would have appropriated \$500,000 to the Superintendent of Public Instruction for the purpose of assisting school districts in the implementation of professional development plans. The plans would have been required to provide for the professional development of teachers and administrators, address methods for improving student achievement levels, and provide for the

development of lifelong learning activities. A school district could have received no more than \$10,000 of these funds. Although the funds provided by the bill draft would not sufficiently fund the studies, the amount would be added to funds from other sources for this purpose.

The committee considered a bill draft that would have repealed the requirement that teachers be citizens. A teacher's certificate may not be issued to any person who is not a citizen of the United States, but teachers who are not able to be certificated because of their citizenship may be employed temporarily if they are approved by the Superintendent of Public Instruction. This bill draft would have removed the references to citizenship and allow certification of any qualified individual. The committee determined that the citizenship of a person has no bearing on that person's fitness to teach and that North Dakota needs to ensure that it has access to the very best teachers and not limit its choices based on nationality.

The committee considered a bill draft that would have appropriated \$640,000 to the Superintendent of Public Instruction for the establishment of one professional development center in each of the state's eight service regions. The bill draft also would have required that the Superintendent of Public Instruction establish one board to define the purpose of the centers, to provide for their governance, and to ensure that each center conducts outreach activities throughout its region. The professional development centers, also known as teacher learning centers, would provide continuing education and support services to teachers and administrators.

The committee considered a bill draft that would have directed the Superintendent of Public Instruction, the director of Vocational and Technical Education, and the chancellor of the North Dakota University System to develop a comprehensive statewide plan for the equitable and accessible provision of elementary and secondary education and for the provision of inservice training to elementary and high school teachers. The Superintendent of Public Instruction also would have been directed to present the plan to an appropriate Legislative Council interim committee on or before September 1, 1995. The committee was informed that the plan was needed because there exists no plan and no direction for approaching change in the state's educational system. The committee determined that the development of the plan should involve representatives of elementary and secondary education, as well as vocational and higher education. It is anticipated that the various interest groups will play a major role in the development of the plan.

Teachers - Recommendations

The committee recommends Senate Bill No. 2051 to appropriate \$500,000 for the purpose of assisting school districts in the implementation of professional development plans. The committee determined that the implementation of a professional development plan would require considerable work and effort on the part of district personnel. The appropriation provided by the bill would assist districts in assuming incidental costs associated with the development

of the plans. Incidental costs would include travel, substitute teachers, and administrative assistance.

The committee recommends House Bill No. 1036 to repeal the requirement that teachers be citizens of the United States and to allow certification of any qualified individual without regard to citizenship. The committee determined that a person's ability to teach was not governed by the country from which the person came and should not be a consideration in the certification procedure. The committee also determined that the employment of a person who is not a citizen of the United States is governed by federal immigration laws and therefore the wording regarding citizenship could be removed from the statute.

The committee recommends Senate Bill No. 2052 to appropriate \$640,000 for the purpose of funding professional development centers in the state's eight service regions. The committee determined that there was a need to support the efforts of the teacher learning centers by modernizing references to them and by providing annual support in the amount of \$40,000 per center.

The committee recommends House Bill No. 1037 to require that the Superintendent of Public Instruction, the chancellor of the North Dakota University System, and the director of Vocational and Technical Education develop a comprehensive statewide plan for the equitable and accessible provision of elementary and secondary education. The committee determined that a direction should be set forth with respect to elementary and secondary education. The report is required to be delivered on or before September 1, 1995, in the hope that during the next interim a Legislative Council committee will use the report in the pursuit of its studies.

School Buildings - Issues

The committee considered three bill drafts that would have required the State Fire Marshal or a designee to inspect public and private elementary and secondary schools at least once every three years. All three bill drafts would have provided for the categorization of deficiencies and the application of penalties if deficiencies were not appropriately corrected. The committee focused on the bill draft that would have required deficiencies to be categorized as structural deficiencies, fire safety deficiencies, or imminent hazards. Structural deficiencies would be corrected whenever any construction, purchase, repair, improvement, renovation, or modernization is undertaken. Fire safety deficiencies would cause the building principal to submit a plan of correction to the State Fire Marshal or a designee within 30 days from the issuance of the inspection report. If these deficiencies are not corrected within the agreed upon time, the Superintendent of Public Instruction is to withhold foundation aid from a public school and to revoke the approval status of a private school until the corrections are made. An imminent fire hazard would authorize the State Fire Marshal to close the school until the hazard is eliminated or to specify a date by which the hazard must be eliminated.

The committee considered school buildings to be an integral part of educating students. The committee was informed that students were in need of safe

buildings and procedures that enhanced, not jeopardized, their safety and well-being, and that the most efficient way of ensuring this was to require the inspection of schools. The inspection schedule proposed in the bill draft should not require the appropriation of additional funds—local fire officials are to be encouraged to participate in or conduct the inspections, in part because they form the first line of response in the case of a fire and they must be acquainted with the layout of the school buildings. Under current law, it can take up to two years to close a school if the State Fire Marshal finds conditions that are believed to jeopardize the life or safety of students attending the school. The bill draft allowed a school to be closed immediately, if warranted.

The committee considered a bill draft that would have provided that the lease-buyback of a school building or facility could not be undertaken without the permission of the Superintendent of Public Instruction. The Superintendent of Public Instruction now reviews school district construction projects to ensure that the school district is able to bear the debt burden. The review process must take place whenever a school district proposes an expenditure in excess of \$25,000. The superintendent, however, has no review authority when a district chooses to engage in a lease-buyback or lease-purchase arrangement. The bill draft attempted to address concerns that current requirements sanction state micromanagement of local affairs. The Superintendent of Public Instruction informed the committee that the concerns would be reviewed and would be addressed in an agency bill during the legislative session.

The committee considered a resolution draft that would have directed the Legislative Council to study the needs of school districts with respect to buildings and facilities and the role of the state in the construction, maintenance, and renovation of school buildings and facilities. While some school districts are contending with inefficient buildings because of inadequate student usage, others are finding their student populations growing beyond their ability to construct new facilities or adequately remodel existing facilities. The committee determined that a study needs to be conducted to determine whether facility costs ought to be considered part of the cost of education and whether the state ought to participate in funding those costs.

School Buildings - Recommendations

The committee recommends House Bill No. 1038 to provide for the inspection of schools at least once every three years and to give the State Fire Marshal the authority to immediately close schools when an inspection reveals the existence of an imminent fire hazard. The committee determined that students deserve to be educated in safe environments and if a school environment is not safe, the state, through the State Fire Marshal, must have the ability to require that safety deficiencies receive prompt attention and must further have the ability to remove students from unsafe environments.

The committee recommends Senate Concurrent Resolution No. 4004 to direct the Legislative Council to study the needs of school districts with respect to

buildings and facilities and the role of the state in the construction, maintenance, and renovation of school buildings and facilities. The committee determined that districts have varying building and facility needs and varying financial circumstances with which to address those needs. The aspects of this study would include equitable considerations, demographic considerations, and the use of state funding sources for construction needs.

School Districts - Issues

The committee considered a bill draft that would have authorized the governing body of a public school district to issue general obligation bonds upon the approval of a majority, rather than 60 percent, of the qualified voters in the school district. The bill draft also would have lowered the required approval limit for a school building fund levy from 60 percent to a simple majority. Committee members suggested that attitudes have changed with respect to providing adequate dollars for education. Many school districts have difficulty meeting the 60 percent requirement to pass mill levy increases. As voters become older and no longer have children in the public school system, they may become more reluctant to tax themselves. Nevertheless, school districts still have the need for new buildings. Proponents testified that the state would still maintain overview of the need for new buildings and that the bill draft would make available viable sources of revenue.

The committee considered a bill draft that would have replaced county reorganization boards with regional committees for the reorganization of schools; provided that each of the state's eight regions is to have a committee consisting of one member appointed by the board of county commissioners from each county in the region; and raised the compensation of committee members from \$25 to \$50 per meeting. The current system of county committees was established nearly 50 years ago when there were more than 2,000 school districts. Now there are only 253 school districts. Regional boards for the reorganization of schools would avoid situations in which some county committees have two or three members from the same school district. In addition, there would be an avoidance of concerns about county committee members interjecting a sense of territoriality into their decisions.

The committee considered a bill draft that would have added the requirement that a school board operating under a cooperative agreement, at its annual meeting in July, issue a schedule of multiboard meetings in which it may participate for the purpose of pursuing joint or cooperative activities. As reorganization and cooperative activities become more commonplace, school boards find themselves dealing with inflexible provisions of the law. A person serving as the superintendent for two school districts could be in the situation of having the boards of both districts meet at the same time in different locations. Similarly, when two or more boards wish to discuss items of mutual interest, they may find themselves unable to hold joint board meetings instead of regular board meetings because of time and place prohibitions. The bill draft would ensure that the public is

made aware, in advance, of all regular school board meetings, regardless of when and where they take place.

The committee considered a bill draft that would have repealed the position of county superintendent of schools effective July 1, 1996. When the state had 4,000 school districts, there was a perceived need to have a coordinating official on the county level. Now that the number of school districts has been drastically reduced and technology has been introduced, the position of county superintendent appears to be of waning use. The bill draft would not preclude a county from hiring a person to fulfill duties once handled by a county superintendent.

The committee considered a bill draft that would have required annexation petitions to identify at least one student who resides in the area to be annexed and who will attend a public school during the year following the approval of the petition. With respect to dissolutions, the bill draft would have provided that a county committee could not order the attachment of any territory unless a minor resides within the boundaries of the territory to be attached. There have been a few instances in which land without students residing within its boundaries was moved from one district to another. The committee determined that this movement has no purpose related to the education of children and should be prohibited.

The committee considered a bill draft that would have required state payments to school districts to be made in roughly equal increments over a 10-month period beginning July 15 and continuing on the first day of the following nine months each year. State payments to school districts are now made over a nine-month period with 15 percent being distributed on September 1, 15 percent being distributed on October 1, and 10 percent being distributed on the first of each month from November through May. School districts may incur significant expenses during the summer months and during the weeks before their first state payment arrives. Often school districts have to borrow money to maintain their operations during that time. If, however, the payment schedule were changed, the state could very well have to borrow money and pay the interest in order to meet its cash flow requirements.

The committee considered a bill draft that would have required all land in the state to be in a high school district by July 1, 1997. The bill draft would have provided that the board of a high school district could not close an elementary school in existence on July 1, 1997, if 85 percent or more of the elementary school's students would have to travel beyond 15 miles from their residences in order to attend another school. If the board of a high school district did close an elementary school, the parent or legal guardian of a student affected by the closure could appeal the decision to the State Board of Public School Education. After the state board ruled on the matter, it could not be considered again until one full school year has passed.

Under current law, some residents have to pay taxes in order to support a high school while others do not have to pay taxes for this purpose. This bill draft

would treat all taxpayers equitably and give them a voice in the operation of a high school. There are, however, tuition agreement laws in place which spell out how much an elementary district must pay for the education of its high school students by a neighboring district. Some committee members suggested that if those amounts are not deemed sufficient, those laws should be reexamined.

The committee discussed whether school districts should be required to pool their tax bases, even if the districts are not required to become high school districts through some form of joinder. The committee determined that this bill draft did pool tax bases and, in addition, it related to equity and taxation fairness. The committee sanctioned the perspective that it takes the effort of all state residents to provide an education for the students of this state.

The committee considered a bill draft that would have appropriated \$500,000 to the Superintendent of Public Instruction for the purpose of assisting school districts in the development of academic programs designed to improve the English language proficiency of students who by reason of ancestry or foreign birth speak a language other than English and understand and speak little or no English. The bill draft would also have required the Superintendent of Public Instruction to prorate \$250,000 during each year of the biennium. Payments were limited to \$600 per eligible student annually and any funds remaining were to be prorated to assist in the education of students' families. The superintendent also would have been directed to establish guidelines regarding the identification and eligibility of students and families.

This bill draft reflected the continuation of a concept first introduced during the 1993 legislative session on behalf of the Fargo Public School District. Since that time, numerous other districts have found themselves trying to educate students whose first language is not English. Although federal law limits the number of refugees allowed to enter the country to approximately 121,000 annually, this figure could very well rise, given the unstable situations in so many parts of the world. There are presently 19.5 million refugees in the world and the number grows by one million each year. With respect to North Dakota, 60 to 90 school-age refugees can be expected to enter the state each year. Most of those students will attend Fargo public schools. Federal regulations require that the resettlement of refugees take place within two hours of driving time from the resettlement staff, that the resettlement take place within an ethnic environment, and that ample employment opportunities be available.

There was some concern that the bill draft distributed dollars without regard to equity or wealth of a school district. However, the committee concluded that certain school districts are now providing an education to refugee students using property tax dollars because the students do not qualify for special education dollars or services.

The committee considered a bill draft that would have appropriated \$500,000 to the Superintendent of Public Instruction for the purpose of providing grants to cooperating school districts. In order to be eligible

for the grants, school districts would have to number three or more and be contiguous. At least one would have had to be a high school district. The districts would have been required to enter a cooperative agreement to increase the educational opportunities for their students, share administrative services, or engage in school improvement activities. The grants, which were to have been awarded on a competitive basis, would have been payable quarterly. No grant could have exceeded \$50,000.

The committee determined that good school district managers should be discussing and engaging in cooperative activities as part of their jobs and those activities should not be dependent on a state grant. However, the committee was not willing to support this bill draft because it did not sufficiently address what a school district had to do differently in order to receive its share of the appropriation.

The committee considered a bill draft that would have directed the Public Service Commission to establish discounted rates for the provision of telecommunications services to all public and private institutions of higher education and to all public and private elementary and secondary schools in the state. The telecommunications services would have to be used for the instruction of students, the continuing education of instructional staff, or research activities conducted by or on behalf of the students or instructional staff. Proponents testified that this was a way to encourage the use of interactive television and telecommunications and, at the same time, address some of the concerns that school districts have about the costs of line charges.

The committee considered a bill draft that would have required the Superintendent of Public Instruction to enter reciprocal master agreements with bordering states and provinces. The agreements would have to address the education of students in the public elementary and high schools or institutions of the bordering states or provinces, including open enrollment options, and would also have to address the costs, and the manner of payment for, that education. School districts would have been permitted to negotiate agreements superseding the master agreement, provided that the amount of tuition did not exceed the level established in the reciprocal master agreement and further provided that the amount could not be less than the per student aid plus tuition apportionment received by the district. The Superintendent of Public Instruction would pay tuition charges for students attending school in a bordering state or province. The superintendent would then deduct that amount from the next distribution of state funds to the school district.

The committee was informed that the Superintendent of Public Instruction would review the policies with respect to the education of students in bordering states and provinces and that the concept would be refined and presented as an agency bill during the legislative session.

School Districts - Recommendations

The committee recommends Senate Bill No. 2053 to authorize the issuance of general obligation bonds by public school districts upon the approval of a

majority rather than 60 percent of the qualified voters in a school district. The committee determined that changing attitudes and voter demographics are making it progressively more difficult for school districts to obtain the local tax dollars they believe they need.

The committee recommends House Bill No. 1039 to replace county reorganization boards with regional boards for the reorganization of schools. The committee determined that having regional boards to address issues of reorganization would alleviate potential conflicts of interest which are more likely to occur with boards serving smaller geographical areas.

The committee recommends House Bill No. 1040 to require that school boards operating under cooperative agreements issue at their annual meetings a schedule of the multiboard meetings in which they plan to participate for the purpose of pursuing joint or cooperative activities. The committee determined that efforts at cooperation and consolidation are often hampered by statutory requirements designed for former times. This bill would provide boards with some flexibility, yet maintain a set schedule of meetings.

The committee recommends House Bill No. 1041 to repeal the position of county superintendent of schools. The committee determined that the number of school districts is declining, the number of students in many districts is declining, and the use of technology to communicate between school districts and the Superintendent of Public Instruction is on the increase. The committee determined that the position of county superintendent is no longer as important as it once was and should therefore be eliminated.

The committee recommends House Bill No. 1042 to require that annexation petitions identify at least one student who resides in the area to be annexed and that in the case of a dissolution, attachment is prohibited unless a minor resides within the territory to be attached. The committee determined that the movement of land from one district to another is generally pursued for educational or economic reasons. When children reside on the parcels to be moved and an educational reason is present, the normal statutory process can be pursued. When the reasons for movement appear to be only economic, the end result is that fewer tax dollars flow to a school district for the support of students. The committee determined that this was inappropriate, even if rare, and should be stopped.

The committee recommends Senate Bill No. 2054 to require that state payments to school districts be made in roughly equal increments over a 10-month period. The committee determined that some school districts have to borrow funds and incur interest charges in order to maintain a cash flow in the weeks between the final state payment for one school year and the first state payment for the following school year. The committee determined that a change in the payment schedule would alleviate this burden.

The committee recommends House Bill No. 1043 to require that all land be in a high school district by July 1, 1997. The committee determined that tuition

agreement laws do not create an equitable situation between residents of high school districts and residents of elementary school districts. Equity requires the financial participation of all residents in the support of a high school district.

The committee recommends Senate Bill No. 2055 to appropriate \$500,000 for the purpose of assisting school districts in the development of academic programs designed to improve the English language proficiency of students who by reason of ancestry or foreign birth speak a language other than English and understand and speak little or no English. The committee determined that the resettlement of refugees was likely to continue and that those school districts in which refugee students reside need financial assistance to provide the students with needed educational services.

The committee recommends Senate Bill No. 2056 to require the Public Service Commission to establish discounted rates for the provision of telecommunications services to all public and private institutions of higher education and to all public and private elementary and secondary schools in the state. The committee determined that telecommunications will continue to have a pervasive influence on the educational sector and that in order to fully participate in the telecommunications revolution, school districts will require financial assistance.

Finances - Issues

The committee considered a bill draft that would have tied the mill deduct to the amount of foundation aid and transportation aid appropriated. The bill draft would have set 24 mills as the base and then provided that for each percentage point that the state appropriation for foundation aid and transportation aid would have been increased beyond the level appropriated for the 1993-95 biennium, the mill deduct would have risen by one. The bill draft would have allowed for a resetting of the mill deduct during the second year of a biennium, in which the dollars actually distributed fell below those appropriated, and it set 25 percent of the statewide average school district mill levy as a cap above which the mill deduct could not rise. The committee viewed this bill draft as a first attempt at tying the mill deduct to the level of state appropriations, but determined that the succeeding bill draft better incorporated their goals.

The committee considered a bill draft that would have used a mathematical formula to determine the mill deduct. Under the formula, the Superintendent of Public Instruction would have determined the amount of foundation aid to be distributed during the current year, subtracted from that the amount of foundation aid distributed during the prior year, and divided the result by the amount of foundation aid distributed during the prior year. The quotient would be multiplied by the statewide average school district general fund mill levy and 50 percent of the product would be added to the mill deduct used the prior year to arrive at the current mill deduct. The mill deduct would vary depending upon the amount of foundation aid distributed. The deduct could not fall below 24 nor rise above 25 percent of the latest available statewide average school district general

fund mill levy. The bill draft also would have provided a foundation aid level equal to the 1993-95 appropriation plus \$80 million.

Four high school districts and approximately one-half of the graded elementary districts would be negatively impacted if 100 percent of the factor were used in the calculation and that impact would occur only if additional dollars were appropriated. With respect to the appropriation of an additional \$80 million above the 1993-95 appropriation for foundation aid, proponents pointed out that the additional dollars will be equalized.

Opponents pointed out that although the bill draft, as it related to the mill deduct, made a significant step toward instituting an equitable method for the distribution of funds inclusion of an education funding level was objectionable because some school districts would be negatively impacted. Opponents testified that education is only one of the multiple needs that require state funding and that it was irresponsible to include an appropriation of this size without giving consideration to the impact that this would have on other sectors of the state's budget and the state's taxpayers.

The committee considered a bill draft that would have provided an appropriation of \$50 million, \$25 million of which would be used during each year of the biennium, to reduce property taxes in school districts having general fund mill levies in excess of 100 mills. County auditors would have certified the general fund levies in dollars and mills and the Superintendent of Public Instruction would have calculated the amount to which qualifying school districts were entitled. A school district would have been entitled to the percentage of property tax relief funds equal to the percentage that the district's total general fund levy in dollars bears to the total general fund levy of all school districts levying in excess of 100 mills. The Superintendent of Public Instruction would have deducted the property tax relief funds from a district's general fund mill levy in dollars and then certified the adjusted levy to the county auditor. The allocation of property tax relief funds could not have caused a school district's general fund levy to fall below 100 mills.

Although committee members agreed with the intent of the bill draft, which was to reduce school districts' reliance on property taxes, the committee was unable to overcome two significant concerns. The first was whether a district accepting the property tax relief funds should be allowed to return its general fund levy to the level it was prior to receipt of the funds and the second was how the requisite \$50 million would be raised. The presumption was that reaching this level would probably require a sales tax increase. Such a measure would leave school districts in a revenue neutral position and probably decrease the chances of passage for additional revenue enhancement measures.

It is estimated that if the state infuses no new money into education, local property taxes will rise by \$9 million. If, on the other hand, the state adds \$9 million, every dollar appropriated thereafter for education will lower property taxes by 28 cents. The committee agreed that the concept should be further

explored and suggested that if individual legislators do not pursue it during the session, it could be considered as the topic of a Legislative Council study during the 1995-96 interim.

The committee considered a bill draft that would have provided that a school district was not entitled to receive foundation aid for students attending any high school having fewer than 35 students in average daily membership in grades 9 through 12 if 85 percent or more of those students live within 20 miles of another high school.

Proponents testified that the state cannot be in a position of maintaining numerous small high schools located near each other and then being told that each of those schools should make multiple course offerings available to their students. There are only 23 high schools with fewer than 25 students. There are between 30 and 40 high schools that have 35 or fewer students.

Opponents testified that if the state adopts an equalized formula for the distribution of state funds, it will not make any difference whether there are 35 or 3,500 students in a school. The committee determined that the closure of small high schools should be a decision made by the residents of a district and not by the Legislative Assembly.

The committee considered a bill draft that would have provided for the application of weighting factors to the first 74 students in average daily membership in grades 9 through 12, the next 75 students, the next 400 students, and to any remaining students. The bill draft also would have adjusted elementary school weighting factors. The categories used were the first 99 students in average daily membership in grades 1 through 6, the next 900 students, and any remaining students. Students in grades 7 and 8 were weighted independently of their numbers. The weighting factors for the first year of the biennium were those found in current law, adjusted by 75 percent of the difference between those factors and the five-year average cost of education for each category. Thereafter, the weighting factors were those that represented the five-year average cost of education per student for each category. The bill draft also would have defined a small but necessary elementary school and provided that a small but necessary school would receive an additional payment of 30 percent of an amount equal to 15 times the school's weighted per student payment.

The intent of the bill draft was to help school districts that find themselves at present cutoff levels. A school that has 74 students now receives a specific weighting factor applicable to all 74 students. If a family moves into the district and the school gains three students, it would find itself with a lower weighting factor for all 77 students. The bill draft ensured that the first 74 students in a school would be funded at the same weighting factor, regardless of the size of the school or its location. In addition, the bill draft removed a major hurdle in the school consolidation effort in that school districts would continue to receive former levels of dollars per student.

The bill draft was estimated to cost another \$7 million a year or \$14 million a biennium.

The committee considered a bill draft that would

have raised the per student transportation payment for all students transported in schoolbuses from 28 cents to \$1 per day. The bill draft would have maintained the 90 percent cap on transportation payments and would have provided that the Superintendent of Public Instruction would have to develop, and require that school districts use, a uniform cost accounting system. Although the bill draft removed the requirement that reorganization proposals provide for the transportation of students, transportation provisions in existing reorganization proposals would remain effective until changed by a majority vote of the electors residing in the school district.

Most districts would not receive the full \$1 per student payment because of the 90 percent cap. Proponents testified that the bill draft would quickly narrow the inequities in the state's transportation funding formula. With respect to the transportation provisions found in reorganization proposals, proponents indicated it was beyond comprehension why some districts had their students' transportation provided in perpetuity while the parents of other students had to pay significant sums for the transportation of their children.

The committee considered a bill draft that would have addressed in lieu of revenues. The bill draft would have provided that if a school district's general fund mill levy is below the state average and if it receives any state or federal dollars in lieu of property taxes, the Superintendent of Public Instruction would multiply the district's taxable valuation by the statewide average school district general fund mill levy, multiply the district's taxable valuation by the district's general fund mill levy, subtract the product of the latter from the former, and divide the difference by the district's general fund mill levy. The resulting figure would have been added to the district's latest available net assessed and equalized valuation of property prior to performing the calculations regarding mill deducts and excess school district general fund balances.

The North Dakota Supreme Court indicated that the current system in which in lieu of revenues are available to some school districts for the funding of education raises questions with respect to equity. In lieu of revenues are not now equalized and, as a result, those districts that receive the revenues are able to keep their property taxes relatively low. Proponents testified that the bill draft takes a step toward equalizing nonproperty factors used in the financing of education, but it would have no impact on any school district that has a general fund mill levy at or above the statewide average school district general fund mill levy. Opponents testified that the residents of coal- and oil-producing counties believe that the appropriate offsets have already been made and that the state has already had its share of equitable involvement.

The committee considered a bill draft that would have required the Superintendent of Public Instruction to categorize forms of disabilities as severe, moderate, and mild. The superintendent would calculate the appropriate weighting factors by dividing the statewide average excess cost of special education per student for all levels into the statewide

average excess cost of special education per student for each level. The resulting factor would be multiplied by the statewide average excess cost of special education. The superintendent would then multiply that result by the percentage arrived at when the state annual general fund appropriation for special education reimbursements is divided by the projected excess cost of special education. The bill draft would have provided that the number of students with mild disabilities for which a school district could receive payment could not exceed nine percent of the total number of students enrolled in the district.

The Legislative Council interim Education Services Committee recommended a special education funding bill to set aside \$12 million of any amount appropriated for special education for the payment of costs associated with statutory placement contracts and then to distribute the remaining funds on a per student basis according to the same method of distribution utilized for foundation aid. Proponents suggested that this method of distribution would allow school districts to know precisely how much they could expect in special education funding, while opponents argued that although the per student disbursement may be considered equitable on some level, it fails to ensure that the dollars are going to the school districts that actually serve students with special needs.

The committee considered a bill draft that would have required the proceeds of the state tuition fund to be distributed in the same manner as foundation aid. The bill draft also would have provided that school districts that educate students enrolled in nonpublic elementary schools would be eligible to receive proportionate payments for such students.

The North Dakota Supreme Court in **Bismarck Public School District No. 1 v. State of North Dakota** viewed tuition apportionment as nothing short of flat grants. The bill draft would have distributed tuition apportionment with the same degree of equity used in the distribution of foundation aid. There would still be tuition apportionment funds, but the funds' relationship to the school census would be severed.

Opponents pointed out that school districts in which large numbers of nonpublic school students reside would lose revenue and that school districts that now receive no foundation aid would, under this bill draft, also be denied tuition apportionment funds. There are reasons why certain school districts do not receive foundation aid and those reasons have to do with the financial viability of the districts. Testimony indicated that tuition apportionment is distributed in an inequitable manner and that the time has come for appropriate changes to be made.

The committee considered a bill draft that would have defined the roles of the district of residence and the admitting district in providing student transportation. In the case of a nonresident student from a district offering the same grade levels, the districts' written agreement would have to specify whether transportation is to be provided and, if so, by which district. If tuition charges are paid for a student to attend school in another district, or if the student participates in open enrollment, the student's school

district of residence could provide transportation. If it does not do so, the admitting district could provide the transportation and then the admitting district is eligible to receive the transportation payments. This bill draft addressed a problem that arose earlier in the year when a school district of residence would not transport students in an open enrollment program into a neighboring district. At the same time, the district of residence prohibited the admitting district from providing transportation to the open enrollment students because the two districts had not signed a transportation agreement.

The committee considered a resolution draft that would have directed the Legislative Council to study the financing of elementary and secondary education. The resolution draft would have encouraged the Legislative Council to appoint a 14-member committee having balanced representation. The House and Senate majority leaders were each to recommend four members and the House and Senate minority leaders were each to recommend three members of the committee.

The committee determined that a balanced setting, in which all participants function as significant contributors, leads to the consideration of technical and political issues from the widest possible perspectives.

Finances - Recommendations

The committee recommends Senate Bill No. 2057 to use a mathematical formula to set a variable mill deduct that will be tied to the level of state appropriations for foundation aid and to provide for an appropriation equal to the 1993-95 appropriation for foundation aid plus \$80 million. The committee determined that the mill deduct was an integral component in an equitable education formula and that by instituting a deduct amount that varies according to the level of appropriations, a gradual rise in the deduct would occur. The committee also determined that the level of appropriations for education in recent years has been inadequate to meet the needs of either students or school districts and that an additional \$80 million was a reasonable amount to make up for the lack of financial support.

The committee recommends Senate Bill No. 2058 to provide for the application of weighting factors based on the first 74 students in average daily membership in grades 9 through 12, the next 75 students, the next 400 students, and to any remaining students; to adjust elementary weighting factors based on the first 99 students, the next 900 students, and to any remaining students in average daily membership in grades 1 through 6; and to weight students in grades 7 and 8 independently. The committee determined that another key element in the development of an equitable education funding formula was the creation of weighted categories that appropriately reflected cost differentials. The committee determined that the categories currently in law were arbitrary and unrelated to the cost levels and that it would be more equitable to fund students at a similar level regardless of the size or location of their school district.

The committee recommends Senate Bill No. 2059

to raise the per student transportation payment for all students transported by schoolbuses from 28 cents to \$1 per day. The committee determined that transportation is a major expenditure for many districts and that this infusion of dollars would assist districts in directing more of their funds toward instruction expenses.

The committee recommends Senate Bill No. 2060 to require the categorization of disabilities as mild, moderate, and severe and to use a mathematical formula to arrive at a weighting factor for each category. The committee determined that the creation of a statutory formula for the funding of special education would ensure school districts a more equitable distribution of the dollars available for special needs reimbursement.

The committee recommends Senate Bill No. 2061 to require that the proceeds of the common schools trust fund be distributed in the same manner as foundation aid. The committee determined that the state currently distributes the proceeds of the common schools trust fund according to the school census and without regard to the wealth of school districts. By distributing the proceeds in the same manner as foundation aid, equity considerations would be interjected into the process.

The committee recommends House Bill No. 1044 to define the roles of a district of residence and an admitting district in the provision of student transportation. The committee determined that this bill would assist in clarifying the requirements, options, and reimbursements when transportation is provided to students attending school in a district other than their district of residence.

The committee recommends Senate Concurrent Resolution No. 4005 to direct the Legislative Council to study education finance issues. The committee determined that discussions regarding educational quality and equity should continue in order to ensure the provision of adequate educational opportunities to all students.

Miscellaneous Matters - Issues

The committee considered a bill draft that would have changed the membership of the North Dakota Educational Telecommunications Council by adding a representative of the Public Service Commission, a representative of the State Board for Vocational and Technical Education, a representative of private elementary and secondary schools, and an additional schoolteacher. One schoolteacher is on the council now and the bill draft would have provided for one elementary and one secondary teacher. The Governor would have been authorized to appoint one representative from Prairie Public Broadcasting, one from the telephone industry, one from the Association of Telephone Cooperatives, and one from the Cable Television Association to serve as advisory members only. The members who would have been advisory only are currently full members of the council.

Testimony indicated that the Educational Telecommunications Council is pleased with the current structure and that if any changes are to be undertaken, the committee should consider adding the State Librarian, a representative of the State Board

for Vocational and Technical Education, and a representative of the North Dakota Council of Continuing Education.

Miscellaneous Matters - Recommendation

The committee recommends House Bill No. 1045 to change the membership of the North Dakota Educational Telecommunications Council. The committee was concerned that the vendors on the council may not have always declared conflicts of interest and declined to vote on projects and processes that could have impacted them financially. The committee determined that this bill would reconfigure the council to include more users and place vendors in a role in which, without conflicts of interest, they can have the opportunity to offer advice and consent.

TEACHER AND ADMINISTRATOR JOB LOSSES AND EARLY RETIREMENT OPTIONS STUDY

Background

Former North Dakota Century Code (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 1.55 percent of final average salary times the number of years of teaching service. 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 equal to or in excess of 85, if one year of that credit was completed after July 1, 1979. The plan provides a minimum benefit for a full-time member who retired in 1971, or later, of \$10 per month per year of teaching for the first 25 years of service and \$15 per month of teaching credit for service over 25 years. A reduced early retirement benefit is available after five years of service.

The 1993 Legislative Assembly addressed the issue of teachers whose contracts are not renewed as a result of school district reorganization by enacting NDCC Sections 15-27.6-13 and 15-27.6-14. Section 15-27.6-13 defines "continuous service," "first preference," "open teaching position," and "qualified by certification." Section 15-27.6-14 provides that when the contract of a teacher employed by a school district involved in a reorganization is not renewed because of a reduction in force, the teacher is entitled to first preference for any open teaching positions in the reorganized school district for which the teacher is qualified by certification. The right of recall continues until July 1 of the year that is two years subsequent to the date of the nonrenewal.

Among teachers who have recall rights and who

are qualified by certification, the teacher with the longest continuous service within a school district involved in the reorganization is entitled to first preference. If teachers entitled to recall have equal continuous service within a district, then the academic preparation beyond a bachelor's degree must be used to determine which teacher is entitled to first preference.

The technical aspects involved in the exercise of a teacher's rights under these conditions require that the teacher file a written demand for recall rights with the reorganized school district within 30 days of the date on which the teacher's nonrenewal notice was issued. When an open position exists in the reorganized school district, the district must notify all teachers who are qualified for the position by certification. The notice must contain, in descending order, the names of teachers entitled to recall rights. Any teacher who fails to accept recall rights in writing, within 14 days, is deemed to have waived rights against that position.

The legislation also provided that the recall rights of any teacher who accepts less than full-time employment in a reorganized school district continue for the time period provided with respect to any open position that offers compensation in excess of that received by the teacher for part-time employment.

Testimony and Committee Considerations

Six percent of all Teachers' Fund for Retirement members are eligible to retire using the "rule of 85" and an additional 3.9 percent of the fund's members would be eligible to retire if the "rule of 80" were invoked. The cost of an early retirement option would depend on whether the early retirement option is for

a set period of time, i.e., a window, or whether it becomes a permanent part of the retirement plan.

The fund's actuaries have determined that a six-month window allowing all eligible fund members to retire under the rule of 80 with unreduced benefits would cost approximately \$5.1 million while a permanent change would cost approximately \$2.5 million during the first year and increase annually as salaries rise.

Testimony indicated that the Legislative Assembly would have to decide whether an early retirement option would be funded through increased contributions from the state, the school districts, the members, or all of these entities. A 1992 comparative study of 85 major public employee retirement systems shows that the member contribution rates are high in North Dakota while the employer contribution rates are low.

The committee discovered that participation in an early retirement option would be affected by the availability of health insurance. The cost to members of purchasing their own health insurance to fill the gap between their retirement and age 65 is high, and if early retirement benefits were to be considered, additional incentives such as paying the member's health insurance in full or in part until the member reaches age 65 should probably be included.

Conclusion

The committee makes no recommendation on the feasibility of allowing teachers and administrators who have lost their jobs as a result of school district annexations, reorganizations, dissolutions, and other restructuring to receive full retirement benefits under the Teachers' Fund for Retirement.

EDUCATION SERVICES COMMITTEE

The Education Services Committee was assigned three studies. Senate Concurrent Resolution No. 4012 directed a study of the optimum structure and staff development services necessary to meet the needs of middle-level adolescents identified as the at-risk group in North Dakota schools. Senate Concurrent Resolution No. 4050 directed a study of the placement of students with developmental disabilities in regular classroom settings and the teacher training curricula or specific study courses designed to assist teachers in accepting and teaching students with mental retardation and other developmental disabilities. House Concurrent Resolution No. 3058 directed a study of the provision of services to blind and visually impaired children and adults.

Committee members were Representatives Bill Oban (Chairman), Ole Aarsvold, James Boehm, Moine R. Gates, Art Goffe, William E. Gorder, Pam Gulleason, Ruth E. Holm, Joe Kroeber, Richard Kunkel, and Rod St. Aubyn and Senators Barb Evanson, Dan Jerome, and Kit Scherber. Representative Dagne B. Olsen was also a member of the committee until her death in August 1994.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

MIDDLE-LEVEL EDUCATION STUDY

Background

In 1986 the Carnegie Corporation of New York established the Carnegie Council on Adolescent Development. Its purpose was to place the challenges of the adolescent years higher on the nation's agenda, to stimulate public attention about the risks and opportunities of the adolescent years, and to generate public and private support for measures that facilitate the critical transition into adulthood.

As the council began this undertaking, it found that young adolescents face significant "turning points." For some, the ages between 10 and 15 represent the start of a productive and fulfilling life. For others, that period may be their last chance to avoid a diminished future.

The council found that the conditions of early adolescence have changed dramatically from those experienced by prior generations. Today, young people enter a society that both denounces and glorifies sexual promiscuity and the use of illicit drugs. They live in neighborhoods where the stability of a close-knit relationship is rare and where the sense of community which once engendered identities is nowhere to be found. They will seek jobs in an economy that will require virtually all workers to think flexibly and creatively, as only an elite few were required, and educated, to do in the past.

In addition, the council found that young people are expected to face unprecedented choices and pressures, all too often without sufficient guidance from elders. Freed from the dependency of childhood, but not yet able to assume the responsibilities of adulthood, many young people feel a desperate sense of

isolation. Surrounded only by their equally confused peers, too many make decisions with harmful consequences.

That one-half of our nation's youth is at serious or moderate risk is cause enough for alarm. But, even among those at little or no risk, the pervasiveness of intellectual underdevelopment is evident. American 13-year-olds, for example, were found on an average to be behind their counterparts from other industrialized nations in mathematics and science achievement. They were found to be extremely deficient in critical reasoning skills and only 11 percent of 13-year-olds were found to be adept readers. Only 20 percent were capable of writing adequate essays.

The council further found that schools were falling far short of meeting the critical educational, health, and social needs of millions of adolescents and urged a fundamental transformation of education into a system that focuses on the characteristics and needs of adolescents. It urged the creation of a community in which adults and young adults would become embedded in networks of support and responsibility. It recommended partnerships in which young adults would serve community organizations and in which sites and methods for fostering the learning environment would provide a shared sense of purpose and help prepare adolescents for productive adult lives. In short, the council recommended the middle school concept.

The Middle School Concept

The Carnegie Council defined a number of concepts that it believed should be part of a middle school arrangement and then made recommendations for the implementation of those concepts. The concepts and recommendations include the following:

1. School should be a place where close, trusting relationships with adults and peers create a climate for personal growth and intellectual development. The council recommended the creation of smaller learning environments, such as schools within schools, or "houses," to create conditions that would assist teams of teachers and students in the formation of close associations. The council recommended the formation of teams of teachers and students to bring together teachers who teach the same students and to allow for the integration of curricula across subject lines. The council also recommended that each student be assigned an adult advisor, thereby ensuring that each student would have a mentor and an advocate.
2. Every student in the middle grades should learn to think critically through mastery of an appropriate body of knowledge, lead a healthy life, behave ethically and lawfully, and assume the responsibilities of citizenship in a pluralistic society. The council recommended that adolescents be taught to think critically and encouraged to develop reasoning skills. The council recommended that adolescents be taught to develop healthy lifestyles and be helped to resist pressures from peer groups and the media,

- and that adolescents be taught to be active citizens. Compassion, regard for human worth and dignity, tolerance for and appreciation of human diversity, and a desire for social justice should also be encouraged.
3. Students should have the opportunity to succeed in every aspect of the middle school program, regardless of previous achievement or the pace at which they learn. The council recommended that, for learning purposes, students be placed in small heterogeneous groups and that there be flexible schedules to accommodate an integrated curriculum and joint planning by teachers. The council recommended that the opportunities for learning be expanded by extending the schoolday, offering summer school or Saturday programs, providing specialized daily instruction, and encouraging greater involvement of students' families in all learning activities.
 4. Decisions regarding the experiences of middle-level students should be made by those adults who know them best. The council recommended that the creative control of students' educational experiences should be the responsibility of teaching teams, while the effective management of other aspects of the educational program should come within the purview of the entire school staff. Teachers should have greater opportunities to participate in decisions about classroom operations, including budgeting and space allocation, instructional methods and materials, the development of interdisciplinary themes, and the scheduling of classes. The council recommended the formation of building governance committees that would be responsible for coordinating and integrating all activities that occur in the school building and those that involve the school and community organizations.
 5. Teachers in middle-level grade schools should be specially selected and educated to teach young adolescents. The council recommended that middle-level teachers acquire an expertise in the area of adolescent development, that mentorship programs be encouraged, and that the certification of middle-level teachers be promoted.
 6. Students must be healthy in order to learn. The council recommended that every middle-level student should have access to a health coordinator who can provide limited medical screening and treatment. Schools should promote healthy environments, good nutrition, exercise, and athletic competition.
 7. Families and middle schools must be allied through trust and respect if students are to succeed in school. The council recommended that parents be given meaningful roles in the decisionmaking process concerning building-wide issues and problems, that parents be kept informed about the rules and procedures students will encounter, and that families be given opportunities to support learning at home and at school.

8. Schools and community organizations should share responsibility for each middle-level student's success. The council recommended that there be opportunities for youth services, that each student be given access to health and social services, that communities support the middle-level education program, that local non-profit agencies be used to augment the students' education, and that local clubs and organizations be used to provide career guidance to students.

At least 26 other states have begun to tailor the basic recommendations of the Carnegie Council to their individual needs.

The North Dakota Response

After publication of the Carnegie Council's report, the Superintendent of Public Instruction, together with the University of North Dakota, received a grant to examine the recommendations contained in the report. Former Governor Sinner appointed a state task force and the task force's findings were subsequently incorporated in a publication entitled *Bridges for Young Adolescents in North Dakota*.

The publication parallels the findings of the Carnegie Council and sets forth its own specific recommendations for families, communities, local school districts, middle-level educators, the Superintendent of Public Instruction, health and human service agencies, colleges and universities, and government in general.

As a result of the task force's findings, several schools were selected to begin implementation of the middle school concept and each year thereafter additional schools were added. Today, 24 schools in the state have implemented the middle school concept to some degree.

Testimony

The early adolescent years are crucial in determining the future of our young people. Early adolescence is a period of rapid growth, equaled only by infancy. Cognitive growth is equally dramatic and with it comes the capacity to think in more abstract and complex ways. An increased sense of self and an enhanced understanding of intimate relationships can also emerge during the years between 10 and 15.

While many children rise to meet their futures without significant problems, others find themselves unable to meet the requirements of the workplace, the commitments of relationships, and the responsibilities of participation in a democratic society. It is estimated that 25 percent of all adolescents are extremely vulnerable to multiple high-risk behaviors and school failure. Another 25 percent are moderately vulnerable.

Schools are the focal institution in prevention, in helping students to meet set levels of academic achievement, and in helping students gain access to social support and health programs. Middle schools traditionally report consistent academic improvement, increased teacher confidence, reduction in office referrals and suspensions, increases in students' emotional health and creativity, and confidence in self-directed learner outcomes.

During the past 25 years, the number of middle schools has increased by 216 percent, while the number of junior high schools has decreased. The primary difference between the two educational environments is the way students are treated. Because school staff have to understand what is and is not appropriate for students during their adolescent years, properly prepared teachers are essential to the overall success of the middle school concept. Thirty-eight states recognize the need for a separate certification category relating to middle school education and 11 of those states mandate middle-level certification for anyone teaching middle-level grades.

A middle school certification program is offered at the University of North Dakota. Most middle school teachers in the state, however, were trained to teach at the elementary or secondary level. A person with a major in elementary education and a minor endorsement can teach all subjects in grades 5 through 8 and a person with a secondary major and a minor or preparation equivalent to a minor can teach grades 7 and 8 in the areas of preparation. Grade 6 teachers are certified as elementary teachers, whereas teachers of grades 7 and 8 may be certified as elementary or secondary teachers. This is problematic because many middle schools include grades 5 through 9. In effect, teachers are not being appropriately prepared for employment in a system that encompasses elementary, middle school, and high school levels. With regard to teacher preparation, only a relatively small number of teachers pursue middle-level endorsements during their teacher preparation programs, and because only one percent of the state's teachers are first-year teachers, there should be a much more pronounced focus on teacher inservice programs.

Committee Considerations

The committee considered a bill draft that would have entitled each school district having a program-accredited middle school to receive an amount equal to seven percent of the contract salary payable to each full-time equivalent classroom teacher in the middle school program. The bill draft would have appropriated \$500,000 for this purpose and would have provided that one-half of the money is to be made available for distribution during each year of the biennium.

Proponents testified that this bill draft evidenced a legislative recognition that middle schools are viable alternatives to junior high schools and that in order to appropriately implement the middle school concept, additional funding is necessary. Merely providing incentive funding, however, could result in districts placing more effort on obtaining the funding rather than on implementing the middle school concept. Requiring that the middle school programs be accredited before providing any additional funds would ensure that there will be a mutual embrace of the middle school concept by teachers, administrators, and school boards.

Opponents testified that if the bill draft were approved, poor districts that could not afford to begin middle schools would lose their share of \$500,000 (\$4 per student) because that amount would otherwise have been placed in foundation aid.

The committee considered a bill draft that would have required the members of the Board of Higher Education, the Board for Vocational and Technical Education, and the Board of Public School Education to discuss at their annual joint meeting opportunities for the professional growth and development of elementary, middle school, and high school staff.

Proponents testified that the bill draft acknowledged the need for teacher inservice opportunities. Schools alone cannot absorb the costs of providing adequate programs. Teacher inservice needs must be defined and creative ways must be found to deliver the programs. One avenue within which conversations can be initiated and options explored is the annual meeting of the members of the Board of Higher Education, the Board for Vocational and Technical Education, and the Board for Public School Education.

The committee considered a resolution draft that would have directed the Legislative Council to study statutory and systemic changes necessitated by the implementation of the middle school concept.

Proponents said that the middle school concept needs to be statutorily recognized. North Dakota statutes refer only to elementary and secondary levels of education. At the very least, inserting references to middle schools could impact issues of school accreditation, teacher certification, minimum curriculum requirements, and the funding of education.

Opponents questioned whether middle schools and their effects should receive this attention when many small districts are occupied merely with trying to sustain themselves. Those districts may not share the enthusiasm for implementing a middle school concept, nor will they share the enthusiasm for funding a program that is not applicable to their school districts.

Recommendations

The committee recommends Senate Bill No. 2062 to appropriate \$500,000 to provide school districts with the equivalent of seven percent of the salaries payable to each full-time equivalent classroom teacher in each district's program-accredited middle schools.

The committee recommends House Bill No. 1046 to require the members of the Board of Higher Education, the Board for Vocational and Technical Education, and the Board of Public School Education to discuss at their annual joint meeting opportunities for the professional development of elementary, middle school, and high school staff.

The committee recommends Senate Concurrent Resolution No. 4006 to direct the Legislative Council to study statutory and systemic changes necessitated by the implementation of middle school concepts.

PLACEMENT OF STUDENTS WITH DEVELOPMENTAL DISABILITIES IN REGULAR CLASSROOMS STUDY

Background

Federal Law

On November 19, 1975, Congress enacted the Education for All Handicapped Children Act of 1975,

which has been the foundation for the provision of special education to children with disabilities in this country. In the Act, Congress enumerated these findings, which were reaffirmed by the 1991 amendment known as the Individuals with Disabilities Education Act:

1. There are more than eight million children with disabilities in the United States.
2. The special education needs of children with disabilities are not being fully met.
3. More than one-half of the children with disabilities do not receive appropriate educational services that would enable them to have full equality of educational opportunity.
4. One million of the children with disabilities are excluded entirely from the public school system and will not go through the educational process with their peers.
5. There are many children with disabilities participating in regular school programs and failing to have successful educational experiences because their disabilities are undetected.
6. Because of the lack of adequate services within the public school system, families are at times forced to find outside services, often at great distances from their residences and at their own expense.
7. Developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, state and local educational agencies can and will provide effective special education and related services to meet the needs of children with disabilities.
8. State and local educational agencies have a responsibility to provide an education for all children with disabilities, but present financial resources are inadequate to meet the special educational needs of children with disabilities.
9. It is in the national interest that the federal government assist state and local efforts to provide programs that meet the educational needs of children with disabilities and to assure equal protection of the law.

The stated purpose of the Act was to assure that all handicapped children have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist states and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.

The Act also provided federal funding to states for the provision of special education programs. To qualify for this federal assistance, however, a state had to demonstrate:

1. That the state had in effect a policy assuring that all handicapped children had a right to a free appropriate public education.
2. That the state had developed a plan with the goal of providing full educational opportunity to all handicapped children, a detailed timetable for accomplishing that goal, and a description in

detail of the kinds and number of facilities, personnel, and services necessarily existent throughout that state to meet that goal.

3. That the state would make available a free appropriate public education for all handicapped children between ages 3 and 18 within the state not later than September 1, 1978, and for all handicapped children between ages 3 and 21 within the state not later than September 1, 1980. With respect to handicapped children ages 3 through 5 and ages 18 through 21, the requirements of the latter clause would not be applied to a state if application of the requirements would be inconsistent with state law or practice, or the order of any court, respecting public education within such age groups in the state.
4. That all children residing in the state who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services would be identified, located, and evaluated, and that a practical method was developed and implemented to determine which children were currently receiving needed special education and related services and which children were not.

Although the Act did not in an absolute sense provide a substantive right for handicapped children to receive public education, by participating in the plan provided for under the Act and acquiring federal funds under the Act, a state became bound by the mandatory requirements of the Act. A state is not obligated to implement educational goals set forth in the Act if it chooses not to participate in the plan and the federal funding provided under it. Once having complied with the Act, however, a state is bound to ensure that all handicapped children within their boundaries are afforded a free appropriate public education concentrating on the unique needs of individual students, and the state must adhere to handicapped students' rights to a "free appropriate public education."

Inclusion in Special Education

Inclusion refers to the opportunity for all students to participate in the totality of the school experience. It includes integration into regular classrooms in neighborhood schools for both education and social opportunities. More than this, it means that children with developmental disabilities participate in or attend extra-curricular activities such as sports and school plays, eat and socialize with peers in the school lunchroom, and engage in other school activities from which they were often excluded.

Declaring that "inclusion is a right, not a privilege for a select few," a United States federal district court judge recently ordered a New Jersey school district to develop an inclusive education plan for an eight-year-old boy with severe intellectual and communication disabilities. In ordering an inclusive education plan for the child, the judge made several findings of fact regarding the education of children with special needs. Included in those findings were the following:

1. Children with special needs may be harmed by being placed in segregated classes, away from

friends and family, and surrounded by inappropriate role models;

2. Success in special schools and special classes is unlikely to lead children to function successfully either in integrated education settings or in the community; and
3. Children with disabilities need access to integrated experiences where they can learn to function effectively.

There are essentially six educational environments within which a student can be placed—the regular classroom, the resource room, the separate classroom, the separate school facility, the residential facility, and the homebound or hospital classroom. The rules that accompany the Individuals with Disabilities Education Act direct placement decisions. The rules require each state education agency to ensure:

1. That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
2. That special classes, separate schooling, or any other removal of children with disabilities from the regular educational environment occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved.

North Dakota Special Education Programs and Services

During the 1992-93 school year, 12,830 students with disabilities received special education services in the state. Of the total number of students with disabilities, 12,528 were served in public schools and 302 were served in state-operated programs, e.g., state schools and infant development programs. Students receiving services include the trainable mentally handicapped, educable mentally handicapped, deaf, hearing impaired, blind, vision impaired, seriously emotionally disturbed, orthopedically disabled, and those with speech or language difficulties and specific learning disabilities.

Special education services provided to these children included preschool programs for disabled children, occupational therapy, physical therapy, psychological services and testing, social work, and vocational special needs. These services were provided by the 31 existing special education units, as well as the Children and Adolescent Unit in Jamestown, the Developmental Center at Grafton, the School for the Blind, the School for the Deaf, the Department of Human Services infant development program, the Anne Carlsen School, Dakota Boys Ranch, VesslAmor in Jamestown, and the State Industrial School.

Teacher Preparation

The Superintendent of Public Instruction adopts the standards for approval of teacher education programs. A teacher education program involves the study of teaching and learning methods and is required to include:

1. A study of the principles of human growth and development and the relationship of teaching and learning theory to physical, social, intellectual, and emotional development;
2. A study of the research regarding teacher characteristics and behaviors as they affect learners;
3. A study of techniques for diagnosing learner capabilities and for designing instructional programs for all learners in the least restrictive environment; and
4. A study of the skills and strategies to be used in the classroom management of individuals and in the classroom management of small and large groups of students.

Teacher education programs leading to a major in special education must include:

1. A study of information, concepts, theories, problem-solving approaches, and value perspectives of the particular special education field of study for which endorsement is sought;
2. A study of curriculum development, methods, and special teaching techniques of the exceptional child endorsement area;
3. A study of recent research-based knowledge, concepts, and analytical perspectives of the exceptional child endorsement area;
4. A study of the social, cultural, philosophical, and humanistic dimensions of education;
5. A study of human development and learning psychology;
6. A study of the fundamental skills needed in the formal and informal assessment of an exceptional child's educational development;
7. A study of exceptional characteristics and how those characteristics affect the learning of exceptional children;
8. A study of referral services and agencies;
9. A study of ways to adapt the environment, equipment, or learning activities for specific student needs, ways to use current and emerging technologies in the exceptional child endorsement area, and ways to integrate the special education student into the general school organization;
10. A study of career and vocational guidance for the special education student; and
11. A study of national, state, and local laws, policies, and procedures affecting the special education student.

In addition, the program requires observation and classroom experience in the elementary school, secondary school, or preschool setting appropriate to the exceptional child endorsement area, full-time student teaching in the specific area and grade level of certification, competence in the development, implementation, and evaluation of a variety of instructional approaches for exceptional children, and experiences in communicating with parents and other professionals regarding the assessment of children and periodic reviews of their progress.

Testimony

The inclusion of students with developmental disabilities means their involvement in all aspects of

school life, alongside peers who do not have disabilities. This includes placement in regular education classes and participation in extracurricular activities. Whereas in the past, students with disabilities were considered “too handicapped” to be members of regular schools and classes, students with even the most severe disabilities are learning and growing up with classmates who do not have disabilities.

The goal of education is to prepare individuals to be contributing members of society and that inclusion affords those with or without disabilities the opportunity to develop the attitudes, values, and skills required to interact with one another as interdependent members of society. By attending their local schools, students with disabilities receive their instruction in the communities where they live. They can practice their skills in the actual community settings where they are needed, and they can gain familiarity with, and develop a sense of belonging to, the locale.

Students with disabilities who are placed in regular classrooms have an environment in which to grow socially and academically. Peers are often the best models and teachers of many socially valued behaviors and in mixed settings, students with disabilities have opportunities to learn many things from their nondisabled friends, including mobility and vocational, social, and communicatory skills. The exposure to a wide range of activities, people, environments, and ideas offers students who are disabled the same experiences once reserved for the nondisabled.

By having students who are disabled in regular classrooms, nondisabled peers learn to develop their skills in dealing with others who are different from themselves. The placement of students with disabilities in the regular classroom also affords students with and without disabilities the opportunity to become friends. Relationships that are developed during school years will take on added importance in the future as the students reach adulthood and become coworkers and fellow members of their communities.

Despite the benefits of inclusion, its acceptance and promotion becomes hampered by the financial burden that school districts face in the provision of special education as a whole. Although the federal and state governments fund a portion of the per student cost of special education, the greatest cost absorption takes place by individual school districts. School districts also bear incidental costs, e.g., when the need for wheelchairs or other adaptive equipment necessitate changes in the use of space and when the demands of students who are disabled affect the amount of time a teacher can expend to meet the needs of disabled and nondisabled students. Not only must school districts deal with the need for appropriate teacher education to ensure the delivery of necessary services to special needs students, they must also supply sufficient staff to ensure the safety and well-being of all students.

When students with disabilities are educated in regular classrooms, special educators provide support to the regular classroom teacher. As a result, students are allowed to learn and otherwise benefit from the expertise of regular and special educators.

However, regular education teachers, especially those who received their teacher training a number of years ago, find themselves ill-equipped to provide the special services required by some students with disabilities. The need for continued cooperation and collaboration between regular and special educators was stressed, as was the need of regular classroom teachers to have teacher inservice training available so that their skills can be advanced and honed.

The changing scope of education is constantly placing new academic and pedagogical demands on teachers. Teacher education is a four-year university program and any additions to the curriculum raises concerns about the ability of prospective teachers to complete the program within that timeframe. Extending the teacher training curriculum to five years is not considered to be a viable option given the status of teacher salaries, and especially beginning teacher salaries, in the state.

As the use of inclusive techniques increases, so does the need to prepare teachers from a pedagogical aspect. This preparation would benefit new teachers and experienced teachers who may not have been thoroughly exposed to the wide variety of teaching methods and concepts when they received their formal education. One method of preparing teachers involves teacher inservice training programs. The institutions of higher education could be intimately involved in the provision of teacher inservice training programs. This could take place if the school districts adequately define their needs, both short-term and long-term, through school district development plans.

Committee Considerations

The committee considered a bill draft that would have added additional statements of legislative intent regarding special education. The bill draft would have set forth the legislative belief that children are entitled to be educated in the least restrictive environment and would have incorporated the federal definition of a least restrictive environment.

Proponents testified that the bill draft affirmed federal legislation and encouraged a return to a unified system of education in which all students are educated in their neighborhood schools. The bill draft did not sanction the maintenance of a continually disruptive student in a regular classroom, if attempts at using appropriate aids and supplemental services to reduce the disruptions have been unsuccessful. Federal law further guards against the inappropriate placement of students with disabilities by mandating that placement decisions be based on a student's individualized education plan, and that placement decisions be made by a team of knowledgeable individuals, including the child's parents.

The committee considered a bill draft that would have directed the Superintendent of Public Instruction to distribute to school districts all moneys appropriated for special education each biennium, less \$12 million, according to the number of students each district has in average daily membership. The \$12 million would have been set aside by the Superintendent of Public Instruction for the payment of statutory placement contract obligations.

There are approximately 13,000 special needs students in the state and for the 1993-95 biennium \$33.5 million was appropriated for special education. Most of this amount is used for high cost special needs students.

Proponents testified that the moneys distributed to districts for special education services are not adequate; that the method by which those moneys are distributed leaves school districts without flexibility in regard to how those moneys are applied; that 10 percent of special needs students receive 70 percent of the funding and even though the remaining moneys constitute a small percentage of the costs absorbed by districts, allowing districts to anticipate accurately the moneys that they are likely to receive will help in their planning and budgeting processes; and that if the school districts' share of special education dollars is distributed on a per student basis like foundation aid, it would amount to an equitable distribution of available state dollars.

Opponents testified that distributing dollars on a per student basis would mean that school districts that receive little or no foundation aid would consequently receive little or no special education funds; and that a school district not having special needs students or having a low percentage of special needs students would receive dollars for services that are not being provided, whereas a school district having a high percentage of special needs students would be required to offer services with even fewer reimbursement dollars than it now receives.

The committee considered a bill draft that would have required each school district superintendent to develop a long-range professional growth and development plan for the district. The plan would have been required to include academic and pedagogical training components as well as a needs assessment, and address methods by which the training would be extended to the parents and families of students enrolled in the district. The Superintendent of Public Instruction would have been required to issue guidelines for the development and updating of plans. The Superintendent of Public Instruction would have been authorized to withhold foundation aid from any district that did not file an initial plan or an updated plan every five years.

Proponents testified that even though the state accreditation system requires districts to have long-range inservice plans, the point system by which schools are rated allows schools to acquire the necessary minimum scores without meeting the inservice requirement. The bill draft would make long-range inservice plans mandatory.

Opponents testified that districts recognize the importance of teacher inservice activities; that districts are doing what they can, but money is the major deterrent to further progress in this area; that the bill draft was not clear with respect to the obligations being placed on school districts; that the bill draft amounted to another mandate that will have financial implications for school districts; and that requiring the Superintendent of Public Instruction to withhold foundation aid is too serious a penalty.

The committee considered a resolution draft that would have urged the institutions of higher educa-

tion offering teacher preparation programs to encourage collaboration and consultation within their individual institutions, the university system as a whole, the communities they serve, and with the Education Standards and Practices Board. The draft also would have encouraged those institutions offering administrator preparation programs to ensure that their students study state and federal laws relating to education, methods by which long-range plans for professional growth and development can be made, and ways in which effective services can be provided to all students.

Proponents testified that the resolution draft recognized the need for a variety of entities to work collaboratively to develop and maintain teacher preparation programs that meet current and future needs.

The committee considered a resolution draft that would have directed the Legislative Council to study the delivery of, and costs associated with, professional growth and development plans for teachers.

Proponents testified that the resolution draft enunciated a legislative recognition of the fact that it is the state's duty to ensure the availability of appropriate professional growth and development opportunities for teachers.

Recommendations

The committee recommends House Bill No. 1047 to add additional statements of legislative intent to the statutory language regarding special education. The bill sets forth the legislative belief that children are entitled to be educated in the least restrictive environment and incorporates the federal definition of a least restrictive environment. The committee determined that this bill is a way to reaffirm the state's acceptance of federal legislation regarding the education of students with disabilities.

The committee recommends Senate Bill No. 2063 to direct the Superintendent of Public Instruction to distribute to school districts all moneys appropriated for special education, less \$12 million, according to the number of students each district has in average daily membership. The \$12 million is to be set aside by the Superintendent of Public Instruction for the payment of statutory placement contract obligations. This method of distributing moneys would enable school districts to know in advance what amount they could expect and would ensure the equitable distribution of additional education moneys.

The committee recommends House Bill No. 1048 to require each school district superintendent to develop a long-range professional growth and development plan for the district. The committee determined that the growth and development of school district staff, through the provision of inservice programs, is in the best interest of both staff and students. If districts have specific plans, steps could be taken to provide programs collaboratively with other school districts and with the institutions of higher education.

The committee recommends House Concurrent Resolution No. 3007 to urge the institutions of higher education offering teacher preparation programs to encourage collaboration and consultation. The resolution recognizes the need for all entities to work

together to develop and maintain teacher preservice and inservice programs.

The committee recommends Senate Concurrent Resolution No. 4007 to direct the Legislative Council to study the delivery of, and costs associated with, professional growth and development plans for teachers. A focus is being placed on the role of teacher inservice programs in the educational process and a study will allow exploration of the state's role and obligation with respect to the continuing education of teachers.

VISION SERVICES STUDY

Background

Nationally, 17.3 people per thousand have substantial visual impairment. In North Dakota, 19.4 people per thousand or approximately 12,400 people have substantial visual impairment. A number of factors contribute to this statistical result.

Diabetes is a leading cause of blindness in people under age 50 and the second leading cause of blindness in people over age 50. North Dakota has the highest per capita rate of diabetes. Multiple sclerosis also often results in blindness. The northeastern region of the state has the highest incidence of multiple sclerosis in the world. Furthermore, the incidents of visual impairment among American Indians is higher than that in the general population and the state has a significant American Indian population. Finally, macular degeneration is the most common cause of visual impairment in persons over age 60. Macular degeneration has been found to occur among those of Norwegian descent at twice the rate that it occurs in other ethnic groups and the state has high numbers of Norwegian descendants.

Federal Statutory Provisions

Federal legislation relating to persons who are blind or visually impaired has its roots in the previous century. However, most of the enactments date from the post-World War II era. It is these statutes that have had a profound impact on services for the blind and visually impaired.

Vocational Rehabilitation

The Rehabilitation Act of 1973 and later amendments require state vocational rehabilitation agencies to give special emphasis and priority to serving the severely handicapped. The Act defines "handicapped individual" as any individual who (1) has a physical or mental disability that for that individual constitutes or results in substantial handicap to employment; and (2) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services. The Act also defines "severe handicap" as a disability that requires multiple services over an extended period of time and results from blindness.

State vocational rehabilitation services are derived primarily from the Act and can include medical evaluations; evaluations of vocational potential; training and placement needs; medical, surgical, psychiatric, and hospital care if needed to maintain or secure employment; artificial limbs, braces, wheel-

chairs, and visual aids if necessary for work; reader services for blind persons; telecommunications; sensory and other technological aids and devices; tuition and fees, books, and supplies at universities, colleges, and commercial and trade schools; on-the-job training; job placement equipment; and individual guidance and counseling, coordination, or services, and followup activities. Although there is no age limitation, most vocational rehabilitation clients are age 16 and older.

The Act also authorizes formula grants to state vocational rehabilitation agencies providing comprehensive independent living services and further provides independent living services for persons over age 55 whose visual impairment is severe enough to make gainful employment extremely difficult but for whom independent living goals are feasible. These services include outreach services, surgical or therapeutic treatment, eyeglasses and other aids, mobility training, and guide and reader services.

Education

The first legislation providing aid from the federal government was approved on March 3, 1879, under the title "an Act to Promote the Education of the Blind." This law set up a perpetual trust fund and provided grants each year to the American Printing House for the Blind in Louisville, Kentucky. The conditions were that the superintendents of the country's various tax-supported schools for the blind would become ex officio members of the board of trustees of the printing house and that the books and tangible apparatus equivalent in value to the governmental grant would be distributed among the schools for the blind in proportion to their student enrollments. Since 1879, the American Printing House for the Blind has provided Braille textbooks and other materials to rehabilitation schools. An important change was made in 1956 when the law was amended to authorize the wider distribution of books and other special instructional material for the blind.

In 1975 the federal government passed Public Law 94-142—the Education for All Handicapped Children Act. This Act and its subsequent amendments is now referred to as the Individuals with Disabilities Education Act. The Act mandated certain procedures and policies to be carried out by the various states in order to ensure a free and appropriate education for all handicapped children, including visually impaired and blind children. An appropriate education has been defined as including not only the teaching of academics and vocational skills, but also nonacademic skills, e.g., self-help, socialization, independent living, orientation and mobility training, and play and recreation.

Vending Facilities

The Randolph-Sheppard Vending Act of 1938, as amended, authorized a program designed to provide gainful employment, enlarge the economic opportunities of the blind, and assist the blind in making themselves independent by operating vending facilities on federal and nonfederal property. The original Act made surveys of concession stand opportunities and authorized vending facility operation by blind

persons in federal and nonfederal buildings at the discretion of the department or agency having control of the building. In 1974 amendments strengthened this part by specifying that any limitation on the placement or operation of a vending facility be based on a finding that placement or operation would adversely affect the interests of the United States.

Transportation

In 1927 Congress passed an amendment to the Interstate Commerce Act stating that nothing in the Act should be construed to prohibit any common carrier from carrying any totally blind person accompanied by a guide at the usual and ordinary fare charged to one person. In 1937 Congress passed another amendment to the Interstate Commerce Act which added seeing eye and other guide dogs to the above provisions.

The Urban Mass Transit Act was amended in 1970 to require eligible local jurisdictions to plan and design mass transportation facilities and services so that they would be available to elderly and handicapped persons. The Act was amended in 1974 to require that the fares charged elderly and handicapped persons during nonpeak hours did not exceed one-half the rate for other persons during peak hours.

The Air Carrier Access Act of 1986 prohibited discrimination against handicapped individuals in the provision of air transportation.

Library Service

Under legislation initially enacted by Congress in 1904, the Library of Congress makes available free Braille and recorded materials to blind and physically handicapped persons. The program, now called the National Library Service for the Blind and Physically Handicapped, distributes full-length books and magazines in Braille and on recorded discs and cassettes through a cooperative network of regional and local libraries. Materials are circulated free of charge to eligible borrowers. Eligibility for this service is extended to anyone who is unable to read or use standard print materials as a result of temporary or permanent visual or physical limitations.

The Library of Congress through its Division for the Blind is responsible for providing books to the blind. To carry out the program, the division has selected libraries on the condition that these libraries circulate books for the blind over designated areas, regardless of whether the areas extend beyond the taxing unit supporting the library. Because of the relatively small number of blind readers in each area, most books are circulated by mail. An amendment to the United States postal laws provided that these books may be sent to blind readers without postage.

North Dakota Statutory Provisions

In 1967 the Legislative Assembly enacted two policy statements regarding blind and visually impaired persons in the state. The first provided that it "is the policy of this state to encourage and enable the blind, the visually handicapped, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in

remunerative employment." The second provided that it "is the policy of this state that the blind, the visually handicapped, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless the particular disability prevents the performance of the work involved."

North Dakota legislative enactments pertaining to persons who are blind cover such varied areas as the taking of big game; making it a misdemeanor for any person to deny or interfere with a blind or partially blind person's right to be accompanied by a guide dog in places of public accommodations, common carriers, facilities of a health care provider, and all other places to which the public is generally invited; and exempting from taxation certain property owned and occupied as a home by a blind person.

North Dakota Services

Department of Human Services

From birth through age 2, a child who is blind or visually impaired may receive early intervention services through the Department of Human Services by participating in infant development programs such as the Bismarck Early Childhood Education Program. Services offered by these programs include in-home assistance, parent training, occupational therapy, physical therapy, and speech therapy. Beginning at age 3, a child falls within the statutory definition of an "exceptional child" and can be transitioned into educational services. Although the education of an exceptional child is statutorily provided for through age 21, another transition phase generally begins around the time a child reaches age 14. This phase involves the Superintendent of Public Instruction and the Vocational Rehabilitation Division of the Department of Human Services and focuses more strongly on preparations for life outside of the school system.

Vocational Rehabilitation Division

The Vocational Rehabilitation Division of the Department of Human Services is authorized to establish two teaching positions and one half-time supervisory position for the rehabilitation of blind and visually impaired persons. Each teacher provides rehabilitation teaching services that may include evaluation, counseling, adjustment training, communication, mobility, and other related services to blind and visually impaired citizens, nursing homes, intermediate care facilities, senior citizen centers, and other facilities in which one may find blind or visually impaired individuals. Rehabilitation teachers may provide aids and appliances, as well as assistance with meal planning, medication management, transportation needs, recreational and social needs, and orientation to blindness instruction for those working directly with or otherwise involved in daily activities of the blind and visually impaired, including home health aides, homemakers, senior companions, the staff of nursing homes,

other professionals, paraprofessionals, and family members.

Public Schools

At one time, the education of blind or visually impaired children was thought to require enrollment at the School for the Blind. However, with Public Law 94-142—the Education for All Handicapped Children Act—and its subsequent amendments, alternative educational opportunities have been made available.

Public Law 94-142 assures that all handicapped children have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs. Most importantly, it requires that, to the maximum extent possible, disabled children be educated with children who are not disabled and if this is not possible, then it requires that the disabled children be educated in the least restrictive environment. For 141 blind or visually impaired students, the least restrictive environment has been deemed to be the state's public school system. These students are served by 7.5 certified vision teachers whose primary responsibilities include coordinating curricula and assisting regular classroom teachers in accommodating the special needs of these students.

Short-term arrangements such as summer adventure camps help to supplement the services provided by the public school system and allow for the social interaction and networking with other individuals similarly situated.

School for the Blind

The purpose of the North Dakota School for the Blind is to provide blind and visually impaired children with an appropriate education in their home state, rather than requiring their attendance at an out-of-state school. Beginning with seven students, the school was first established at Bathgate, North Dakota. In 1963, following a vote of the people, the school was moved to its present location on a 10-acre site at the northern boundary of the University of North Dakota in Grand Forks.

Students who are considered for admission are those who have a visual acuity of 20/70 or less in their better eye following the best possible correction, those who in the opinion of an ophthalmologist are visually impaired, those who have a visual field of less than 20 degrees regardless of their visual acuity, those who are totally blind, and those who have multiple handicaps in addition to their visual impairments.

In order to be admitted, students must be referred by their local education agencies and must generally undergo a two-day evaluation by personnel at the school. The findings of the evaluation and the recommendations are presented to a placement committee, which normally consists of the child's parents, representatives of the local education agency, developmental disabilities, and the School for the Blind staff.

The School for the Blind offers individualized programs of instruction to each of its students in one of four educational tracts—preschool, multiple-handicapped, prevocational, and academic. The academic

program leads to a high school diploma for students working at grade level. These students have the opportunity to attend local schools on a part-time basis and to participate in a wide variety of academic classes, while returning to the School for the Blind to receive special classes and support services. Students unable to complete the requirements for a diploma follow a nongraded program emphasizing life and work skills. Special instruction is provided in orientation and mobility, activities of daily living, prevocational and vocational education, adaptive physical education, and apartment living.

Because many of the students have serious medical, emotional, and physical limitations that must be addressed before they can take full advantage of the educational opportunities provided, the school also offers a fully equipped health center; occupational, physical, and speech therapy; audiology services; psychology services; speech and language pathology; low vision services; and social work services.

The School for the Blind is accredited by the National Accreditation Council of Agencies Serving the Blind and the Visually Impaired, the North Central Association of Elementary and Secondary Schools, and the Superintendent of Public Instruction. It also serves as an instructional resource center to help meet the needs of each visually impaired child enrolled in public school programs throughout the state. Requests for service are handled on a referral basis according to the availability of time and staff. All students served through the outreach program must be registered at the School for the Blind to be eligible for materials from the American Printing House for the Blind, which is the resource center for much of the material.

The services made available by the School for the Blind outreach staff include:

1. The provision of resource material to local education agencies, parents, and other governmental entities;
2. The provision of onsite evaluations and assistance with individualized education program plans;
3. The provision of direct services to students enrolled in public school programs, including the provision of Braille, large print, recorded material, and other specialized equipment; and
4. The provision of consultative services with classroom teachers regarding teaching adaptations and methods of using electronic aids, computers, and software.

Talking Book Program

North Dakota participates in the National Library Service program for visually and physically disabled persons who cannot use standard print library materials. The program, which is administered by the Library of Congress, makes available full-length books and some magazines on recorded discs and tape cassettes and in Braille. The collections consist of recreational and informational reading for adults and children.

Dakota Radio Information Service

Dakota Radio Information Service is a closed cir-

cuit radio reading and information service for visually, physically, and learning disabled people who cannot effectively read standard print. It is broadcast from studios at the North Dakota State Library and transmitted over the microwave facilities of Prairie Public Broadcasting. Subcarrier receivers are necessary to hear the signal. The receivers are provided free of charge to those who need them.

Testimony and Committee Considerations

Visually impaired state residents, whether children or adults, need to have available a continuum of services to ensure that the ultimate goal of independent living can be reached, or at least approached. In addition to a continuum of services, visually impaired persons need overlapping services. In the case of children who are visually impaired, an inclusive education can be provided through the public school system. However, these children often require more services than a public school has the ability to offer.

Eighty-five to 90 percent of all learning is done visually. A visually impaired student must learn to enhance listening skills. In addition, visually impaired students need to receive mobility training and become familiar with typing and computer technology. They need to acquire Braille skills and they need to receive training in social and daily living skills. Even if a school does have access to a vision teacher, that teacher's time is largely dedicated toward the adaptation of classroom materials.

Testimony indicated that it is very important to maintain a center such as the School for the Blind. Even if children are not placed there as full-time residents, they need this type of center to enhance training that is not being offered through the public school system. Most of all, they need to occasionally get together with other students in a like situation and share, in a social setting, the aspects of visual impairment which are not understood by others not so situated.

Testimony also indicated that some people believe if full inclusion is advocated and provided, the need for residential-based schools such as the School for the Blind will dissipate. Residential programs have always been expensive and when children with multiple disabilities, in addition to blindness, need to be accommodated, the price per student rises dramatically.

Centers such as the School for the Blind are equally important in the education and support of visually impaired adults. Not only is the school a base for outreach activities, but it also functions as a center where adults who find themselves with sudden or rapidly deteriorating vision loss can go to learn or hone those skills that will be necessary to their independent living and future employment.

The committee considered a bill draft that would have made school districts responsible for some of the costs associated with sending a student to the School for the Blind, the School for the Deaf, and the State

Industrial School. School district liability for costs would have been limited to 2.5 times the per student cost of education, as it is with other special needs students.

Federal law requires school districts to educate disabled students in the least restrictive environment. Proponents testified that the least restrictive environment is most often the student's neighborhood school. The bill draft was supported as a means to encourage school districts to educate disabled students in their neighborhood schools by making districts financially responsible for 2.5 times the per student cost of education if the student is placed in a residential facility.

Opponents testified that if districts were required to pay up to 2.5 times the average cost of education per student for a student placed at a state residential facility, school districts would make fewer referrals and decisions regarding the education of children would become financially driven. It was also suggested that the ability of the School for the Blind to continue serving as the state's resource and training center for the visually impaired would be placed in jeopardy.

With respect to the School for the Deaf, opponents of the bill draft testified that the bill draft had nothing to do with the placement of a student in the least restrictive environment and everything to do with money. Many hearing-impaired students participate in the public school system but ensuring their ability to do so will not necessarily ensure that their needs will be adequately met in their home communities. Deafness requires a learning process quite different from other disabilities. Students who are deaf at an early age have to learn a language without hearing it and without having a language structure on which to build. Opponents also testified that even though the public system is capable of mainstreaming or including deaf children, it is not capable of ensuring adequate social development. Other children may try to learn sign language, but it is rarely to the point of being fluid. As a result, instead of feeling included, a hearing-impaired child often feels socially isolated without friends or shared activities.

With respect to the State Industrial School, proponents testified that if school districts were forced to absorb some of the costs associated with the education of students at the school, schools might take greater responsibility for their students.

Opponents testified that school districts do not have any control over the placement of students at the State Industrial School and that to hold them responsible could be likened to holding cities financially responsible for the costs of incarcerating prisoners from those cities.

Conclusion

The committee makes no recommendation regarding its study of services to blind and visually impaired children and adults.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. Under North Dakota Century Code (NDCC) Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs and health and retiree health plans of public employees. The committee is allowed to solicit draft measures from interested persons during the interim and is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review. A copy of the committee's report must accompany any measure or amendment affecting a public employees retirement program, health plan, or retiree health plan which is introduced during a legislative session. The statute provides that any legislation enacted in contravention of these requirements is invalid and benefits provided under that legislation must be reduced to the level in effect before enactment.

Committee members were Representatives Art Goffe (Chairman), Dan J. Austin, Rick Clayburgh, Carolyn Nelson, and Rich Wardner and Senators Bonnie Heinrich, Dan Jerome, Karen K. Krebsbach, and Elroy N. Lindaas.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

CONSIDERATION OF RETIREMENT, HEALTH PLAN, AND RETIREE HEALTH PLAN PROPOSALS

The committee established April 1, 1994, as the deadline for submission of retirement, health, and retiree health proposals. The deadline provided the committee and the consulting actuary of the affected retirement, health, and retiree health programs sufficient time to discuss and evaluate the proposals. The committee allowed only legislators and those agencies entitled to the bill introduction privilege to submit retirement, health, and retiree health proposals for consideration.

The committee reviewed each submitted proposal and solicited testimony from proponents; retirement, health, and retiree health program administrators; and other interested persons. Under NDCC Section 54-35-02.4, each retirement, insurance, or retiree insurance program is required to pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program. The committee referred every proposal submitted to it to the affected retirement, insurance, or retiree insurance program, which was requested to authorize the preparation of actuarial reports. The Public Employees Retirement System used the actuarial services of the Segal Company in evaluating proposals that affected retirement and retiree health programs, and the actuarial services of William M. Mercer, Inc., in

evaluating proposals that affected the public employees health insurance program. The Teachers' Fund for Retirement Board used the actuarial services of the Wyatt Company in evaluating proposals that affected the Teachers' Fund for Retirement. The committee obtained written actuarial information on each proposal.

In evaluating each proposal, the committee considered the proposal's actuarial cost impact; testimony by retirement, health insurance, and retiree health insurance 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, unfavorable recommendation, or no recommendation.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to the proposal and delivered to its sponsor. Each sponsor is responsible for securing introduction of the proposal in the 1995 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 1.55 percent of final average salary times the number of years of teaching service. 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 which is equal to at least 85. The plan provides for a minimum benefit for a full-time member who retired on July 1, 1993, or later of \$10 per month per year of teaching for the first 25 years of service and \$15 per month of teaching credit for service over 25 years.

Postretirement adjustments were provided by the Legislative Assembly in 1983, 1985, 1987, 1989, 1991, and 1993. 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 the amount computed by the retirement formula without consideration of age or the amount computed by the retirement formula without consideration of age but assuming the member had 20 years of credited service.

The teacher and the teacher's employer each contribute 6.75 percent of covered salary to the plan. Employers are permitted to pay the employees' 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, 1994. According to the report, on that date the fund had total assets with an actuarial value of approximately \$606.8 million and a market value of approximately \$649.3 million. Total active membership was 9,653 and total membership was 15,153. The report indicated that an employer contribution of 6.42 percent of projected fiscal 1994 compensation is necessary to meet the normal cost and payment of unfunded liability. This results in an actuarial margin of .33 percent, the difference between the indicated required employer contribution and the expected employer contributions of 6.75 percent.

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. 57

Sponsor: Senator Bonnie Heinrich

Proposal: Implement a rule of 80 for establishing eligibility for retirement benefits under the Teachers' Fund for Retirement.

Actuarial Analysis: The reported actuarial cost of the proposal is 1.07 percent of total covered compensation.

Committee Report: Unfavorable recommendation because the available margin is not sufficient to fund the proposal.

Bill No. 115

Sponsor: Board of Trustees

Proposal: Increase benefit multiplier from 1.55 percent to 1.75 percent; provide that retirement benefits must begin no later than April 1 of the calendar year following the year the member attains age 70.5 or April 1 of the calendar year following the year the member terminates covered employment, whichever is later; and provide a postretirement benefit increase of \$3 per month times years of service for individuals who retired before 1980, \$2.50 per month times years of service for individuals who retired after 1979 and before 1984, and \$1 per month times years of service for individuals who retired after 1983 and who retire before July 1, 1995, or 10 percent, whichever is greater. The committee amended the proposal at the request of the board to remove the provision providing that retirement benefits must begin no later than April 1 of the calendar year following the year the member attains age 70.5 or April 1 of the calendar year following the year the member terminates covered employment, whichever is later.

Actuarial Analysis: The reported actuarial cost of the ad hoc increase for retirees and beneficiaries is 1.10 percent of total covered compensation. The reported actuarial cost of increasing the multiplier applicable to the Teachers' Fund for Retirement from 1.55 percent to 1.75 percent is 2.92 percent of

total covered compensation.

Committee Report: Unfavorable recommendation on the proposal as amended because the available margin is not sufficient to fund the proposal and the board withdrew its support for the proposal.

Bill No. 116

Sponsor: Board of Trustees

Proposal: Provide that a teacher's salary for purposes of calculating benefits under the Teachers' Fund for Retirement may not exceed federal limits; delete the provision allowing the superintendent and assistant superintendent of the Developmental Center at Grafton to participate in the Teachers' Fund for Retirement; provide that the executive director and professional staff of the North Dakota Education Association, the professional staff of the North Dakota High School Activities Association, and the executive director and professional staff of the North Dakota Council of School Administrators must be members of the Teachers' Fund for Retirement on July 1, 1995, to participate in the Teachers' Fund for Retirement; delete the requirement that the Teachers' Fund for Retirement be required to prepare a voucher and submit the voucher to the Office of Management and Budget to expend money for administrative purposes; delete the requirement that if a member elected a disability annuity under an option allowed under NDCC Section 15-39.1-16, the subsequent retirement benefit must also be calculated under that option; provide that a member may elect to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member for withdrawals taken after January 1, 1993; and provide that active teachers who are elected president of a professional educational association may purchase service credit under the Teachers' Fund for Retirement. The committee amended the proposal at the request of the board to include a provision that retirement benefits must begin no later than April 1 of the calendar year following the year the member attains age 70.5 or April 1 of the calendar year following the year the member terminates covered employment, whichever is later.

Actuarial Analysis: The proposal has no actuarial impact on the Teachers' Fund for Retirement.

Committee Report: Favorable recommendation.

Bill No. 124

Sponsor: Senator Bonnie Heinrich

Proposal: Provide that persons receiving monthly benefits from the Teachers' Fund for Retirement are entitled to receive a monthly credit toward hospital and medical benefits coverage of \$2.50 multiplied by that person's years of service, funded from a general fund appropriation. The committee amended the proposal at the request of the sponsor to remove the general fund appropriation and

include an employer contribution of one percent of payroll to fund the prefunded retiree health benefits program for teachers.

Actuarial Analysis: The proposal has no actuarial impact on the Teachers' Fund for Retirement because the proposal is funded from employer contributions. A \$2.50 credit would require an employer contribution rate of .94 percent.

Committee Report: No recommendation because of the unavailability of information concerning utilization and savings that may result from higher compensated employees taking advantage of the teachers' retiree health benefits program to retire and being replaced by lower compensated employees.

Bill No. 136

Sponsor: Representative Rich Wardner

Proposal: Provide that the purchase cost of credit under the Teachers' Fund for Retirement must be on an actuarial equivalent basis based upon the current salary of the teacher, as provided under current law, or the average salary of all contributors during the period for which the teacher desires to purchase credit, whichever salary is lower.

Actuarial Analysis: The actuary reported that it could not determine the actuarial cost of the proposal because information on the amount of service that may be purchased under the proposal is not readily available, but the proposal would impose a real, even though small, cost on the Teachers' Fund for Retirement.

Committee Report: Unfavorable recommendation because although the cost cannot be calculated it would have a negative impact on the fund and may jeopardize the qualified status of the plan.

Public Employees Retirement System

The Public Employees Retirement System is governed by NDCC Chapter 54-52 and includes the Public Employees Retirement System main system, judges' retirement system, National Guard retirement system, Highway Patrolmen's Retirement System, and retiree health benefits fund. The plan is supervised by the retirement board and covers most employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 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 retirement board also administers the uniform group insurance, life insurance, flexible benefits, deferred compensation, and NDCC Chapter 27-17 judges' retirement programs. The NDCC Chapter 27-17 judges' retirement program is being phased out of existence except to the

extent its continuance is necessary to make payments to retired judges and future payments to judges serving on July 1, 1973, as required by law.

The plan provides for participating members other than judges to receive a retirement benefit of 1.74 percent of final average salary times the number of years of service. For judges, the normal retirement is 3.50 percent of final average salary times the first 10 years of judicial service, 2.25 percent of final average salary for the next 10 years, and 1.25 percent for service after 20 years. 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 88. 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. Disability benefits are calculated at 25 percent of the member's final average salary with a minimum monthly disability retirement benefit of \$100.

The employer contributes 4.12 percent of covered salary to the plan and the employee contributes four percent. 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 1989 Legislative Assembly established a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for 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 employer contribution under the Public Employees Retirement System was reduced from 5.12 percent to 4.12 percent and under the Highway Patrolmen's Retirement System from 17.70 percent to 16.70 percent or one percent of the monthly salaries or wages of participating members, including participating Supreme Court and district court judges, and those moneys were redirected to the retiree health benefits fund.

The latest available report of the consulting actuary is dated July 1, 1994. According to the report, on that date the Public Employees Retirement System had net assets with an actuarial value of \$547,153,419 and a market value of \$559,796,086. Total active membership was 14,992 (14,931 persons other than judges or National Guard security officers or firefighters, 28 judges, and 33 National Guard security officers or firefighters). The report indicated that an employer contribution of 4.12 percent of projected fiscal 1994 compensation is necessary to meet the normal cost associated with nonjudge members. This means statutory contributions are expected to meet the actuarial requirements of the Public Employees

Retirement System and there is no margin available in the main system.

The report for the judges' retirement system indicated that an employer contribution of 6.68 percent of payroll is required to fund the system. The statutory employer contribution rate is 12.52 percent of salary. This results in an actuarial margin of 5.84 percent of total covered compensation.

The report for the National Guard retirement system indicated that an employer contribution of 7.38 percent of payroll is required to fund the system. The contribution rate set by the retirement board is 7.70 percent of salary. This results in an actuarial margin of .32 percent of total covered compensation.

The latest available report of the consulting actuary for the Highway Patrolmen's retirement fund is dated July 1, 1994. According to the report, on that date the Highway Patrolmen's retirement fund had net assets with an actuarial value of \$18,260,253 and a market value of \$19,506,290. Total active membership was 109 and an employer contribution of 14.92 percent of payroll is necessary to meet the normal cost of the Highway Patrolmen's retirement fund. The statutory contribution rate is 16.70 percent of payroll. Thus, the actuarial margin is 1.78 percent of payroll.

The latest available report of the consulting actuary for the retiree health benefits fund is dated July 1, 1994. According to the report, on that date the fund had net assets with a market value of \$8,099,471. Total active membership was 15,101 (6,306 men and 8,795 women). An employer contribution of .95 percent of payroll is required to fund the plan. The statutory contribution rate is 1.00 percent of payroll. This results in an actuarial margin of .05 percent of payroll.

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:

Public Employees Retirement System Main System

Bill No. 24

Sponsor: Representative Rich Wardner

Proposal: Provide that a member whose improperly credited service under the Public Employees Retirement System was reduced by the retirement board between August 31, 1989, and July 1, 1991, is entitled to regain that service upon documentation of the loss to the board.

Actuarial Analysis: The reported actuarial cost impact of the proposal is minimal.

Committee Report: Unfavorable recommendation because of the concern of establishing a precedent for granting credit for service that is not eligible under the Public Employees Retirement System.

Bill No. 32

Sponsor: Senator Bonnie Heinrich

Proposal: Implement a rule of 85 for calculating

normal retirement date under the Public Employees Retirement System.

Actuarial Analysis: The reported actuarial cost impact is .38 percent of covered payroll for the Public Employees Retirement System main system and .09 percent of covered payroll for the judges' retirement system.

Committee Report: Unfavorable recommendation because of the lack of a funding mechanism in the proposal and because there is no margin available to fund the proposal.

Bill No. 125

Sponsor: Retirement Board

Proposal: Increase the benefit multiplier from 1.74 percent to 1.80 percent; allow a participating member who is a vested permanent employee to purchase credit to enable the member to qualify for normal retirement date; provide a prior service retiree adjustment of 3.45 percent of the present benefit; provide a disability adjustment for participants who became eligible for disability retirement benefits after June 30, 1981, of 6.45 percent of the present benefit for participants receiving disability retirement benefits; and allow a member to convert unused sick leave to credit in the retirement system. The committee amended the proposal at the request of the board to delete the increase in the benefit multiplier; to delete the prior service retiree adjustment; to delete the disability adjustment; to provide that payment of the account of a vested member who dies before retirement to a surviving spouse must be calculated as if the deceased member were of normal retirement age rather than age 65; and to provide that if a member has not designated a beneficiary other than the member's surviving spouse and the member dies on or after the member's normal retirement date after completing five years of eligible employment and before retiring, the member's surviving spouse may select a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a 100 percent joint and survivor annuity.

Actuarial Analysis: The reported actuarial cost impact of the original proposal is .47 percent of covered payroll. The amended proposal has no actuarial impact on the fund.

Committee Report: Favorable recommendation on the proposal as amended because the proposal provides improved benefit options at no actuarial cost.

Bill No. 126

Sponsor: Retirement Board

Proposal: Increase the employer contribution from 4.12 percent to five percent; implement a rule of 85 for calculating normal retirement date for members other than Supreme Court and district court judges; implement a rule of 88 for calculating

normal retirement date for Supreme Court and district court judges; provide that early retirement benefits must be actuarially reduced based upon the earliest eligible retirement date rather than the normal retirement date; provide that disability benefits are 25 percent of the member's final average salary or the benefit accrued calculated as if the member were of normal retirement age at the date of disability, whichever is greater; provide that payment of the account of a vested member who dies before retirement to a surviving spouse must be calculated as if the deceased member were of normal retirement age rather than age 65; and provide that if a member has not designated a beneficiary other than the member's surviving spouse and the member dies on or after the member's normal retirement date after completing five years of eligible employment and before retiring, the member's surviving spouse may select a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a 100 percent joint and survivor annuity. The committee amended this proposal at the request of the board to change the proposed employer contribution rate from five percent to 4.69 percent; to delete the provision that payment of the account of a vested member who dies before retirement to a surviving spouse must be calculated as if the deceased member were of normal retirement age rather than age 65; and to delete the provision that if a member has not designated a beneficiary other than the member's surviving spouse and the member dies on or after the member's normal retirement date after completing five years of eligible employment and before retiring, the member's surviving spouse may select a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a 100 percent joint and survivor annuity.

Actuarial Analysis: The reported actuarial cost impact of the proposal is .57 percent of covered payroll for the main system, .29 percent of covered payroll for the judges' system, and .08 percent of covered payroll for the National Guard system. Increasing the employer contribution rate from 4.12 percent to 4.69 percent will fully fund the benefit enhancements contained in the bill for the main system.

Committee Report: Favorable recommendation because the bill contains a funding mechanism to pay for the benefit enhancements.

Bill No. 127

Sponsor: Retirement Board

Proposal: Increase the employee contribution from four percent to 4.47 percent; increase the employer contribution from 4.12 percent to 4.59 percent; implement a rule of 85 for calculating normal retirement date for members other than Supreme Court and district court judges; implement a rule

of 88 for calculating normal retirement date for Supreme Court and district court judges; provide that early retirement benefits must be actuarially reduced based upon the earliest eligible retirement date rather than the normal retirement date; provide that disability benefits are 25 percent of the member's final average salary or the benefit accrued calculated as if the member were of normal retirement age at the date of disability, whichever is greater; provide that payment of the account of a vested member who dies before retirement to a surviving spouse must be calculated as if the deceased member were of normal retirement age rather than age 65; and provide that if a member has not designated a beneficiary other than the member's surviving spouse and the member dies on or after the member's normal retirement date after completing five years of eligible employment and before retiring, the member's surviving spouse may select a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a 100 percent joint and survivor annuity. The committee amended this proposal at the request of the board to change the proposed employee contribution from 4.47 percent to 4.33 percent and the proposed employer contribution from 4.59 percent to 4.45 percent; to delete the provision that payment of the account of a vested member who dies before retirement to a surviving spouse must be calculated as if the deceased member were of normal retirement age rather than age 65; and to delete the provision that if a member has not designated a beneficiary other than the member's surviving spouse and the member dies on or after the member's normal retirement date after completing five years of eligible employment and before retiring, the employee's surviving spouse may select a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a 100 percent joint and survivor annuity.

Actuarial Analysis: The reported actuarial cost impact of the proposal is .66 percent of covered payroll for the main system, .30 percent of covered payroll for the judges' system, and .09 percent of covered compensation for the National Guard system. Increasing the employee contribution rate from four percent to 4.33 percent and the employer contribution rate from 4.12 percent to 4.45 percent will fully fund the benefit enhancements contained in the bill for the main system.

Committee Report: No recommendation.

Bill No. 129

Sponsor: Retirement Board

Proposal: Define the terms seasonal employee, wages, and salaries; provide that the retirement board may audit documents of participants in programs and providers of services under the retirement board, fund administrative expenses of

the deferred compensation program, and correct errors in records; provide for calculation of interest on or waiver of delinquent employer contributions; provide that the account balance of a vested member who dies before retirement must be paid to the surviving spouse, person designated by the surviving spouse, or the member's estate; allow members to purchase credit for federal employment, employer-approved leave of absence, or time as a seasonal employee; and provide that interest earned on funds administered by the retirement board must be credited to the respective fund.

Actuarial Analysis: The proposal has no actuarial cost impact.

Committee Report: Favorable recommendation.

Bill No. 132

Sponsor: Retirement Board

Proposal: Replace the terms county, city, school district, district health unit, and Garrison Diversion Conservancy District with the term political subdivision; and make technical, clarifying changes relating to the term governmental unit.

Actuarial Analysis: The proposal has no actuarial cost impact.

Committee Report: Favorable recommendation.

Bill No. 133

Sponsor: Retirement Board

Proposal: Delete the requirement that security police and firefighter employees of the North Dakota National Guard be members of the National Guard.

Actuarial Analysis: The proposal has no actuarial cost impact.

Committee Report: Favorable recommendation.

Bill No. 134

Sponsor: Retirement Board

Proposal: Increase the benefit multiplier applicable to Supreme Court and district court judges from 2.25 percent of final average salary multiplied by the second 10 years of judicial service to 2.90 percent of final average salary multiplied by the second 10 years of judicial service; and provide a postretirement benefit increase for participants who retire before August 1, 1995, of 2.90 percent multiplied by the second 10 years of judicial service. The committee amended this proposal at the request of the board to change the proposed benefit multiplier from 2.90 percent to 2.80 percent.

Actuarial Analysis: The reported actuarial cost impact of the original proposal is 2.58 percent of covered payroll. The reported actuarial cost impact of the amended proposal is 2.18 percent of covered payroll.

Committee Report: Favorable recommendation on the proposal as amended because the proposal provides a benefit enhancement at a reasonable cost.

Highway Patrolmen's Retirement System

Bill No. 130

Sponsor: Retirement Board

Proposal: Replace the statutory provisions governing the repurchase of forfeited past service credit with rules to be adopted by the retirement board; increase the benefit multiplier from 2.96 percent to 3.10 percent of final average salary for the first 25 years of service; provide postretirement increase in benefit multiplier from 2.96 percent to 3.10 percent of final average salary; provide that the accumulated deductions of a vested contributor who dies before retirement must be paid to the surviving spouse, designated beneficiary, or contributor's estate; provide that the surviving spouse may elect the greater of a monthly retirement benefit equal to 50 percent of the deceased contributor's accrued normal retirement benefit until the spouse dies or the equivalent of the accrued benefit available under 100 percent joint and survivor provisions as if the deceased were of normal retirement age; allow a member to convert unused sick leave to credit in the system; and provide that the surviving spouse of a member receiving retirement benefits must be the member's primary beneficiary unless there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing. The committee amended this proposal at the request of the board to change the proposed multiplier from 3.10 percent of payroll to 3.03 percent of payroll and to delete the surviving spouse provision.

Actuarial Analysis: The reported actuarial cost impact of the original proposal is 2.63 percent of covered payroll. The reported actuarial cost impact of the amended proposal is 1.19 percent of covered payroll.

Committee Report: Favorable recommendation because the available margin is sufficient to fund the proposal while maintaining a sufficient margin in the system.

Pretax Benefits Program

Bill No. 40

Sponsor: Legislative Council (Employee Benefits Programs Committee)

Proposal: Allow political subdivisions to participate in the pretax benefits program.

Actuarial Analysis: The proposal has no actuarial cost impact.

Committee Report: Favorable recommendation because the proposal would have no actuarial impact on any of the retirement plans administered by the retirement board.

Bill No. 41

Sponsor: Legislative Council (Employee Benefits Programs Committee)

Proposal: Allow political subdivisions participating in the Public Employees Retirement System to

participate in the pretax benefits program.

Actuarial Analysis: The proposal has no actuarial cost impact.

Committee Report: No recommendation because Employee Benefits Programs Committee Bill No. 40 was given a favorable recommendation and is recommended to the Legislative Council.

Bill No. 42

Sponsor: Legislative Council (Employee Benefits Programs Committee)

Proposal: Provide that political subdivisions required to participate in the Public Employees Retirement System participate in the pretax benefits program.

Actuarial Analysis: The proposal has no actuarial cost impact.

Committee Report: No recommendation because Employee Benefits Programs Committee Bill No. 40 was given a favorable recommendation and is recommended to the Legislative Council.

Uniform Group Insurance Program

Bill No. 72

Sponsor: Legislative Council (Health and Communications Committee)

Proposal: Allow any person who is without health insurance coverage to participate in the uniform group insurance program provided medical underwriting requirements are met.

Actuarial Analysis: Because the bill provides the retirement board with authority to adopt minimum standards, medical underwriting requirements, and risk adjusted premiums, the proposed expansion will not have a negative effect on the uniform group insurance program.

Committee Report: No recommendation because the bill would not have a negative effect on the Public Employees Retirement System program and would have no effect on Public Employees Retirement System participants.

Bill No. 73

Sponsor: Legislative Council (Health and Communications Committee)

Proposal: Require any resident who is not covered by the uniform group insurance program to enroll in the program.

Actuarial Analysis: The actuarial cost impact is unknown because the demographics and the risk characteristics of the statewide population are unknown and thus it is not possible to provide a specific cost analysis figure for this bill.

Committee Report: Unfavorable recommendation because the demographics and the risk characteristics of expanding the uniform group insurance program to require all residents of the state to participate in the group are unknown and the impact on current Public Employees Retirement

System participants cannot be determined.

Bill No. 131

Sponsor: Retirement Board

Proposal: Allow the retirement board to establish a dental plan, vision plan, long-term care plan, and employee assistance program under the uniform group insurance program.

Actuarial Analysis: The proposal has no actuarial cost impact because participants would be required to pay the entire premium for the dental, vision, and long-term care benefits and the premium for the employee assistance program would be paid by employers or through dividends, surplus, or refunds provided by the overall health program pool.

Committee Report: Favorable recommendation because the proposal provides a benefit enhancement with no financial effect on the Public Employees Retirement System as participants would be required to pay the entire premium for dental, vision, and long-term care benefits and the premium for the employee assistance program would be paid by employers or through dividends, surplus, or refunds provided by the overall health program pool.

Bill No. 135

Sponsor: Retirement Board

Proposal: Provide that if certain sections or phraseology of certain sections of the chapter governing the uniform group insurance program do not comply with federal law the retirement board must take necessary measures to bring these sections into compliance with federal law.

Actuarial Analysis: The proposal has no actuarial cost impact.

Committee Report: Favorable recommendation.

Retiree Health Benefits Fund

Bill No. 128

Sponsor: Retirement Board

Proposal: Increase the monthly credit toward hospital and medical benefits coverage under the retiree health benefits fund from \$4.50 to \$5.50; revise the reduction factors applicable to persons terminating employment prior to age 62 or the normal retirement date for persons retiring after August 1, 1995.

Actuarial Analysis: The reported actuarial cost impact is .27 percent of covered compensation.

Committee Report: Unfavorable recommendation because the available margin is not sufficient to fund the proposal and because the retirement board withdrew its support for the proposal.

Bill No. 154

Sponsor: Representative Eugene Nicholas

Proposal: Allow a member or surviving spouse to

continue to participate in the retiree health benefits program provided that person did not receive a single lump sum retirement payment.

Actuarial Analysis: The reported actuarial cost impact is .03 percent of covered payroll.

Committee Report: Unfavorable recommendation because although the proposal has merit the available margin is not sufficient to fund the proposal and a sufficient margin should be maintained in the fund.

Other Retirement Plans

The committee considered several proposals dealing with changes to other retirement plans, including the Old-Age and Survivor Insurance System and alternate firefighters relief association plan. The committee considered the following proposals:

Old-Age and Survivor Insurance System

Bill No. 121

Sponsor: Job Service North Dakota

Proposal: Increase primary insurance benefits by \$20 per month for fiscal year 1995 and by an additional \$20 per month for fiscal year 1996. The committee amended this proposal at the request of the sponsor to revise the statutory list of proper investments for the Old-Age and Survivor Insurance System fund.

Actuarial Analysis: Job Service North Dakota indicated that the proposal would increase benefit payments by \$12,060 during the period beginning August 1, 1995, and ending July 31, 1997.

Committee Report: Favorable recommendation because the proposal provides an enhanced benefit at a reasonable cost.

Alternate Firefighters Relief Association Plan

Bill No. 157

Sponsor: Senator Bob Stenehjem

Proposal: Provide an optional pension payment schedule for members of a firefighters relief association with 10 years of service.

Actuarial Analysis: The reported actuarial cost impact on the Bismarck Firefighters Relief Association is .04 percent of covered compensation.

Committee Report: Favorable recommendation because the available margin of the Bismarck Firefighters Relief Association fund is sufficient to fund the proposal.

Bill No. 158

Sponsor: Senator Bob Stenehjem

Proposal: Provide that the assets of the association state fund must be held in trust and that no part of the assets may be diverted to purposes other than for the exclusive benefit of the members; provide that benefits payable under the alternate firefighters relief association plan may not exceed limits established under federal law; pro-

vide that a member's benefit may not commence later than April 1 of the calendar year following the latter of the calendar year in which the member attains age 70.5 or the calendar year in which the member terminates employment; provide that a lump sum death benefit must be paid no later than 60 days following the member's date of death; provide that the member's entire interest in the plan must be distributed over the life of the member or lives of the member and a designated beneficiary; provide that if the plan terminates, accrued benefits are immediately vested and are nonforfeitable to the extent funded; and provide that benefit forfeitures may not be applied to increase the benefits a member would otherwise receive.

Actuarial Analysis: The proposal has no actuarial cost impact.

Committee Report: Favorable recommendation.

1993 HOUSE BILL NO. 1075

The committee received a report regarding the determination of the retirement board concerning the effectiveness of 1993 Session Laws Chapter 534 (1993 House Bill No. 1075). This bill increased the benefit multiplier applicable to the Public Employees Retirement System main system for service credit, prior service credit, and retiree benefits from 1.725 percent to 1.74 percent and provided a one percent proportional increase in benefits for prior service pensioners. The provisions of the bill increasing the multiplier and providing an increase in benefits for prior service pensioners had an effective date of January 1, 1994, only if the retirement board determined before January 1, 1994, with the advice of its actuary, that the provisions could be implemented on an actuarially sound basis. The board's actuary determined that the actuarial cost of the proposal was .13 percent of covered payroll and the actuarial margin was .13 percent of covered payroll on July 1, 1993. As a result, the Public Employees Retirement System Board determined that the fund could cover the actuarial cost impact of the proposal and the provisions of the bill increasing the multiplier and providing a proportional increase in benefits for prior service pensioners became effective January 1, 1994.

RETIREMENT AND INVESTMENT OFFICE

The committee received reports on administrative efficiencies and cost savings realized as a result of the creation of the Retirement and Investment Office. The Retirement and Investment Office was created in 1989 when the Legislative Assembly combined the administrative offices of the Teachers' Fund for Retirement and the State Investment Board. The mission of the Retirement and Investment Office is to provide and coordinate the administrative activities of the Teachers' Fund for Retirement and the State Investment Board. The State Investment Board oversees the investment of eight statutory funds with assets totaling approximately \$1.5 billion and four contracted funds with assets totaling approximately \$18 million.

Representatives of the Retirement and Invest-

ment Office reported that creation of the Retirement and Investment Office has resulted in administrative savings of \$528,798 and investment savings of \$2,699,444 since the office was created. Administrative savings include staff costs not incurred as a result of the combination of the budgets of the State Investment Board and the Teachers' Fund for Retirement and the elimination of one investment officer. Investment savings include both pension and nonpension fund savings.

PRETAX BENEFITS PROGRAM

The committee studied whether political subdivisions should be eligible to participate in the state pretax benefits program. A pretax benefits program allows an employee to reduce that person's salary and elect benefits to the extent of the reduction. The state pretax benefits program was created by the Legislative Assembly in 1989. Political subdivisions were eligible to participate in the program, but in 1991 the Legislative Assembly enacted legislation prohibiting political subdivisions from participating in the program.

The committee received testimony that certain political subdivisions, e.g., district health units, are required to participate in the Public Employees Retirement System but are prohibited from participating in the state pretax benefits program. Although the prohibition enacted in 1991 was intended to prevent the Public Employees Retirement System from competing with private pretax benefit program providers, the committee received testimony describing a political subdivision's experience with two private insurers in an attempt to provide a pretax benefits program for its employees. The employees were interested in prepaid medical, dental, and vision benefits afforded by such a program, but the private insurers contacted to provide such a service were primarily interested in gaining access to the employees to promote other insurance products. Also, testimony indicated that private insurers were interested only in establishing the program, not administering the program. A small governmental unit may incur problems in self-administering a pretax benefits program because if medical benefits are used early in the period it may create a significant deficit in the pretax benefits fund. Five political subdivisions participated in the pretax benefits program of the Public Employees Retirement System between 1989 and enactment of the prohibition in 1991. Approximately 150 political subdivisions participate in the Public Employees Retirement System. Testimony indicated that if only five or six political subdivisions participate in the state pretax benefits program, the workload of the Public Employees Retirement System would not increase, but if as many political subdivisions participate in the program as participate in the retirement system, administrative costs may increase. These expenses, however, would be passed on to the participating political subdivisions.

The committee studied three bill drafts that would have allowed political subdivisions to participate in the state pretax benefits program. One bill draft

allowed political subdivisions to participate in the state pretax benefits program; one bill draft allowed political subdivisions participating in the Public Employees Retirement System to participate in the state pretax benefits program; and one bill draft provided that political subdivisions required to participate in the Public Employees Retirement System could participate in the state pretax benefits program. A representative of the Custer District Health Unit testified that although under the bill draft providing that political subdivisions required to participate in the Public Employees Retirement System could participate in the state pretax benefits program would allow district health units to participate in the state program because they are required by law to participate in the Public Employees Retirement System, any political subdivision should be allowed to participate in the state pretax benefits program. The Public Employees Retirement System Board did not express a preference among the three bill drafts.

Recommendation

The committee recommends House Bill No. 1049 to allow political subdivisions to participate in the state pretax benefits program.

STATE'S INVESTMENT PROCESS AND THE INVESTMENT OF STATE FUNDS

In reviewing Employee Benefits Programs Committee Bill No. 121, which would have increased the primary insurance benefits under the Old-Age and Survivor Insurance System, the committee discovered that the Old-Age and Survivor Insurance System fund may only be invested in interest-bearing bonds issued by the United States, or by the State of North Dakota, or in bonds, certificates of indebtedness, or warrants of any political subdivision of the state that constitute the general or contingent general obligations of the issuing authority. The fund is currently invested in certificates of deposit issued by the Bank of North Dakota. The current interest rate being received on these certificates of deposit is 3.44 percent. The committee studied whether investment returns could be enhanced while maintaining appropriate safety and liquidity requirements in the Old-Age and Survivor Insurance System fund.

The committee received testimony from the state investment officer that it would not be advisable to pool the Old-Age and Survivor Insurance System fund with other trust funds managed by the State Investment Board because the Old-Age and Survivor Insurance System plan is a mature plan and benefit payments could cease in as few as 11 years. However, the state investment officer reported that returns could be enhanced if the fund were allowed to be invested in vehicles other than those allowed by current law, e.g., United States treasury securities, United States agency securities, and certificates of deposit in addition to those issued by the Bank of North Dakota. Also, the state investment officer recommended that a cash-match strategy in which income accruing to the fund is matched to benefits paid by the fund be utilized by the fund and that a written investment policy be established for the fund.

The state investment officer indicated that investment and cash flow assumptions should be reviewed annually and investment strategies adjusted accordingly.

Based upon its review of the allowable investments of the Old-Age and Survivor Insurance System fund and the favorable recommendation on Employee Benefits Programs Committee Bill No. 121, which would allow the fund to be invested in bonds, treasury bills, notes, or other securities that are direct obligations of the treasury of the United States; bonds, debentures, or notes issued by a federal farm credit bank, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Association; deposits of the Bank of North Dakota; or deposits of any federally insured bank, federal savings bank,

or savings and loan association in an amount not exceeding the maximum insurance available for each deposit, the committee reviewed a resolution draft that would have directed the Legislative Council to study the state's investment process and the investment of state funds.

The executive director of the Retirement and Investment Office testified in support of a study of the state's investment process and the investment of state funds.

Recommendation

The committee recommends Senate Concurrent Resolution No. 4008 to direct the Legislative Council to study the state's investment process and the investment of state funds.

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 (NDCC) Section 54-35-02.7, which statutorily creates the 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 Senators Gary J. Nelson (Chairman), William G. Goetz, Joe Keller, Jerome Kelsh, Byron J. Langley, Tim Mathern, and Dan Wogsland and Representatives Rick Berg, Tom D. Freier, Lee Kaldor, Bob Martinson, Eugene Nicholas, Bill Oban, and Alice Olson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

HISTORY OF THE PROJECT

Pick-Sloan Plan

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 the state 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).

Garrison Diversion Unit

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 provided for irrigation service to 250,000 acres in the state. 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 to enhance 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 would be situated so that water could 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 slowed or halted construction on the project in recent years, including:

1. Canadian concerns that the Garrison Diversion Unit 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 Canadian interests under the Boundary Waters Treaty of 1909 was achieved. The United States government responded by stating its recognition of its obligations under the Boundary Waters Treaty and adopting a policy that no construction affecting Canada would be undertaken until it was clear that these obligations would be met.

During 1974 several binational meetings of officials were held to discuss and clarify 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 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 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 the state 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 approved 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 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. The commission recommended that the Sykeston Canal be constructed as the functional replacement for the Lonetree Dam. While the Lonetree Dam and Reservoir would remain an authorized feature of the plan, construction of that dam would be deferred pending appropriation of funds by Congress and a determination by the Secretary of the Interior that consultations with Canada were satisfactorily concluded. 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 nonreimbursable 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 cities benefited.

Garrison Diversion Unit Reformulation

Following the issuance of the commission's final report, Congress enacted the Garrison Diversion Unit Reformulation Act of 1986 (Pub. L. 99-294; 100 Stat. 433). This legislation was approved by representatives of the state, 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 the state's water rights claims to the Missouri River.
4. Nonreimbursement of features constructed before 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; and
 - 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 system 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 Unit 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.

On July 18, 1986, the Garrison Diversion Conservancy District and the State Water Commission entered an agreement for the joint exercise of governmental powers. The 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 which designates the district as 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 an agreement that designates the district to act on behalf of the state 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. The agreement defines the responsibilities of the United States and the district under the agreement and contains 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.

An important aspect of the water supply program is that an application for financial assistance for construction of a water supply project must be submitted by a local governmental entity and must be supported by a preliminary report and followed by a feasibility report. The feasibility report must be submitted before the project can be approved for funding. 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

Throughout the interim legal counsel for the Garrison Diversion Conservancy District briefed the committee on 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 nonfederal costs of the Garrison Diversion Unit. The conveyance was based on 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 the lakebed.

In June 1986 the Devils Lake Sioux Tribe initiated a quiet title action against the state and the Garrison Diversion Conservancy District concerning the ownership of the Devils Lake lakebed and the location of the northern boundary of the reservation. The tribe claims that the United States owns the lakebed in trust for the tribe, that the lakebed is all land below the 1,439-foot contour around the lake (the 1867 elevation of the lake was 1,439 feet, which is over 10 vertical feet above the current elevation of Devils Lake), and that the north reservation boundary also follows the 1,439-foot contour. The defendants successfully moved to dismiss the lawsuit in the United States District Court in April 1989, 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 reversed and remanded the case to the district court in October 1990. The Governor, the Attorney General, and the chairman of the Devils Lake Sioux Tribe are attempting to settle the case without further litigation. They have agreed to several basic settlement concepts, and the parties' attorneys are negotiating the language for federal legislation that could implement a settlement agreement. Any settlement agreement would be submitted to public hearings pursuant to NDCC Chapter 54-40.2.

PROJECT UPDATE

Throughout the interim the committee received updates concerning the Garrison Diversion Unit Project from representatives of the Garrison Diversion Conservancy District, State Water Commission, and the United States Bureau of Reclamation.

Appropriations

Congress appropriated \$30 million for the Garri-

son Diversion Unit Project for fiscal year 1993. Of this amount, \$14,550,000 was designated for municipal, rural, and industrial water supply programs; \$750,000 for recreational purposes; and approximately \$5 million for mitigation and enhancement purposes.

Congress appropriated \$32 million for fiscal year 1994. Of this amount, \$12 million was designated for municipal, rural, and industrial water supply programs.

Congress has appropriated \$32 million for fiscal year 1995. Of this amount, approximately \$14,500,000 is designated for municipal, rural, and industrial water supply programs.

Of the \$200 million authorized for the Garrison municipal, rural, and industrial water supply program, approximately \$100 million has been received or budgeted since 1986. Of the \$100 million, approximately \$60 million has been expended on the Southwest Pipeline Project and \$40 million on other water projects throughout the state.

Water Improvement or Supply Projects

The State Water Commission has received applications from 129 communities and associations concerning water improvement projects under the Garrison municipal, rural, and industrial water supply program. Of the 129, 45 have submitted an application (Phase 1), 31 have entered the preliminary engineering phase (Phase 2), 10 are in feasibility studies (Phase 3), four are in the design and construction phase (Phase 4), 24 have been completed (Phase 5), and 15 have been withdrawn. The total estimated cost for projects under the program is \$475,313,550, with \$94,986,000 obligated federal municipal, rural, and industrial water supply funds. This total estimated cost includes estimates for four Phase 1 projects, 31 Phase 2 projects, 10 Phase 3 projects, four Phase 4 projects, and 21 of the 24 Phase 5 projects. The estimated costs for three of the Phase 5 projects are included in the costs of other projects.

The Southwest Pipeline has supplied water to Dickinson since October 15, 1991. By the end of 1994, 10 communities will have or are scheduled to join Dickinson in receiving water from the Southwest Pipeline Project.

Bureau of Reclamation Projects

Representatives of the Bureau of Reclamation reported on bureau activities throughout the interim. The bureau is emphasizing the completion of features of the Garrison Diversion Unit Project that were authorized in the Garrison Diversion Unit Reformulation Act of 1986. These supported programs include the operation and maintenance of the completed features of the project, including the Snake Creek Pumping Plant, McClusky Canal, New Rockford Canal, and the Oakes Test Area.

The Bureau of Reclamation is studying four alternatives in its environmental assessment of the Oakes Test Area. These include no reclamation-funded research planned beyond 1995 and discontinuance of water deliveries, no reclamation-funded research planned beyond 1995 and continued water deliveries, conduct research to address national reclama-

tion concerns and continue water deliveries, or transfer ownership of the Oakes Test Area facilities. Water service contracts have been issued for approximately 3,000 acres in the Oakes Test Area.

RECENT DEVELOPMENTS

Garrison Diversion Unit Conceptual Alternative Discussion Paper Draft

The committee received a draft of the Garrison Diversion Unit Conceptual Alternative Discussion Paper. The draft was prepared on June 10, 1993, and discussed several options for meeting the principal mission of the Garrison Diversion Unit. The mission of the Garrison Diversion Unit was identified as the delivery of Missouri River water to the areas of need in the James River, Sheyenne River, Red River, and Devils Lake basins. The objective of the mission is the completion of the major supply works, including a connecting link between the McClusky and New Rockford canals, and development of project components consistent with the Garrison Diversion Unit Reformulation Act of 1986, the statement of principals, the Boundary Waters Treaty of 1909, and the National Environmental Policy Act. Other objectives include providing water for municipal, rural, and industrial water users in the state, providing mitigation and enhancement for fish and wildlife, enhancing water-based recreation, and providing Missouri River water for rural economic development. The principal options discussed in the paper are a major pipeline to complete the major supply works of the Garrison Diversion Unit and a pipeline option from the New Rockford Canal to Grand Forks and Fargo. A rural economic development phase based on water supply for agricultural use would be substituted for the conventional irrigation development under existing Bureau of Reclamation procedures and result in a more focused effort to provide job opportunities and economic activity in the state. The plan contained in the discussion paper reduces the federal cost component of the Garrison Diversion Unit from \$1.2 billion to \$900 million.

North Dakota Water Management Collaborative Process

The committee received reports concerning the North Dakota water management collaborative process. This process began during the summer of 1993 when the Garrison Diversion Unit Conceptual Alternative Discussion Paper identified the objective of connecting the McClusky Canal with the New Rockford Canal and the option of distributing water to eastern North Dakota through a pipeline. The North Dakota water management collaborative process is designed to identify the water needs of the state and develop a conceptual plan to realize the Garrison Diversion Unit Project. The Bureau of Reclamation, the Governor, the Congressional Delegation, the state's Indian tribes, and environmental and conservation groups are involved in the collaborative process.

The initial plan that resulted from the collaborative process called for:

1. Delivery of 100 cubic feet per second of Mis-

souri River water to the James River. The estimated cost of this feature is \$63 million. This feature was opposed by the environmental interest groups involved in the collaborative process.

2. Completion and implementation of a comprehensive water management plan for the Devils Lake Basin.
3. Initiation of an inlet-outlet project for Devils Lake with an estimated cost of \$111 million.
4. Categorization of the state's municipal, rural, and industrial water supply costs into immediate needs, short-term needs, and long-term needs. The total estimated cost of this feature is \$291 million for North Dakota municipal, rural, and industrial water supply development and \$13 million for South Dakota municipal, rural, and industrial water supply development that was included in the plan.
5. A clean, safe, and reliable water supply to residents of three of the state's reservations through tribal municipal, rural, and industrial water supply and irrigation projects. The total estimated cost is approximately \$188 million.
6. Allocation of \$70 million for erosion protection and Missouri River bank stabilization.
7. Construction of a pipeline connecting the McClusky Canal and the New Rockford Canal. The pipeline would have a capacity of 450 cubic feet per second, including an additional 100 cubic feet per second to meet future water needs, especially irrigation in the New Rockford-Warwick-McVille area.

The plan indicated that the Lonetree Reservoir may be deauthorized if certain conditions are met, including construction of a pipeline to connect the McClusky Canal to the New Rockford Canal, and that privately held land within the Lonetree Wildlife Management Area (the area acquired for the Lonetree Reservoir) not be acquired using eminent domain but a willing-seller willing-buyer process.

The initial proposed conceptual plan for the Garrison Diversion Unit was opposed by the state's Congressional Delegation, the National Audubon Society, and the National Wildlife Federation. The Congressional Delegation noted that the proposal required the imposition of new water taxes on residents in eastern North Dakota cities supplied by the Garrison Diversion Unit, proposed to spend more money than is necessary on some components of the project, and contained certain specific costs and priorities on major component parts of the system which were advanced outside the collaborative process and without consultation with the other parties. The National Wildlife Federation viewed the initial proposed conceptual plan as a product it would not accept but as a concept that could be modified with some stringent parameters to make it acceptable — the tribal and statewide municipal, rural, and industrial water supply needs were acceptable but additional work needed to be done on these needs to ensure that the state and the tribes are benefiting sufficiently from the money spent on these projects; the James River release and Turtle Lake irrigation components of the plan were not acceptable; and the Sheyenne-Red

River release, the inclusion of an additional 100-cubic feet per second capacity in the pipeline connecting the McClusky Canal and the New Rockford Canal for future uses, and Devils Lake stabilization should be studied further. The committee was informed that the North Dakota water management collaborative process is again moving forward and that the Congressional Delegation and the Governor have signed a letter forming an Executive Steering Committee to develop a consensus concerning the Garrison Diversion Unit. It is anticipated that the Executive Steering Committee will recommend that further studies be undertaken to better define North Dakota's future water needs. The committee was requested to adopt a resolution supporting the Garrison Diversion collaborative process and urging the Governor, Congressional Delegation, and state officials to support vigorously the Garrison Diversion collaborative process. It was suggested that a resolution would promote the determination of North Dakota's future water needs as well as methods of financing the nonfederal cost of projects identified by these studies.

OTHER ACTIVITIES

The State Engineer briefed the committee on the Missouri River master manual review process. The United States Army Corps of Engineers operates the Missouri River system pursuant to its master manual which sets out the operating criteria and determines how the reservoirs will be drawn down to meet the system's uses. The master manual was first developed in 1960 and was based upon water needs in existence at that time. The United States Army Corps of Engineers is reviewing the master manual based upon national economic demand benefits of the Missouri River system reservoirs and environmental quality benefits.

The committee also received information on the North Dakota Water Coalition and the North Dakota Water Education Foundation. The North Dakota Water Coalition was established to address state water supply and water distribution issues. The goals of the coalition are to implement the flagship initiatives of the North Dakota Vision 2000 report concerning water infrastructure; to secure and enhance North Dakota's future economic well-being and quality of life; to develop and maintain statewide

organization support for a statewide water supply and water distribution program; to establish a mechanism for the exchange of information, discussion, and ideas among organizations concerning water supply and water distribution issues and projects; and to provide information and education concerning these matters to federal, state, and local decisionmakers.

The purpose of the North Dakota Water Education Foundation is to develop and implement water information and water education programs in the state, and to increase awareness, understanding, and knowledge among students, teachers, water users, decisionmakers, and the general public about water resource issues in North Dakota. Four programs sponsored by the North Dakota Water Education Foundation are the *North Dakota Water Magazine*, the North Dakota Water Course, the North Dakota Wetlands Institute, and the Water Education for Teachers program. The purpose of the *North Dakota Water Magazine* is to communicate to people about water. The purpose of the North Dakota Water Course is to enhance and facilitate public awareness of the state's water resource issues and increase public understanding of the importance of water for the state's future, economic prosperity, and quality of life. The purpose of the North Dakota Wetlands Institute is to work toward cooperative solutions for wildlife, water, and agriculture. The purpose of the Water Education for Teachers program is to facilitate and promote the awareness, appreciation, and knowledge of the state's water resources through the development and dissemination of classroom-ready teaching aids.

RECOMMENDATION

The committee requests that the Legislative Council approve a resolution from the committee supporting the Garrison Diversion collaborative process and urging the Governor, Congressional Delegation, and state officials to support vigorously the Garrison Diversion collaborative process. The resolution resolves that these officials establish a high priority to the successful outcome of the Garrison Diversion collaborative process to enable completion of the Garrison Diversion Unit Project, which will provide water for multiple uses and address and accommodate other significant water supply and water management needs across the state.

HEALTH AND COMMUNICATIONS COMMITTEE

The Health and Communications Committee was assigned four studies. House Concurrent Resolution No. 3023 directed a study of railroad crossing safety to improve railroad crossing safety. Senate Concurrent Resolution No. 4025 directed a study of the North Dakota Educational Telecommunications Council. Senate Concurrent Resolution No. 4042 directed a study of the feasibility and desirability of allowing all North Dakota residents to participate in the uniform group insurance program. Senate Concurrent Resolution No. 4061 directed a study of the feasibility and desirability of pooling all sources of funding for health care benefits in conjunction with the study by the North Dakota Health Task Force in exploring the control of costs and the redistribution of dollars toward improved access to services through a health care reimbursement system. The committee was also directed to receive reports from the Commissioner of Insurance relating to basic health insurance coverage and to the progress of the partnership for long-term care program.

Committee members were Senators Tim Mathern (Chairman), Bill L. Bowman, Judy L. DeMers, Tish Kelly, Larry W. Schoenwald, John T. Traynor, and Herb Urlacher and Representatives Everett Dobrinski, RaeAnn Kelsch, David Monson, Marv Mutzenberger, Clara Sue Price, Cathy Rydell, Allan Stenehem, and Ken Svedjan. Representative Dagne B. Olsen was also a member of the committee until her death in August 1994.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

RAILROAD CROSSING SAFETY STUDY

Background

The study of railroad crossing safety reflected the concern over public safety at railroad crossings. Proponents of the study pointed out that train cars used to transport grain may sit at a crossing in rural North Dakota for an extended period of time and after nightfall this presents a danger where crossings are not marked to indicate a train is on the tracks.

Statistics compiled by the Federal Railroad Administration show that in 1991 there were 12 accidents or incidents at highway/railroad grade crossings involving motor vehicles in the state. Of those accidents or incidents, one person was killed and four people were injured.

State Law Governing Railroad Grade Crossings

There are several statutes that govern the signals and behavior required at railroad grade crossings. North Dakota Century Code (NDCC) Chapter 24-09 governs railroad crossings. Section 24-09-01.1 identifies the type of railroad crossing warning systems required to be installed at each public highway/railroad grade crossing. Additional provisions in Chapter 24-09 establish exceptions to warning systems and requirements for additional warning systems for railroad crossings.

North Dakota Century Code Section 39-09-01 requires a person to drive at a safe and appropriate speed when approaching and crossing at a railroad grade crossing; Section 39-10-14 provides that a driver of a motor vehicle may not drive left of the center of the road when within 100 feet of a railroad grade crossing; and Section 39-10-41 regulates the conduct of drivers of motor vehicles approaching railroad grade crossings by requiring motor vehicles to stop within 50 feet, but not less than 15 feet, from the nearest rail when various circumstances indicate the immediate approach of a train. Section 39-06.1-06 provides for a \$50 penalty for violating Section 39-10-41. Other provisions in NDCC Chapter 39-10 require certain vehicles to stop at all crossings, require all vehicles to stop at certain crossings, regulate the moving of heavy equipment at railroad grade crossings, prohibit a driver from proceeding onto tracks when the driver cannot continue past the tracks, and prohibit a pedestrian from passing through any crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed.

North Dakota Century Code Section 49-11-19 prohibits a person from operating a train in a manner that prevents the use of a motor vehicle on a roadway for a period in excess of 10 consecutive minutes except when necessary to comply with safety signals affecting the safety of movement of trains; the train is disabled, by accident or otherwise; the train is in motion except when engaged in switching operations; there is no vehicular traffic waiting to use the crossing; or when necessary to comply with a government statute or regulation.

North Dakota Century Code Section 49-10.1-14 authorizes the Public Service Commission to prescribe and enforce railroad safety rules and NDCC Section 24-09-10 authorizes the Public Service Commission to close unnecessary or unsafe railroad crossings.

Operation Lifesaver, Incorporated

Operation Lifesaver, Inc., is a nonprofit organization that promotes railroad safety. The Operation Lifesaver program focuses on education, enforcement, and engineering. Program presenters give presentations to children to educate them about railroad safety. Railroad companies contribute to the program based on the miles of track the railroad operates in the state.

On the national level, Operation Lifesaver develops material used in the states that have adopted the program; provides training for volunteers on presenting railroad safety information to schools, law enforcement agencies, and community organizations; guides states and railroads in implementing effective education programs; creates films and videos for training and public service announcements; addresses issues that arise in the states; and disseminates information on statutory changes affecting highway/railroad grade crossing safety in each state.

Testimony and Committee Considerations

The committee received testimony on the Operation Lifesaver program in this state. The three Es of Operation Lifesaver are education, engineering, and enforcement. The program identifies certain facts about trains that seem to be common misconceptions, i.e., rather than immediate braking, it actually takes approximately 21 seconds from the time an emergency is declared to the time the train begins to brake. In 1992 the program was presented to all schoolbus drivers.

Railroads are taking a very aggressive approach to educate senior citizens and professional drivers as well. Railroads have contributed money to the North Dakota Safety Council to budget for programs on railroad grade crossing safety. Railroads are also offering accident investigation courses.

Most crossings have as warning signs at least an advance railroad warning sign, pavement markings, and a crossbuck. Some crossings also have stop signs, flashing lights, and gates.

The committee received testimony that the buckeye crossing being used in Ohio is the most effective passive warning device for railroad grade crossings. The buckeye crossing, however, has not been approved by the federal government for use in all states.

The federal share payable for railroad grade crossings may be up to 100 percent of the cost of construction for grade crossing safety signs. The amount, however, may not exceed 10 percent of the total highway funding moneys received by the state. Representatives of the Department of Transportation testified that the railroads are responsible for upgrading grade crossing signals, but the department would work with the railroads and the Federal Railroad Administration in reflectorizing railroad grade crossings. Reflectorizing existing posts is a safety effort that could be paid by the federal government.

Representatives of the railroads testified that the railroads did not have a plan to switch from one type of material for reflectorization to another. Crossbucks and crossing signals are replaced when they have been damaged, destroyed, or broken.

The committee received testimony that there are several different signals being used at the various grade crossings throughout the state. Although some signals are over 30 years old, some signals that are two to three years old have event recorders. While the older signals begin to flash when the train reaches a certain point, the event recorders are computerized. Computerization allows the recorder to determine the speed of the train and the distance of the train from the crossing in calculating the point at which the signals should begin to operate. Advance warning times for the signals vary—the minimum required is 20 seconds but railroads typically use 25 seconds.

Bill Draft Considered

The committee considered a bill draft that would have required the Department of Transportation to upgrade railroad grade crossing signals using state-of-the-art reflectorized materials. Representatives of the Department of Transportation testified that the department and the railroads are working together

to devise a plan to improve railroad grade crossing signals in the state. The department plans to inventory the signals as it upgrades them. The railroads will replace the crossing signals if the Department of Transportation furnishes the materials. The cost will be borne 90 percent by the department and 10 percent by the railroads. An estimated \$4 million will be needed to complete the project. The total amount needed will depend on the number and extent of the replacements needed. Representatives of the railroads testified that they did not foresee any problems arising between the department and the railroad in implementing the upgrading plan. Representatives of the department and the railroads testified that legislation is not necessary to allow them to continue their efforts to upgrade railroad grade crossing signals.

Committee Recommendations

The committee recommends Senate Bill No. 2064 to increase, from \$50 to \$100, the fine for going around lowered gates or any other barrier at a grade crossing. The committee recommends the bill in anticipation of additional funding becoming available for railroad grade crossing signal improvements. A bill pending in Congress may provide for increased federal funding to the states to improve railroad crossing safety, but that funding may only be made available to states in which the fine for going around lowered gates is at least \$100.

NORTH DAKOTA EDUCATIONAL TELECOMMUNICATIONS COUNCIL STUDY

Background

The study of the North Dakota Educational Telecommunications Council resulted from concerns over whether membership of the council should include more educators and whether the duties of the council are broad and need to be reviewed along with the work that has been done by the council in distributing grant moneys.

History of the Council

In 1961 newly enacted legislation, codified as NDCC Section 15-47-36, authorized the Superintendent of Public Instruction to contract with a nonprofit corporation to provide educational television services in elementary, secondary, and higher education; adult education; and other fields tending to promote cultural improvement. In 1969 the Legislative Assembly created the Educational Broadcasting Council to encourage and direct the creation of educational radio and television facilities. In 1977 the Educational Broadcasting Council was directed to contract with eligible applicants to build and operate public television stations in this state. The network consisted of six television stations that broadcast signals covering North Dakota, northwestern Minnesota, parts of northern South Dakota, and cities in Manitoba and Saskatchewan. The development and operation of the network was accomplished through funding from local, state, and federal sources. The funds provided by the state for construction were used to generate federal funds from the Prairie Telecommu-

nications Facilities Program.

During the 1987-88 interim, the Legislative Council's Education Committee studied the feasibility, cost, and benefits of using current telecommunications technology to enhance the educational opportunities of students. The committee noted that the state, as a rural state, has a large number of schools that are small, have limited resources, and are often located great distances from neighboring schools. Additionally, the committee recognized that many of these schools have difficulty meeting state accreditation standards because of their limited curricula. The committee found that telecommunications can increase the level of cooperation among schools and is an alternate solution to the consolidation of schools to address the problems of rural schools. The 1987-88 interim Education Committee received testimony on the different telecommunications projects being developed throughout the state and in other states and agreed that the coordination of telecommunications technologies in this state and with other states could produce cost savings in the delivery of education, training, library resources, public information, and intergovernmental projects. The committee recommended 1989 House Bill No. 1041 to change the name of the Educational Broadcasting Council to the Educational Telecommunications Council, to expand the membership of the council, and to broaden the council's focus from television and radio to telecommunications. The bill also gave the council the responsibility for coordinating statewide educational telecommunications programs and systems.

1989 House Bill No. 1041

House Bill No. 1041, as described above, was passed by the Legislative Assembly and is codified in NDCC Chapter 15-65. Testimony before the 1989 standing Committees on Education indicated that the Educational Telecommunications Council was not intended to determine what programs would be introduced in North Dakota through telecommunications, but was meant to be a facilitator to ensure compatibility among systems. The council was also described as a "funnel" through which appropriations would be run prior to being distributed to various entities developing the telecommunications programs. In discussing the membership of the council, testimony was that the interim Education Committee intended the council to provide a means through which telecommunications providers would be responsible for providing technical assistance to determine the types of telecommunications systems that would be best for the state. Based on the testimony to the interim Education Committee, it would take approximately 10 years to develop a uniform interactive television system throughout the state and the providers were in the best position to facilitate that development.

North Dakota Educational Telecommunications Council

The stated purpose of the North Dakota Educational Telecommunications Council is to encourage and direct the creation of educational telecommuni-

cations programs and systems within the state.

The council has 11 members. The Governor appoints eight members — one citizen member, one representative of Prairie Public Broadcasting, one representative of the telephone industry, one representative of the North Dakota Association of Telephone Cooperatives, one representative of the North Dakota Cable Television Association, one school board member, one school administrator, and one school-teacher. The other three members of the council are the Commissioner of Higher Education or the commissioner's designee, the Superintendent of Public Instruction or the superintendent's designee, and the director of the Information Services Division of the Office of Management and Budget.

The council is required to:

1. Direct the implementation of telecommunications systems that are compatible and can be connected with each other.
2. Develop a comprehensive written plan for the development of telecommunications in the state.
3. Be concerned with the development and use of statewide educational telecommunications programs and systems.
4. Hold coordinating authority for the development of statewide educational telecommunications programs and systems as may be required to serve the entire state.
5. Assist organizations and state agencies in the preparation, filing, and prosecution before federal agencies of any applications, reports, or other documents or requests of any kind necessary or appropriate to achieve the purposes of NDCC Chapter 15-65.
6. Receive gifts and contributions from public and private sources to be expended to provide educational telecommunications programs and systems.
7. Be concerned with the activation of educational broadcasting channels presently assigned to North Dakota, or the reallocation or addition of the channels, or both, as are determined to be in the best interests of the people of the state.
8. Actively cooperate with the Superintendent of Public Instruction and the State Board of Higher Education and other agencies and private organizations for the purpose of developing statewide educational telecommunications projects.
9. Publish informational material determined by the council to be necessary.
10. Carry on a continuing study relating to the needs, resources, and facilities that are available or may be required to establish educational telecommunications programs and systems throughout the state.
11. Contract with eligible applicants to build and operate public television stations in the state.
12. Solicit grants to be used in conjunction with moneys appropriated by the Legislative Assembly for telecommunications as it develops and implements a plan for a statewide system of interactive telecommunications.

The council is allowed to require a school district to provide up to 50 percent in matching funds to receive any funds appropriated or that may otherwise be-

come available for telecommunications.

Testimony and Committee Considerations

The committee received testimony that the Educational Broadcasting Council contracted with Prairie Public Broadcasting in 1961 to provide public television. Special school programs were set up for kindergarten through grade 12 under Prairie Public Broadcasting broadcasts. After the council was renamed the Educational Telecommunications Council, the scope of the duties of the council was expanded. The council continued to be responsible for the building and operation of state-owned broadcast towers. The council also became responsible for assisting in building systems that are compatible and connectable.

The Educational Telecommunications Council has established a statewide plan. The planning actions of the council are continuous as new and adequate information is received. The council recognizes that it needs to pursue grants that are available.

The Educational Telecommunications Council works in cooperation with the Superintendent of Public Instruction, the State Board of Higher Education, the Information Services Division of the Office of Management and Budget, and other public and private organizations in the development of statewide telecommunications projects. With limited staffing, the council has attempted to determine what programs are available and how old those programs are. The council has formed regional advisory committees to assist in review and planning.

The Educational Telecommunications Council has achieved its goal of offering Prairie Public Television throughout the state, offering it even in places that do not have cable television. A representative of the council testified that the priorities of the council are:

1. The supplementation and expansion of school curriculum in kindergarten through grade 12.
2. The provision of options for continuing education for kindergarten through grade 12 personnel.
3. The supplementation of higher education efforts in sharing services and improving access to course offerings by the universities.

The committee received testimony that the current structure of the council serves the state well and does not need to be changed. One suggestion, however, was to have a librarian from the State Library as a member of the council. To compensate for the lack of a librarian, the council has established subcommittees.

A representative of Prairie Public Broadcasting testified that the Educational Telecommunications Council has established specific goals and is making progress toward those goals. The present membership of the council provides the right mix of educational, public, and technical expertise. One change suggested was to identify the public broadcasting representative as a representative of the organization contracted to operate and maintain public television stations in the state, rather than Prairie Public Broadcasting specifically. This change was suggested because public and educational broadcasting services to the state are provided through a contract

rather than by statute and could conceivably change.

Additional testimony received by the committee suggested that the makeup of the council be changed to remove vendors as voting members of the council, but to allow them to serve in an advisory capacity.

The committee was informed that the interim Education Finance Committee, in its review of educational quality and equity, had identified the current and future use of technology in the delivery of kindergarten through grade 12 education as a particular concern of the committee and was considering a bill draft to alter the composition of the Educational Telecommunications Council.

Conclusion

The committee makes no recommendation with respect to the Educational Telecommunications Council study. Because the Education Finance Committee was addressing concerns about the membership of the Educational Telecommunications Council through a proposal before that committee, and because other testimony received by the Health and Communications Committee suggested little or no need for changes to the membership or duties of the Educational Telecommunications Council, the committee deferred any recommendation for change to the interim Education Finance Committee.

HEALTH CARE STUDIES

The study of the feasibility and desirability of pooling all sources of funding for health care benefits in conjunction with the study by the North Dakota Health Task Force was the means by which the Legislative Assembly remained actively involved with the health task force as it pursued a solution to health care delivery and access problems in North Dakota.

The study of the feasibility and desirability of allowing all North Dakota residents to participate in the uniform group insurance program was suggested as a method to determine if the uniform group insurance program, which seems to meet the needs of the public employees in an efficient and qualitative manner, could serve the uninsured and underinsured in this state.

The committee consolidated both of these studies into a health care study.

Previous Legislative Council Health Care Studies

During the 1987-88 interim, the Legislative Council's Budget Committee on Government Administration studied the health care insurance needs of individuals who did not have access to insurance coverage as part of a study of the difference in employee benefits between part-time and full-time employment in the private sector. Information presented to that committee indicated that between 10.6 and 12 percent of the state's population was either uninsured, underinsured, or without access to health services. The 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, but the bill failed to pass the House.

During the 1989-90 interim, the Legislative

Council's Industry and Business Committee studied the health care insurance needs of uninsured and underinsured persons. Testimony received by the committee indicated that approximately 8.8 percent of the state's population were without health insurance coverage. The committee concluded that absent 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. The committee recommended House Bill No. 1042, which allowed 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 coverage. The bill was enacted by the Legislative Assembly. The committee recommended House Bill No. 1043, which would have prohibited the introduction of legislation mandating health insurance coverage or various other components of health insurance plans unless the proposal is accompanied by an assessment by the Commissioner of Insurance, but the bill failed to pass the Senate. The committee recommended Senate Bill No. 2053, which would have required 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, but the bill failed to pass the Senate. The committee recommended Senate Concurrent Resolution No. 4002, which directed a Legislative Council study of the feasibility of adopting a state-subsidized health insurance program for uninsured and underinsured residents of the state. That resolution was passed and was assigned to the 1991-92 interim Health Care Committee.

During the 1991-92 interim, the Legislative Council's Health Care Committee studied the need for a state health policy for the purpose of providing basic medical and health care to all citizens of this state and the feasibility of adopting a state-subsidized health insurance program for uninsured and underinsured residents of the state. During these studies the committee was informed of the efforts of the North Dakota Health Task Force. The committee recommended House Bill No. 1038, which would have required the task force to develop a prospective all payers ratesetting system or other health care financing system and to develop a mechanism to provide health coverage for all North Dakotans, but the bill was vetoed by the Governor. The committee recommended House Concurrent Resolution No. 3001, which would have offered legislative support to the efforts of the task force, but the resolution failed to pass the House. The committee recommended Senate Bill No. 2038, which would have established a program to provide health services to children through the age of 18 and to pregnant women, but the bill failed to pass the Senate. The committee recommended Senate Bill No. 2039, which would have prohibited certain financial arrangements between health care providers and health care service providers, but the bill failed to pass the House.

Sources of Health Care Funding

There are several sources of health care funding for residents of the state. Some sources provide complete coverage and some are supplemental.

Medical Assistance

North Dakota Century Code Chapter 50-24.1 establishes the state's medical assistance program for needy persons. The program pays for a wide range of medical services from licensed medical providers for persons 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 exclusive of medical care costs. Medical assistance is available to individuals described in the state plan for medical assistance as "categorically needy" or "medically needy."

Significant changes to the state Medicaid program were required by the Medicare Catastrophic Coverage Act of 1988. That Act required state programs to pay for the cost-sharing requirements (premiums, copayments, and deductibles) of all Medicare-eligible populations with incomes below the federal poverty level. The mandate was implemented on a phase-in schedule. It began with up to 85 percent of poverty level in 1989, 90 percent of poverty level in 1990, 95 percent of poverty level in 1991, and 100 percent of poverty level in 1992. The Act also required state programs to extend Medicaid coverage to pregnant women and to children up to age 1 with family incomes below the federal poverty level. Pregnant women are eligible to receive pregnancy-related services while the children must receive all benefits included in the state plan and provided to cash assistance recipients. This requirement was also phased in with a two-year schedule and since July 1, 1990, states have been required to cover all children up to age 1 and pregnant women with incomes at or below 100 percent of poverty level. According to Blue Cross Blue Shield of North Dakota, 1992 expenditures for health care by the Medicaid program are estimated to have been \$253,000,000. Late in 1992, the number of North Dakotans estimated to be eligible for medical assistance benefits was 47,556 or approximately eight percent of the population.

Comprehensive Health Association of North Dakota

The Comprehensive Health Association was created in 1981 as a pool of insurance companies to provide health insurance coverage to persons who are unable to receive coverage elsewhere. All insurance companies are required to maintain membership in the association as a condition for writing accident and health insurance policies in the state.

To be eligible for enrollment a person must have been rejected for accident and health insurance by one company, or have been subject to a restrictive rider or preexisting conditions limitation, the effect of which is to reduce substantially the coverage typically received by a person considered a standard risk by the insurance company. 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 association covers approximately 1,200 people under policies that have either a \$500 or \$1,000 deductible and that either provide or do not provide chiropractic coverage.

Other Programs

The Department of Human Services administers several programs that provide varying degrees of medical services to the populations those programs serve. In 1992, the Division of Aging Services provided medical benefits to 1,589 people, approximately 20 percent of whom are on medical assistance; Crippled Children's Services covered 1,366 people; the Developmental Disabilities Division, acting as a payer of last resort, covered 232 contracts between families and medical service providers; the Vocational Rehabilitation Division administers a physical and mental health restoration program that provided medical benefits for 301 North Dakotans; and the eight regional human service centers provided medication to 142 persons.

Among the other sources of health care funding available to residents of the state are workers' compensation coverage, commercial health insurance coverage, the federal Medicare program, coverage by a nonprofit health service corporation, public health services, coverage through the Veterans Administration, and military coverage.

Uniform Group Insurance Program

The uniform group insurance program was established in 1971 "to promote the economy and efficiency of employment in the state's service, reduce personnel turnover, and offer an incentive to high-grade men and women to enter and remain in the service of state employment." The uniform group is composed of eligible and retired public employees. The program provides hospital benefits coverage, medical benefits coverage, and life insurance benefits coverage as set out in state law.

The Legislative Council's Employee Benefits Programs Committee considers and reports on those legislative measures and proposals over which it takes jurisdiction and which affect health and retiree health plans of state employees or employees of any political subdivision.

As of April 30, 1993, there were 17,153 contracts for health insurance coverage under the uniform group insurance program. Of those contracts, 3,932 were single active employee contracts, 10,754 were family active employee contracts, 265 were single non-Medicare retiree contracts, 116 were family non-Medicare retiree contracts, 1,304 were single Medicare A and B contracts, 210 were single Medicare A and B (one over/one under) contracts, nine were single Medicare A only contracts, and one was a double Medicare A only contract. For the 1991-93 biennium, the monthly premium for each contract was single active—\$121.42; family active—\$323.28; single non-Medicare retiree—\$303.56; family non-Medicare retiree—\$606.32; single Part A Medicare retiree—\$325.77; family Part A Medicare retiree—

\$527.16; single Medicare A and B retiree—\$152.39; and family Medicare A and B retiree—\$239.93.

For the 1993-95 biennium, the plan was revised so each state agency would pay \$254 per month for each active employee for whom it provides health insurance coverage regardless of whether the employee receives single or family coverage. This single rate does not apply to retiree plans.

1993 Legislative Activity

During the 1993 legislative session, several bills were introduced concerning the provision of health care to residents of the state and concerning the work of the health task force. The provisions not already discussed are:

1. House Bill No. 1343, as passed, required state agencies administering maternal and child health programs to work together to consolidate all state-administered maternal and child health programs under a single state agency.
2. Senate Bill No. 2426 would have established a state unified health coverage plan for residents of the state, but the bill was defeated in the House.
3. Senate Bill No. 2466 would have established a universal health access program under which every resident of the state would have been eligible to receive benefits for services, but the bill was defeated in the House.

Health Care Reform Proposals in Other Jurisdictions

Almost every state has been attempting to develop some sort of health care reform for the health care system in the individual state. Many are trying to use Medicaid funds, via a waiver from the federal government, to institute a new program of reform. No proposal was found that attempts to expand a state employee group to include the general population; however, some states are attempting to expand programs that cover a specified population to include a larger population.

In 1974 Hawaii passed the Prepaid Health Care Act, which requires employers to offer health insurance coverage to an employee who has completed at least four consecutive weeks of work, who works a minimum of 20 hours a week, and who has a monthly wage of at least 86.67 times the minimum hourly wage. Although the law requires employers to offer coverage, employers and employees share the cost. Shortly after it was enacted, the 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 Employee Retirement Income Security Act.

In 1989 Oregon adopted legislation to guarantee access to adequate health care within that state. The key components of the legislation include raising the Medicaid eligibility threshold from 58 percent of the federal poverty level to 100 percent, prohibiting the arbitrary modification of Medicaid eligibility standards to meet monetary budget needs, developing a

method of determining what level of care is adequate, reimbursing providers at a cost actuarially determined to be the cost of providing the service, funding the services on the priority list established by the commission (in order of priority), and taxing employers who do not provide coverage for their employees and the employees' families whose incomes are above the statutorily defined Medicaid eligibility levels. The Oregon plan limits the range of health services provided to the "socially accepted minimum level of care to which everyone should have access." A Health Care Commission, composed of providers and consumers, set up priorities for health care based on the cost effectiveness and social value of the services. To implement the program, Oregon applied for a waiver from Medicaid regulations. The United States Department of Health and Human Services approved the waiver early in 1993. The plan was expected to be implemented beginning in January 1994.

In 1992 Minnesota approved health care reform legislation that, among other things, expanded a children's health plan to include low-income residents. The plan provides for income-based premiums, and enrollment in the program did not open to adults without children until June 1994. Enrollment was expected to reach 54,000 by June 1994.

In 1993 Tennessee enacted legislation intended to end its current system of Medicaid but retain federal matching funds. The plan, called TennCare, is modeled on the state employees group insurance plan and will serve three classes of beneficiaries—those under 100 percent of the poverty level will get free care, those between 100 and 200 percent of poverty level will contribute to premiums and coinsurance on a sliding fee scale, and those over 200 percent of poverty level will pay 20 percent, in addition to a \$1,000 deductible. Deductibles and copayments for preventive services will be waived. The plan is premised upon the idea "that there's enough money in the system to pay for care" for everyone, but the money needs to be redistributed. The program is dependent, however, upon continued contributions from the federal Medicaid match. The state hoped to have the program ready to implement by January 1, 1994, provided it received federal waivers needed to implement the plan.

In 1992 Vermont enacted a comprehensive health care reform package. The state has made a step toward universal access by allowing a greater portion of the population to enroll in a Medicaid-based program called "Dr. Dynosaur." The increased eligibility is for children age 18 years and younger; previously, the program had been open to children age 7 and younger. The program also offers additional insurance, through Medicaid, to children who have partial insurance. With the expanded coverage offered, enrollments for the six months between July 1992 and January 1993 increased from 2,367 to 6,168.

Employee Retirement Income Security Act

The Employee Retirement Income Security Act of 1974, generally known as ERISA, was enacted by Congress to comprehensively regulate employee pension and welfare benefit plans. An employee welfare benefit plan is defined as one that provides to employ-

ees "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 investing. It also establishes various uniform procedural standards relating to reporting, disclosure, and fiduciary responsibilities for both pension and welfare plans. Three provisions, contained in 29 U.S.C. 1144, define the scope of federal preemption under the Act. The first provision states that the Act shall "supersede any and all state laws in so far as they may now or hereafter relate to any employee benefit plan" While this provision broadly preempts state laws that relate to employee benefit plans, that preemption is substantially qualified by what is called the "insurance saving clause," which broadly states that, with one exception, nothing in the Act "shall be construed to exempt or relieve any person from any law of any state which regulates insurance, banking, or securities." The one specified exemption to the insurance saving clause is the so-called "deemer clause," which states that no employee benefit plan, with certain exceptions, "shall 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 ways to distinguish insured and uninsured plans in the context of the issue of whether the Act preempts state-mandated benefit statutes as applied to uninsured plans. Courts have determined this clause prohibits the state from regulating the self-insured ERISA employee benefit plan as if it were an insurance company. While state-mandated benefit statutes may not be preempted by the Act with respect to insured ERISA employee benefit plans, state insurance regulations may be preempted by the Act when applied to self-funded or uninsured plans.

North Dakota Health Task Force

The State Health Council organized the North Dakota Health Task Force in 1990. The task force identified six critical areas in its review of the health care crisis—cost, education/prevention, access, regulation, manpower, and health care policy and delivery systems.

The task force formed a subcommittee to formulate possible health care strategies to be used to apply for a grant from the Robert Wood Johnson Foundation. The ultimate proposal presented in the grant application contained two reforms. One was to develop a prospective all payers ratesetting system that will control costs and redistribute dollars toward improved access to health services. The all payers ratesetting system proposed to be developed by the task force would retain numerous payers rather than going to a single payer system similar to the one in Canada. The second was to develop a mechanism to provide universal health insurance coverage for the people of the state.

The task force received a grant of \$671,337 from the Robert Wood Johnson Foundation. The grant provided technical assistance and administrative expenses for the task force in its study of health care financing systems and health care provision mechanisms. The grant was to be used over a two-year period and at the end of that period the task force was expected to propose legislation.

The task force identified five possible systems to be developed as health care reform. These systems were a single payer system, a multipayer tax financed system, employment-based health insurance, individual-based health insurance, and voluntary insurance with incremental reforms.

The multipayer tax financed system would have allowed private insurance to remain intact but all payers would not necessarily pay the same rates. A subset of the multipayer tax financed system is an all payers reimbursement system, which makes all health care payers pay the same rates. A single payer system assumes comprehensive coverage with no copayment or deductible. It is administered through the government or a private contractor. Under a single payer system, Medicaid is discontinued but Medicare remains the same. A single payer system may be extended to include workers' compensation.

The task force focused its work on developing one of two options—a single payer health care system or a federally compatible health care system. Reimbursement through a single payer system would be by one agency whether it is a state agency, quasi-public commission, or a private entity with whom the state contracts for services. The system would be financed by taxes and run by a single entity. A federally compatible plan would be one that would be state action in conjunction with a plan that is passed by Congress. The most discussed plan was the Clinton plan.

The task force was divided into subcommittees once the number of options for health care reform was narrowed to two.

The Consensus Building Subcommittee was responsible for communicating with the public through press conferences. The subcommittee recognized a need to ensure that the media clearly understands and follows the proceedings of the task force to accurately get the information across to the public. The subcommittee worked to set up public forums so the task force could receive public comment on the options being reviewed by the task force.

The Single Payer Subcommittee was charged with analyzing, evaluating, and making recommendations on a single payer system for North Dakota. This included determining a funding mechanism which would have raised revenue through an employer/employee payroll tax, an unearned income tax, and an increase in taxes on cigarettes, tobacco, beer, and alcohol products. Blue Cross Blue Shield and U S Healthcare were reviewed as possible administrators of the system. The costs of health care were estimated to be approximately \$650 million based on calculations by the Rand Corporation.

Under a single payer system, no subsidies would be needed because all funding comes from public sources. The subcommittee recommended that the

employer and employee each pay one-half the cost of health care coverage. The subcommittee also reviewed using taxes on alcohol and tobacco products and taxes on unearned income as financing sources. Providing a medigap policy to cover services not covered under Medicare would add approximately \$65 million to the projected \$650 million needed to finance the single payer plan. A single payer system could also include payment of medical expenses for compensable injuries for which the Workers Compensation Bureau has liability. The payment of disability, rehabilitation, and other workers' compensation benefits that are nonmedical, however, would remain the responsibility of the Workers Compensation Bureau. Certain federal programs such as Veterans Administration benefits, CHAMPUS, and Indian Health Service would also be reviewed to determine whether they would be included programs in a single payer system.

The Federal Compatible Subcommittee was charged with developing an employer-based option that would meet the requirements of a federal health care reform plan. The subcommittee endorsed universal coverage that would guarantee access to health care to all North Dakotans regardless of their ability to pay. The subcommittee also endorsed the use of an employer mandate, eliminating preexisting conditions, portability of coverage, choice, and use of cost-sharing tools. One of the goals of the subcommittee was to find a way to retain much of the current system but expand coverage to people who need it.

The Infrastructure Subcommittee was divided into two groups—cost containment and access. The cost containment group reviewed the possibility of establishing a state health care authority to oversee the health care system in the state. The group attempted to put a regional focus on its efforts that allowed it to recognize the diversity of the different regions of the state. The access group discussed access to health care issues including trauma care needs, primary care needs, rural health needs, transportation needs, and communications.

Testimony and Committee Considerations

Health Task Force

Representatives of the North Dakota Health Task Force testified that the task force is attempting to not only resolve problems with the health care delivery system, but resolve them in a way that is acceptable to a majority of the state's citizens.

The committee received testimony that global budgeting would allow for a specific amount of money to be used for health care in the state. Of the total amount allocated, a portion would be allocated to each different industry in health care. Some states produce global budgets only for certain types of health care expenses. Ratesetting can be a part of global budgeting but it can also be a separate initiative.

The committee received testimony that the annual cost of continuing to finance the current system with a federal subsidy would be approximately \$118 million. The annual costs for a single payer program would require \$664 million in public financing. The annual cost to finance a single payer plan with a

strong cost containment strategy would approximate \$631 million. The cost of financing a Clinton-style plan would require approximately \$45 million.

The committee received testimony that the benefit plan considered in conjunction with the task force options was based on the benefits offered under the Public Employees Retirement System's uniform group insurance program because that program provided a good base from which the task force could make projections and because the program is a fairly comprehensive program. The task force also considered adding benefits to cover dental expenses and to cover three years in a nursing home for care above custodial care.

Representatives of the task force testified that the task force was very concerned about the small employer issues. That is one of the reasons subsidies were being proposed. One of the greatest concerns of the task force was how the options would affect farm families and how the employer subsidy would be applied.

The task force reviewed the two proposals that remained under consideration and opted to recommend the best components of each plan as a first step in implementing health care reform. The recommendations of the task force were presented to the committee and the committee reviewed bill drafts addressing the recommendations.

Federal Initiatives

The basis for the Clinton plan was to provide health care through health care alliances and purchasing cooperatives. The alliance would be the provider of health insurance and would work with providers and insurance companies to set up a health care plan for the segments of the population covered by that particular alliance. Providers who do not provide care at a reasonable price would not be chosen by an alliance to provide care under that alliance's plan. An alliance is different from a single payer system in that alliances would have been responsible for reimbursements but they would have been regulated by the state. A single payer system would combine administrative and regulatory aspects of the system with the reimbursement responsibilities.

The three options under the Clinton plan would have provided for a program in which there would have been no deductibles, one in which there would have been a 20 percent copayment, or one in which there would have been a low deductible and no copayment.

The financial support for the Clinton plan would have come primarily from employers. One element of the plan was relief for small employers. The maximum payment by an employer would have been 7.9 percent of payroll, but the maximum payment by a small employer was as low as 3.5 percent of payroll. Approximately 80 percent of North Dakota employers were expected to be subject to the lower maximum for small employers under the Clinton plan.

The Clinton plan allowed states to regulate self-insured welfare benefit plans and self-insured employers would have no longer had the same exemptions

as currently provided under ERISA. Self-insured employers would have been required to meet certain minimum benefit levels but they may still have been allowed to self-insure.

The Clinton plan initially would not have affected the Medicare system. If a Medicare recipient chose to join an alliance that gave better medical benefits than those being received under Medicare, the Medicare recipient could have joined the alliance. Veterans' programs and Indian health services were also outside the system that would have been established under the Clinton plan.

The committee received testimony on the health care reform plan initiated by a bipartisan group in Congress. The group proposed health care reform legislation based on a proposal that had received the approval of the Senate Finance Committee. The group's goal was to produce health care reform that expanded coverage, preserved quality, contained health care costs, and passed Congress. The group proposed insurance market reforms, the use of voluntary purchasing cooperatives, subsidies for certain individuals, and an income tax deduction for health insurance premiums. The group also looked at medical malpractice reforms and limiting deductibility of health care expenses. The proposal was designed to reduce the federal deficit by \$100 billion over the next 10 years.

Uniform Group Insurance Program

The committee received testimony on the uniform group insurance program offered to members of the Public Employees Retirement System. Expansion of the uniform group insurance program to nonpublic employees would have a substantial impact on the costs incurred by the system in administering retirement plans because the plans would then be subject to the ERISA requirements. This would be a result of the change in the classification of the Public Employees Retirement System from a governmental plan to a nongovernmental plan in the event of expansion to nongovernmental workers. The increase for administering the health insurance plan would not be as dramatic.

In calculating a risk estimate for expansion of the uniform group insurance program, it was reported that underwriting procedures could mitigate the increased costs. An estimate would depend on the medical condition and health of the expansion group to be covered.

The biggest problem in preparing the estimates would be the potential for random factors to come into play. Certain assumptions would also need to be made in preparing the estimates.

The committee received testimony on five options for expanding the uniform group insurance program. None of the options would change the way the Public Employees Retirement System functions. Broadening eligibility under the program would not necessarily increase its risk. Any option pursued, however, would require the Public Employees Retirement System to seek a waiver to the ERISA to expand the uniform group insurance program. Without the waiver, the program would lose its governmental exemption.

The five options were:

1. Require all North Dakotans to participate in the program. This option would be most disruptive to the traditional insurance market.
2. Require coverage with an opt out so people with better or alternate coverage under a different plan could opt out of coverage under the program. This is less risky to the program. People expected to participate under this option would be those with no other means of insurance.
3. Allow for voluntary coverage with open access. This option posed the highest risk to the program and had the highest potential cost risk to the program. This would have provided coverage similar to that provided under the Consolidated Omnibus Budget Reconciliation Act continuation rights requirements.
4. Provide voluntary coverage with medical underwriting. This option may change the characteristics of the group covered under the program and it could affect the stability of the program.
5. Expand the eligible group under the current rules. This option was expected to provide the least amount of change to the existing structure.

The committee received testimony on three of the options for expanding the uniform group insurance program. The mandatory coverage option is a type of single payer option. This option would expand the program to approximately twelve times its current size. In calculating the costs for the mandatory coverage, it was assumed there would be no change in premiums in spite of the estimated 12-fold increase.

The voluntary coverage with medical underwriting option would open up the uniform group insurance program to anyone who wants coverage who meets medical underwriting requirements. If medical underwriting were not required, there may be problems with the long-term security of the fund. People who do not qualify under the medical underwriting requirements would be referred to the Comprehensive Health Association of North Dakota. Approximately 80 percent of the estimated 56,500 people in the state who are uninsured are estimated to meet the medical underwriting requirements.

Expanding the eligible group under the current rules of the program would allow employers who are part of the group to bring in additional employees without evidence of insurability. Insurability for individuals would still be required. This option would open up the program for greater participation but would also maintain the integrity of the program.

Other Testimony

The committee received testimony that the Department of Human Services is reviewing whether it would be feasible to purchase an insurance product to cover Medicaid expenses. The department would only be able to purchase health insurance for Medicaid recipients if it receives a waiver from the federal government allowing it to do so. The federal government does allow payment of insurance for certain recipients if it is cost effective to do so.

The committee received testimony that persons receiving health care under Medicare are not in-

cluded in the options set out by the task force. One possibility for including the Medicaid population is to give the Medicaid-eligible population vouchers allowing them to buy a private insurance policy.

The committee received testimony that the state has 35 frontier counties—those counties with a population of fewer than six people per square mile. Within the state, the determination of whether a health care facility is located in a rural setting is frequently debated. Some hospitals are considered to be rural because of their location within the state and some are considered to be rural because of the number of beds there are in the facility.

The older population is more dependent on ready access to health care providers. Since 1977 Congress has established a federal certification for rural health clinics. In 1989 the state had no rural health clinics but since then the number of rural health clinics in the state has increased to 55. A rural health clinic receives enhanced reimbursement for Medicare and Medicaid services. Traditionally, rural providers have been shortchanged by the reimbursement system. One of the qualifications for a rural health center is that it must employ nonphysician providers as a means of addressing health professional shortages in that area. Smaller clinics extend services into other rural areas with nonphysician providers. This provides access to clinic services in towns where, historically, there have been no services available.

While large providers in the cities have been providing the more complex medical procedures, there is a definite trend toward outpatient care and services. North Dakota hospitals have a greater outpatient care and service percentage than most rural hospitals nationwide.

Rural communities in the state have been able to take advantage of grant money through the receipt of transition grants. The net effect has been \$2.6 million for rural hospitals to attempt outreach services in collaboration with surrounding communities.

The committee received testimony that the health care system has reached the point where the costs of charity care, which historically have been shifted to other consumers, cannot be shifted anywhere else. Medicare, Blue Cross Blue Shield, and Medicaid all involve discounts and the costs of discounting are not as readily shifted as they have been in the past. Medical providers have had to increase efficiencies to keep overall costs down. Most commercial carriers are reimbursed according to fixed fee schedules. Typically, 20 to 25 percent of the fee listed on the schedule is discounted for Blue Cross Blue Shield.

The committee received testimony concerning a survey commissioned by the Robert Wood Johnson Foundation on family and employer health insurance. About 2,000 families in the state were surveyed. The survey estimated that almost 10 percent of the state's population was uninsured at the time of the survey. Approximately one third of the uninsured have a family income of less than 200 percent of poverty. Most of the uninsured are low-income workers and their families; four out of five uninsured adults are employed.

About 2,000 businesses were also surveyed. The survey indicated that small businesses are less likely

to offer health insurance coverage than larger establishments, but a significant number of employees without health care coverage work for businesses that have 25 or more employees. Firms that do not offer any health care plan have a greater portion of employees who are part-time workers. The average annual payroll per employee is higher in firms that offer health care coverage. Most employees are covered under a traditional indemnity plan and most employees, especially those working for a small establishment, do not have a choice of plans. Almost half of the employees who work at a larger firm (50 or more employees), are covered under a self-insured plan. Among firms of all sizes, 36 percent of the employees are covered under self-insured plans that are not subject to state regulation. The average premiums for a small establishment are not materially higher than those for larger establishments. Employers who provide health insurance for their employees generally contribute about 80 percent of the cost of coverage for an individual and about 70 percent of the cost of coverage for a family. Firms that have been in business from six to 10 years are less likely to provide health insurance coverage for their employees than newer firms or firms that have been in business for more than ten years.

Bill Drafts Considered

Cooperative Agreements

The committee considered a bill draft that would have allowed for the establishment of health care network cooperatives to promote the efficient and effective delivery of health care to people in the state. This concept was not specifically endorsed by the task force. The bill draft would have allowed provider cooperatives to negotiate with buyers on premiums and the provider cooperative would assume the risk for delivery of services. Payment for services could be according to fee schedules, salaries, or premiums—a point to be decided by the cooperatives. A network cooperative established under the bill draft would be made up of buyers. The buyers would negotiate with providers on a premium basis rather than individual payments.

The committee considered a bill draft that would have amended NDCC Chapter 23-17.5 to require active supervision of health care provider cooperative agreements to comply with federal antitrust requirements. The committee received testimony that state action immunity requires the action to be pursuant to clearly articulated state policy, and to be subject to active supervision by the state. A case-by-case determination is used to allow for a negotiated process to determine active supervision.

Health Care Commission and Cost and Quality Review Program

The committee considered a bill draft that would have established a health care commission. The health care commission would have been responsible for establishing maximum health care expenditures for the state. A provider exceeding the expenditure limits would be penalized. The limits could include a ceiling on part or all of the components of health care.

The system would be designed to provide for no interruption of services even if there would be an interruption in financing.

The committee discussed the need for a commission to oversee immediate health care reform as well as long-term reform issues being developed. The committee received testimony that there are many different combinations of people who could serve on this type of commission. The Health Council is performing many of the duties the bill draft required the commission to perform. With adequate information and resources the council could accomplish the duties recommended for the commission. The bill draft also would have required the Department of Health and Consolidated Laboratories to pursue funding in the form of grants from the Robert Wood Johnson Foundation to defray the expenses of the health care commission.

The committee considered a bill draft that would have created a cost and quality review program. The committee received testimony that the Department of Health and Consolidated Laboratories could contract with a third party to set up the program, rather than rely on consultations with the professionals who will be evaluated under the program. The committee received testimony that the program would help to point out the deficient areas in quality. The estimated cost of setting up the cost and quality review program was \$1.5 million a year.

Medical Savings Accounts

The committee considered a bill draft that would have allowed for the establishment of medical savings accounts for health care. The money in the account could be used to pay deductibles, copayments, and coinsurance requirements of a health insurance policy. When the money in the account is depleted, the coverage under the insurance product purchased in connection with the savings account would begin. The amounts contributed by employers and employees would be determined by those parties. Experts believe that the use of programs with high deductibles leads to the more prudent use of services, although there are also experts who believe people might forego preventive or necessary care because they want to use the funds in the medical savings account for other purposes.

Insurance Market Reforms

The committee considered a bill draft that would have established modified community rating for health insurance products and which would have prohibited using gender as a rating factor. The committee received testimony that the use of modified community rating would reduce the potential for insurers to be able to pick and choose only the good risks to insure. The rating factors used in the bill draft were based on the suggestions of the health task force.

The committee considered a bill draft that would have provided for guaranteed issue and renewal of health insurance products and for portability of health care coverage, would have reduced waiting periods for preexisting conditions, and would have increased the age of dependents who would be covered under a

health insurance policy. The bill draft also would have required the Commissioner of Insurance to regulate insurers who fail to provide coverage, and prohibited an insurer who pulls out of the individual market from selling its products in the state for five years.

The committee considered a bill draft that would have provided for direct reimbursement by a third-party payer to advanced registered nurse practitioners. The committee received testimony that nurse practitioners are billed through the physician for whom they work. Reimbursement of a nurse practitioner is about 75 percent of the rate paid to physicians. Advanced registered nurses do receive direct reimbursement from Medicare.

The committee considered a bill draft that would have required insurers to provide benefits for nutrition services. The committee received testimony that there are nine conditions in which nutrition therapy is medically necessary. It is difficult to determine actuarial data on the use of nutrition services because the information is not coded consistently among insurers.

Standard Benefits Package

The committee considered a bill draft that would have required insurers offering health insurance products in the state to offer a standard and basic benefits package to consumers. The benefits packages were based on the benefits package developed by the health task force and one of the benefits packages being offered under the small employer/employee health insurance program provided by NDCC Chapter 26.1-36.3.

Medical Malpractice Reform

The committee considered two bill drafts that would have limited noneconomic damages, limited attorneys' fees paid for medical malpractice cases, and required that an alternative dispute resolution system for medical malpractice claims be established. One bill draft also would have required that practice parameters be established. The other bill draft was based on the proposal suggested by the bipartisan group in Congress who developed ideas on health care reform.

The North Dakota Supreme Court found, in 1977, that limitations on economic damages were unconstitutional. If the rationale of the court in that case were applied to limitations on noneconomic damages, it is possible that those limitations would also be determined to be unconstitutional.

The committee received testimony that practice parameters are guidelines that identify common procedures that are used to diagnose or treat conditions that frequently arise. A physician who follows practice parameters should be entitled to the presumption that the physician did all that was required to diagnose or treat a condition.

The committee received testimony that limitations on attorneys' fees should be imposed against plaintiffs' attorneys to limit nonmeritorious actions. There is also a need to assure that it is the plaintiff, instead of the attorney who represented the plaintiff, who gets the bulk of an award for damages.

The committee received testimony that the number of medical malpractice claims filings have been decreasing, and that to limit the amount of damages a person may receive would be punishing the wrong party. Instead, something should be done to reduce the incidences of malpractice. Less than one percent of health care costs, nationwide, is associated with premiums and claims paid for medical malpractice.

Expansion of Medical Assistance

The committee considered a bill draft that would have expanded the medical assistance program to include children and pregnant women whose countable incomes are less than 185 percent of the federal poverty level.

The committee considered a bill draft that would have expanded the medical assistance program to cover all persons whose countable income is less than 100 percent of the federal poverty level. The committee received testimony that expanding the program to this extent can only be done through a waiver process. Expanding the program also would not increase the amount of money available to be spent on benefits for program recipients.

Tax Deduction and Tax Rate Increase

The committee considered a bill draft that would have established a tax deduction for individual taxpayers for health insurance premiums paid. This deduction would provide a deduction for individuals similar to that which is in effect for employers. Testimony received by the committee indicated that a premium that is fully deductible under federal law would also be fully deductible under state law if the bill draft were passed.

The committee considered a bill draft that would have provided an increase in individual income tax rates from 14 percent to 15.7 percent of the federal income tax liability. This increase was recommended by the task force to provide a financing mechanism for the Health Care Commission and for the expansion of medical assistance coverage.

Uniform Group Insurance Program Expansion

The committee considered a bill draft that would have expanded the uniform group insurance program by making it mandatory that all North Dakota residents obtain coverage under the program. The bill draft was referred to the Employee Benefits Programs Committee for consideration as required by NDCC Section 54-35-02.4. The Employee Benefits Programs Committee gave the bill draft an unfavorable recommendation because the demographics and characteristics of expanding the uniform group insurance program to require all residents of the state to participate in the group are unknown and the impact on the current Public Employees Retirement System participants cannot be determined at this time.

The committee considered a bill draft that would have expanded the uniform group insurance program by allowing anyone who wants to obtain coverage under the program to do so upon meeting medical underwriting requirements. The committee referred the bill draft to the Employee Benefits Programs

Committee as required by Section 54-35-02.4. The Employee Benefits Programs Committee gave no recommendation on this bill draft because the bill draft would not have a negative effect on the Public Employees Retirement System program and would have no effect on Public Employees Retirement System participants.

The committee considered a bill draft that would have expanded the uniform group insurance program by expanding the group under the current rules of the program.

Resolution Urging Congress to Amend the ERISA

The committee considered a resolution draft that would have urged Congress to amend the Employee Retirement Income Security Act to subject employers' self-funded insurance plans to regulation by the states to facilitate health care reform at the state level. The committee received testimony that amendments to the Act are necessary to implement health care reform in this state.

Health Care Reform Study Resolution

The committee reviewed a resolution draft that would have directed a Legislative Council study of health care reform, including continued study of additional recommendations of the health task force and any programs that are implemented by the 1995 Legislative Assembly, mental health and chemical dependency coverages, and unmet health care needs in rural areas.

Committee Recommendations

The committee recommends Senate Bill No. 2065 to expand the uniform group insurance program administered by the Public Employees Retirement System to allow voluntary participation for persons who meet medical underwriting requirements of the program.

The committee recommends House Bill No. 1050 to provide for health care cooperatives; health care provider cooperatives; a health care commission as a permanent subcommittee of the health council; a cost and quality review program; medical savings accounts; insurance market reforms including portability, guaranteed issue and renewal of health insurance products, and modified community rating; medical malpractice damages limitations; medical malpractice attorneys' fees limitations; medical malpractice alternative dispute resolution; expansion of medical assistance to specified populations to the greatest extent possible without needing a waiver from the federal government; an income tax deduction for health insurance premiums paid; and an income tax rate increase. The bill includes appropria-

tions to expand the medical assistance program to certain children and pregnant women in the amount of \$18,779,731 and to expand the medical assistance program to certain other populations in the amount of \$1,871,086. The bill also includes a \$3 million appropriation to establish a cost and quality review program and a \$1.5 million appropriation to cover the expenses of the health care commission established by the bill. The bill contains an effective date, provides for retroactive application; and contains an emergency clause. The bill is a compilation of several bill drafts considered by the committee.

The committee recommends Senate Concurrent Resolution No. 4009 to urge Congress to amend the Employee Retirement Income Security Act to subject employers' self-funded insurance plans to regulation by the states to facilitate health care reform at the state level.

The committee recommends House Concurrent Resolution No. 3008 to direct the Legislative Council to study health care reform, including continued study of additional recommendations of the health task force and any programs that are implemented by the 1995 Legislative Assembly.

REPORT ON THE BASIC HEALTH POLICY

The committee received a report of the Commissioner of Insurance on the progress of the implementation of a basic health policy. The basic health policy is available to individuals or to employers with fewer than 25 employees who have not had health insurance for at least 12 months prior to applying for coverage. The policy is to be offered without mandated coverage for the care and treatment of substance abuse, for the care and treatment of mental disorders, for mammogram examinations, and for surgical and non-surgical treatment of temporomandibular joint disorder and craniomandibular disorder.

The commissioner reported that since passage of the legislation, Blue Cross Blue Shield of North Dakota has sold only three policies covering 11 individuals. There have been no rate increases on the product since the effective date of the policies, January 1, 1992.

REPORT ON THE PARTNERSHIP FOR LONG-TERM CARE PROGRAM

The committee received a report of the Commissioner of Insurance on the progress of the Partnership for Long-Term Care Program.

Representatives of the Commissioner of Insurance disclosed that the program was never put into effect because Congress passed the Omnibus Budget Reconciliation Act of 1993, which contained provisions precluding the pursuit of the program. Because the federal law changed, the state had no further authority to pursue the program.

INTERNATIONAL TRADE COMMITTEE

The Legislative Council chairman established the International Trade Committee to overview state compliance with requirements of international trade treaties. The international trade treaties of most concern to the committee were the Uruguay Round Agreement, which renegotiated the General Agreement on Tariffs and Trade and established the General Agreement on Trade in Services, and the North American Free Trade Agreement.

Committee members were Senators Byron J. Langley (Chairman), Corliss Mushik, Gary J. Nelson, David E. Nething, and Dan Wogslund and Representatives John Dorso, Bob Martinson, Bill Oban, and Barbara Pyle.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

BACKGROUND

Uruguay Round Agreement

General Agreement on Tariffs and Trade

Following World War II, the United States and its allies sought to create world economic development and growth by negotiating a set of rules for reducing and limiting barriers to trade and for settling disputes. These rules were called the General Agreement on Tariffs and Trade (GATT). This agreement covers trade in goods and operates chiefly through the "Round," a process lasting years, whereby member countries negotiate tariff and quota reductions for individual products with their chief trading partners and then extend their reductions to all other members.

The Uruguay Round Agreement (named after the host country), involving trade ministers from over 100 countries, began at a conference in Punta Del Este, Uruguay, in September 1986. The Uruguay Round was the eighth general renegotiation of the GATT since 1947. This Round was intended to be the most ambitious postwar expansion of international trade rules and covered all the sectors emerging as points of dispute between trade partners. On April 15, 1994, the United States Trade Representative signed the Uruguay Round Agreement. Congress is scheduled to vote on the Uruguay Round Agreement in November-December 1994.

The Uruguay Round Agreement expanded the GATT rules, reduced or eliminated tariffs, and established the General Agreement on Trade in Services (GATS) and the Dispute Settlement Understanding Agreement. The Dispute Settlement Understanding Agreement provides for a World Trade Organization to enforce the rules of international trade law. Within the World Trade Organization, panels may be established to administer the dispute proceedings arising under the Uruguay Round Agreement. The World Trade Organization may implement the rulings and recommendations of the panels and authorize retaliatory measures against the losing country.

General Agreement on Trade in Services

The Uruguay Round Agreement contains GATS, which is the first multilateral agreement covering trade and investment in the services sectors—insurance, banking, securities trading and related services, shipping and transport, telecommunications, tourism, education, and professional services. Disputes between member countries under GATS are governed by the World Trade Organization.

Broadly, GATS has two parts. First, the framework agreement provides general principles and rules. The principal elements of the framework agreement include most-favored nation treatment, national treatment, market access, transparency, and the free flow of payment and transfers. Second, in order to fulfill the market access and national treatment provisions of the agreement, each government has submitted a schedule of market access commitments and services which will become effective when the Uruguay Round Agreement becomes effective.

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) was approved by Congress in November 1993 and signed by the President in December 1993. The agreement became effective in January 1994. The agreement builds on the existing United States-Canada Free Trade Agreement by creating a free trade area among the United States, Canada, and Mexico for investment, goods, and services originating in any of these countries. The agreement phases out all tariffs and other barriers to trade in goods and services in North America, eliminates barriers to investment, strengthens protection for intellectual property rights, and requires a NAFTA country to treat products from another NAFTA country in a nondiscriminatory manner.

The agreement covers all disputes between parties regarding the interpretation or application of the agreement, and also covers any challenges to a measure that is challenged as inconsistent under the agreement. The dispute mechanism under NAFTA provides for consultations between disputing parties and the convening of arbitral panels.

TESTIMONY AND COMMITTEE DISCUSSION

State Reservation Process

Because many of the areas covered under GATS and NAFTA are traditionally under state control, states are concerned over the possibility of the preemption of state measures found to be inconsistent under these agreements. In June 1994, the United States Trade Representative allowed states to submit inconsistent state subsidy programs and tax measures for reservation under GATS. In order to reserve state measures from challenge under NAFTA, inconsistent financial services measures and quantitative restrictions on services must be submitted to the United States Trade Representative by January 1, 1995. Also, inconsistent services and investment measures must be submitted to the United States Trade Representative by January 1, 1996. Inconsis-

tent state measures can continue to be enforced if the measures are reserved under these agreements.

Testimony indicated that the Governor is coordinating the reservation process in this state. The Governor was notified in May 1994 about the reservation of inconsistent state measures to GATS. The Governor requested state agencies to provide information on inconsistent state measures under GATS by May 28, 1994. The Governor then submitted the inconsistent state measures to the United States Trade Representative. The United States Trade Representative replaced the specific measures submitted by the states under GATS with general reservations intended to cover the submitted measures in all states.

The Governor sent a memorandum to state agencies in June 1994 to inform the agencies of reservation deadlines under NAFTA. On September 1, 1994, the Governor submitted state measures providing quantitative restrictions to the United States Trade Representative and on September 8, 1994, the Governor submitted state measures providing inconsistent financial services. The next deadline under NAFTA is January 1, 1996, for the reservation of services and investment measures.

Testimony indicated that even if the United States Trade Representative rejects a state measure that has been submitted for reservation under one of the international trade agreements, the state measure remains valid because it has not been repealed or overturned. However, a state measure rejected by the United States Trade Representative will be subject to the dispute mechanisms provided in the trade agreements.

Amendments to the Uruguay Round Implementing Legislation

In order to address concerns of state preemption under the Uruguay Round Agreement, various national organizations negotiated amendments to the Uruguay Round implementing legislation with the United States Trade Representative. Testimony indicated that the amendments will help preserve states' rights under the Uruguay Round Agreement. The committee reviewed the four key areas of the negotiated amendments to the Uruguay Round implementing legislation.

The first key amendment provides that the United States Trade Representative must consult with states on all matters that directly relate to or will potentially have an effect on state law. Also, states have an opportunity to submit, and the United States Trade Representative must consider, information and advice on all international trade matters affecting the states.

The second key amendment provides for federal-state cooperation in the World Trade Organization dispute settlement process. The Governor and the state's chief legal officer will be notified within seven days whenever a foreign nation requests consultation with the United States on the issue of whether a state law violates the Uruguay Round Agreement. The state is expected, but not mandated, to then appoint counsel to represent its issues. Within 30 days of the foreign government's request, the United

States Trade Representative must actively consult with the state's representative. State representatives have an opportunity to assist the United States Trade Representative in defending state law, and will have advance notice of proceedings at all critical stages of the dispute process.

The third key amendment provides that all states must receive 30 days' notice and have the opportunity to be heard when the United States seeks to challenge the provincial measures of another nation. If exigent circumstances are present, the United States Trade Representative may notify the states only three days before the initiation of the challenge.

The fourth key amendment provides that if the United States sues a state in federal district court to overturn a state law, the World Trade Organization panel report or appellate body decision on the state law will not be considered binding or otherwise accorded deference by the court. Also, an effective bar to all private rights of action relating to the Uruguay Round Agreement, whether primarily based on the Uruguay Round Agreement, the commerce clause, or "any other basis" is contained in the implementation language along with strong explanatory language in the statement of administrative action.

Sanitary and Phytosanitary Measures

The committee discussed the possibility that certain state sanitary and phytosanitary measures may be inconsistent with the sanitary and phytosanitary requirements of the Uruguay Round Agreement and NAFTA. Sanitary and phytosanitary measures are laws, decrees, regulations, requirements, and procedures that protect human, animal, or plant life or health. Countries have applied these sanitary and phytosanitary measures to imports in order to protect their consumers and producers from unwanted diseases, pests, and other contaminants. Sanitary and phytosanitary measures are often called nontariff barriers to trade.

The Uruguay Round Agreement and NAFTA require sanitary and phytosanitary measures of member countries to be based on scientific principles and not to be lower than internationally recognized standards. Although certain state measures enjoy the opportunity to be permanently grandfathered under the agreements, neither the Uruguay Round Agreement nor NAFTA provide for the grandfathering of sanitary and phytosanitary measures. Thus, any state sanitary and phytosanitary measures that are inconsistent with the sanitary and phytosanitary requirements of the agreements are subject to challenge under the agreements.

The committee requested 49 state agencies involved in areas regulated by sanitary and phytosanitary measures to identify sanitary and phytosanitary measures that may be inconsistent with the requirements of the international trade agreements. The only sanitary and phytosanitary measure brought to the committee's attention was North Dakota Century Code Section 36-15-21, which requires that female cattle brought into this state be vaccinated against brucellosis. Testimony indicated that there is no scientific basis for the measure, as it relates to Canada and Canada has been free of

brucellosis since October 1987. Testimony further indicated that the 1995 Legislative Assembly may be requested to repeal the section.

International Trade in Selected States

The committee reviewed the coordination of international trade issues in selected states. States indicated by the United States Trade Representative as the most organized in the coordination of international trade issues are Texas, Florida, California, Michigan, Kentucky, and Minnesota.

Texas

The Governor of Texas is the main contact for international trade issues in Texas. The Governor appoints the Office of State-Federal Relations, which has offices in Washington, D.C., and Austin, to oversee the state reservation process under GATS and NAFTA. The Office of State-Federal Relations often enlists assistance from the Texas Attorney General and other state agencies.

Florida

The Florida International Affairs Commission coordinates international trade issues in Florida. The Governor chairs the commission. The commission has the authority to make policy for the state relating to international trade, investment, commerce, education, and cultural affairs. The commission analyzes and evaluates state programs in education, tourism, trade, and investment, and makes recommendations to the appropriate state agency for making the programs more effective. The commission also makes recommendations to the legislature regarding proposed legislation and appropriations in the areas of international trade issues. The commission recently completed a strategic plan as a blueprint for the state's public and private international activities. The commission enlisted the assistance of state agencies and the Attorney General during the GATS and the NAFTA reservation process.

California

Various economic development agencies coordinate international trade development and export programs in California. The Governor coordinated the reservation process under GATS and NAFTA.

Michigan

The Michigan Department of Commerce, through its International Office, coordinates international trade issues in Michigan. Duties of the International Office include the coordination of the reservation process under GATS and NAFTA and the promotion of export and financial assistance programs. The International Office also maintains offices in Washington, D.C., and in several international cities.

Kentucky

The Cabinet for Economic Development, through its International Trade Office, is responsible for international trade issues in Kentucky. The International Trade Office works closely with trade support organizations through export development counseling, representing Kentucky business at trade fairs,

providing trade leads and marketing information, and providing export seminars. The International Trade Office receives assistance from two foreign offices, which are located in Brussels and Tokyo. These foreign offices disseminate trade leads, assist with trade shows and fairs, and arrange meetings with foreign buyers. The International Trade Office received assistance from the Attorney General on the submission of reservations under GATS and NAFTA. The Kentucky Legislative Research Division also employs one person who mainly concentrates on international trade issues.

Minnesota

The State of Minnesota office in Washington, D.C., coordinates international trade issues in Minnesota. One person in the Minnesota Attorney General's office also coordinates issues in Minnesota after receiving instructions from the Washington, D.C., office. The Attorney General's office then enlists assistance from state agencies in the reservation process and in other areas of international trade.

Arizona-Mexico Commission

The committee reviewed the Arizona-Mexico Commission, a regional exchange program for various international issues. The Arizona-Mexico Commission and its counterpart, the Commission Sonora-Arizona, were established 34 years ago as joint forums for social, cultural, and economic exchange and development. The Arizona-Mexico Commission is a nonprofit corporation and a member organization. It consists of 16 committees, including Agriculture, Art and Culture, Education, Environment, Financial Services, Industry and Maquila, International Services, Legal Advisory, Legislative, Livestock, Media and Communications, Physical Infrastructure, Public Health, Small Business/Franchise, Sport, and Tourism.

Testimony indicated that the commission strives to promote good will, understanding, and mutual development by taking better advantage of human, technical, cultural, and economic resources and by improving coordination and relations among people of Arizona and all of Mexico. These objectives are carried out through many activities coordinated by the Arizona-Mexico Commission. After a study of a particular international program, and at the recommendation of the committees, the Arizona-Mexico Commission and the Commission Sonora-Arizona advise decisionmakers at the national or state level, either in the United States or Mexico.

International Trade Forums in North Dakota

North Dakota Century Code Section 54-01-17.2 provides for the North Dakota-Saskatchewan-Manitoba Boundary Advisory Committee. The advisory committee consists of the Governor, five members of the Legislative Assembly, and five executive branch members. Duties of the committee include discussing matters of mutual concern with the appropriate bodies of the provinces of Saskatchewan and Manitoba and making necessary recommendations to the appropriate government or private entity. Under this

broad authority, the committee could discuss and make necessary recommendations on international trade issues.

Testimony indicated that the position of international trade specialist in the Department of Economic Development and Finance functions as the trade office for this state. The committee reviewed the responsibilities of the international trade specialist, which include providing marketing assistance, export assistance, shipping assistance, labeling assistance, and export certification assistance. Testimony indicated that a need exists for the development of stronger export assistance programs in this state.

The committee discussed the "Trade Point" program, which is an Ohio-based program that allows states to enter their available products in an Internet system. The products can then be purchased from around the world through the Internet system. There is a subscription fee states must pay to join the "Trade Point" program.

The committee also discussed ISO 9000 (International Standards Organization) certification. This certification is for the entire export process of a business and indicates that the export process of a business meets international export standards. Testimony indicated that other countries generally prefer to purchase products from an ISO 9000 certified business.

The committee reviewed a bill draft that would have established an International Trade Coordinating Council to oversee and coordinate policies and activities relating to international affairs of this

state. The Lieutenant Governor would have been chairman of the council, and membership would have consisted of two legislators from each house and the Attorney General, the Commissioner of Agriculture, one Public Service Commissioner, the State Tax Commissioner, the Commissioner of Higher Education, the Securities Commissioner, the Commissioner of Banking and Financial Institutions, the State Health Officer, the director of the Game and Fish Department, the director of the Department of Economic Development and Finance, the director of the Board of Animal Health, and the person appointed by the Governor to be the United States Trade Representative point of contact. The council was authorized to employ staff services.

During discussion of the bill draft, the committee decided to include the Commissioner of Insurance and the director of the Department of Transportation as members of the council. Also, the committee decided to remove the director of the Game and Fish Department and the director of the Board of Animal Health from the council.

RECOMMENDATIONS

The committee recommends Senate Concurrent Resolution No. 4010 to direct the Legislative Council to establish an International Trade Committee to study international trade agreements and their effect on North Dakota.

The committee recommends Senate Bill No. 2066 to establish an International Trade Coordinating Council to oversee and coordinate policies and activities relating to international affairs of this state.

JOBS DEVELOPMENT COMMISSION

The Jobs Development Commission was assigned five studies. Senate Bill No. 2021 directed a study of methods and coordination of efforts to initiate and sustain new economic development in this state. House Concurrent Resolution No. 3066 directed a study of products liability statutes as they relate to the aircraft industry. Senate Concurrent Resolution No. 4056 directed a study of the tax, regulatory, marketing, and other business incentives that can be enacted by the state of North Dakota to maintain and encourage development of our state's abundant lignite resources. Senate Concurrent Resolution No. 4070 directed a study of open records, open meetings, and bidding laws for nonprofit corporations and organizations. Senate Concurrent Resolution No. 4071 directed a study and monitoring of the social economic impact of defense-related downsizing, closures, and loss of federal contracts.

The Legislative Council also delegated to the commission the responsibility to receive a report from the Department of Economic Development and Finance regarding the impact of the income level requirement in North Dakota Century Code (NDCC) Section 10-30.3-11. In addition, the Legislative Council assigned to the commission the responsibility to receive annual reports from the Department of Economic Development and Finance on loan performance and performance of the department.

Commission members were Representatives Barbara Pyle (Chairman), Clare Carlson, Loren DeWitz, Mick Grosz, Howard Grumbo, Roy Hausauer, John Hokana, Marv Mutzenberger, Eugene Nicholas, Ronald Nichols, Gary Porter, Clara Sue Price, Rod St. Aubyn, Mike Timm, and Ben Tollefson and Senators Layton Freborg, Jayson Graba, Joe Keller, Aaron Krauter, Karen K. Krebsbach, and Kit Scherber.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

METHODS AND EFFORTS TO INITIATE AND SUSTAIN NEW ECONOMIC DEVELOPMENT STUDY

The study of the methods and efforts to initiate and sustain new economic development was conceived as a method through which members of the Legislative Assembly could monitor jobs creation programs.

Background

Between 1980 and 1990, the state's population decreased by almost 14,000 residents. The Census Bureau estimates that the population of the state will decrease by another 10,000 by the year 2000.

Per capita income, adjusted for inflation, decreased for state residents by about eight percent during the 1980s. The national per capita income for 1991 was approximately \$19,000 while North Dakota's per capita income was about \$15,600. About 13.5 percent of North Dakota residents lived in poverty in 1991, compared with the national average of 14.2 percent.

Notwithstanding the decline in population and

real per capita income, North Dakota had a job growth rate of 2.17 percent from 1991 to 1992, which was better than the national average of .45 percent. North Dakota's job growth rate for that year ranked seventh among the 50 states.

1991 "Growing North Dakota" Legislation

During the 1989-90 interim, the Legislative Council's Jobs Development Commission studied methods to initiate economic development. One of its recommendations was 1991 Senate Bill No. 2058, which was enacted by the Legislative Assembly. The program established by the bill was popularly referred to as Growing North Dakota. The bill replaced the Economic Development Commission with the Department of Economic Development and Finance.

Senate Bill No. 2058 required the Governor to appoint a director of the Department of Economic Development and Finance. The bill also provided for a Division of Finance, a Division of Marketing and Technical Assistance, and a Division of Science and Technology. The bill provided for the establishment of these funds:

1. The agriculture partnership in assisting committee expansion (Ag PACE) fund, for the purpose of buying down the interest rate on loans to on-farm businesses.
2. The partnership in assisting community expansion (PACE) fund, for the purpose of buying down the interest rate on loans made by lead financial institutions in participation with the Bank of North Dakota.
3. The primary sector development fund (North Dakota Economic Development Finance Corporation), for the purpose of taking equity positions in, providing loans to, or using other innovative financing mechanisms to provide capital for new or expanding businesses in the state or relocating businesses to the state. Every full-time employee of a business receiving moneys or other assistance from the primary sector development fund was required to be paid an income at least equal to 100 percent of the federal poverty level for a family of four for the life of the loan, equity position, or other financial relationship.
4. The regional rural development revolving loan fund, for the purpose of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanding primary sector businesses in areas in the state which are not located within five miles of any city with a population of more than 8,000. Funds in the regional rural revolving loan fund are divided equally among the eight planning regions. Repayments from projects funded by the regional rural revolving loan fund are credited to the local region.

The bill established the Science and Technology Corporation to provide a program and budgetary interface between the Department of Economic Development and Finance and the North Dakota Uni-

versity System. The primary purpose of the corporation was to focus the intellectual and technical resources of the university system on the discovery, development, and application of scientific and technological principles and concepts on North Dakota primary sector businesses.

The 1991 Legislative Assembly appropriated about \$21 million for economic development purposes for the 1991-93 biennium. Funding for the economic development program came from transfers from the earnings of the Bank of North Dakota to the general fund.

1993 "Growing North Dakota II" Legislation

The Growing North Dakota program established in 1991 was partially revised in 1993 by Senate Bill No. 2021.

Senate Bill No. 2021 changed the name of the Science and Technology Corporation to Technology Transfer, Inc., and changed the name of the North Dakota Economic Development Finance Corporation to the North Dakota Future Fund, Inc.

Senate Bill No. 2021 also changed the wage requirement for assistance from the Future Fund (formerly the primary sector development fund). As changed, 85 percent of the full-time employees of a rural North Dakota business or North Dakota American Indian business receiving assistance from the fund must be paid an income at least equal to 100 percent of the federal poverty level for a family of four. Every full-time employee of an urban North Dakota business receiving assistance from the fund must be paid an income at least equal to 100 percent of the federal poverty level for a family of four for the first year following the receipt of moneys from the fund and after the first year, 90 percent of the full-time employees must be paid an income at least equal to 100 percent of the federal poverty level for a family of four for the remaining period of the loan, equity position, or other financial relationship. A full-time employee is defined as a person employed to work at least 32 hours per week.

Senate Bill No. 2021 also eliminated the requirement that the Department of Economic Development and Finance include a Division of Marketing and Technical Assistance. The bill authorized the director of the department to establish additional divisions as necessary; however, the department must contain an office of North Dakota American Indian Business Development and an office of North Dakota Women's Business Development.

Because all of the funds in the Future Fund and Technology Transfer, Inc., had been expended for the 1991-93 biennium, the Legislative Assembly appropriated \$1,625,000 for the Future Fund and \$375,000 for Technology Transfer, Inc., for the period beginning January 1, 1993, and ending June 30, 1993.

The 1993 Legislative Assembly appropriated the following amounts for economic development for the 1993-95 biennium:

Department of Economic Development and Finance	\$3,855,907
Grants	\$1,492,723
Future Fund	\$5,005,000
Technology Transfer, Inc.	\$2,125,000

Partnership in assisting community expansion fund	\$2,700,000
Agriculture partnership in assisting community expansion fund	\$ 400,000
Agricultural Products Utilization Commission	\$1,175,000
Beginning farmer revolving loan fund	\$1,000,000

Testimony

The commission received reports from the Department of Economic Development and Finance with respect to its various divisions and programs and from several other agencies and entities involved in economic development activities.

Department of Economic Development and Finance

The Department of Economic Development and Finance undertook an effort to collect and interpret information regarding jobs creation and capital investment in primary sector industries in the state. Because there was not a great deal of data available for comparison, the department's goal was to establish a benchmark and continue to collect data for comparison purposes.

The department implemented a total quality management format in an effort to streamline the administration of the department and assist future directors in their transitions. The administrative goals achieved by the department during the interim included:

1. Evaluation of all employees of the department;
2. Establishment of a reference library;
3. Publication of a monthly newsletter;
4. Establishment of an evaluation process to measure the quality and frequency of staff efforts;
5. Transfer of the procurement technical assistance program from the department to the North Dakota Small Business Development Center in Grand Forks; and
6. Adoption of a policy requiring reports from other development entities receiving department funds regarding service and achievement.

As part of its annual report to the commission, the department reviewed the activities of the community development program, the international trade program, and its research and evaluation teams.

Technology Transfer, Inc.

The purpose of Technology Transfer, Inc., is to provide leadership and financial resources toward the commercialization of new technology in North Dakota. Investments are made primarily in the conceptual stages of product research and development and contracts generally are structured to recover the principal investment. However, where ample margins and substantial volume are expected, a payback may be negotiated which exceeds the investment.

Between July 1, 1993, and June 30, 1994, Technology Transfer, Inc., approved funds for projects totaling over \$1.5 million. Since the inception of the program, Technology Transfer, Inc., has provided about \$3.5 million in funding and has been responsible for the creation of an estimated 180 jobs.

In July 1994, \$400,000 was allocated from the

regional rural development revolving loan fund to Technology Transfer, Inc., for research and development projects. The \$400,000 was divided among the eight planning regions and six projects have been approved. In addition, Technology Transfer, Inc., is working with the North Dakota University System for technology transfer services, including outreach programs; technological assistance for designing, licensing, patenting, and testing of new projects; business development assistance; production engineering; and marketing.

North Dakota Future Fund

The purpose of the North Dakota Future Fund is to provide flexible "gap financing" partnerships through loans, equity investments, and grants. During the interim, the Future Fund Board reevaluated its operation and made several changes. The board developed a written loan, investment, and grant policy, established credit parameters, and developed a marketing and image building program. The board also began conducting two meetings per month to approve investment requests.

During the first year of the biennium, 26 projects were approved. The projects were provided with over \$5 million and were projected to create over 900 jobs within a two-year period. Since 1991, the Future Fund has provided nearly \$9 million in funding for 45 projects. Those projects have created approximately 1,400 jobs. Four loans totaling approximately \$400,000 are past due and two businesses that were funded by the Future Fund have closed. One of the loans for \$50,000 has been charged off and determined to be uncollectible.

Regional Rural Revolving Loan Fund

The Future Fund Board administers the regional rural revolving loan fund. During the first six months of operation of the fund (which commenced operation during the 1993-95 biennium), the board provided over \$1 million for 14 projects, which are projected to create approximately 500 jobs within two years.

Native American Business Development Program

The purpose of the Native American business development program is to assist American Indian tribes, businesses, and entrepreneurs to secure continuing access to economic development financing and technical assistance and to improve the American Indian business climate through advocacy, policy, and education. One of the first goals of the program was to identify the types of American Indian businesses and determine the impact of these businesses on the state's economy.

Forty percent of American Indian businesses in the state are located off reservations, while another 37 percent are located on the Turtle Mountain Reservation. Services, retail trade, and construction constitute over 80 percent of the American Indian businesses both on the reservations and off the reservations.

The program is gathering information regarding spending habits of various segments of the reservations to determine basic economic needs. The study is

a joint effort between the Department of Economic Development and Finance, tribal planning offices, and tribal colleges. The goal is to establish a comprehensive baseline for strategic planning and to determine the investment needs of the reservations.

Women's Business Development Program

The purpose of the women's business development program is to encourage and assist North Dakota women in business. During the interim, the program designed and implemented a women-owned business certification service and certified 11 women-owned businesses. The program also provided leadership and support to the state Women's Business Leadership Council, provided counseling and technical assistance to over 70 primary sector women in the process of establishing and improving businesses, provided advocacy and support services to various women's business organizations, and provided assistance to the regional planning councils in administering the women's incentive grant program through which 25 incentive grants were awarded to women's businesses. The program is conducting a study to measure the economic impact of women's businesses on the state's economy.

Income Level Requirement Study

Senate Bill No. 2021 (1993) required the Department of Economic Development and Finance to monitor the impact of the income level requirement for businesses receiving Future Fund moneys and the benefit packages on businesses that receive those moneys. The department surveyed businesses that have received Future Fund moneys and found that 25 percent of the businesses pay only employer payroll taxes for employees; 35 percent of the businesses pay payroll taxes and some type of insurance or retirement; 25 percent of the businesses pay payroll taxes, health insurance, and retirement; and 15 percent of the businesses pay full benefits to the employees. The average wage of the employees of the businesses surveyed is \$9.67 per hour and the average benefit paid per hour is \$1.88.

Bank of North Dakota - Partnership in Assisting Community Expansion Fund

The PACE fund buys down the interest rate on loans made by lead financial institutions in participation with the Bank of North Dakota. Since the inception of the program in 1990, approximately 150 loans have been funded through the program. The total amount of funding for those loans is approximately \$56 million, with about \$11 million in buydown funds provided under the program. An estimated 2,466 jobs have been created as a result of this program. As of June 30, 1994, two loans were considered to be delinquent and one loan was in default.

Bank of North Dakota - Agriculture Partnership in Assisting Community Expansion Fund

The Ag PACE fund buys down the interest rate on loans to on-farm businesses. In the three years since its inception, approximately 100 loans have been funded through this program. The total amount of

the loans is over \$4 million, with over \$1 million in buydown funds provided under the program. No loan is delinquent or in default.

Bank of North Dakota - Beginning Farmer Revolving Loan Fund

The beginning farmer revolving loan fund provides direct loans through the Bank of North Dakota to first-time purchasers of agricultural real estate for the purchase of agricultural real estate. Under the program, the borrower's net worth cannot exceed \$150,000 and the maximum loan amount is \$100,000. The interest rate under the loan program is fixed at one percent below the Bank of North Dakota base rate for the first five years with a maximum of six percent per year and during the second five years fixed at one percent below the Bank of North Dakota base rate with a maximum of eight percent per year. The maximum loan term is 25 years and the rate for the remaining years after the first 10 years is adjusted as needed to equal the Bank of North Dakota base rate.

During the three years since its inception, almost 250 loans have been granted under the program. The total amount of the loans is over \$17 million and the buydown funds committed by the Bank amount to almost \$2 million. As of June 30, 1994, no loan is delinquent or in default.

North Dakota Agricultural Products Utilization Commission

During the interim, the North Dakota Agricultural Products Utilization Commission has awarded grants of approximately \$1.5 million to 57 projects for research and development, marketing and utilization, cooperative marketing, and farm diversification.

Job Service North Dakota

Job Service North Dakota reported on its Work Force 2000 job training program, which is designed to fill gaps in federally funded job training programs and assist North Dakota businesses in retraining and upgrading workers' skills. During the 1991-93 biennium, 15 projects were funded to provide training to 300 individuals at an average cost of \$188 per individual. In addition to Work Force 2000 funds, additional funding was provided by the Department of Vocational and Technical Education, the Job Training Partnership Act, and the Joint Labor Management Committee. Employer contributions to the training totaled approximately \$250,000. The average wage of participants during the first year of operation of the program is approximately \$10 per hour.

During the first year of the 1993-95 biennium, 20 projects were funded and 536 individuals received training at a projected average cost per participant of \$314. The Work Force 2000 budget for the biennium is \$185,000 and total training costs of the projects funded during the first year of the biennium amounted to almost \$2.5 million. Employers contributed approximately \$2.1 million for the training. The remainder of the funding was provided by the Department of Vocational and Technical Education,

the Job Training Partnership Act, and the new JOBS training program.

Other Miscellaneous Reports

Other entities reporting to the commission on economic development activities included the Commissioner of Labor, Commissioner of Agriculture, Department of Tourism, Board of Higher Education, Office of Intergovernmental Assistance, Small Business Administration, Farm Bureau, Greater North Dakota Association, and the North Dakota Rural Electric Cooperatives.

Growing North Dakota III

The Department of Economic Development and Finance reported to the commission on recommendations by the Growing North Dakota III Committee which will be proposed to the Legislative Assembly in 1995. The recommendations include:

1. Repealing the income level requirement for businesses receiving funds from the Future Fund. Businesses receiving Future Fund moneys would no longer be subject to the requirement even if they received Future Fund moneys before the effective date of the repeal.
2. Separating the appropriations for the PACE fund, Ag PACE fund, and the beginning farmer revolving loan fund from the appropriation for the Department of Economic Development and Finance because those funds are administered by the Bank of North Dakota.
3. Removing statutory references to the farm diversification analytic system because that program has been completed and has not been funded since the 1991-93 biennium.
4. Changing statutory references relating to the corporate status of Technology Transfer, Inc., and to clearly state it is a revolving fund.
5. Allowing Pride of Dakota moneys to be rolled back into the program rather than be deposited in the general fund.

Conclusion

The commission makes no recommendation with respect to its study of methods and efforts to initiate and sustain economic development in the state.

AIRCRAFT PRODUCT LIABILITY STUDY

The study of aircraft product liability statutes was proposed to determine if North Dakota laws could be revised to create a favorable environment for aircraft manufacturers in the state.

Background

During the last 15 years, the number of small aircraft manufactured in the United States has decreased from approximately 17,000 to fewer than 1,000 per year. Aircraft manufacturers generally attribute the decrease in manufacturing to the costs associated with product liability claims against the manufacturers.

North Dakota Product Liability Law

The 1993 Legislative Assembly adopted a new product liability law, which is codified as NDCC

Chapter 28-01.3. A product liability action is an action brought against a manufacturer or seller of a product for or on account of personal injury, death, property damage caused by or resulting from the manufacture, labeling, or sale of the product, the failure to warn against a danger in the use of the product, or the failure to provide proper instructions for the use of a product.

Under North Dakota product liability law, an alteration or modification of a product is a defense in a product liability action.

North Dakota law requires the manufacturer of a product to indemnify the seller for the cost of defense of a product liability action and any liability imposed if it is alleged that the product was defectively designed, contained defectively manufactured parts, had insufficient safety guards, or had inaccurate or insufficient warning; the defective condition existed when the product left the control of the manufacturer; the seller has not substantially altered the product; and the defective condition or lack of safety guard or adequate warnings caused the injury or damage.

A product may not be considered to have a defect unless when the product was sold by the manufacturer or other initial seller there was a defect that made the product unreasonably dangerous to the user or consumer.

Federal Law

In August 1994 the United States Congress passed legislation addressing small aircraft product liability claims. Under the legislation, a civil action for damages for an individual's injury or death or for property damage may be brought against the manufacturer of a general aviation aircraft or aircraft component only if the injury, death, or damage occurred within 18 years after delivery of the product to the first purchaser or lessor or after the replacement of any component.

Testimony and Commission Considerations

Proponents of the study testified that the decrease in the number of small aircraft manufactured in the United States was primarily due to product liability concerns. Although the federal legislation regulating claims against the manufacturers of small aircraft was recently enacted, proponents of the study contended that changing North Dakota law to create a more favorable environment for small aircraft manufacturers would entice manufacturers of small aircraft to locate in the state.

One method identified by which product liability concerns could be addressed would be to establish a statute of repose—a point after which no claims may be brought against the manufacturer of a product. Because defects are generally discovered within the first four to seven years after manufacture of a small aircraft or aircraft component, proponents of the study argued that a 10-year statute of repose would be fair to consumers and to manufacturers. A second area by which product liability costs could be reduced is a state-of-the-art defense. Under that defense, if a product is determined to be the most technologically advanced product feasible at the time of manufac-

ture, the manufacturer may not be held liable for an alleged defect. In addition, proponents of the study contended that product liability costs could be reduced by relieving a manufacturer of liability if the manufacturer establishes that the harm was caused after the period of useful safe life of the product had expired. Among other things, the period of useful life would take into account:

1. The progress of the art, innovations, economic changes, and the development within the industry;
2. Climatic and other storage and usage conditions;
3. Wear and tear on the product;
4. Stressful circumstances that would shorten useful product life;
5. Misuse; and
6. Policies on repairs, modifications, renewals, and replacements of the product.

The commission considered a bill draft that would have established various defenses and presumptions that an aircraft or aircraft component is free from defects. The bill draft would have included a state-of-the-art defense, a useful safe life defense, and a 10-year statute of repose. The bill draft also would have established a disputable presumption that a product is free from defects if the product was in compliance with applicable government or industry standards.

Proponents of the bill draft argued that the presumptions and defenses included in the bill draft would be instrumental in reducing the potential liability of North Dakota small aircraft manufacturers. They contended that the federal aircraft product liability legislation was watered down to the extent that any additional state incentives would be instrumental in luring a small aircraft manufacturer to the state. Although the defenses and presumptions included in the bill draft would apply only to product liability actions brought under North Dakota law and would not likely apply to aircraft sold and operated outside the state, proponents of the bill draft contended that the bill draft would be a good first step. In addition, they informed the commission that they were studying other potential solutions to address, through contract law provisions, the liability of aircraft manufactured in the state and sold to out-of-state purchasers.

In light of a 1986 North Dakota Supreme Court decision declaring a 10-year statute of repose unconstitutional because it violated the equal protection clause of the Constitution of North Dakota, concern was expressed regarding the inclusion of a statute of repose in the bill draft. However, proponents of the bill draft contended that there was a rational basis for the statute of repose.

Recommendation

The commission recommends House Bill No. 1051 to establish a disputable presumption that an aircraft or aircraft component is free from defects if the product was in compliance with applicable government or industry standards at the time of manufacture; a state-of-the-art defense; a useful safe life defense; and a 10-year statute of repose for manufacturers of small aircraft and aircraft components.

LIGNITE RESOURCES STUDY

The study of business incentives to encourage development of the state's lignite resources was proposed to explore methods through which the state could assist the state's lignite industry in maintaining competitiveness with other lignite-producing states.

Coal Conversion Facility Privilege Tax

A coal conversion facility privilege tax is imposed on all coal conversion facilities, including electrical generating plants, coal gasification plants, and coal beneficiation plants. This tax is in lieu of ad valorem taxes except for taxes on the land on which the facility is located.

An additional tax is also imposed upon electrical generating plants at a rate of .25 mill on each kilowatt hour of electricity produced for the purpose of sale. The moneys received from the additional tax imposed on electricity generated by electrical generating plants is deposited in the state general fund. The moneys received from coal conversion facilities in each county is allocated 65 percent to the state general fund and 35 percent to the county. Of the moneys allocated to counties, 30 percent is paid to the incorporated cities of the county based upon the population of each incorporated city; 40 percent is deposited in the general fund of the county to be used for general governmental purposes; and 30 percent is paid to school districts within the county on an average daily membership basis.

During fiscal year 1992, \$9,772,293 was deposited in the state general fund and \$2,748,717 was allocated to the counties as a result of the coal conversion facility privilege tax.

Coal Severance Tax

A tax is imposed upon all coal severed for sale or for industrial purposes by coal mines within the state. The tax is 75 cents per ton and is in lieu of any sales or use taxes. An exemption is provided for coal used primarily for heating buildings in this state, coal used by the state or any political subdivision of the state, and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states. A reduction by 50 percent in the severance tax is provided for any coal that is to be burned in a coal generation facility that is designed to use renewable resources as fuel to generate 10 percent or more of its energy output measured in British thermal units.

An additional coal severance tax of two cents per ton is imposed for deposit in the lignite research fund. The lignite research fund is to be used for contracts for land reclamation research projects and for research, development, and marketing of lignite and products derived from lignite.

Of the coal severance tax revenues, 50 percent is deposited in the state general fund; 35 percent is allocated to coal-producing counties for apportionment to cities, the county, and school districts in the same manner as the coal conversion facility privilege tax; and 15 percent is deposited in the coal development trust fund (a permanent trust fund under Article X, Section 21, of the Constitution of North

Dakota) administered by the Board of University and School Lands. Up to 50 percent of the tax deposited in the coal development trust fund during a biennium may be appropriated by the Legislative Assembly for lignite research, development, and marketing and an additional 20 percent may be appropriated for clean coal demonstration projects approved by the Industrial Commission. Fifty percent of the taxes deposited in the coal development trust fund is transferred to the lignite research fund.

Of the coal severance tax revenues during fiscal year 1992, \$11,361,033 was deposited in the state general fund, \$8,014,538 was allocated to the coal-producing counties, and \$3,434,802 was deposited in the coal development trust fund (50 percent of which is transferred to the lignite research fund). In addition, \$610,631 was deposited in the lignite research fund as a result of the additional two-cent severance tax.

Impact Aid Program

Fifteen percent of the coal severance tax is deposited in the coal development trust fund. The Board of University and School Lands has authority to invest the trust fund and may loan moneys from the fund to coal development-impacted counties, cities, and school districts. The interest earned on moneys in the trust fund must be used first to replace uncollectible loans from the fund, and the balance must be credited to the general fund of the state. Loan principal payments must be redeposited in the trust fund.

Within the office of the commissioner of the Board of University and School Lands there is an Energy Development Impact Office. The director of the Energy Development Impact Office is required to develop a plan for the assistance of counties, cities, school districts, and other political subdivisions in coal development and oil and gas development-impacted areas; and to make grants to counties, cities, school districts, and other taxing districts within legislative appropriations.

Lignite Research, Development, and Marketing

The Industrial Commission is required to consult with the Lignite Research Council in matters of policy affecting the administration of the lignite research fund. In evaluating applications for funding from the lignite research fund, the Industrial Commission and the Lignite Research Council must give priority to those projects, processes, or activities that will preserve existing jobs and production, create the greatest number of new jobs and most additional lignite production and economic growth potential in coal-producing counties or those counties with recoverable coal reserves, attract matching private industry investment equal to at least 50 percent or more of the total cost, and that will result in development and demonstration of a marketable lignite product or products with a high level of probability of rapid commercialization by the year 2000. For marketing applications, priority must be given to those projects, processes, or activities that develop baseline information, implement specific marketing strategies, and otherwise contribute to the effective marketing of lignite and its products by the year 2000. For

reclamation applications, priority must be given to those projects, processes, or activities that will reduce unnecessary regulatory costs and assist in effectively reclaiming surface mined land to its original or better productivity as soon as possible.

During the 1991-93 biennium, approximately \$6,533,000 was deposited in the lignite research fund. That amount included about \$1,228,000 from the additional two-cent coal severance tax, about \$5,081,000 from the coal severance tax deposited in the coal development trust fund, and about \$224,000 from interest income.

Expenditures from the lignite research fund for the 1991-93 biennium approximated \$2,446,000. The expenditures included about \$600,000 for a lignite marketing feasibility study, \$210,000 for the Land Reclamation Research Center, and \$1,636,000 for administration and development of the lignite research, development, and marketing program.

At the end of the 1991-93 biennium, the fund had an approximate balance of \$4,206,000. Estimated receipts during the 1993-95 biennium are \$5,164,000. The 1993 Legislative Assembly appropriated \$10,163,800 for lignite research grants for the 1993-95 biennium.

Coal Mining Regulation

The Industrial Commission has jurisdiction over all persons and property necessary to regulate the exploration for coal within the state. The State Geologist is required to act as a supervisor responsible for enforcing the regulations and orders of the commission. The commission may require the furnishing of a reasonable bond and the delivery to the State Geologist of basic data collected during the exploration for coal. Any lands substantially disturbed in coal exploration must be reclaimed.

The Public Service Commission is the state regulatory authority for all purposes relating to the federal Surface Mining Control and Reclamation Act of 1977. The commission may issue permits for surface coal mining operations and adopt regulations necessary to carry out its responsibilities.

A mineral developer is required to give the surface owner written notice of the type of land disturbance or mining operation contemplated by the mineral owner before the Public Service Commission may issue a permit to surface mine the land. The commission may not issue a permit to surface mine land unless the permit application is accompanied by statements of consent executed by each surface owner whose land is included within the permit area to have the surface mining conducted upon that person's land.

Testimony and Commission Considerations

The lignite industry in the state creates over 18,000 direct and indirect jobs and generates a personal income of approximately \$420 million and \$1.2 billion of business volume. A representative of the lignite industry indicated that a competitive business environment is important to the North Dakota lignite industry. The federal Clean Air Act and other environmental issues including externality legislation in states currently relying on lignite generated

power from North Dakota were described as concerns of the lignite industry. Research and development and marketing programs were described as important methods of addressing those environmental concerns, enhancing existing uses of lignite, and developing new and more efficient and environmentally responsive uses of lignite.

After receiving a report on the status of the lignite industry in North Dakota, the commission requested the proponents of the study to submit suggestions for proposed legislation to encourage and enhance the lignite industry in North Dakota. Representatives of the lignite industry informed the commission that they were unable to suggest any specific proposals.

Conclusion

The commission makes no recommendation concerning its study of incentives that can be enacted to maintain and encourage development of lignite resources in the state.

OPEN RECORDS STUDY

The study of open meetings, open records, and bidding laws for nonprofit corporations and organizations was proposed to address concerns with the accountability of nonprofit corporations and organizations that receive government funds. The commission limited the scope of its study to a review of open records requirements applicable to nonprofit corporations and organizations receiving state funds.

North Dakota Constitutional and Statutory Provisions Relating to Open Records

Section 6 of Article XI of the Constitution of North Dakota and NDCC Section 44-04-18 provide that except as otherwise specifically provided by law, all records of governmental entities or "organizations or agencies supported in whole or in part by public funds, or expending public funds," are public records, open and accessible for inspection during reasonable office hours. A copy of a public record must be provided upon request and a fee may be charged for making a copy. A violation of the open records requirement is an infraction. State law provides several exemptions from the open records requirements. Among those exemptions that may be relevant to nonprofit corporations and organizations are:

1. Records relating to boarding homes.
2. Records relating to licensing of health care facilities.
3. Records relating to drug addiction treatment facilities.
4. Records relating to the care of developmentally disabled persons.
5. Attorney work product.
6. Records relating to foster care institutions.
7. Records relating to children receiving early childhood services.
8. Records relating to maternity homes.

North Dakota Case Law and Attorney General Interpretations Relating to Open Records

The North Dakota Supreme Court has addressed the open records law in various aspects. In **Hovet v.**

Hebron Public School District, 419 N.W.2d 189 (N.D. 1988), the Supreme Court addressed whether exemptions may be implied under Section 44-04-18. The court determined that the introductory language in that section, “[E]xcept as otherwise specifically provided by law,” clearly indicated that an exemption to the open records requirements may not be implied.

In **City of Grand Forks v. Grand Forks Herald**, 307 N.W.2d 572 (N.D. 1981), the Supreme Court addressed the issue of what types of records are “public records.” The court determined that any record possessed by an entity subject to Section 6 of Article XI of the Constitution of North Dakota and NDCC Section 44-04-18 is open to inspection unless specifically exempted by law.

In **Forum Publishing Company v. City of Fargo**, 391 N.W.2d 169 (N.D. 1986), the Supreme Court addressed the question of whether public documents in the possession of a nongovernmental third party are open to inspection. The court determined that records relating to qualifications of applicants for the position of police chief which were held by a third party were subject to the open records requirements. The court stated that the open records laws may not be “circumvented by the delegation of a public duty to a third party,” and the records are not any less a public record because the records were in the possession of the third party.

In a March 1993 opinion, the North Dakota Attorney General addressed the question of whether all records of an organization that receives public funds are subject to the open records requirements. The Attorney General opined that “[n]othing in state law exempts an organization’s records because the records are not related to the public funds received by the organization.”

In March 1994 a district court judge issued an order that stated that the records of a nongovernmental entity—the Greater North Dakota Association—are not public records. **Adams County Record v. Greater North Dakota Association**, (Civil No. 93-C-2330 South Central Judicial District). The order stated that “public funds, once paid to GNDA for goods and services or memberships cease to be public funds . . .” and “because public funds are not appropriated to GNDA, GNDA is not an organization or agency supported in whole or in part (sic) by public funds, nor does it expend public funds.” The decision of the district court was appealed to the North Dakota Supreme Court, but no opinion had been issued before the commission completed its interim work.

Open Records Laws From Other Selected States

The commission reviewed open records laws of several states and focused on a number of states where the open records laws have language specifying that the records of nongovernmental entities receiving public funds are open. This portion of the report describes some of these states’ laws and court cases or other interpretations of the laws.

Arkansas law provides that “public records” include records of any “agency wholly or partially supported by public funds or expending public funds.” The Supreme Court of Arkansas has addressed the issue of whether a nongovernmental entity is subject

to this law due to the acceptance of public moneys on at least two occasions. In one case, the court determined that a private, nonprofit association of colleges and secondary schools which was composed of public servants and accepted public moneys was subject to the law because the association affected public schools in Arkansas, the state committee of the association was composed of public servants with its official situs and operation in a public-owned institution, and dues and other contributions from public schools are paid to the association. In the other case, the court determined that a property lease between a city and the American Red Cross in which the city charged the Red Cross a \$1 per year lease payment did not qualify as “supported by public funds” because the language was specific and did not include every form of government assistance or subsidy, no matter how indirect.

The South Carolina Freedom of Information Act includes within the definition of a public body “any organization, corporation, or agency supported in whole or in part by public funds or expending public funds.” In determining that a nonprofit corporation that accepted state funds and federal grant moneys through the University of South Carolina was a public body subject to the Freedom of Information Act, the South Carolina Supreme Court stated:

When a block of public funds is diverted *en masse* from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds, the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds.

The court, however, indicated that the Freedom of Information Act was not so broad as to apply to business enterprises that received payment from public bodies in return for supplying specific goods or services on an arm’s-length basis.

The Texas open records law includes within the definition of a governmental body “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.” Public funds are defined as any “funds of the state or of a governmental subdivision of the state.” A United States Court of Appeals determined that the National Collegiate Athletic Association and the Southwest Athletic Conference, which received funds from state universities in Texas, are not subject to the Texas open records law because those organizations provide “specific and gaugeable services which negate the general support element required for a governmental body designation.”

Although the Connecticut Freedom of Information Act does not specifically include within its definition of a “public agency” a nongovernmental entity, the Connecticut Supreme Court has stated that in determining whether an entity is a public agency subject to the Freedom of Information Act, the court will consider the following criteria: (1) whether the entity performs a governmental function; (2) the level of

government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government.

Testimony and Commission Considerations

Although it appears clear that the open records requirements do not apply to situations in which a nongovernmental entity engages in an exchange of goods or services with a state agency, questions were raised concerning the applicability of the open records requirements when there is not a clear purchase of goods or services by the state agency. Questions were also raised regarding the definition of public funds.

A representative of various media organizations testified that organizations or agencies supported in whole or in part by public funds, or expending public funds, often refuse to acknowledge that they are covered by the open records requirements. In those cases, the only recourse for persons seeking information from those organizations is to go through an expensive and time-consuming court proceeding. Thus, a clarification of what is meant by an organization or agency "supported in whole or in part by public funds, or expending public funds" may be needed.

Because the North Dakota Supreme Court had not ruled in the Greater North Dakota Association open records case, commission members generally agreed that it may be premature to recommend any changes in the open records laws. Commission members also agreed that further study of the open records area may be necessary after a review of the decision of the Supreme Court in the pending appeal. The commission considered a resolution draft that would have directed the Legislative Council to study open records laws and exceptions to the open records laws.

Recommendation

The commission recommends Senate Concurrent Resolution No. 4011 to direct the Legislative Council to study open records laws and exceptions to the open records laws.

IMPACT OF DEFENSE-RELATED DOWNSIZING STUDY

The study of defense-related downsizing, closures, and loss of federal contracts was proposed as a means to gather information relating to mitigation of the economic impact of defense cutbacks and to review the impact of defense-related downsizing. The study resolution was introduced in response to the failure of 1993 Senate Bill No. 2282 to pass the Senate. That bill would have provided loans for businesses developing nonmilitary uses for military bases and vacated North Dakota National Guard armories and for diversifying defense-dependent businesses.

Defense-Related Spending in the State

Defense-related spending has a significant impact on the state's economy. For fiscal year 1991, the United States Department of Defense expenditures in the state totaled over \$480 million—about \$332 million was attributable to defense payrolls and \$148 million was attributable to defense prime contracts. Defense grants to the state and local governments for fiscal year 1991 amounted to over \$6 million, which

ranked North Dakota second per capita among the states for expenditures in that area.

Most of the Department of Defense payroll expenditures in North Dakota are a result of the Grand Forks Air Force Base and the Minot Air Force Base, each of which employ about 6,000 Air Force personnel. In addition, it is estimated that the Grand Forks Air Force Base generates an estimated 4,600 jobs in the Grand Forks area and the Minot Air Force Base generates an estimated 3,700 jobs in the Minot area. North Dakota ranked second per capita among the states in total Air Force payroll for fiscal year 1991.

Military Facility Closure

Because of the end of the cold war, federal defense expenditures are expected to be reduced significantly over the next several years. According to the Congressional Research Service, the Department of Defense is estimating that total defense expenditures could drop by as much as \$90 billion by fiscal year 1997. That is equal to a reduction of approximately 30 percent between fiscal year 1990 and fiscal year 1997. It is estimated that cuts in defense expenditures could result in the loss of over one million military and civilian jobs by 1995.

In general, most defense spending occurs in four areas—military and civilian pay; procurement; nonpay operation and maintenance; and research, development, test, and evaluation. Military pay makes up the greatest portion of defense spending in the state. As well as the general reductions in defense spending, an added threat to the state's economy is the potential closure of the major Air Force facilities in the state. The federal Base Closure and Realignment Commission reviews and recommends proposed base closures. In 1991 the commission recommended the closure and realignment of 82 military bases. The recommendations were submitted to the President, who accepted the recommendations and transmitted the recommendations to Congress. Although Congress can overturn the recommendations by a joint resolution within 40 days after submission, the House of Representatives rejected a resolution that would have overturned those recommendations.

In 1993 the Base Closure and Realignment Commission reviewed a list of 31 major base closures, 12 major base realignments, and 122 smaller base or activity closures, realignments, or relocations. During the deliberations by the commission, the Grand Forks Air Force Base was added to the closure study list. However, members of the commission voted to not include Grand Forks Air Force Base on the closure list. The final list recommended by the commission included the closure of 35 major military bases and 95 minor bases. The list was submitted to the President who accepted the recommendations and transmitted the recommendations to Congress. In September 1993 the United States Senate rejected a resolution that would have overturned the recommendations.

The next round of base closures is scheduled for 1995 when the Secretary of Defense will submit a list of proposed closures to the Base Closure and Realignment Commission.

Federal Economic Assistance Programs

The Office of Economic Adjustment within the Department of Defense has administered a defense economic adjustment program since 1961. The Office of Economic Adjustment provides direct technical assistance and planning grants to communities impacted by major defense base closures and realignments and defense contract-related cutbacks. The purpose of the program is to play a facilitating role in the economic adjustment process of the affected community.

In addition to the economic adjustment program, Congress has provided funding in several areas for assisting communities and businesses affected by cutbacks in defense programs. Recent defense authorization and appropriation acts have included funding for the Department of Defense to be used for adjustment assistance to displaced defense workers under the Job Training Partnership Act, and other assistance programs have been established through the community block grant program, Small Business Administration, and the Farmers Home Administration. In addition, the President has requested \$2.24 billion for conversion-related programs. Congress has proposed adding additional funds to conversion programs such as the Technology Reinvestment Project, which was established by Congress in 1992 to assist small- and medium-sized defense firms develop dual use technologies that would be relevant to defense requirements and to the commercial market. One requirement of programs under the Technology Reinvestment Project is cost sharing of at least 50 percent.

Selected Other States' Defense Conversion Programs

California

The California Legislature has established a defense conversion matching grant program to provide matching grants and technical assistance to non-profit organizations, public agencies, and businesses for projects qualifying for federal funds under the federal Technology Reinvestment Project and other programs providing incentives for economic conversion.

The California Legislature has established the Defense Conversion Council to develop and recommend a strategic plan for federal, state, and local defense conversion and training programs. The council is also required to act as a central agency for all defense conversion funding, assistance, and information and to coordinate state procedures for proposals seeking state funds to match funding requirements of federal defense conversion programs. In addition, the council is required to conduct an evaluation of the impact of the state's matching fund expenditures on the California economy by January 1, 1995, and January 1, 1997.

The California Legislature has established within the Department of Commerce an Office of Strategic Technology. The purpose of the office is to administer programs for technology transfer that provide funds to leverage private and federal funds for technology development and commercialization in response to

defense industry conversion and diversification. The office has established a challenge grant program to provide funds for defense industry conversion and diversification.

The California Legislature has established California regional technology alliances to provide the overall administration, coordination, informational network for the defense industry conversion and diversification program. Three alliances have been established as nonprofit corporations in the San Francisco Bay area, Los Angeles, and San Diego. Among the responsibilities of the alliances are to provide information about federal and state defense conversion programs, assist in the formation of new businesses, and to make recommendations to the Defense Conversion Council regarding programs to assist defense-dependent industries to convert to commercial markets.

Connecticut

The Connecticut General Assembly has created within the Department of Economic Development a Commission on Business Opportunity, Defense Diversification and Industrial Policy. One of the duties of the commission is to advise the General Assembly and the Department of Economic Development on issues relating to the diversification and conversion of defense-related industries. The Department of Economic Development is required by law to engage special agent technologists to assist medium and small manufacturers to find solutions for the problems related to defense conversion.

Maine

The Maine Legislature has established a Task Force on Defense Realignment and the Economy within the State Planning Office to monitor federal reductions in defense spending and defense realignment. The task force is required to prepare a state-wide strategy and implementation plan to assist defense-dependent industries, workers, and communities to reduce defense dependency by shifting from military to civilian enterprises. The legislature also established an Economic Conversion Division within the Office of Business Development to implement the recommendations of the task force.

Missouri

The Missouri General Assembly has established a defense conversion pilot project to assist Missouri-based defense industry contractors in the conversion to nondefense-oriented manufacturing.

New Mexico

The New Mexico Legislature has designated the Economic Development Department as the lead agency to promote defense conversion technology, to coordinate the transfer of defense technology to private sector industries, and to promote private-public partnership and business development programs.

Testimony and Commission Considerations

The commission received testimony from the Adjutant General of the North Dakota National Guard

regarding the impact of defense downsizing on the North Dakota National Guard. Because of plans to downsize the United States Army, the importance of the National Guard is increasing. A battalion at Grand Forks will be adding approximately 300 positions and the overall impact of the downsizing of the regular military forces may actually result in an increase in the size of the North Dakota National Guard.

The commission received testimony from representatives of the Department of Economic Development and Finance regarding activities by the department with respect to mitigating the impacts of defense downsizing. The department has worked with various federal agencies in identifying federal funds available to assist North Dakota defense manufacturers convert to nonmilitary manufacturing. In addition, the department is working with the Small Business Administration to provide procurement assistance for North Dakota businesses. The department has also offered its assistance to regional planning councils in areas of the state faced with closures of military facilities, such as the United States Air Force radar tracking station at Dickinson.

The commission received testimony from defense manufacturers located in the state indicating that defense downsizing has not had a negative impact on the North Dakota businesses. The defense-related businesses have generally experienced an increase in business in part because of the low cost of doing business in North Dakota and the quality of the products manufactured in the state. Concern was expressed regarding the cost of converting a defense-dependent business to a nondefense-related business, particularly with respect to the cost of research and development and the cost associated with product liability concerns when selling to nonmilitary markets.

The commission received testimony from representatives of the cities of Grand Forks and Minot.

Although concern was expressed regarding the impact of a closure of either Air Force base near those cities and its impact on the state, representatives from both cities indicated that local groups are working first to retain the installations and second to review alternative uses of a closed military installation.

The commission received testimony from representatives of school districts that receive federal impact aid for "federally connected children." In 1989 the Legislative Assembly allowed for the creation of coterminous school districts on the Minot and Grand Forks Air Force bases. As a result, the two Air Force base school districts receive 100 percent of the federal funding allowed. The school districts in the areas of the Grand Forks Air Force Base and the Minot Air Force Base are significantly impacted in enrollment and funding by the Air Force bases. Any decrease in the impact aid could result in significant cutbacks for those school districts.

The commission received testimony regarding programs in other states to assist communities impacted by the closure of major military installations. In at least two states, legislation has been enacted to allow for the creation of local authorities to take control of a closed military installation. Pursuant to the legislative authorization, local governing boards were established that had special zoning and planning authority and taxing authority. In addition, public corporations were created to receive federal funding to assist in the conversion of the military facility to nonmilitary uses. Some members of the commission contended that similar legislation in this state would be important if either of the two large military installations were slated for closure.

Conclusion

The commission makes no recommendation with respect to the study of defense-related downsizing, closures, and loss of federal contracts.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned three studies. House Concurrent Resolution No. 3072 directed a study of charitable gaming laws and rules and the effects of Indian gaming on charitable gaming in this state. Senate Concurrent Resolution No. 4052 directed a study of accusations of child abuse or child sexual abuse by one parent against the other during contested custody and visitation cases. Senate Concurrent Resolution No. 4057 directed a study of the Uniform Interstate Family Support Act and its relationship to existing North Dakota law to determine the desirability of adopting it. The Legislative Council delegated to the committee the responsibility to review uniform laws recommended to the Legislative Council by the North Dakota Commission on Uniform State Laws under North Dakota Century Code (NDCC) Section 54-35-02. The Legislative Council also assigned to the committee the responsibility for statutory and constitutional revision.

Committee members were Representatives William E. Kretschmar (Chairman), Lorraine Allmaras, Grant C. Brown, James O. Coats, Matthew M. Klein, Jennifer Ring, and Robert Stenson and Senators Jim Dotzenrod, Bonnie Heinrich, Dan Jerome, Rolland W. Redlin, Wayne Stenehjem, and John T. Traynor.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

CHARITABLE GAMING STUDY

The goals of this study were to determine whether the laws and rules regarding taxation, enforcement, and limitations on charitable gaming are adequate and appropriate and to study the effects of Indian gaming on charitable gaming in the state.

Background

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 scandal and controversy following this attempt led to the state's first constitutional amendment, which outlawed all forms of lotteries and gift enterprises.

In 1976 the constitutional prohibition was amended to allow the Legislative Assembly to authorize public-spirited organizations to conduct games of chance when the net proceeds of the games are devoted to public-spirited use. Temporary laws were passed by the 1977 and 1979 Legislative Assemblies and "permanent" legislation was enacted in 1981 (NDCC Chapter 53-06.1).

Since 1981, several Legislative Council interim committees have studied charitable gaming. Many of the changes that have been made to the charitable gaming law resulted from Legislative Council recommendations. 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, the administration and enforcement of the charitable gaming law, and the

taxation of gaming proceeds.

The State Gaming Commission shares authority with the Attorney General to impose fines on organizations, distributors, and manufacturers who violate any gaming law or rule. The commission is given full authority for adoption of rules to implement the charitable gaming laws, which, before 1991, was the responsibility of the Attorney General.

In 1993 the Legislative Assembly passed legislation that provided for the installation of video surveillance equipment in authorized sites conducting the game of twenty-one unless the twenty-one gross proceeds average less than \$10,000 per quarter. The definition of eligible use for gaming proceeds was expanded to include the stimulating and promoting of state and community-based economic development programs and developing, promoting, and supporting tourism. The tax on the gross receipts of pull tab sales was increased from two to 4.5 percent.

Indian Gaming

Indian gaming operations are the fastest growing form of legalized gaming in the country. This increase in Indian gaming operations has resulted in a surge of interest in the status of Indian gaming operations across the country as well as in this state. Indian gaming operations are authorized and regulated by federal rather than state law.

Indian tribes are "sovereign" nations and, therefore, free from most federal and state governmental control. State laws, including those regarding gambling activities, generally do not apply to Indians or Indian lands without the consent of Congress and the federal government.

In 1988 Congress passed Public Law 100-497, the Indian Gaming Regulatory Act, 25 U.S.C. 2701-2721 and 18 U.S.C. 1166-1168 (Act). The Act attempted to balance the tribes' sovereignty and the federal and state governments' right to exercise some influence on Indian gaming. Congress wanted to protect the tribes and the general public from organized crime and other corrupting influences; ensure that gaming would be conducted fairly and honestly; ensure that the tribes would be the primary beneficiaries; and help promote tribal economic development, self-sufficiency, and strong tribal governments. The Bureau of Indian Affairs of the Department of the Interior and the federal Indian Gaming Commission were given the responsibility for overseeing Indian gaming operations.

Generally, Indian tribes in any state are allowed to conduct on Indian lands those types of gaming that the state allows for non-Indians. Instead of being bound by state law in these operations, Indian gaming is subject to either federally approved tribal ordinances or negotiated tribal-state compacts, depending on the types of gaming involved.

Indian gaming is subject to a three-tiered regulatory system. Class I games (traditional ceremonial games) may be conducted by the tribes without restrictions. Class II games (bingo and related games and certain card games) are allowed if the state "permits such gaming." Class III games (casinos,

lotteries, parimutuel operations, blackjack, and slot and video machines) are allowed only if such activities are "located in a State that permits such gaming for any purpose by any organization, or entity, and ... conducted in conformance with a Tribal-State compact entered into by the Tribe and the State."

An Indian tribe does not have complete authority to conduct any type of gaming it wishes. The state must already permit a type of gaming for any non-Indian before it can be conducted on Indian land. The non-Indian gaming need not be commercial or profitmaking. Gaming by a nonprofit organization for charitable purposes, or even private social betting, can provide a basis for Indians to claim the right to conduct comparable forms of gaming. A state cannot prohibit Indian gaming if it is a type of gaming that the state allows for non-Indians.

The Act provides a method for negotiating the compacts. To protect the states from unilateral decisions by tribes to conduct any Class III game, the Act requires the parties to reach an agreement on how the gaming would be conducted. If an agreement is not reached, the gaming activity cannot be conducted by the tribe. To protect the tribe from the states' refusal to negotiate or failure to negotiate in good faith, the Act provides time limits for completing the negotiation process as well as a test for determining whether the state negotiated in good faith.

In 1992 the Governor of North Dakota and tribal officials approved tribal-state compacts allowing certain gaming activities to be conducted by the Devils Lake Sioux, Turtle Mountain Band of Chippewa, Three Affiliated Tribes of Fort Berthold, and the Standing Rock Sioux. In 1993 a fifth tribal-state compact was signed with the Sisseton-Wahpeton Sioux Tribe.

Testimony and Committee Considerations

The committee received testimony from individuals and organizations involved in charitable gaming in the state and reviewed extensive information submitted by the Gaming Section of the Attorney General's office with regard to all aspects of the charitable gaming industry and Indian gaming. The committee's considerations centered on six issues—the pull tab excise tax; the wager limit on the game of twenty-one; video surveillance of twenty-one sites; social problems related to charitable gaming, such as compulsive gambling; effects of charitable gaming on the nonprofit sector; and the impact of Indian gaming on charitable gaming and other Indian gaming-related issues.

Pull Tab Excise Tax

The 1989 Legislative Assembly imposed an excise tax on pull tabs at a rate of two percent on the gross receipts of sale or retail of pull tabs. The 1993 Legislative Assembly increased the tax from two percent to 4.5 percent on the gross receipts of pull tab sales.

Testimony from various representatives of charitable gaming organizations indicated that the additional 2.5 percent tax on pull tabs had substantially affected charitable gaming activities. Many charitable organizations conducting the game of pull tabs had attempted to pass the additional tax through to

patrons by reducing the payout percentage 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 additional excise tax on pull tabs may result in the closing of several pull tab sites operated by the organization. Additional testimony indicated that as a result of the 2.5 percent excise tax increase, charities have received 14 percent less than they would have if the tax increase had not taken effect and consequently have been forced to either cut back or cut out some programs. 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.

The State Gaming Commission indicated that because many small charities depend solely on pull tabs, the tax burden is falling unfairly on these organizations. It was suggested that a better approach would be to assess the tax on the adjusted gross proceeds and not on the gross proceeds, to make the tax more progressive. The testimony indicated that if the game of pull tabs is to be a viable game of chance, the payout percentage should be 78 percent or greater. Because of testimony from a number of organizations, the commission agreed to drop the percentage below 78 percent if the organization posted the payout rate at the gaming site.

In the course of considering issues related to the impact of recent tax legislation, the committee considered a bill draft that would have permitted an organization that conducts the game of pull tabs at an authorized site to deduct as an expense 2.5 percent of the gross proceeds for the game of pull tabs. Information received by the committee indicated that this bill draft would take the burden of the \$8.2 million fiscal effect off the organizations by increasing their allowable expense limitation. The additional expense limitation would result in an \$8.2 million decrease in net proceeds.

Wager Limit for Twenty-One

The maximum limit per wager for the game of twenty-one is five dollars and wagers of one dollar must be accepted up to the maximum limit.

Testimony from various representatives of charitable gaming organizations indicated that the five dollar wager limit for the game of twenty-one should be increased to enable charitable gaming organizations to compete with tribal casinos. North Dakota tribal casinos have a wager limit of \$50 and there are no wager limits for twenty-one at tribal casinos in Minnesota. Additional testimony from several organizations indicated support for higher wager limits if organizations were permitted to set a higher minimum wager limit for some tables at the site.

The committee considered a bill draft that would have increased the wager limit to \$25 for the game of twenty-one. The bill draft also included a provision that at least one table at a site must accept wagers in increments of one dollar up to a maximum set by the organization which may be below the maximum for any other table at the site.

Video Surveillance of Twenty-One Sites

The 1993 Legislative Assembly required charitable gaming organizations to install video surveillance equipment at authorized sites conducting the game of twenty-one unless the twenty-one gross proceeds average less than \$10,000 per quarter and wagers do not exceed \$2. Supporters of the legislation indicated it would have a favorable effect on the security problems that have plagued the game of twenty-one.

The committee was informed that 251 sites and 502 gaming tables are affected by the 1993 law. Public hearings held on the proposed gaming rules produced numerous complaints about the video surveillance system requirement—smaller organizations complained that the \$10,000 threshold was too low and that it was forcing those organizations to either lower their maximum wager to \$2 or to discontinue the game of twenty-one; the cost of installing the equipment is \$2,500 to \$3,000 per table which could take up to one and one-half years for an organization to pay for the surveillance equipment for each table; organizations have not been provided with a fair opportunity to compete with the tribes, which have a much higher wager limit for the game; and some organizations are dropping the wager limit from \$5 to \$2 to encourage the 1995 Legislative Assembly to reconsider the threshold for requiring video surveillance systems from \$10,000 to \$20,000 or \$25,000.

Compulsive Gambling

One of the more troublesome occurrences in environments in which gaming 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 the state has not been adequately assessed, it is a problem that mental health organizations frequently encounter in offering assistance to clients. Testimony also indicated that there are only three nationally licensed gambling addiction counselors practicing in North Dakota, with practices located in Fargo, Minot, and Bismarck. It was noted that because two of the three gambling addiction counselors are in private practice, many persons with gambling addictions cannot afford to seek help from these private counselors.

Testimony indicated that a minimum of 4,500 persons in the state are in need of gambling addiction counseling. There are no treatment centers or clinics devoted exclusively to gambling problems and addictions in the state. It was also noted that every addicted gambler affects at least 17 other individuals, including immediate family, relatives, friends, and employers. According to the testimony, consideration should be given to educating the state's residents about the potential problems associated with gambling, providing treatment services for those individuals who experience difficulties related to their gambling, and ensuring that adequate funds for such efforts are made available.

Effects of Charitable Gaming on the Nonprofit Sector

The committee, during the course of reviewing how best to regulate charitable gaming activities in the state, reviewed the publication *The Effects of Charitable Gaming on the Nonprofit Sector in North Dakota*. The publication resulted from a project funded by a research grant from the Aspen Institute and conducted by personnel of the Plains Art Museum in Fargo. The project focused on the effects charitable gaming has had on the 358 North Dakota nonprofit organizations that use this form of fundraising. Three specific areas were addressed—mission, administration, and programs and services. The methodology included a direct mail survey to representatives of the 358 nonprofit organizations. Approximately 95 percent of the respondents agreed that overall charitable gaming has been successful; approximately 57 percent believe the long-term stability of charitable gaming is doubtful; and more than 96 percent agree that charitable gaming is an effective way to assist nonprofit organizations. Additionally, it was noted that when asked for the most positive impact on the state, most organizations cited employment, especially in small communities hurt by the continuing shift of population to urban areas.

Indian Gaming

During the course of the committee's review of charitable gaming laws and rules, the Gaming Section of the Attorney General's office presented testimony on the impact of Indian gaming on charitable gaming and other related issues. The testimony indicated that a leveling off of charitable gaming activity in the state may be attributed to Indian gaming competition or because gaming has reached the saturation point. Testimony also indicated that other factors such as the weather and the increased excise tax could be reasons for the decreases in charitable gaming.

The committee also received testimony from the Gaming Section regarding the compliance of the tribes with the provisions of the compacts. There are six Indian casinos in operation in the state with a seventh expected to open in 1995. It was noted that a monthly compact compliance inspection has been performed by the Attorney General's office on each of the four tribes operating the casinos. It was reported that the working relationship with the tribes has been positive and the compact compliance is improving. It was also noted that periodic compliance reports are being submitted to the Governor.

The tribal gaming compacts require the tribes to submit independent financial audit reports. The compacts require the information contained in the audit reports to remain confidential. Only the Governor and the Attorney General's office are permitted to have access to the financial information and Indian gaming information can only be released by court order or by permission from the tribe. A provision in each compact states that the compact is provided for by federal law and therefore supersedes any state open records law that may be to the contrary.

Committee members expressed frustration at the inability of the committee to review the financial

information submitted by the tribes to the Attorney General. Article XI, Section 6, of the Constitution of North Dakota and NDCC Section 44-04-18(1) require that records of state agencies be open to the public. In addition, the North Dakota Supreme Court has held that for an exception to the state open records law to exist, it must be specific. That is, the Legislative Assembly must directly address the status of the record in question. Committee members questioned whether any state official has the authority to enter a compact that abrogates state open records laws. Committee members were concerned that lack of access to financial information affects the ability of the Legislative Assembly to exercise its responsibility as a policymaking body.

The committee considered a bill draft that would have ratified the compacts executed prior to February 1993 (which includes all existing compacts), but not portions of any gaming compact which close tribal records in the possession of state agencies, nor any amendments that may be made to present compacts or any new compacts that may be negotiated.

Because of concern over the compact negotiation process and the lack of legislative involvement in that process, the committee also considered a resolution draft for a study of the tribal-state compact negotiation process.

Recommendations

The committee recommends House Bill No. 1052 to permit an organization that conducts the game of pull tabs at an authorized site to deduct as an expense 2.5 percent of the gross proceeds for the game of pull tabs.

The committee recommends House Bill No. 1053 to increase the wager limit to \$25 for the game of twenty-one and require that at least one table at a site must accept wagers in increments of one dollar up to a maximum set by the organization which may be below the maximum for any other table at the site.

The committee recommends Senate Bill No. 2067 to ratify tribal-state gaming compacts executed prior to February 1993. The bill does not ratify portions of gaming compacts that close tribal records in the possession of state agencies, nor does it ratify any amendments that may be made to present compacts or any new compacts that may be negotiated.

The committee recommends Senate Concurrent Resolution No. 4012 to direct the Legislative Council to study the tribal-state compact negotiation process.

CHILD ABUSE ACCUSATION STUDY

The study of the accusations of child abuse or child sexual abuse by one parent against the other during contested custody and visitation cases was proposed as a companion proposal to 1993 Senate Bill No. 2488 relating to allegations of abuse in custody and visitation cases.

Background

Contested custody and visitation cases sometimes involve accusations by one parent of child sexual abuse by the other. The limited information available to date suggests that in most courts approximately two to 10 percent of all family court cases involving

custody or visitation disputes also involves a charge of child abuse or child sexual abuse. The incidence of contested custody is estimated to be about 10 to 15 percent of divorce filings with minor-aged children.

When a charge of abuse is made, the court essentially makes a finding that the accused committed the act, the accused is innocent but that the accusation was made in good faith, or the accused is innocent and the accusation was fabricated and malicious.

Innocent parents who are victimized by fabricated and malicious allegations of sexual abuse of a child in a custody case have few places to turn for relief. In a search of other states' statutes, references were found to a court's duty to halt the custody proceedings until an investigation of sexual abuse charges was complete. However, only one state statute specifically allowed a remedy in the case of fabricated allegations. An examination of state and federal custody cases involving fabricated allegations of child sexual abuse found no substantial attempt to provide redress to an innocent party.

1993 Legislation

The 1993 Legislative Assembly enacted two bills that addressed the issue of child abuse and child sexual abuse as they relate to child custody and visitation. Senate Bill No. 2488 dealt with the effect of allegations of child abuse or child sexual abuse in child custody determinations. An unfounded allegation, made in bad faith by one parent against the other, of harm to a child, was made a factor to consider in determining the best interests and welfare of a child. If a court finds that an allegation of harm to a child made by one parent against the other is unfounded and in bad faith, the court may order the parent making the allegation to pay court costs and reasonable attorney fees incurred by the other parent in responding to the allegation.

House Bill No. 1393 related to the effect of child sexual abuse or child abuse on child custody or visitation proceedings. A court was allowed to prohibit custody or visitation between an abusive parent and a child under specific circumstances.

Testimony and Committee Considerations

The committee conducted several meetings at which the committee received testimony from agencies involved in the investigation of allegations of child abuse and child sexual abuse in visitation and custody cases. The committee also received extensive information from the Department of Human Services with regard to accusations of parental child and sexual abuse. The committee's considerations centered on two issues—the prevalence of cases in North Dakota involving accusations of child abuse or child sexual abuse during child custody and visitation cases; and the desirability of amending the child abuse and neglect law (NDCC Chapter 50-25.1) to refocus the approach of the Department of Human Services regarding child abuse matters.

Child Abuse Accusations

The Department of Human Services indicated that the department has no reports dealing with child abuse or child sexual abuse accusations when

dealing with child custody situations. The department keeps a number of statistics dealing with probable cause or no probable cause for child abuse investigation purposes, including a breakdown on age, gender, and types of abuse. The testimony indicated that the number of reports of abuse is on the rise and in fiscal year 1992 there were 4,200 reports of abuse. It was noted that NDCC Chapter 50-25.1 contains a mechanism to charge people with making false reports of abuse; however, the provision is not often used.

The Department of Human Services is required by law to investigate all reports of abuse. If during the initial process there is reason to believe the information is false, it was noted that the department does not continue with the regular investigation procedure, but instead follows an administrative policy procedure. It was noted that this type of case eventually may be referred to the state's attorney for prosecution.

Testimony before the committee indicated goals of the Department of Human Services regarding child abuse and neglect matters are to regionalize investigations of child abuse to ensure that investigators are well-trained and have the necessary expertise; to require that law enforcement and social service personnel work together when investigating abuse allegations; and to train more physicians to do physical exams of child abuse victims. It was noted that to properly evaluate the validity of abuse allegations, it is critical that the department continue to provide specialized training in these areas.

No records are kept of cases that initially were reported as no probable cause and later found to justify a probable cause finding. It was noted that a determination of no probable cause means only that the department did not have probable cause to support a finding of abuse, not that a false report has been made. The department indicated it will attempt to keep this type of record in the future.

Because the law regarding unfounded accusations of abuse has only been in effect since 1993, the district courts in the state were unable to provide statistics on the prevalence of these allegations.

Child Abuse and Neglect Law

In the course of reviewing issues relating to accusations of abuse during custody and visitation proceedings, the committee reviewed a bill draft that would have modified current terminology governing child abuse and neglect. The bill draft changed some of the terminology used by the Department of Human Services regarding child abuse matters. Under this bill draft, the term "probable cause" was changed to "a decision that services are required" and the term "investigation" was changed to "assessment." The bill draft also provided for a clarification of the duties of the state child protection team regarding institutional child abuse.

Testimony in support of the bill draft indicated that it is the goal of the Department of Human Services to refocus its purpose regarding child abuse matters. Social workers should work with the family and not against it. Concern was expressed for the need to get away from the "law enforcement" attitude

and to work toward a goal of providing child protection services. It was also noted that the terminology change would help to clarify the responsibilities of the department and those of law enforcement when handling child abuse and neglect matters.

Recommendation

The committee recommends Senate Bill No. 2068 that amends NDCC Chapter 50-25.1 regarding the use of certain terminology when dealing with child abuse and neglect matters. The bill also clarifies the duties of the state child protection team.

UNIFORM INTERSTATE FAMILY SUPPORT ACT

This study was to determine the impact of the Uniform Interstate Family Support Act on state child support enforcement laws because the United States Congress intended to mandate each state to adopt the Act.

North Dakota Century Code Provisions

North Dakota Century Code Section 14-07-15 provides that every parent or other person legally responsible for the care or support of a child who willfully abandons the child or willfully fails to furnish food, shelter, clothing, and medical attention is guilty of a Class C felony. The section further provides that the fact that either parent has secured a decree of divorce awarding the custody of a child in no way relieves either parent from the requirements or penalty of the section.

North Dakota Century Code Chapter 14-12.1 codifies the Revised Uniform Reciprocal Enforcement of Support Act, which provides a method of recognizing support orders by other states for minor children of divorced parents.

Uniform Interstate Family Support Act

In 1910 the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Desertion and Nonsupport Act, which dealt with the subject of interstate child support. In 1950 the conference promulgated the Uniform Reciprocal Enforcement of Support Act. The Act was amended in 1952 and in 1958. In 1968 the conference prepared a major revision of the Act and retitled the revision the Revised Uniform Reciprocal Enforcement of Support Act.

In 1988 the conference established a drafting committee to revise the Uniform Reciprocal Enforcement of Support Act. The drafting committee worked closely with the Commission on Interstate Child Support in drafting what was designated as the Uniform Interstate Family Support Act. The conference adopted the Uniform Interstate Family Support Act in 1992 and the American Bar Association approved the Uniform Interstate Family Support Act in February 1993. At least 16 states have passed the Act.

Congress created the Commission on Interstate Child Support as a part of the Family Support Act of 1988. The commission's charge was to recommend improvements to the interstate establishment and enforcement of child support awards and any revisions to the Uniform Reciprocal Enforcement of Sup-

port Act. The commission held public hearings and forums throughout the country and made its recommendations to Congress in 1992. One of the recommendations was that all states adopt the final version of the Uniform Interstate Family Support Act with no material changes. The commission recommendation provided that those states not implementing the Uniform Interstate Family Support Act would risk losing federal funding of child support programs.

Testimony and Committee Considerations

The committee conducted several meetings at which the committee received testimony from organizations and agencies regarding the desirability of adopting the Uniform Interstate Family Support Act.

Testimony from a representative of the North Dakota Commission on Uniform State Laws indicated that while drafting the Act, the drafting committee took into consideration complaints of persons involved with the Uniform Reciprocal Enforcement of Support Act. The complaints dealing with the Uniform Reciprocal Enforcement of Support Act included time delays, access to the enforcement process by persons needing support, information not being available from other states, problems of jurisdiction over the obligor, methods used by enforcement personnel when dealing with multiple support orders, and a general finding of confusion. Under the Uniform Interstate Family Support Act, a one-order system is established and "tribunal" is used because a few states have administrative agencies that handle child support enforcement. It was further noted that the Act makes wider use of the electronic media to transmit forms and process information between states. To increase accessibility, the Act permits private attorneys plus child support enforcement agencies to obtain support for individuals requiring support. Finally, it was noted that the Act should more efficiently effect the needs of child support enforcement.

A representative of the Department of Human Services indicated that the department strongly supports adoption of the Act. Testimony indicated that the concepts embodied in the Act are an appropriate step along the difficult path of effectively addressing interstate child support matters.

Recommendation

The committee recommends Senate Bill No. 2069 to adopt the Uniform Interstate Family Support Act. The bill provides for the repeal of the Revised Uniform Enforcement of Support Act (NDCC Chapter 14-12.1) and sections which are in conflict with the Uniform Interstate Family Support Act (NDCC Sections 14-09-09.19, 14-09-09.20, 14-09-09.21, and 14-09-09.3).

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of nine members. The primary function of the commission is to represent North Dakota in the National Conference of Commissioners on Uniform State Laws. The national conference consists of representatives of all states and its purpose is

to promote uniformity in state law on all subjects on which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under NDCC Sections 54-35-02 and 54-55-04, the state commission may submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Council for its review and recommendation during the interim between legislative sessions.

The state commission recommended five uniform Acts to the Legislative Council for its review and recommendation. These Acts range from amendments to existing uniform Acts adopted in North Dakota to comprehensive legislation on subjects not covered by existing state law. The five Acts were the Uniform Health Care Decisions Act; the Uniform Correction or Clarification of Defamation Act; the Uniform Statute and Rule Construction Act; the Uniform Partnership Act (1993); and amendments to the Uniform Probate Code Article II— Intestacy, Wills, and Donative Transfers, with conforming and miscellaneous amendments to Articles I and III.

Uniform Health Care Decisions Act

The National Conference of Commissioners on Uniform State Laws approved the Uniform Health Care Decisions Act in 1993. The Act is designed to allow a state to replace existing legislation concerning advance health care directives (living wills and powers of attorney for health care) with a single statute. This Act supersedes the Model Health Care Consent Act (1982), the Uniform Rights of the Terminally Ill Act (1985), and the Uniform Rights of the Terminally Ill Act (1989). North Dakota adopted the Uniform Rights of the Terminally Ill Act in 1989, with amendments in 1991 and 1993.

The committee received and reviewed information comparing NDCC Chapters 23-06.4, the Uniform Rights of the Terminally Ill Act, and 23-06.5, which contains the provisions governing durable powers of attorney for health care, with the provisions of the Uniform Health Care Decisions Act.

Testimony in opposition to the Uniform Health Care Decisions Act indicated that the basic premise of the Act was good because the Act would consolidate and coordinate legislation from 1989 through 1993 concerning living wills, durable powers of attorney for health care, and informed consent by proxies. However, the existing laws regarding health care decisions have not been in effect long enough to sufficiently evaluate their effectiveness. It was suggested that consideration of the proposed Act be postponed until the 1997 session.

Uniform Correction or Clarification of Defamation Act

The National Conference of Commissioners on Uniform State Laws approved the Uniform Correction or Clarification of Defamation Act in 1993. This Act is intended to provide incentives for individuals promptly to correct or clarify an alleged defamation as an alternative to litigation. The correction or clarification procedures of the Act apply to all defamation and defamation-like claims involving

reputational harm to persons arising out of published falsity. The Act applies to all forms of publication, including written and oral publications, and to all publishers, including national and local media, and private individuals.

Testimony in opposition to the Act indicated NDCC Section 14-02-08 contains the essential elements of the Act; however, it was noted that Section 14-02-08 applies only to print media and does not include broadcast media. It was suggested that it would be preferable to amend current law rather than to adopt this Act.

Uniform Statute and Rule Construction Act

The National Conference of Commissioners on Uniform State Laws recommended the Uniform Statute and Rule Construction Act in 1993. This Act is intended to assist drafters in preparing legislation and rules, government officials and lawyers in applying them, and courts and administrative agencies in construing them.

Testimony in explanation of the Act indicated that there are two chapters in North Dakota law that deal with statutory construction. It was explained that NDCC Chapter 1-01 contains definitions and general principles regarding statutory construction that apply to the entire code and NDCC Chapter 1-02 contains rules of construction. Under the Uniform Statute and Rule Construction Act, there is a consolidation of terms that appear throughout NDCC Title 1. In addition, under the Act certain statutory definitions apply not only to statutes but also to rules adopted under statutes. There was no testimony in opposition to the Act.

Uniform Partnership Act

The Uniform Partnership Act (1993), which was recommended by the National Conference of Commissioners on Uniform State Laws in 1993, is intended to be a substantial revision of the Uniform Partnership Act (1914), which was adopted by North Dakota in 1959.

The committee received and reviewed information comparing NDCC Chapters 45-13 through 45-21 with the Uniform Partnership Act (1993). Testimony in explanation of the Act indicated that under the 1914 Act, a partnership is an aggregation of individuals in which each individual partner has an ownership interest in partnership property. Under this Act, the partnership is an entity, with the partnership owning the property, not the individual partners. Although the filing of a statement of partnership authority with the Secretary of State is voluntary filing has the effect of placing third parties on notice that a partnership exists.

It was suggested in testimony from the Secretary of State's office that the committee amend the Act to make its provisions consistent with other procedures in the Secretary of State's office, including amendments to prevent a duplication of filing in the Secretary of State's office, to provide name protection to partnerships, to require partnerships to notify the Secretary of State when moving the chief executive office, and to establish fees to cover the administra-

tion of the filings. There was no testimony in opposition to the Act.

Amendment of Uniform Probate Code Article II—Intestacy, Wills, and Donative Transfers

The Uniform Probate Code, codified as NDCC Title 30.1, was enacted in 1973 with changes to allow for specific provisions pertinent to North Dakota. Uniform Probate Code Revised Article II was adopted in 1993 and is effective August 1, 1995. In 1993 the National Conference of Commissioners on Uniform State Laws recommended amendments to the revised Article II, which governs intestacy, wills, and donative transfers, with conforming and miscellaneous amendments to Articles I and III.

Testimony in explanation of the amendments indicated that the amendments would generally clarify the types of property interests included in the augmented estate. The amendments also contain cross-reference corrections, make several changes in terminology, eliminate the 120-hour survival requirement, and relocate many sections of Article II to create a more logical order within the article.

Testimony in opposition to the proposed amendments indicated that the amendments would expand the scope of the legislation passed by the 1993 Legislative Assembly. It was suggested that the legislation passed in the 1993 session be amended to permit life insurance products to be treated as nonprobate assets, which are not part of the augmented estate. In the alternative, it was suggested that the committee consider extending the effective date of the 1993 legislation to August 1, 1997, to provide ample time for members of the State Bar Association of North Dakota to review and comment on the legislation.

Recommendations

The committee recommends the adoption of the Uniform Correction or Clarification of Defamation Act. The Act would provide incentives for individuals promptly to correct or clarify an alleged defamation as an alternative to litigation.

The committee recommends adoption of the Uniform Statute and Rule Construction Act. The Act would assist drafters in preparing legislation and rules, government officials and lawyers in applying them, and courts and administrative agencies in construing them.

The committee recommends adoption of the Uniform Partnership Act (1993), with the amendments proposed by the Secretary of State. The Act would substantially revise and update existing law governing partnerships.

The committee recommends adoption of the amendments to the Uniform Probate Code Article II—Intestacy, Wills, and Donative Transfers, with conforming and miscellaneous amendments to Articles I and III. The amendments would clarify the property to be included in the augmented estate, provide for some changes in terminology, eliminate the 120-hour survival requirement, and relocate the provisions of Article II into a more logical order. The committee makes no recommendation with respect to the Uniform Health Care Decisions Act.

CONSTITUTIONAL REVISION

The committee continued the tradition of reviewing and making recommendations regarding revision of the Constitution of North Dakota. The committee received and considered information and recommendations relating to the status of the Lieutenant Governor as presiding officer of the Senate, a new executive branch article, the length of terms of representatives, and the number of Supreme Court justices necessary to declare a legislative enactment unconstitutional.

Lieutenant Governor as Presiding Officer of Senate - Recommendation

Article V, Section 7, of the Constitution of North Dakota provides that the Lieutenant Governor serves as the President of the Senate. Because of a concern that this provision causes a blurring of the lines between the executive and legislative branches, the committee recommends Senate Concurrent Resolution No. 4013 proposing a constitutional amendment to provide for the removal of the Lieutenant Governor as the presiding officer of the Senate and for the Senate to elect one of its members as presiding officer. Committee members in support of the amendment suggested that when the Lieutenant Governor serves as the presiding officer of the Senate, it gives the executive branch the power to control the procedure and workflow and to make a final decision on legislative matters. Committee members in opposition to the amendment suggested that if a member of the Senate serves as the presiding officer it would limit that senator's ability to participate in floor debate.

New Executive Branch Article - Recommendation

Article V of the Constitution of North Dakota provides for the executive branch of North Dakota government. In order to simplify the language and reduce the length of the article, the committee recommends House Concurrent Resolution No. 3009 proposing a constitutional amendment to replace the executive branch article of the Constitution of North Dakota. The new article retains all current elected officials; provides for the election, qualification, and compensation of executive officials, for the powers and duties of the Governor, and for gubernatorial succession; requires the Attorney General to be licensed to practice law in the state; and eliminates the State Treasurer's current service limit of two consecutive terms. The present Article V of the constitution is repealed. If approved, the changes will take effect on July 1, 1997. The provisions of this resolution are based on recommendations of the 1972 Constitutional Convention.

Terms of Representatives - Recommendation

Article IV, Section 4, of the Constitution of North Dakota provides that members of the House of Representatives are elected to serve two-year terms and senators are elected to serve four-year terms. To provide consistency in the length of terms of senators and representatives, the committee recommends House Concurrent Resolution No. 3010 proposing a

constitutional amendment to change the term of members of the House of Representatives from two years to four years and authorize the Legislative Assembly to establish a procedure whereby one-half of the members of the House of Representatives are elected biennially. Opponents of the proposal suggested that state legislatures should parallel the United States Congress and that the founding fathers intended for one house to be immediately accountable to the electorate and for the other house to have continuity in its membership. Proponents of the proposal suggested that members of the House of Representatives are the only elected state officials to serve two-year terms and that a four-year term would provide for uniformity of terms among elected officials.

Supreme Court Majority - Conclusions

Article VI, Section 4, of the Constitution of North Dakota provides that the Supreme Court may not declare a legislative enactment unconstitutional without the support of at least four members of the court. Because of the concern over the recent decision, **Bismarck Public School District No. 1 v. North Dakota**, 511 N.W.2d 247 (N.D. 1994), in which three of the five justices on the North Dakota Supreme Court found certain statutes unconstitutional but the statutes were upheld because of the lack of the super majority required by the constitution, the committee considered a resolution draft that would have changed from four to a majority the number of Supreme Court justices necessary to declare a legislative enactment unconstitutional.

Committee members in support of the resolution indicated that a vote on a constitutional matter is the only area in government requiring an 80 percent vote. Those in opposition to the resolution draft indicated that when dealing with constitutional matters, the decision should be a clear and decisive one. Further opposition to the proposal indicated that when North Dakota adopted its constitution, there was a compromise to recognize the right of the court to hold a legislative enactment unconstitutional but to require more than a simple majority to do so.

The committee makes no recommendation concerning any change in the number of Supreme Court justices required to declare a statute unconstitutional.

STATUTORY REVISION

Technical Corrections - Recommendation

The committee continued the practice of reviewing the code to determine if there are inaccurate or obsolete name and statutory references or superfluous language. The committee recommends Senate Bill No. 2070 which makes technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change.

Section	Reason for Change
10-19.1-26(17)	The reference corrects an incorrect statutory reference.
10-19.1-50(2)	The reference corrects an incorrect statutory reference.

Section	Reason for Change	Section	Reason for Change
10-19.1-105	Section 10-19.1-113 was repealed and replaced by Section 10-19.1-113.1.	27-01-06	This section should have been repealed when the state assumed the costs of district courts and eliminated county courts.
10-19.1-116(3)	This change corrects a typographical error contained in 1985 S.L., ch. 147, which created this section.	32-07.1-01(3)(d)	Chapter 65-13 was repealed and replaced by Chapter 54-23.4.
11-02	Chapter 11-02 provides for organization of territory into a county if the territory has not been previously organized into a county. Because all areas in North Dakota are part of a county, this chapter is obsolete.	32-19-41	The change corrects a calculation relating to acres of land.
15-05-16	Section 23-01-01.1 provides that whenever the term "food commissioner and chemist" appear in Chapters 19-17 and 19-18, the term "state department of health and consolidated laboratories" must be substituted. This change would make the language consistent.	32-19.1-01	The change corrects a calculation relating to acres of land.
15-38.1-05	Section 28-32-10 was repealed effective July 1, 1991.	37-15-14.1(3)	Section 21-10-10 was repealed by 1989 S.L., ch. 667, as amended by 1993 S.L., ch. 245.
15-62.2-01(1)	Section 15-10-19 was repealed and replaced by Section 15-10-19.1.	41-01-11(3)	The insertion completes the statutory reference.
15-62.3-01(6)	Section 15-10-19 was repealed and replaced by Section 15-10-19.1. 19-03.1-36(1)(e)(3)1993 S.L., ch. 128, amended Section 19-03.1-23 causing a renumbering of the subsections of that section. The bill did not correct the cross-reference in this section.	41-02.1-76(1)	The reference corrects an incorrect statutory reference.
19-14-03(4)	Section 23-01-01.1 provides that whenever the term "food commissioner and chemist" appear in Chapters 19-17 and 19-18, the term "state department of health and consolidated laboratories" must be substituted. This change would make the language consistent.	41-02.1-77(1)	The reference corrects an incorrect statutory reference.
20.1-02-16.3	The change corrects a calculation relating to acres of land.	41-03-60(3)	The reference corrects an incorrect statutory reference.
20.1-03-12.1	The change corrects a calculation relating to acres of land.	41-09-16(1)	The change in this cross-reference is necessary to accurately reflect the current coverage of Section 41-09-19.
21-03-38	Section 21-03-22 was repealed in 1993.	41-09-19(1)	The change is made to accurately reflect the current title of Chapter 41-03.
23-02.1-20(6)	The reference corrects an incorrect statutory reference.	41-09-23(1)(f)	The change in this cross-reference is necessary to accurately reflect the current coverage of Section 41-09-19.
23-17.2-02(13)	The reference corrects an incorrect statutory reference.	44-11-04	The changes correct a publication error, make the section gender neutral, and improve grammar.
26.1-03-17(2)	Sections 26.1-03-19, 26.1-03-20, and 26.1-03-21 were repealed and replaced by Sections 26.1-03-19.1 through 26.1-03-19.7.	44-11-07	The changes correct a publication error, make the section gender neutral, and improve grammar.
26.1-06.1-11(6)	Sections 26.1-03-19, 26.1-03-20, and 26.1-03-21 were repealed and replaced by Sections 26.1-03-19.1 through 26.1-03-19.7.	53-09-10	Section 9-10-07 was repealed by 1987 S.L., ch. 404, as amended by 1993 S.L., ch. 324, and the provision referenced is now in Section 32-03.2-02.
26.1-19-03(5)	This change corrects the reference to the federal law.	54-16-04	This change is necessary to correct an error in transcription between the time of passage of the bill and preparation of the Session Laws in 1965.
26.1-34.1-05	Section 26.1-03-20 was repealed and replaced by Section 26.1-03-19.6.	54-34.4-04	This reference is contained in Section 55-08-07.1, which is repealed by this Act and moved to Chapter 54-34.4.
		54-52-17.4(1)(a)	The reference corrects an incorrect statutory reference.
		55-08-01.7	Section 55-08-01.7 is repealed because the Tourism Department was separated from the Parks and Recreation Department in 1993, making this section obsolete.
		64-02-20	The reference corrects an incorrect statutory reference.

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 committee. In addition to Lt. Governor Rosemarie Myrdal, other committee members were Representatives Ole Aarsvold, John Dorso, Gereld F. Gerntholz, Eliot Glassheim, John M. Howard, Andrew G. Maragos, Francis J. Wald, and Gerry L. Wilkie and Senators Duane Mutch, Pete Naaden, David O'Connell, Ken Solberg, Bryce Streibel, and Harvey D. Tallackson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

During the 1993-94 interim, the State Auditor and independent accounting firms presented 112 audit reports. An additional 110 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 presented at the request of committee members.

The committee has the following duties and responsibilities:

1. Study and review audit reports as selected by the committee from those submitted by the State Auditor. (NDCC Section 54-35-02.2)
2. Receive and review annual reports on the status of accounts receivable from the Department of Human Services and the State Developmental Center at Grafton. (NDCC Sections 25-04-17 and 50-06.3-08)
3. Receive the State Fair Association's audit report. (NDCC Section 4-02.1-18)
4. Receive the annual audit reports of corpora-

tions receiving ethyl alcohol or methanol production subsidies. (NDCC Section 10-23-03.2)

5. Determine, along with the State Auditor, what performance audits are to be conducted and determine the frequency of audits of state agencies. (NDCC Section 54-10-01)

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 years ended on June 30 of 1992 and 1993. The firm presented its audit report at the committee's October 1993 meeting. In accordance with the terms of the contract between the Legislative Council and Eide Helmeke and Company, the firm reviewed the audit procedures and practices of the State Auditor's office. The findings of the review by Eide Helmeke and Company of the State Auditor's office's audit procedures and practices included the following:

1. The State Auditor's office should properly document in its audit working papers any communication to the Legislative Audit and Fiscal Review Committee.
2. The State Auditor's office should implement procedures to assure that all representation letters are dated the date of the audit report.
3. The State Auditor's office should develop a more complete checklist for determining if all disclosures for local government audit engagements have been included in the audit.

Suggested Guidelines for Performing Audits of State Agencies

The committee reviewed information on guidelines that have been developed by the committee during past interims for audits performed by the State Auditor's office and independent certified public accountants. The guidelines require that audit reports include specific statements and recommendations 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 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 has implemented the statewide accounting and management information system (SAMIS) including the cost allocation system.
12. Whether the agency has developed budgets of actual anticipated expenditures and revenues on at least a quarterly basis and compares on at least a quarterly basis actual expenditures and revenues on the accrued basis to budgeted expenditures and revenues.

The committee requested the following information be included in future audits:

1. To the extent possible, information on the current market value of Future Fund, Inc., investments.
2. Schedule of insurance coverages.

During report presentations, the State Auditor's office reviewed findings relating to the 12 specific guidelines developed by the committee. Committee members expressed a special interest in the findings related to compliance with legislative intent, use of accrual accounting, funds being spent within legislative appropriations, and the expenditure of funds in conference accounts.

Comprehensive Annual Financial Report

North Dakota Century Code Section 54-10-01 requires the State Auditor to provide for the audit of the state general purpose financial statements and a review of the material included in the Comprehensive Annual Financial Report. The committee received and reviewed the state's June 30, 1992, and June 30, 1993, Comprehensive Annual Financial Reports. The committee received information on how to best use the information contained in the Comprehensive Annual Financial Report. The Comprehensive Annual Financial Report includes an introductory section, a financial section, and a statistical section. The Comprehensive Annual Financial Report contains the audited financial statements for state agencies including the elected officials.

Performance Audits

North Dakota Century Code Section 54-10-01 provides that the State Auditor's office is to provide for performance audits of state agencies as determined necessary by the State Auditor or the Legislative Audit and Fiscal Review Committee. A performance audit must include a review of elements of compliance, economy and efficiency, and program results to determine whether an agency has complied with applicable laws and legislative intent and is managing its resources efficiently, and whether the agency's programs are achieving the desired results.

The committee received the following performance

audits during the 1993-94 interim:

1. Statewide leasing - The purpose of the audit was to assess the efficiency and effectiveness of policies and procedures for leasing, the cost efficiency of leasing versus purchasing, and to determine if maintenance contracts are cost efficient. The major findings and recommendations indicated that agencies and institutions should be required to use formal documented decisionmaking processes when determining whether to lease or purchase assets and services.
2. Motor pool services - The purpose of the audit was to determine if the services provided by the Department of Transportation (DOT) Fleet Services and North Dakota University System could be improved through shared services. The findings and recommendations included:
 - a. That the North Dakota University System centralize the management and operation of all the university vehicle fleets into one motor pool; and
 - b. That the university motor pools and DOT Fleet Services share services when economical and feasible.
3. Medicaid drug rebate - This audit was performed because the federal Office of the Inspector General indicated that substantial improvements could be made at the state level in this program. The recommendations indicated that the Department of Human Services should develop an accounts receivable system for the Medicaid drug rebate program and that the department should develop formal policies and procedures for the collection of drug rebates from the drug manufacturers.
4. Child support enforcement - The audit was undertaken as part of a joint audit initiated by the National State Auditors Association to review the efficiency and effectiveness of the system of establishing and enforcing support orders, the potential for reducing costs through program fees and interest on arrears, and the adequacy of policies and procedures surrounding the collection of overpayments to custodial parents. The recommendations indicated that the Department of Human Services should reconcile all account balances with the clerk of court records and that the department centralize child support receipts and disbursements.
5. Status of the recommendations contained in the Workers Compensation Bureau performance audit - Fourteen of the 15 recommendations are either completely or partially implemented. The one nonimplemented recommendation involves reducing the experience period used for merit rating from five years to three years. The five-year time period is consistent with the period used by other states using the same formula.
6. Status of recommendations contained in the Department of Human Services performance audit - Five of the 19 recommendations are fully implemented, eight were partially imple-

mented, three were not implemented, and three were no longer applicable.

A copy of each of the performance audit reports is on file in the Legislative Council office.

In addition to the statewide leasing performance audit, the committee reviewed the sections of law that pertain to the leasing of property by state agencies and the leasing of state property by private entities. Leases for office space for all state agencies except institutions under the Board of Higher Education, the Adjutant General, and the Department of Transportation must be approved by the director of the Office of Management and Budget and have the Attorney General determine the legal sufficiency of the lease. The standard state lease for office space provides that the landlord is responsible for maintenance, janitorial services, snow removal, and lawn care.

Recommendations

The committee recommends that the Office of Management and Budget include information in the executive budget identifying major asset acquisitions when the acquisition is through a lease arrangement rather than a purchase.

The committee also recommends that state agencies and institutions have available for review during their audit all appropriate working papers documenting their decision on whether to lease or purchase major assets or services. The working papers should include an analysis that supports the decision whether to lease or purchase major assets or services.

The committee recommends House Bill No. 1054 to require every state agency and institution to prepare a written analysis documenting the decision to acquire any asset through a lease arrangement. The bill also requires the director of the budget to include in the executive budget a list of all proposed asset acquisitions through lease arrangements when the value of the asset is at least \$10,000 or the value of a group of assets comprising a single system has a combined value of at least \$10,000. The committee specified that the intent of the committee is for the bill to apply to asset acquisitions, not real estate or office space rentals.

Other Reports

The committee also reviewed the following reports from the State Auditor's office:

1. Summary report of findings and recommendations pertaining to the Department of Human Services reported in the 1991-92 single audit and the 1992 agency audit - The report was a followup report on the findings released during the 1993 legislative session. This report did not reflect the \$40 million impact that the original report contained, but did reflect \$34,000 of questioned costs. The report also contained 19 recommendations relating to the improvement of the department's operations.
2. 1994 EDP General Controls audit of the Information Services Division - A report on the review of the general controls of the Information Services Division was conducted and the Information Services Division has satisfactorily re-

sponded to all of the recommendations.

3. State purchasing policies - The report presented information on which state agencies must comply with the Office of Management and Budget's fiscal and administrative policies. The only state agencies exempted from the Office of Management and Budget's fiscal and administrative policies are the legislative branch, judicial branch, and institutions under the Board of Higher Education.
4. Deposits of state agencies - The report reviewed the deposits of state agencies that are uncollateralized and uninsured. The state of North Dakota's 1993 Comprehensive Annual Financial Report included approximately \$49 million of uncollateralized and uninsured deposits of state agencies.
5. The cost of 1993 House Bill No. 1062 regarding mandatory sentencing for drug offenders - The report reviewed the estimated financial impact of 1993 House Bill No. 1062 regarding mandatory sentencing. Based on the fiscal year 1994 cost per day to house an inmate of \$51.68 and the average projected inmate increase of 1,195 days per year, the cost to taxpayers is approximately \$61,758 per year.
6. A review of the North Dakota Department of Agriculture's conference checking accounts - The report indicated that all of the conference accounts were properly authorized. Not all of the accounts were maintained on SAMIS as required by Office of Management and Budget Policy 212 that requires state agencies on SAMIS to maintain their conference accounts on SAMIS.
7. Possible future performance audits - The report presented a list of possible future performance audits.

In addition to the State Auditor's office report on the deposits of state agencies, the committee heard Legislative Council reports on the statutory requirements regarding the deposit of state funds and on state agencies that had state funds deposited outside of the Bank of North Dakota. Pursuant to NDCC Section 6-09-07, all state funds must be deposited in the Bank of North Dakota unless a specific constitutional or statutory provision governs the deposit of those funds.

Recommendations

The committee recommends House Bill No. 1055 to repeal NDCC Section 54-06-08.1, which allows for state agencies and institutions to maintain bank accounts outside of the Bank of North Dakota. Members of the committee thought that with the current technology and ability to wire transfer funds the need no longer exists for state agencies or institutions to maintain bank accounts outside of the Bank of North Dakota.

In regard to the report on possible future performance audits, the committee requested the State Auditor's office to proceed with performance audits of the Department of Human Services (third-party liability), Agriculture Department agriculture mediation program and farm credit counseling program, Department of Public Instruction, and Workers Com-

pensation Bureau. The committee requested the State Auditor's office to proceed with the audits in the order listed and provided that if any of the performance audit reports are available while the Legislative Assembly is in session the reports are to be presented to the members of the 1995 Legislative Assembly.

**DEPARTMENT OF HUMAN SERVICES
ACCOUNTS RECEIVABLE**

North Dakota Century Code Sections 25-04-17

Fiscal Year	State Hospital	Developmental Center	Human Service Centers	Total
1993	\$7,720,747	\$863,507	\$ 59,424	\$8,643,678
1994	\$6,811,643	\$757,259	\$198,767	\$7,767,669

In addition, the committee received a Legislative Council report on the Department of Human Services miscellaneous receivables of \$98,385,584 and related provision for uncollectible receivables of \$89,878,265 and the miscellaneous refund receivables of \$8,851,169 and related provision for uncollectible refund receivables of \$1,431,785 included in the Department of Human Services audit report for the year ended June 30, 1993. The miscellaneous receivables are for services provided at the human service centers, State Hospital, and Developmental Center and child support receivables. The refund receivables are from overpayments for the aid to families with dependent children program and the JOBS program, hospital settlements, and drug rebates.

Recommendation

In order to provide the Department of Human Services with more time to prepare the report on the status of accounts receivable for each fiscal year, the committee recommends House Bill No. 1056 to change the date the Department of Human Services is to present a detailed report to the Legislative Audit and Fiscal Review Committee on the status of accounts receivable for that fiscal year from 30 days after the close of each fiscal year to September 1 after the close of each fiscal year.

The committee also requested the Department of Human Services to prepare an analysis, including all funding sources, for the Appropriations Committees of the 1995 Legislative Assembly of services provided and payments received for individuals potentially eligible for Indian Health Service funding, Bureau of Indian Affairs funding, or any other federal funding available for Native Americans. The analysis is to include comparative information provided on South Dakota's services and payments received for Native Americans, including an analysis of the existing accounts receivable and any additional amounts for which billings were not made. Committee members thought this information would be beneficial to the Appropriations Committees of the 1995 Legislative Assembly during their review of the Department of Human Services budget request.

FUTURE HIGHER EDUCATION AUDITS

The committee received a proposal from the State

and 50-06.3-08 require that the Developmental Center and the Department of Human Services present detailed reports to the Legislative Audit and Fiscal Review Committee of writeoffs of accounts receivable and the status of accounts receivable for each fiscal year.

The committee accepted detailed reports on the amounts of accounts receivable written off during the 1993-94 interim. The amounts are as follows:

Auditor's office regarding future audits and financial reports of the North Dakota University System. The proposal was that the State Auditor's office would perform a single audit of the North Dakota University System and issue a single audit report containing the financial information of all higher education institutions. The proposed single audit would save the state approximately \$100,000 per biennium. The proposal indicated that in addition to the annual financial statement audit of the University System, the State Auditor's office would also perform a financial-related audit every two years for each of the institutions under the control of the State Board of Higher Education. The State Auditor's office informed the committee that if a single audit report is performed, all of the individual institutions' financial information would be presented. The individual institutions' information would separate NDSU-Bottineau, UND-Williston, and UND-Lake Region from the respective parent institutions.

The committee asked that the smaller campuses be shown separately and that the audit not be concentrated on the financial activities of the larger campuses.

Recommendation

The committee approved the format should the State Auditor's office and the Board of Higher Education decide to proceed with a single audit of the North Dakota University System as one reporting entity and a single audit report would be issued which would include comparative data for prior years. The committee concluded it would be more convenient for legislators to be able to go to a single document for all of the higher education financial information and that this would be a positive change in the way state government operates.

LEGISLATIVE INTENT

The committee received a staff report on legislative intent. The report indicated that in the committee guidelines for audit reports, the auditor is asked to comment in each report on whether expenditures are made in accordance with legislative appropriations and other state fiscal requirements and restrictions. The report indicated that it has been the committee's expectation that any actions by state

agencies which are not consistent with legislative intent would be reported pursuant to this provision in the guidelines.

The report indicated that the documents used to determine legislative intent include:

1. Laws passed by the Legislative Assembly;
2. House and Senate journals;
3. Statements of purpose of amendments contained in the Legislative Council's analysis of legislative changes to the recommended appropriations in the executive budget;
4. Standing committee minutes; and
5. Executive budget documents.

The committee was informed that the State Auditor's office reviews items of legislative intent. The State Auditor's office could not address the private auditing firms' auditing practices regarding legislative intent.

DEPARTMENT OF PUBLIC INSTRUCTION

The committee received a staff report on the Department of Public Instruction's foundation aid budgeting controls and on the department's foundation aid projecting and reporting procedures. The report included possible improvements the department could implement to improve the foundation aid budgeting controls. The report indicated that consideration should also be given to having the Department of Public Instruction make foundation aid program status reports available to the appropriate legislative committees and the Office of Management and Budget. The status reports should include a comparison of actual and estimated payments to date, an analysis of the variances between actual and estimated payments, the amount of remaining future payments for the year and biennium, a comparison of total payments for the year and biennium to appropriated amounts, and an analysis of variances. Improvements to the present system which should be considered by the department include developing a comprehensive student data base by requiring school districts to input data directly in an on-line computer. This would make information available sooner and would make it possible for the Department of Public Instruction to alert school districts and appropriate state fiscal offices as early as possible about the status of the foundation aid program.

Recommendations

The committee recommended and accepted the Department of Public Instruction's new foundation aid status report containing actual and estimated payments to date, the amount of future payments by year for the biennium, a comparison of total payments by year to appropriated amounts, and an analysis of any variances. The committee also recommended that the foundation aid status report be used to inform school districts, legislators, and other interested persons of the status of the foundation aid program.

NORTH DAKOTA REAL ESTATE TRUST

The committee received reports from the Legislative Council and Bank of North Dakota on the North Dakota real estate trust. The state of North Dakota

through the North Dakota real estate trust, and under the provisions of NDCC Chapter 54-30, issued long-term bonds in 1982, 1984, and 1986. The proceeds of the bonds were used to provide funds to the Bank of North Dakota to replace Bank funds used to make loans upon first mortgages of real estate. The June 30, 1993, North Dakota real estate trust audit report showed a trust fund deficit of \$23,307,175 as of June 30, 1993. The following schedule shows the projected deficit of the North Dakota real estate trust at the end of the bond issue, September 1, 2013:

Trust fund deficit as of June 30, 1993	\$23,307,175
Projected trust fund interest payments from July 1, 1993, through September 1, 2013	37,648,371
Projected trust fund interest revenues on farm loans and other miscellaneous revenues from July 1, 1993, through September 1, 2013 (excluding additional Bank of North Dakota cash investments)	(18,142,546)
Projected additional amount of Bank of North Dakota funds necessary to assist the North Dakota real estate trust from July 1, 1993, through September 1, 2013	<u>\$42,813,000</u>
Amount of Bank funds invested in the trust as of June 30, 1993	4,795,000 ¹
Amount of Bank of North Dakota funds projected to be invested in the trust as of September 1, 2013 (trust fund deficit on September 1, 2013)	<u><u>\$47,608,000</u></u> ²

¹ Through December 31, 1992, the Bank had purchased \$7,827,000 of bonds. During 1991 and 1992 the Bank wrote off \$3,032,000 of the bonds it had purchased and canceled the bonds. In 1993 the Bank reserved \$1,500,000 for investment losses against its income, but did not cancel any bonds pending resolution of the North Dakota real estate trust issue.

² The total amount of Bank funds invested in the trust over the life of the bond issue is projected to be \$50,640,000. The \$50,640,000 is the total amount projected to be invested as of September 1, 2013 (\$47,608,000) and the amount written off during 1991 and 1992 (\$3,032,000).

The committee reviewed three possible alternatives for handling the North Dakota real estate trust deficit. The three possible options for handling the deficit as presented by the Bank of North Dakota were:

1. Assess the trust deficit against the Bank's capital in the current biennium and reduce transfers to the general fund by the amount necessary to maintain a minimum capital level of \$100 million.
2. Allow the Bank of North Dakota to present the bonds to the State Treasurer for payment in accordance with NDCC Section 54-30-10, which

provides for the faith and credit of the state of North Dakota to be pledged for the payment of the bonds.

3. Allow the Bank of North Dakota to continue to carry the trust deficit as a contingent liability this biennium and transfer the \$48 million to the general fund and then write off the full trust deficit against the Bank's capital in the 1995-97 biennium.

Recommendation

The committee recommends that the Industrial Commission direct the Bank of North Dakota to appropriately reflect on its records the North Dakota real estate trust deficit of approximately \$23 million in the 1993-95 biennium, recognizing that this may require the Bank to reduce its transfers to the general fund during the 1993-95 biennium in order to maintain a minimum capital level of \$100 million. The committee decided to recommend the writeoff in the current biennium because general fund revenues for the 1993-95 biennium are significantly higher than the legislative forecast. The September 30, 1994, Office of Management and Budget general fund status report projected an unobligated general fund balance for June 30, 1995, of \$43.7 million, \$34.8 million more than the ending general fund balance of \$8.9 million estimated by the 1993 Legislative Assembly.

PACE LOAN FUND

The Bank of North Dakota December 31, 1992, audit report indicated that on February 7, 1992, the Industrial Commission authorized an additional transfer of up to \$3 million from the Bank's undivided profits to the PACE fund. This transfer was in addition to the 1991-93 biennium appropriation of \$2,700,000 for the PACE fund. The committee requested, in accordance with NDCC Section 54-35-02.2, and received an Attorney General's opinion to determine whether the February 7, 1992, Industrial Commission transfer of up to \$3 million from the undivided profits of the Bank of North Dakota to the

PACE fund was within the requirements of law since the transfer was not authorized by the Legislative Assembly. The Attorney General's opinion stated that the Industrial Commission has the authority to transfer Bank of North Dakota earnings to the PACE fund without specific legislative appropriation. The opinion stated that the Constitution of North Dakota appropriates the funds necessary to conduct the financial transactions of the Bank of North Dakota. Because of this the opinion concluded the Industrial Commission does not have to seek a legislative appropriation to conduct the financial transactions of the Bank. The opinion also states that the operation and financing of the PACE program, as it is currently established, is a financial transaction of the Bank.

OTHER COMMITTEE ACTION

The committee also received information on:

1. Contracts entered into between the University of North Dakota and the University of North Dakota Aerospace Foundation.
2. The sale of the Roughrider Industries agriculture division.
3. The Future Fund's investment in Technology Applications Group, Inc.
4. The University of North Dakota Aerospace Foundation's refinancing of approximately \$9 million of lease revenue bonds.
5. The possible sale of bonds by the Bank of North Dakota.
6. An analysis of the home-quarter purchase fund.
7. Emergency Commission actions relating to the Department of Labor.
8. Loans made by the Department of Economic Development and Finance.

Also, pursuant to NDCC Section 10-23-03.2, the committee was to receive the audit reports from corporations receiving ethyl alcohol or methanol production subsidies. During the 1993-94 interim, the committee did not receive any audit reports from corporations receiving ethyl alcohol or methanol production subsidies.

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 assigned to the committee the studies directed by House Concurrent Resolution No. 3061 (procedures necessary to implement annual sessions of the Legislative Assembly beginning in 1995 and 1996); Senate Concurrent Resolution No. 4019 (legislative employee pay scales to determine if inequities exist and the feasibility and desirability of providing additional compensation to legislative employees based on prior employment by the Legislative Assembly); and House Concurrent Resolution No. 3024 (feasibility and desirability of making the North Dakota Century Code, the North Dakota Administrative Code, the North Dakota Session Laws, and other legislative publications available in mediums other than published volumes). The Legislative Council also delegated to the committee: (1) the power and duty of the Legislative Council under NDCC Section 54-35-02 to determine access to legislative information services and impose fees for providing such services and copies of legislative documents, and to control the use of the legislative chambers and permanent displays in Memorial Hall; (2) the authority of the Legislative Council under NDCC Section 46-02-04 to determine the contents of contracts for printing of legislative bills and resolutions and journals; and (3) 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).

Committee members were Senators Dan Wogsland (Chairman), William G. Goetz, Tish Kelly, Byron J. Langley, Tim Mathern, Corliss Mushik, Gary J. Nelson, David E. Nething, and Rolland W. Redlin and Representatives Rick Berg, Tom D. Freier, Roy Hausauer, Lee Kaldor, William E. Kretschmar, Bob Martinson, and Bill Oban.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. The committee distributed a 1993 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. Portions of this report refer to the results of the survey.

Definition of Absence and Presence

The committee discussed legislative rules referring to the absence or presence of members. A question arose during the 1993 legislative session

concerning the definition of "present" and whether a member could "attend" a meeting through a video or telephone link. Although statutes refer to conference call meetings, there is no legislative rule authorizing attendance by means other than actual physical presence. The committee recommends amendment of Senate and House Rules 102 to define "present" as physically in the chamber or room where the session or meeting is being held and for purposes of a committee meeting the term includes participation by means of interactive video or teleconference call. The proposed change does not change the requirement of physical presence during a floor session of the Legislative Assembly.

Supervision of Session Employees

During discussion of the pay and number of employees hired by the Legislative Assembly, the committee reviewed the need for a clear line of supervisory authority over session employees. In past sessions there have been questions concerning who exercises supervisory authority—sponsoring legislators, members of the Employment Committees, or the Secretary of the Senate or Chief Clerk of the House. Of primary concern is the ability to assign employees to various tasks, some of which may not be within the normal responsibilities of that employee, e.g., during the 1993 session a House page and Senate employee of the bill and journal room were transferred to the telephone room. Questions were also raised concerning the authority of supervisory personnel to establish required hours of duty by legislative employees. The committee recommends amendment of Senate and House Rules 203(6) and repeal of House Rule 201(5) to provide that the Secretary of the Senate and Chief Clerk of the House are responsible for supervising the employees of the Senate and the House.

Legislative Guests

As a result of comments by legislators in response to the legislative process survey, committee members discussed various problems resulting from the movement of guests on the floor during sessions. The problems include the distraction caused by the movement of guests and the noise generated from persons behind the rail in each chamber. The committee reviewed various proposals to restrict access of guests to the floor, including limiting tour groups, reducing the time guests could be on the floor, and limiting the total number of guests a legislator could have on the floor. Since 1983, House Rule 358 has provided that no member may have more than one guest on the floor at any one time and since 1991 Senate and House Rules 205 have provided that a member may have only one guest on the floor at a time. In 1991 the House amended House Rule 205 to provide that the sergeant-at-arms is to clear a designated area of the balcony of all persons except legislative guests who have passes during the daily session. Although some committee members expressed concern over closure of floor access, the committee recommends amendment of Senate and House Rules 205(3) to eliminate legislative guests from the list of persons who may

remain on the floor from 30 minutes before the house convenes to when the house recesses for that calendar day, and to provide that during this period a legislator may not have any guest on the floor. The committee also recommends amendment of House Rule 358 to provide that no member may have any guest seated with a member on the floor.

Officers and Employees

As the result of its study of legislative employee compensation, the committee recommends a reduction in the number of Senate and House employees. This recommendation is described under the portion of the report entitled **LEGISLATIVE EMPLOYEE COMPENSATION STUDY**. Certain employee positions are specified in legislative rules, and those rules are affected by the committee recommendation. The committee recommends amendment of Senate and House Rules 206 to reflect the changes recommended in employee positions. The position of calendar clerk is added to each rule as a Group B position, which is appointed by the party having a majority of the members-elect, through the Employment Committee; one committee clerk position is deleted and an additional assistant committee clerk position is added because the chief committee clerk is to be assigned as clerk of a committee and an additional assistant clerk is added to provide assistance to committee clerks as needed; each leader is provided with an additional staff assistant in lieu of a legislative intern; references to stenographers and typists are deleted because these services are to be provided by a private secretarial service; and two desk pages are removed from the House rule.

Request to Divide a Question

The committee compared the provisions of Senate and House Rules 319(1) which require support of five other senators or 11 other representatives to divide a question with the provisions of Senate and House Rules 603 which allow any member to have amendments divided into separate divisions. At issue was the requirement for a number of members to support a request for division of a question, unless the question pertained to division of amendments. The committee recommends amendment of Senate and House Rules 319(1) to eliminate the requirement that additional members support a member's request to divide a question.

Referral to Appropriations Committee

The committee compared Senate Rule 329 with House Rule 329, relating to the referral of measures to the Appropriations Committees. During the 1991-92 interim, the Legislative Management Committee recommended amendment of Senate and House Rules 329 to provide that every measure to which is attached a fiscal note stating that the measure has an effect of \$50,000 or more on the appropriation for a state agency must be rereferred to and acted on by the Appropriations Committee. Although the Senate adopted the recommended change, the House did not. The committee recommends amendment of House Rule 329 to include a requirement that every measure to which is attached a fiscal note stating that the

measure has an effect of \$50,000 or more on the appropriation for a state agency must be rereferred to and acted on by the Appropriations Committee before final action by the House, unless otherwise ordered by a majority vote of the members present.

Verification Vote for Reconsideration

Under Senate and House Rules 342, any member may request that the vote be verified after a vote has been announced. The committee discussed whether a verification vote should always be required when the question is reconsideration of any matter. The committee recommends creation of a new subsection to Senate and House Rules 346 to provide that determination of any vote required under Senate and House Rules 346 must be by a verification vote. This will eliminate the use of voice votes in deciding a motion for reconsideration, but does not prevent a recorded roll call vote if requested by one-sixth of the members present as provided by Senate and House Rules 320 and Section 13 of Article IV of the Constitution of North Dakota.

Consideration of "Do Not Concur" Recommendations

The committee reviewed the procedures followed in each house under Senate and House Rules 349, relating to return of amended measures and appointment of conference committees. In the Senate the standing committee chairman made the motion to not concur and to appoint a conference committee. A separate motion was made for each measure. In the House the majority leader made a motion to not concur in amendments to a number of bills and to appoint conference committees. The Speaker then appointed the conference committees, which were individually listed in the journal. The issue discussed by committee members was whether it is more favorable to have individual consideration of a recommendation to not concur and appoint a conference committee or to group into one motion all recommendations to not concur. Because of the practices favored by each house, the committee recommends amendment of House Rule 349 to provide that, without objection, a motion to accept recommendations to not concur and to appoint conference committees must be voted on in a single vote. If any member objects to voting on a recommendation to not concur, that recommendation must be voted on as a separate item. As a result of this recommendation, Senate Rule 349 continues to describe the procedure followed by the Senate and the proposed change to House Rule 349 describes the procedure followed by the House.

Private Telephones

Generally, one telephone is provided to every two legislators. Instead of "ringing," a telephone light on the desk of the legislator who has the telephone indicates when there is an incoming call. During the 1993 session, a legislator brought a private telephone and plugged that telephone into the system. This caused the lights on that legislator's desk and on the desk of the legislator who had the designated telephone to indicate an incoming call. This disrupted

the normal process, and the committee was requested to prohibit the use of private telephones in the House as the Senate has done. The committee recommends creation of House Rule 358.1 to prohibit private telephones on the floor of the House. This rule is identical to Senate Rule 359.

Approval of Delayed Bills and Resolutions

The committee reviewed whether it is appropriate for the Delayed Bills Committee to issue a report relating to introduction of a delayed bill or resolution. Senate and House Rules 403 provide that if a majority of the committee favors introduction, the measure may be introduced. At issue was the effect of rejection of the committee report, even though by rule the measure may be introduced if a majority of the Delayed Bills Committee favors introduction. The committee recommends amendment of Senate and House Rules 403 to eliminate reference to a report of the Delayed Bills Committee and to provide that the committee is to inform the house whether the introduction of the measure has been approved. The amendment also provides that a delayed bill or resolution must note the approval of the Delayed Bills Committee which has been the standard practice in both houses.

Arrangement of Committee Minutes

The committee reviewed the requirements for the content and arrangement of minutes of committee meetings. Committee minutes are the major source of determining legislative intent of a bill or resolution. To improve the use of and access to legislative histories, since 1979 minutes have been maintained by bill number. The committee recommends amendment of Senate and House Rules 506(2) and (3) to provide that minutes of committee hearings and deliberations must be arranged by bills or resolutions discussed. Although the requirements that names of committee members present and absent and the time of commencement and adjournment of each meeting are eliminated, the requirement for recorded roll call votes on amendments and committee recommendations is retained and those votes would indicate the absence or presence of members.

Reporting of Measures

The committee reviewed the deadlines for reporting measures from committees. One issue was whether the 21-day limit for resolutions in committee applies to constitutional amendments. Senate and House Rules 402 allow resolutions proposing constitutional amendments to be introduced through the 18th legislative day and require the resolutions to be reported back no later than the 44th legislative day. Senate and House Rules 507 provide no resolution may be held in committee for more than 21 legislative days without an extension of time.

In discussing the 21-legislative-day limit for reporting of bills and resolutions from committee, it was noted that the limit has seldom been enforced, is often suspended, and very likely has never been enforced before crossover with respect to bills in a house other than the house of origin.

The committee recommends amendment of Sen-

ate and House Rules 402 and 507 to transfer the deadlines for reporting back certain resolutions in Senate and House Rules 402 to Senate and House Rules 507, to provide that the 21-legislative-day limit for holding a bill or resolution in committee applies only to bills or resolutions in the house of origin, to extend the 21-legislative-day limit to 30 legislative days, and to extend from the 48th legislative day to the 55th legislative day the deadline by which bills and resolutions from the other house must be reported back. Transferring the language concerning the deadlines for reporting resolutions directing Legislative Council studies or proposing constitutional amendments from Senate and House Rules 402 to Senate and House Rules 507 consolidates deadlines for reporting and eliminates the ambiguity as to whether those deadlines conflict with the limit for holding measures in committee. The new 30-legislative-day limit for holding a bill or resolution in committee allows every bill, except an appropriations bill, and certain resolutions to be in committee until the day before the deadline for reporting bills and certain resolutions out of committee. The exception for an appropriations bill recognizes that under Senate and House Rules 329, an appropriations bill must be rereferred to the Appropriations Committee no later than the 23rd legislative day. This new limit recognizes the fact that in recent legislative sessions the 21-legislative-day limit has been extended to around the 30th legislative day. Extending the 48th legislative day deadline to the 55th legislative day allows bills received on crossover to be held for 21 legislative days in committee in the second house (which was the limit for bills in the house of origin) and recognizes the fact that extension of the deadline has been customary in recent legislative sessions.

Committee of the Whole

The committee reviewed the committee of the whole procedure followed by the Senate during the 1994 special session. Although *Mason's Manual of Legislative Procedure* provides for the committee of the whole, certain procedures in *Mason's* appear to be inefficient or are contrary to customary procedures followed by the Legislative Assembly. For example, according to *Mason's*, minutes are not recorded, the chairman of the committee of the whole cannot maintain order but must relinquish the chair to the presiding officer, and roll call votes are not taken. The committee recommends creation of Senate Rule 510 to provide the procedure for the Senate to resolve itself into a committee of the whole. The president pro tempore would preside over the committee of the whole, the rules of the Senate would have to be observed insofar as they may be applicable to committees, the minutes would be kept by a committee clerk, the time of speaking could be limited only by motion, and upon adoption of a motion to rise the report of the committee of the whole would be presented to the Senate as are other committee reports. The committee also recommends amendment of Senate Rule 201(2) to provide that the chairman of the committee of the whole would maintain order. The committee also recommends amendment of House Rules 701, 702, 703, and 704 to revise the House rules

on the committee of the whole so that the procedure in each chamber would be similar. The committee recommends repeal of House Rule 705, which provides that a motion that the committee rise is always in order and is nondebatable, because that is provided by *Mason's*.

Immediate Action After Adoption of Amendments

The committee discussed the desirability of an automatic procedure to place measures on the calendar for second reading and final passage immediately after explanation of substantial amendments to those measures. Under current rules, a motion may be made that a measure be placed on the calendar for second reading and final passage immediately after action is taken on the amendment. The rules also provide that after the 32nd legislative day all bills in the house of origin and after the 55th legislative day all measures must be placed on the calendar for second reading and final passage immediately after action is taken on the amendment. The committee recommends amendment of Senate and House Rules 601(2)(g) to provide that a committee report could recommend that a measure be placed on the calendar for second reading and final passage immediately after action is taken on the amendment. If the report contains this recommendation, the measure would have to be placed on the calendar for second reading and final passage immediately after the amendment is adopted. The measure would not be placed on the calendar for immediate action if the amendment is not adopted. It is anticipated that the daily calendar would provide a separate category of sixth order to give notice of reports containing these types of recommendations.

Divided Committee Reports

The committee reviewed the procedure followed if a committee recommends divided reports. At issue was whether all divided committee reports should be put on the seventh order, regardless of the type of recommendation. Under current rules, two different procedures apply. If one report recommends amendment and the other recommends do not pass, those reports are placed on the seventh order of business and are subject to a motion that the minority report be substituted for the majority report. If both reports recommend amendment, the reports recommending amendments are placed on the sixth order of business. The committee recommends amendment of Senate and House Rules 601 and 602 to provide that all divided reports would be placed on the calendar for the next legislative day on the seventh order of business and are subject to a motion that the minority report be substituted for the majority report.

An additional issue was the procedure if the divided reports all fail. Senate and House Rules 601(2)(d) provide that if an amendment is rejected, the measure without amendment is to be placed on the calendar for the next legislative day for second reading and final passage. This implies that this procedure could be followed for measures if both the minority and majority reports have been defeated. The committee recommends amendment of Senate

and House Rules 601(3) to specifically provide that if no divided report is adopted, the measure must be placed on the calendar on the 11th or 14th order of business unless the measure is subject to rereferral under Senate or House Rule 329, which govern referrals to the Appropriations Committees.

Single Vote Consideration of Amendments on Sixth Order

The committee reviewed procedures followed by the Senate and House for approving amendments on the sixth order of business. At issue was whether the rules should require that all amendments on sixth order be considered in one motion, unless a member removes an amendment from the list for individual consideration. The Senate individually considers each amendment on the sixth order. During the past three legislative sessions, the House has approved all amendments on the sixth order by one motion, unless a member has requested in advance that a specific amendment be removed from the consolidated motion in order to give individual consideration to that amendment. The committee recommends amendment of House Rule 601(2)(a) to provide that, without objection, the proposed amendments on the sixth order must be voted on in a single vote, but if any member objects to voting on a proposed amendment with other proposed amendments, that amendment must be voted on as a separate item. This proposed change reflects the procedure followed by the House.

Amendment, Reconsideration, or Suspension of Joint Rules

The committee discussed the procedure for amending, reconsidering, or suspending joint rules. Under current provisions, a rule may be amended by a majority vote of the members present and voting, but a rule may be reconsidered or suspended only by a two-thirds vote of the members-elect or by unanimous consent if the rule to be reconsidered or suspended requires unanimous consent. At issue was the vote requirement for one house suspending or amending a joint rule and whether the other house should be notified of this action. Although some committee members expressed concern as to the effect of this requirement at crossover, the committee recommends creation of Joint Rule 105 to provide that after adoption of the joint rules, no joint rule may be amended unless the rule is first reconsidered, and a joint rule may not be reconsidered or suspended except by a vote of two-thirds of the members-elect of the appropriate house. The house that reconsiders or suspends a joint rule is required to notify the other house with respect to that action. The committee also recommends a new subdivision to Senate and House Rules 318(4) to add amendment, reconsideration, or suspension of a joint rule to the list of actions requiring a two-thirds vote of the members-elect of the appropriate house.

Crossover of Study Resolutions

The committee reviewed deadline dates in addition to the deadlines provided in Senate and House Rules 507. Of concern was the fact that resolutions directing Legislative Council studies must be re-

ported from committee by the 37th legislative day, but resolutions directing Legislative Council studies may not be sent to the other house after the 38th legislative day. This timeframe does not recognize the one-day delay allowed for reconsideration. The committee recommends amendment of Joint Rule 203(2) to provide that a resolution directing a Legislative Council study may not be sent to the other house after the 40th legislative day, rather than the 38th legislative day. This extension allows consideration of an amendment on the 38th legislative day, final action on the 39th legislative day, and reconsideration on the 40th legislative day.

Return of Measures

The committee discovered that a request for return of a measure from the other house must be by resolution. The customary practice has been for a motion requesting return of a measure from the other house. The committee recommends amendment of Joint Rule 204 to provide that either house shall return a measure requested by motion of the other house.

Correction of Clerical Errors

The committee discovered that the traditional authority of the Legislative Council to correct clerical errors as measures are engrossed and enrolled is not provided for by legislative rule. Under *Mason's Manual of Legislative Procedure*, it is not proper to correct clerical errors unless the rules so provide. The committee recommends amendment of Joint Rule 205 to authorize the Legislative Council to correct clerical errors discovered as it engrosses and enrolls bills and resolutions.

Introduction of Executive Agency and Supreme Court Bills

The committee was informed that the Governor directed executive agencies under his control to obtain individual sponsors for bills those agencies desire to introduce into the 1995 Legislative Assembly. At issue was the ramification this directive would have on the legislative workload during the 1995 session. Agency bills are required to be prefiled by December 10. This deadline was originally the fifth legislative day, then was moved to December 15, then was set at December 10, in order to provide sufficient time to review the bills for form and style, print the bills, and schedule the bills for hearing during the early weeks of the session. Although the policy of seeking individual legislators to sponsor agency bills may be seen as a means to reduce the number of bills introduced (by requiring agencies to seek individual legislators to sponsor and support their bills), several committee members expressed concern over the potential for very few agency bills to be prefiled by December 10 and the impact this would have on the early weeks of the session. Committee members also expressed concern over the impact on the legislative process if legislators who sponsored agency bills testify on those bills rather than attend their committee hearings. The committee recommends amendment of Joint Rule 208 to provide that if the entity filing a bill under the rule receives the approval of up

to six legislators to sponsor the bill and the bill is filed by December 10, the bill will include the name of the filing agency. A bill sponsored by a legislator at the request of an agency, but filed after December 10, would not identify the agency. The intent of this rule change is to encourage legislators who sponsor agency bills to have those bills prefiled by December 10.

Meetings of Conference Committees

The committee discussed the requirements for meetings of conference committees. At issue was whether the rules or the leaders should set aside specific days and times for conference committees to meet. During recent legislative sessions, time has been set aside for conference committees to meet at certain times on certain days, depending on whether the conference committees were three-day committees or two-day committees. The committee recommends amendment of Joint Rule 301(2) to provide that a conference committee consisting of members from a three-day committee is to meet on Mondays, Wednesdays, and Fridays, and a conference committee consisting of members from a two-day committee is to meet on Tuesdays and Thursdays. Authority is given for conference committees to meet on other days as deemed necessary by the chairmen. The proposed rule change does not specify the hours during which conference committees are to meet.

Copies of Fiscal Notes

The committee discussed the requirements for copies of fiscal notes. The current rules provide for three copies, but the Legislative Council staff makes five additional copies and additional copies have been made for distribution as directed by the Speaker or others. The committee recommends amendment of Joint Rule 501(4) to require the agency or department preparing the fiscal note to return the fiscal note along with a number of copies requested by the Legislative Council. The Legislative Council is to retain three copies, provide one copy to the Office of Management and Budget, provide one copy to the Governor, and deliver the remaining copies to the Secretary of the Senate or the Chief Clerk of the House. Of those copies, one is to be attached to the original bill or resolution, one is to be filed with the bill clerk, one is to be provided to the President of the Senate, one is to be provided to the Speaker of the House, and any remaining copies are to be distributed as directed by the Secretary of the Senate or the Chief Clerk of the House as appropriate. The intent of the recommendation is to improve the efficiency of distributing fiscal notes by requiring the agency or department preparing the fiscal note to provide the correct number of copies for appropriate distribution.

Copies of Bills and Resolutions

The committee considered a suggestion by the Secretary of the Senate that the number of copies of bills and resolutions be reduced to reflect the number needed for distribution. The current rule provides for 800 copies of each bill and 500 copies of each resolution to be printed. The committee recommends amendment of Joint Rule 603(1) to reduce the number of printed copies to 500 copies of each bill and 300 copies

of each resolution. The recommendation also replaces the provision that the house of introduction may order a greater or lesser number of bills or resolutions to be printed with a provision authorizing the chief bill and journal room clerk to order additional copies to be printed to meet demand. The transfer of authority to order additional copies eliminates the need for an entire house to be involved in a decision seen as appropriate for the person responsible for maintaining copies of bills and resolutions.

Other Rules Proposals Considered

The committee reviewed several other proposed rules amendments. These included (1) amendment of Senate and House Rules 301 to create a new 18th order of business entitled "Special Business" for a member to speak on a matter not technically a point of personal privilege; (2) creation of Senate and House Rules 331.1, with corresponding amendment of Senate and House Rules 318, to prohibit the consideration of committee reports recommending replacement of the entire text of a bill or resolution (a "hoghouse" amendment) unless unanimous consent of the Senate or House is received; (3) amendment of Joint Rule 501 to provide that if a bill or resolution affects more than one agency, a separate request for a fiscal note would have to be sent to each agency affected and each agency requested to prepare a fiscal note would have to describe the fiscal impact on that agency; (4) creation of Senate and House Rules 606, with appropriate amendments to other rules, to provide that a committee would not have to report every bill or resolution back from committee, but that one-third of the members-elect could require a committee to report a measure back to the full house; and (5) amendment of Joint Rule 603 to provide that 300 copies of each officially engrossed measure would have to be printed.

The committee also received information on the subject matter of committees as designated by Senate and House Rules 501. At issue was whether the subject matter listing should be revised or eliminated in light of the practice of referring bills to committees other than those that would have jurisdiction under the rules. The committee also received information on the vote required to take an item from the table. Except for Senate and House Rules 347, which relate to a clincher motion, no other rule identifies the vote required to take a question from the table and thus a motion to take an item from the table requires a majority of the votes cast for adoption.

EFFECTIVE DATE OF BILLS

Background

Section 13 of Article IV of the Constitution of North Dakota provides that every law takes effect on August 1 after its filing with the Secretary of State, except an appropriations measure for support and maintenance of state departments and institutions and a tax measure that changes tax rates take effect on July 1. This section was amended by constitutional amendments approved in 1987 and 1992. Before the 1987 amendment, all measures took effect on July 1 after the legislative session. The 1987 amend-

ment introduced the differential for appropriation measures and tax measures and provided that these measures took effect on July 1 after the legislative session while other measures took effect 90 days after filing with the Secretary of State or on July 1, whichever came later. The 1992 amendment introduced the August 1 effective date for legislation other than appropriation or tax measures.

The 1993 Legislative Assembly passed House Bill Nos. 1211 and 1212, both of which increased certain fees charged by the Secretary of State. In response to a request from the Secretary of State, on June 8, 1993, the Attorney General issued an opinion on the effective dates of these bills. The opinion indicated that each provision of a bill is a measure and must be examined separately to determine the effective date of that provision. The opinion also indicated that fees for certain services are not taxes, filing fees calculated not to raise revenue but to help make the filing system self-sustaining are not taxes, and license and registration fees are taxes.

Tax Measures and "Measure"

In 1971 the North Dakota Supreme Court, in **Ralston Purina Co. v. Hagemeister**, stated that a tax is an enforced contribution for public purposes which in no way is dependent upon the will or consent of the person taxed. Since 1987 the Legislative Council staff has reviewed each bill passed by the Legislative Assembly to determine effective dates and has used **Ralston Purina** in determining that a bill providing for a change in an enforced contribution for public purpose is a tax measure.

The committee discussed the problems that could arise under the Attorney General's opinion that every provision of a bill is considered to be a "measure." For example, appropriation bills often contain a section providing an appropriation and numerous additional sections imposing qualifications or limitations upon the appropriation. The committee reviewed the constitutional, statutory, and legislative rule usage of the term "measure." Other than specific instances when the term was used in a way to indicate reference to a portion of the entire legislative act, the committee discovered no authority that the term "measure" means less than the entire bill.

The committee also discussed problems that could arise if every fee must be reviewed to determine if the fee is calculated to raise revenue or make the system self-sustaining.

Recommendation

The committee recommends Senate Bill No. 2071 to provide that in determining the effective date of any law, a "measure" includes the entire contents of a legislative enactment, unless the Legislative Assembly specifically provides that a portion of the enactment is to be considered an emergency, appropriation, or tax measure. The bill establishes a two-step process for determining whether a measure is a tax measure that changes tax rates. First, the bill must provide for an enforced contribution for public purposes which is not dependent upon the will or consent of the person taxed, impose a fee for any purpose, or authorize a public official or entity to

determine the level of a fee for any purpose. If any of these factors is present, the bill must also change any statutory factor that determines the amount of a taxpayer's liability for the contribution or fee, including a full or partial exemption or credit. This last step recognizes the fact that the constitutional provision requires that there be a "change" in tax rates.

ANNUAL LEGISLATIVE SESSION PROCEDURES 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 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 the interim. That committee made no special recommendation concerning the use of the extra days available to the Legislative Assembly.

During the 1989-90 interim, the Legislative Management Committee studied the legislative process, with emphasis on the appropriate use of the 80 natural days allowed for the Legislative Assembly to be in session. That committee compared legislative deadlines in effect for the 1977 Legislative Assembly and the 1989 Legislative Assembly; reviewed the length of legislative sessions since 1975; reviewed use of legislative days in other states; and reviewed legislative proposals since 1979 which would have established procedures for calling the Legislative Assembly back into regular session after adjournment, provided for a fiscal session in even-numbered years, provided for a budget adjustment session in even-numbered years, and provided for regular sessions in even-numbered years rather than odd-numbered years. That committee recommended a resolution directing the Legislative Council to study and establish procedures necessary to implement annual sessions of the Legislative Assembly beginning in 1993 and 1994. Although the 1991 Legislative Assembly approved the study resolution, the Legislative Council did not give priority to the study during the 1991-92 interim.

Legislative Rules to Implement Annual Sessions

House Concurrent Resolution No. 3061 directed the Legislative Council to study and establish procedures necessary to implement annual sessions beginning in 1995 and 1996. Although past legislative proposals would have enacted a statutory requirement for annual legislative sessions, the Constitution of North Dakota specifically provides the days spent in regular session need not be consecutive and that each house of the Legislative Assembly is to determine its rules of procedure. Under this authority, the Legislative Assembly could establish, by rule,

the procedure for implementing annual legislative sessions.

The committee reviewed legislative rules amendments to implement annual sessions. The amendments were based on four assumptions:

1. Each annual session should be approximately equal in length, but the session before the beginning of the biennial budget period would need more time to approve biennial budgets.
2. Although an annual session would be one-half the length of a biennial session, merely cutting every deadline in half would severely compress timeframes very early in the session.
3. Because of substantially reduced session length, there would need to be a procedure to permit orderly processing of workload in a compressed timeframe.
4. A bill or resolution would not carry over from one session to the next.

The proposed rules amendments to implement annual sessions established a 40-day session in odd-numbered years and a 35-day session in even-numbered years, which is similar to the sessions of the South Dakota Legislature, but which allows for a five-day reserve. Rather than merely cutting the time periods in half, the current deadlines for bill introduction were retained, crossover was moved from the 34th to the 29th legislative day, and the deadline for reporting measures out of committee in the second house was moved from the 48th to the 35th legislative day. This is similar to the deadline framework of the South Dakota Legislature. For the even-numbered year session, the deadlines were reduced by five legislative days. As a means to promote orderly processing of workload in a compressed timeframe, the rules amendments provided for committees to table bills, but included a procedure whereby one-third of the members of a house could recall a bill from committee. This proposal is patterned after South Dakota's "smokeout" rule.

Interim Committee Structure

The committee reviewed a proposed interim structure that consisted of 20 committees—12 joint House and Senate standing committees and eight Legislative Council committees that are statutory or traditional (Administrative Rules, Advisory Commission on Intergovernmental Relations, Budget Section, Employee Benefits Programs, Garrison Diversion Overview, Legislative Audit and Fiscal Review, Legislative Management, and the Regulatory Reform Review Commission). The committee discovered that an interim structure consisting of primarily joint standing committees required several issues to be addressed. For example, if study assignments were based on committee of first referral, different committees could have duplicative studies, a committee could be studying an issue that does not traditionally fall within the relevant standing committee's jurisdiction, some committees could have no study responsibilities, and some committees could have a burdensome workload. The committee also discovered that total committee membership would be higher under a joint standing committee interim

structure because of the automatic assignment to at least two "interim" committees. Thus, expenses of interim committee studies could increase unless other action was taken, e.g., scheduling three-day and two-day committees that had substantially similar membership to meet together or reducing the number of meetings during the interim. The selection of a chairman of a joint interim committee could also be an issue due to the presence of both standing committee chairmen. Another issue is the selection of study resolutions. Under the current process, the Legislative Council selects resolutions primarily based on issues with a high priority and establishes an interim structure to fit those priorities. Under a predetermined committee structure, studies would perhaps be selected to fit that structure rather than to address priorities.

Although an argument was made that a predetermined committee structure would result in legislators giving more consideration to the importance of a study resolution before approving the resolution during the legislative session, a countervailing argument was that legislators assigned to committees studying areas other than the legislators' specific standing committee jurisdictions result in more informed legislators.

Conclusion

The committee makes no recommendation concerning adoption of rules to replace the current biennial session of the Legislative Assembly with annual legislative sessions. The committee makes no recommendation to revise the interim committee structure whether or not the Legislative Assembly establishes annual legislative sessions.

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 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 Assembly has been on a daily basis, with the highest compensation ranging from \$7 per day in 1890 to \$95 per day in 1993. In 1991 and 1993 an additional \$1 per day increment was provided for employment during certain legislative sessions, up to a maximum of \$5 per day.

The number of employees of the Senate and House has generally increased from 1890 to 1993. In 1890 there were 16 Senate employees and 18 House employees, and in 1993 there were 62 Senate employees and 82 House employees (which includes janitors employed on a part-time basis).

1993 Employee Compensation

For the 1993 Legislative Assembly, Senate Concurrent Resolution No. 4019 identified the employees of each house as well as the daily wage to be paid to each employee by position. The daily wage ranged from \$58 to \$95, which does not include the \$1 per day per session increment authorized for any employee employed by the 1991 Legislative Assembly or if not employed by the 1991 Legislative Assembly, who was employed by the Legislative Assembly during a previous regular legislative session for at least 45 days. This provision for an incremental increase affected 25 Senate employees and 28 House employees—13 Senate employees and seven House employees received an additional \$1 per day, three Senate and five House employees received an additional \$2 per day, three Senate and four House employees received an additional \$3 per day, two Senate and four House employees received an additional \$4 per day, and four Senate and eight House employees received an additional \$5 per day.

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.

1995 Session Employee Compensation

The committee reviewed the specific compensation grades for legislative session employees to determine appropriate pay levels for employment during the 1995 session. The committee determined that certain compensation grades should be adjusted to reflect varying levels of knowledge, technical skills, and supervisory skills.

Number of Employees

The committee focused on the number of Senate and House employees. Responses to the legislative process questionnaire, as well as suggestions from employees who were in supervisory positions during the 1993 session, indicated that the number of employees should be reduced.

The committee reviewed a legislative session employee position plan based on recommendations of 1993 session supervisory employees. The specific proposal reviewed by the committee provided for 16 fewer House employee positions and five fewer Senate employee positions. For the House, the plan provided for six stenographers (rather than five stenographers and two typists), three assistant sergeants-at-arms (rather than seven), no assistant chief page and bill book clerk (rather than one), one desk page (rather than three), a calendar clerk (a new position), eight page and bill book clerks (rather than 17), and three bill room clerks (rather than four). For the Senate, the plan provided for five stenographers (rather than four), one deputy sergeant-at-arms (rather than two), no journal page (rather than one), one calendar clerk (a new position), five page and bill book clerks (rather than eight), and three bill room clerks (rather than four). The plan also recognized that during the 1995 session the House rather than the Senate would employ the supply room coordina-

tor and the chief bill and journal room clerk, and the Senate rather than the House would employ the chief telephone attendant.

The estimated savings in compensation resulting from the 21 fewer positions was \$83,283 (not including savings resulting from reduced workers' compensation, unemployment compensation, and Social Security contributions).

After the initial plan was presented, the committee determined that each majority and minority leader should be provided an additional assistant (because of difficulties in obtaining a legislative intern for each caucus); that the Legislative Assembly should contract for stenographic services to be provided by a private secretarial service; that the chief committee clerk of each house should also be assigned to clerk for a committee, with the Employment Committee of each house to determine whether the assignment would be to a three-day or two-day committee, and that an additional assistant committee clerk be employed in each house (the net effect is to maintain the total number of committee clerks); and that only one payroll clerk be employed rather than a chief stenographer and payroll clerk in each house. The committee determined that the payroll clerk position should alternate between the Senate and the House, as does the supply room coordinator, chief bill and journal room clerk, and chief telephone attendant.

Joint Steno Pool

After the committee approved a session equipment plan, which is described in this report under **SESSION ARRANGEMENTS**, the committee reviewed information on the cost of contracting with a private secretarial service for steno services, rather than employing stenographers. During the 1993 session, the Senate and House employed the equivalent of 10.5 stenographers and typists (one employee left in early February) at a cost of \$56,629.20, which does not include the cost of the two chief stenographers and payroll clerks (\$14,326.59). These figures include wages, Social Security contributions, and unemployment compensation premiums, but do not include workers' compensation premiums or temporary secretarial services.

The committee received information indicating that private secretarial services could provide nine stenographers and a supervisor for 72 legislative days at estimated prices between \$50,700 and \$65,200. Representatives of the secretarial services also indicated that if fewer stenos were needed because of the use of a true "pool" concept, i.e., work is assigned to available typists rather than to typists who represent the majority or minority, the actual charges would be less.

The committee approved the conversion of the steno pool from a session employee operation to a service provided by a private contractor. The committee requested the Legislative Council staff to prepare specifications and solicit bids for secretarial services for the Legislative Assembly. The specifications included proficiency in Word Perfect or any other software provided by the Legislative Council for use by the steno service; a bid price based on nine stenogra-

phers and a supervisor, based on 72 legislative days, with an appropriate reduction if fewer typists are needed and the length of the session is less than 72 days. The contract is also to contain assurances of nondisclosure by the employees of the secretarial service.

Because of its decision to "privatize" the steno pool, the committee also addressed the issue of the need for each house to employ a chief stenographer and payroll clerk. The committee reviewed the job responsibilities of this position and determined that one position, that of payroll clerk, could perform the responsibilities for both houses.

Janitors

The Legislative Assembly historically has employed janitors selected from employees on staff of the Facility Management Division of the Office of Management and Budget. Starting with the 1977 session, the resolutions designating legislative employee positions and their pay identify the janitors' pay as partial pay. This pay was based on the janitors' regular wage at a time and one-half rate for four hours per day.

Legislative employees were specifically exempted from the federal Fair Labor Standards Act in 1985. Although the Legislative Assembly employed janitors who were also employed by the executive branch, the Legislative Assembly continued to pay them for four hours of work per day at time and one-half what those janitors were paid by the executive branch. However, because of the exemption of legislative employees from the Fair Labor Standards Act, precise records were not kept on the hours actually worked by janitors.

During the 1993 legislative session, the Wage and Hour Division of the United States Department of Labor determined that janitors employed by the Legislative Assembly were not "legislative" employees and each janitor's compensation should be determined by adding what that individual was paid by the executive branch and the amount paid by the legislative branch and dividing that amount by the actual number of hours worked in order to determine the "real" hourly rate and then multiplying that "real" hourly rate times one and one-half to determine the overtime rate that should be paid for every hour worked for the Legislative Assembly. The result would have been that janitors would be entitled to an overtime rate figured on top of the time and one-half rate already paid by the Legislative Assembly. The Legislative Council staff and the chairman of the Legislative Council corresponded with the Wage and Hour Division and the Congressional Delegation to protest the apparent ignoring of the specific exemption of legislative employees provided in the federal law.

Because of the ramifications if the determination of the Wage and Hour Division prevailed, e.g., any person employed by the Legislative Assembly on a part-time basis who is also employed by another state agency would not be considered a legislative employee, the committee requested the Attorney General to represent the legislative branch in this matter. To date, there has been no further action by the Wage

and Hour Division to pursue this matter.

The committee considered whether janitorial services should be provided by the Facility Management Division of the Office of Management and Budget rather than by employees of the Legislative Assembly who were on the staff of the division. The committee received information that the Facility Management Division of the Office of Management and Budget would require an additional \$25,000 to compensate employees of the division for providing janitorial service to the Legislative Assembly during the 1995 session. The committee received information on the cost of contracting with private firms to provide janitorial services. The information indicated that a private janitorial service could provide service during the 1995 session, in all areas under control of the Legislative Assembly, at costs estimated between \$18,000 and \$37,500.

Recommendations

The committee recommends the employment of a total of 57 House employees and 51 Senate employees by the 1995 Legislative Assembly. This represents 21 fewer House employees and eight fewer Senate employees. The committee recommends that each employment committee use the proposed plan considered by the committee as a guideline, but that specific positions be determined according to need.

The committee recommends that janitorial services be provided by the Facility Management Division of the Office of Management and Budget. The committee determined that the cost of paying for additional working hours by staff of the Facility Management Division was within the estimates for contracting with a private janitorial service. The committee approved requesting the transfer of \$25,000 from the budget of the Legislative Assembly to the Facility Management Division.

The committee recommends that the compensation of certain legislative session employees be increased to recognize a supervisory technical level and a supervisory nontechnical level, recognize required knowledge, and establish a differential between three-day committee clerks and two-day committee clerks.

The committee recommends that session employees receive increments to the basic daily wages. The increment recommended is \$1 per day for each session employed by the Legislative Assembly, subject to a total increment of \$10 per day.

LEGISLATIVE PUBLICATION MEDIUM STUDY

Publication Rights

The study directed by House Concurrent Resolution No. 3024 was of the feasibility and desirability of making the North Dakota Century Code, North Dakota Administrative Code, North Dakota Session Laws, and other legislative publications available in mediums other than hard copy, including CD-ROM and diskettes, with particular emphasis on the rights of a publisher of the Century Code and the cost ramifications to the state and to private subscribers.

The North Dakota Century Code is the codified compilation of all laws of a general and permanent

nature. The committee reviewed court cases pointing out that statutory text is in the public domain and states cannot restrict access to the text of statutes through copyright. However, in the publication of the North Dakota Century Code, a considerable amount of material is included in addition to the text of the statutes. The publisher of the code has placed annotations, cross-references, source notes, and other materials after statutory provisions. Copyright protection is generally available for original works independently created by the author which possess at least some minimal degree of creativity. The publisher of the code, The Michie Company, has obtained a copyright to its publication of the North Dakota Century Code, which has been assigned to the state for official use, subject to reservation of contractual rights by The Michie Company.

The Session Laws of North Dakota are compiled and prepared by the Legislative Council staff. A private printer primarily binds the materials into volumes and the Secretary of State is responsible for distributing and selling the Session Laws. The Legislative Council staff compiles and prepares all material included in the North Dakota Administrative Code and delivers those materials to the state's Central Duplicating Division. The Secretary of State distributes the Administrative Code. There is no copyright obtained for materials in the Session Laws or the Administrative Code.

Although other legislative publications are prepared by the Legislative Council, e.g., House and Senate bills and resolutions, House and Senate journals, committee hearing schedules, daily calendars, bill status reports, and Legislative Council reports, the committee focused the study on the publication of the North Dakota Century Code.

Access

The North Dakota Century Code is available for purchase from The Michie Company at a current price of \$450 for the 23-volume set. That price includes one year of supplement service. Supplements are printed after a legislative session and replacement volumes (approximately two to three volumes each interim) cost in the range of \$225 to \$250. The state of North Dakota is the largest subscriber and maintains approximately 700 sets of the Century Code. Access to the Century Code is also available through two computerized research services—Lexis and Westlaw. Both of these companies have obtained contractual rights from The Michie Company to publish the Century Code in this format. These services are available at variable rates.

The Session Laws are available for purchase from the Secretary of State at a cost of \$47 for the two-volume set of the 1993 Session Laws. There were 800 sets of the 1993 Session Laws printed.

The North Dakota Administrative Code is available for purchase from the Secretary of State at an initial cost of \$520 for the 15-volume set. That price includes one year of supplement service. Monthly supplements for the Administrative Code are available at a cost of \$190 per year. There are 203 subscribers to the Administrative Code (99 of whom receive free sets by law).

Alternative Technologies

The committee discovered that New Mexico was the first state to make its statutes available on CD-ROM and that was made available by the publisher of the New Mexico statutes—The Michie Company. The Michie Company publishes the South Dakota Codified Laws on CD-ROM and the disk also contains the South Dakota Administrative Code and South Dakota Supreme Court cases dating back to 1965. South Dakota purchases 50 subscriptions to this service at a price of \$750 per subscription per year, and each private subscriber pays \$1,500 per year for the service.

The Michie Company informed the committee that it has not yet determined whether its sale of CD-ROM statutory services substantially affects its sale of published volumes; however, if an entity other than The Michie Company sold CD-ROM services of publications of The Michie Company, that could affect the prices of the publications.

The committee was also informed that the Legislative Council staff has received several requests for computer access to its data base of the Century Code. Although the Century Code is available from private companies—Lexis and Westlaw—the requesters apparently do not want to subscribe to those services. A major issue in providing access to the Century Code data base maintained by the Legislative Council is that the data base is used for bill drafting purposes and does not contain laws that expire before the next Legislative Assembly, laws with delayed effective dates, or laws that go into effect at other times, because those laws are not of prime importance in preparing bill drafts for the next Legislative Assembly.

CD-ROM Proposal

The committee reviewed a proposal from The Michie Company for a CD-ROM edition of the Century Code. The disk would contain the Century Code, the decisions of the Supreme Court of North Dakota from January 1929, the decisions of the Court of Appeals of North Dakota from November 1987, and the North Dakota Administrative Code. The disk would be updated quarterly with the most recent case law and a quarterly newsletter sent to all subscribers would describe search techniques, innovative uses of the CD-ROM, and new product enhancements and announcements.

The Michie Company would provide one complimentary subscription to each North Dakota Supreme Court justice and Court of Appeals and district court judge, 25 complimentary subscriptions to the Legislative Council, and a complimentary subscription to each member of the Legislative Assembly who requests one. Any entity that received a complimentary subscription would sign a license agreement and agree that the disk would be used for state government use only. In exchange for receiving these complimentary subscriptions, the state would provide The Michie Company with an electronic version of the Administrative Code and the exclusive right to sell the Century Code in CD-ROM format.

Proposal Acceptance

The committee approved acceptance of the pro-

posal by The Michie Company for providing North Dakota Law on Disk—the CD-ROM version of the Century Code.

LEGISLATIVE INFORMATION SERVICES

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, copies of introduced bills and resolutions, daily journals, and bill status reports. The documents were sent to 30 libraries in 1983; 46 in 1985; 45 in 1987; 51 in 1989; 21 in 1991; and 20 in 1993. During the 1989-90 interim, the Legislative Management 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 the other documents plus the cost of shipping the materials. In 1991 the cost to subscribe to the program was \$130; in 1993 the cost to subscribe was \$150, with a \$25 late fee. The committee approved continuation of the program for the 1995 Legislative Assembly, with the requirement that a participating library pay \$150 to subscribe to the program, and if the subscription is after the deadline for subscribing, a \$25 late subscription fee.

On-Line Bill Status System Access

The bill status system began in 1969 as a Legislative Council computerized in-house report that provided 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 entities that are not state agencies or institutions have gained access through arrangements with the Legislative Council and the Information Services Division of the Office of Management and Budget. In 1993, 69 entities other than state agencies were authorized access. Those users paid a \$200 subscription fee and the direct and indirect costs of providing access and obtaining usage.

The committee reapproved the policy established in 1992 that a user's hardware and software must be compatible with the state's system; that no on-line user is allowed to provide on-line access to others who are not subscribers, without the permission of the Legislative Council staff; that no on-line user is allowed to download information obtained from the on-line system and provide on-line access to that information without notice to the Legislative Council staff; and that no on-line access should be provided to a state agency or institution for the purpose of providing or reselling that information to others unless that state agency or institution provides or resells that information for a fee that recovers the costs incurred

by the agency or institution to provide that service.

The committee approved a subscription fee of \$250 for access to the bill status system during the 1995 legislative session for any subscriber that is not a state agency or institution. A subscriber is also subject to a monthly access charge and a computer usage charge per CPU second as determined by the Information Services Division.

Bill Status Report Subscription Fee

When the bill status system began in 1969, the system consisted of printed reports. During the 1989 session, over 135 copies of the bill status report were printed 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. In 1991 the number of printed reports distributed without charge was substantially reduced (state agencies no longer received a printed bill status report from the bill and journal room) and a subscription fee of \$130 was established to receive a printed bill status report. Twelve entities subscribed to the printed bill status report. In 1993, 38 entities paid a subscription fee of \$150 to receive a copy of the printed bill status report. The committee determined that printed bill status reports should continue to be made available through the bill and journal room only to those who subscribe to the 1995 bill status report and pay a \$150 subscription fee, \$260 if mailed (a state agency can print its own report through arrangements with the Information Services Division).

Photocopied Bill and Resolution Subscription Fee

Under Senate and House 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 this service and established a fee of \$600 for the 1995 session.

Bill, Resolution, and Journal Subscription Fees

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee adopted the policy that the joint bill and journal room should mail a small number of bills and resolutions at no charge to a requester, but if the request is for a large number or for all of the bills and resolutions introduced, the requester should pay the postage. This policy was followed during the 1987, 1989, and 1991 sessions. During the 1991-92 interim, the Legislative Management Committee established subscription fees to cover the cost of printing a set of bills, resolutions, and journals and the cost of mailing these documents. State agencies and institutions were not charged the fees, nor were representatives of the media as determined under Joint Rule 802.

The committee established the following fees with respect to receiving a copy of every bill and resolution introduced and printed or reprinted and a copy of the daily journal of each house during the 1995 session: for a set of bills and resolutions - \$90, or \$200 if mailed; and for a set of daily journals of the Senate and House - \$60, or \$170 if mailed. The committee

expanded the subscription service to include final covers for the Senate and House journals after the session adjourns. A state agency, state institution, or representative of the media as determined under Joint Rule 802 may pick up from the joint bill and journal room a set of bills and resolutions as introduced and printed or reprinted and a set of the daily journals of the Senate and House, without paying the subscription fees for a set of the bills, resolutions, and daily journals. Anyone can still receive a limited number of bills and resolutions without charge.

The committee established a subscription fee of \$30 to receive the index to the Senate and House journals for the 1995 session.

Committee Hearing Schedule and Daily Calendar Subscription Fees

The committee reviewed the practice of making committee hearing schedules and daily calendars available at no charge. The committee determined these documents should continue to be made available at no charge. The committee determined that if a request is received for the mailing of daily calendars or committee hearing schedules, the policy followed during the 1993 session should continue and a fee should be imposed to cover the cost of mailing. The committee established a subscription fee of \$55 for mailing a set of daily calendars of the Senate and House and a subscription fee of \$30 for mailing a set of the weekly hearing schedules for Senate and House committees.

CONTRACTS FOR PRINTING OF LEGISLATIVE DOCUMENTS

Background

Under NDCC Section 46-02-04, the Legislative Council is authorized to determine the contents of contracts for printing legislative bills, resolutions, and journals. Requests for bids for the printing of legislative bills, resolutions, and journals are prepared by the State Purchasing Division, usually in October of the year preceding the legislative session.

Bills and Resolutions Contract

Under the recommended amendment of Joint Rule 603, 500 copies of each bill and 300 copies of each resolution must be printed and additional copies may be ordered by the chief bill and journal room clerk. This change was made to the contract for printing bills and resolutions.

Daily Journals Contract

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee approved the reduction in the number of daily journals to 2,000 for each chamber, rather than 2,300 House journals and 2,200 Senate journals. During the 1987 session, the number was reduced to 1,800 and the contract to print the 1989 journals provided for 1,800 copies of the daily journals of each house. As the result of a suggestion by the 1991 chief bill and journal room clerk, the contract to print the 1993 journals provided for 1,200 copies of the daily journals of each house. As

the result of a suggestion by the 1993 Secretary of the Senate, the contract to print the 1995 journals provides for 900 copies of the daily journals of each house. As in the past, the contract allows the total number of daily journals to be varied during the session, depending on need. Specifications were added to the contract for 280 sets of journal covers, which will be distributed to legislators and subscribers.

Use of Recycled Paper

North Dakota Century Code Section 54-44.4-08 requires at least 30 percent of the total volume of paper and paper products purchased for state agencies to contain at least 25 percent recycled material. To promote the use of recycled materials, the requests for bids for the printing of bills, resolutions, and journals requested bidders to use recycled paper but to include alternate bids on the use of nonrecycled paper.

SESSION ARRANGEMENTS

Legislator's Automated Work Station (LAWS) System

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee considered the possibility of replacing legislators' bill racks with personal computer terminals. Representatives of IBM spent a day in each chamber during the 1987 session, interviewed legislators, and sat with legislators on the floor. Bill racks were found to be used 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 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.

During the 1989-90 interim, the Legislative Management Committee approved enhancements of the LAWS system to allow display of the full text of a bill page 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 work stations; word processing capability; spreadsheet capability; and storage of telephone messages in caller sequence. For the 1991 session, the committee approved expansion of the system to 24 work stations—eight in the Senate and 16 in the House.

During the 1991-92 interim, the Legislative Management Committee determined that the LAWS system should be implemented on a controlled growth

basis, with usage voluntary and participation assigned through the caucuses. The committee approved expansion of the system to 50 work stations in the chambers—17 in the Senate and 33 in the House, as well as a terminal and printer in each of the majority and minority leaders' offices.

The committee received information concerning conversion of the LAWS system to a personal computer-based system rather than a host computer-based system. Conversion of the LAWS system to a personal computer-based system will allow legislators to view complex tables contained within statements of purpose of amendments, increase the number of versions of a bill available for viewing, increase printer capabilities, improve spreadsheet and word processing software, and, depending on the type of personal computers used, substantially increase legislators' access to information outside the Senate and House chambers.

The committee determined that the LAWS system should be continued for the 1995 session at the same level as for the 1993 session—17 terminals on the Senate floor and 33 terminals on the House floor. Rather than continuing growth of a mainframe-based system, the committee determined that resources should be used to defray costs of converting to a personal computer-based system, which would substantially increase a legislator's access to information.

The committee approved a LAWS PC pilot project for the 1995 Legislative Assembly. Under the PC pilot project, four members of the Legislative Management Committee (two from each house, one from each caucus) will receive notebook-type personal computers for use during the session and the interim. The intent of the pilot project is to assess the feasibility and desirability of making notebook computers available to legislators and of converting the LAWS system to a personal computer-based system.

Legislator Supplies

The committee reviewed the policy of providing stationery to legislators. The committee reviewed proposals for legislators' stationery. The committee recommended that 24-pound laser print paper be used for stationery. This paper is a new product, especially designed for laser printers, copiers, and plain paper fax machines. When tested, the paper performed better than other paper tested in the printers to be used by the Legislative Assembly.

The committee approved the policy that Monarch stationery (with envelopes) be provided to each leader, assistant leader, and the Speaker of the House. The committee also approved the policy that the leader receive as much regular stationery (and envelopes) as needed, and that other legislators are entitled to one ream of stationery (and envelopes) and can receive a second ream (and envelopes) on request.

The committee approved continuation of the policy of providing letter files to 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 through the 1991 sessions. During the 1991-92 interim, the Legislative Management Committee decided that repairs for damage occurring during the legislator's tenancy should not be included, but otherwise the policy adopted previously was followed. The committee recommends that the policy followed during the 1993 session as the policy to be applied for determining reimbursable lodging expenses during the 1995 session.

Legislative Parking Lot

The committee reviewed the practice of painting legislators' chamber desk numbers on the parking spaces assigned to legislators in the parking lot west of the legislative wing of the Capitol. Legislators receive their desk assignments during the organizational session in December. After the desk assignments are made, parking space assignments are made by each house. Those spaces are then painted with the number of the assigned legislator's desk.

The committee approved a proposal that 100 spaces be painted with House numbers in a sequential pattern and 50 spaces be painted with Senate numbers in a sequential pattern. Legislators would be assigned the appropriate parking lot space number, which would not relate to the chamber desk number of the legislator. The committee approved this proposal due to the difficulty in effectively painting parking lot spaces in late December after legislators have selected their desks at the organizational session.

Journal Distribution Policy

The committee reviewed the policy initiated in

1985 that legislators would no longer receive a form to list up to 15 persons who are to receive daily journals without charge, but that legislators would be informed by their desk force that they could request that daily journals be sent to as many as 15 persons.

The committee noted that there could be a conflict between providing a subscription service to daily journals and providing free sets of journals for distribution at the request of legislators. The committee recommends that the policy for distribution of journals at the request of legislators should be that the desk force inform legislators that a legislator may have daily journals sent to as many as three persons, but any additional journals may only be sent for that legislator upon the approval of that legislator's floor leader. The intent of this policy change is to determine the extent of free distribution of journals at the request of legislators.

Television Coverage

The committee reviewed a proposal by Meredith Cable for live television coverage of the 1995 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. A camera was positioned on alternating sides of the gallery, and viewers were given the opportunity to observe the legislative process. This service was available to approximately 8,000 Bismarck-Mandan Cable TV subscribers who had a secondary level of service known as the variety tier. During the 1991 session, Bismarck-Mandan Cable TV, through Community Access Television, a non-profit corporation responsible for programming the public access channel of Bismarck-Mandan Cable TV, provided legislative coverage on a basic tier channel. By changing channels, more than 20,000 subscribers had access to legislative coverage. The coverage was also expanded to include the North Dakota House of Representatives on alternating weeks. The coverage of the 1993 Legislative Assembly was continued under a similar arrangement, which allowed more than 22,000 subscribing households, businesses, and schools to have access to legislative coverage.

The committee discussed the coverage provided by Meredith Cable and Community Access Television. Committee members expressed interest in expanding the coverage to include committee hearings and caucus meetings. In addition, committee discussions concerned the feasibility of expanding the distribution of tapes of the floor sessions to other community access systems in the state. The committee received information that it would cost approximately \$2,000 per community access system for distribution of tapes of floor sessions and rebroadcast on a one-day delay basis. Although suggestions were made that the Legislative Assembly or another state entity could bear the burden of this cost, the committee recommended that Meredith Cable and Community Access Television make available copies of the tapes for rebroadcast by any community access system in the state, with the cost to be borne by the local systems.

With respect to the coverage of the 1995 Legislative Assembly by Meredith Cable and Community Access Television, the committee authorized Meredith Cable to continue the coverage under an arrangement similar to that in the past, but with a request that attempts be made to provide some coverage of selected committee hearings.

Interactive Video Committee Hearings

The committee received testimony that use of the Interactive Video Network under the Board of Higher Education would expand citizen access to the legislative process. The network has 13 locations at the institutions of higher education. The testimony also recommended use of the interactive video system during the interim.

The committee approved a plan for the use of the Interactive Video Network during the 1995 session which evenly divides the time between Senate and House standing committees and between three-day committees and two-day committees. Specifically, the plan is for use of the system between the hours of 10:00 a.m. and 12:00 noon in the Pioneer Room on Tuesday and Thursday, January 31 and February 2, and in the Fort Lincoln Room on Tuesday and Thursday, February 7 and 9. The chairmen of the committees assigned these rooms are to determine the subjects of the hearings, the sites at which the hearings are to be carried, the format of the hearings, and the type of publicity that will be done and who is to do it.

Incoming WATS Lines

The committee reviewed information on the usage of the six incoming WATS lines provided during the 1993 session for residents in the state to contact legislators or obtain information concerning legislative proposals. The information indicated six lines are adequate for handling the volume of calls received by the telephone attendants (during the 1993 session 62,320 calls were received). The committee recommends no change in the incoming WATS line service.

Appropriation Bills

The committee received a request from the Office of Management and Budget relating to the preparation of appropriation bills in time for the organizational session. Under NDCC Sections 54-44.1-06 and 54-44.1-07 the appropriation bills embodying the budget data and recommendations of the Governor for appropriations for the next biennium are to be presented to the Legislative Assembly at the organizational session. The Office of Management and Budget reported to the committee that the office could not meet the organizational session deadline for the preparation of bills. The committee recommends the Legislative Council staff be requested to receive appropriation bills implementing the Governor's budget for prefiling after the statutory deadline but by December 19.

Session Employment Coordinators

The committee approved the hiring of personnel representing the two major political parties to re-

ceive and coordinate the handling of applications for session employment.

Session Equipment

The committee reviewed the results of a questionnaire sent to 1993 session committee clerks, secretaries to the leaders, stenographers, and typists. At issue was the type of equipment to be used by employees in these positions. The focus of the questionnaire was the type of equipment—typewriters, word processors, terminals with access to the state mainframe computer, or personal computers—which the employees preferred for use during the 1995 session. Part of the concern over the use of typewriters was the ever-increasing cost of leasing typewriters and the complaints by certain employees during the 1993 session over the lack of equipment with advanced word processing capability. The cost to lease typewriters during the 1993 regular session was approximately \$19,000, and the estimate for leasing the same type of equipment for the 1995 regular session was \$43,510.

The committee approved a plan for enhancing the ability of certain session employees to perform their responsibilities. The plan provides for typewriters to be provided only to legislative interns and to others on a limited basis for special projects; personal computers with color monitors, individual printers, and Word Perfect software to be provided to the stenographers and the five secretaries to the leaders; and terminals with access to the state's mainframe computer be provided to committee clerks. Committee clerks are provided with terminals because the clerks already work with programs on the mainframe computer—committee hearing schedules are entered into the computerized hearing system. By providing an individual terminal to each committee clerk, the committee clerk will be able to prepare committee reports using the computerized committee report system, prepare amendments using the computerized amendment system, and prepare minutes using the word processing software on the mainframe. The committee determined that committee clerks' use of the computerized committee report system will eliminate duplicative rekeying of handwritten or typewritten reports by other legislative employees and use of the computerized amendment system will eliminate duplicative rekeying of amendments originally typed by committee clerks.

Because of the changes in equipment, the committee reviewed the job description for committee clerks. The committee approved a revised job description for a committee clerk. The revisions reflect the essential function and essential skills and abilities, as required under the federal Americans with Disabilities Act; changes in procedures since the job description was first adopted; changes in procedures due to using computer terminals rather than typewriters; and the requirement that every registered lobbyist appearing before a committee must indicate the lobbyist's registration number on the witness registration sheet used by the committee clerk.

The committee reviewed the application form for legislative employment. Because of the potential need to reassign employees to tasks that may be

considered outside their normal responsibilities and due to the increased use of personal computers and computer terminals during the 1995 session, the committee approved the addition of a certification to the application. The certification is that the employee understands that the employee may be assigned to different tasks for which hired, and that the employee will faithfully perform assigned duties with whatever equipment or resources that may be provided.

Session Employee Orientation and Training

The committee reviewed the orientation and training provided to session employees immediately before the convening of the 1993 Legislative Assembly. Committee members expressed support for expanding the training, especially for the employees receiving personal computers or mainframe terminals, to 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 various session employees. Major changes from the training provided for employees of the 1993 Legislative Assembly are:

1. Eight days rather than four days of training for the desk reporters.
2. Five and one-half days rather than three days of training for the committee clerks.
3. Two days of training for the Assistant Chief Clerk and Assistant Secretary of the Senate (assuming these employees operate the computerized message system). In 1992 two days of training were provided to whomever operated the system.
4. Two days of training for the calendar clerks (formerly provided to the desk pages who prepared the daily calendars).
5. One day of training (rather than none) for the secretaries to the leaders.
6. One-half day rather than two days of training for the bill clerks (the bill clerks formerly were trained on the message system).
7. One-half day of training for all telephone attendants, rather than just for the chief telephone attendant.

The committee recommends that the Employment Committees hire session employees to begin work at various times before the convening of the Legislative Assembly, depending on the nature of an employee's duties and the training recommended for the employee. The recommended starting dates range from December 12 to December 29, 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 1993 session, and distribute bills prior to the convening of the 1995 Legislative Assembly.

Legislative Internship Program

Since 1969 the Legislative Assembly has sponsored a legislative internship program in cooperation with the law school and graduate school at the University of North Dakota and the graduate school at North Dakota State University. The program has provided the Legislative Assembly with the assistance of law school students and graduate school students for a variety of tasks 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 in 1989. An intern who completes the regular term of internship receives a stipend and an intern who continues service beyond this regular term receives compensation for additional service.

The committee reviewed the program and approved its continuation for the 1995 Legislative Assembly. The committee increased the stipend received by an intern by \$50 per month for the 3.5-month program, to a total of \$4,725. The interns will receive training and orientation by the Legislative Council staff and will be given their assignments prior to the session.

At its last meeting, the committee discovered that only seven of 16 internships had been filled as of that date. The committee determined that priority should be given to providing interns to committees, and recommended that each leader be provided with an additional staff assistant and that the two internship positions assigned to the Legislative Council staff not be filled.

Legislative Tour Guide Program

For the past nine 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. Since 1987 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 1995 session.

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 1995 session.

Chaplaincy Program

In cooperation with the Bismarck, Mandan, and Evangelical Ministerial Associations, the House and Senate have chaplains open daily sessions with a prayer. The committee reviewed the procedure in effect since 1985 which gives legislators until the end of December to schedule out-of-town clergymen to deliver prayers during the session. The committee invited the Bismarck, Mandan, and Evangelical Ministerial Associations to continue the program during the 1995 session. The committee also requested the Legislative Council staff to notify all legislators before the convening of the session that they have until December 31, 1994, to schedule out-of-town clergymen to deliver daily prayers during the 1995 session.

Organizational Session Agenda

The committee approved a tentative agenda for the 1994 organizational session which is based on the agenda for the 1992 organizational session. The differences are that the joint session for the receipt of the Governor's executive budget recommendation is returned to the third day of the session, immediately before adjournment. During the 1992 organizational session, that time period was made available for an informal address by the retiring Governor and the budget message was delivered on the second day. Another change concerns the seven-year plan for higher education prepared by the Board of Higher Education. Rather than a formal presentation of the plan on the second day, the written plan is to be distributed to members. The new orientation session begun in 1992 on the impact of the federal Americans with Disabilities Act on legislative operations is continued as a scheduled item on the agenda. The presentation is intended to inform legislators, especially committee chairmen and members of the Employment Committees, of the requirements of the Act. In order to allow the House staff to complete its work in a timely manner on the third day, the meeting of the Budget Section was moved from the House chamber to the Senate chamber.

Tapes of Daily Floor Sessions

The committee reviewed the informal policies governing the use and retention of audio tapes of floor sessions. Under current policies, each desk reporter tapes the daily floor session as needed to record remarks for the daily journal. The desk reporter reuses the tapes on a daily basis.

The committee recommends that the majority leader of each house establish a policy for recording of all floor sessions and for retaining the tapes throughout the session. The committee also recommends that each majority leader establish a policy on the availability of the tapes during the session and that during

the next interim, the Legislative Management Committee determine a policy on the retention of and access to the tapes.

State of the State Address

During the 1993 session, the House and Senate convened in joint session at 1:45 p.m. on the first legislative day and the Governor presented his state of the state address beginning at 2:30 p.m. The committee authorized the Legislative Council staff to contact the Governor for presentation of the state of the state address under a similar schedule on the first legislative day of the 1995 session.

State of the Judiciary Address

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the North Dakota Supreme Court for the state of the judiciary address to a joint session on the second legislative day of the 1995 session. The committee accepted, on behalf of the Legislative Assembly, an invitation from the Supreme Court administrator which invited all legislators to a judiciary/legislative luncheon on the second legislative day.

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 Legislative Procedure and Arrangements and Legislative Management Committees, a spokesman from the tribes addressed each house of the Legislative Assembly during the first week of the 1985 through the 1993 sessions.

The committee authorized the extension of an invitation to representatives of the Indian tribes to make a presentation to each house of the 1995 Legislative Assembly on the third legislative day, similar to the presentation made during the 1993 session.

Legislative Compensation Commission Report

The committee met with the Legislative Compensation Commission. Although the committee made no recommendations to the commission with respect to legislative compensation, committee discussions included increasing the monthly expense reimbursement and the relationship between low compensation and vacant positions on the ballot.

The committee requested that the report of the Legislative Compensation Commission be a written report submitted to the presiding officer of each house in lieu of an oral report.

Legislative Blood Drive Day

The committee recommends designation of February 2, 1995, as Legislative Blood Drive Day. Designation of Legislative Blood Drive Day is to draw attention to the shortage of blood supplies and to recognize Capitol employees' support of blood drives. Memorial Hall is to be reserved on that day for use by United Blood Services. The goal is to have 75 donors on that day.

SPECIAL SESSION ARRANGEMENTS

The Governor issued Executive Order No. 1994-05 on June 16, 1994, convening the Legislative Assembly into special session on June 29, 1994, in order to amend NDCC Chapter 40-57.1 to allow a property tax exemption for large industrial projects, to amend NDCC Chapter 57-39.2 to allow sales tax exemptions for building material used in agricultural processing plants and for computerized office equipment necessary to operate equipment already exempt, and for other related purposes as the Legislative Assembly deemed appropriate to encourage a proposed corn processing facility to locate in the state.

The committee reviewed two areas for consideration for the special session—legislative rules and session employees.

Legislative Rules

The committee reviewed legislative rules amendments adopted during the 1986 special session, the 1981 reconvened session, and the 1991 special session.

The committee determined that rules amendments similar to the 1991 rules amendments should be made to the legislative rules for the 1994 special session. The recommended rules amendments were presented to the Senate and House Rules Committees for the 1994 special session.

The committee recommended amendment of Senate and House Rules 318(4), 336, and 601, and Joint Rule 206 to authorize a measure to be considered on the same day it is reported from committee or placed on the consent calendar. Thus, the timeframe for consideration of a measure is shortened from the day after a measure is reported to the same day a measure is reported from committee or placed on the consent calendar.

The committee recommended amendment of Senate and House Rules 345 to authorize a measure to be transmitted to the other house immediately after approval, unless a member gives notice of intention to reconsider. If notice is given, the measure cannot be transmitted until the end of that day. Without this amendment, a measure must be retained until the end of the next legislative day.

The committee recommended amendment of Senate and House Rules 401(1), 402(1) and (2), and 403, and Joint Rule 208 to provide that bills and resolutions introduced, other than bills introduced by the Legislative Council, must go through the Delayed Bills Committees. Committee members expressed concern about items that might be considered during the special session. As pointed out by the Governor in his executive order, the special session was called to encourage a proposed corn processing facility to locate in the state. By requiring measures to be introduced through the Delayed Bills Committees, bills and resolutions could be screened to assure promotion of this objective.

The committee recommended amendment of Senate and House Rules 504 to eliminate specific meeting days for committees. Although meetings may be called at times and on days as deemed necessary, the specific listing of the days that three-day and two-day committees may meet could cause misconceptions if

such committees met on other than regularly scheduled days.

The committee recommended amendment of Joint Rule 202 to allow either house to reconsider receding before a conference is called. Without the amendment, reconsideration could not be made until the next legislative day.

The committee recommended amendment of Joint Rule 501(4) to require the return of a fiscal note within one day of the request instead of five days. This recommendation recognized the shortened timeframes for considering bills and resolutions during the special session.

The committee considered but did not recommend proposed Senate and House Rules 327.1 to require transmittal of a bill immediately after first reading to the other house for first reading and then return to the house of origin. The intent was to allow second reading on the next day in both houses which would comply with the constitutional prohibition against first and second readings on the same day and would allow the session to complete its business in two days. The committee determined that regular procedures should be followed during the 1994 special session.

Session Employees

The committee reviewed the employee positions filled during the 1991 special session. During the 1991 special session, there were 17 Senate employees and 19 House employees.

The committee recommended that the Senate Employment Committee employ not more than 16 Senate employees and the House Employment Committee employ not more than 22 House employees for the 1994 special session, with the positions left to the discretion of the Employment Committees. The committee determined that specifying employee positions to be filled during the special session may be unduly restrictive because the subject matter and number of bills or resolutions to be considered during the special session was unknown.

APPROPRIATIONS 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. In recent years various projects have been undertaken to continue the renovation of the legislative wing.

Committee Hearing Monitor System

The committee hearing/meeting display system consists of four monitors on the ground floor and two monitors at the information kiosk on the first floor. The system was developed in 1982 and first used during the 1983 session. The drivers (terminals) used to operate the system are Beehive International terminals and are no longer manufactured or available. There is no backup terminal, and if one needs repair, there is no local company with parts.

The committee reviewed two proposed systems for replacing the existing system. In both proposals,

personal computers would replace the Beehive International terminals. The major difference between the systems was that one system would replace the existing system with a new system designed to display one day of committee hearings and include descriptive information for each bill scheduled for hearing. The other system would make use of the existing software and thus display up to four days of hearings, depending on the size of the characters on the monitors. Use of the existing system does not allow for descriptions of bills to be displayed on the monitors. The committee approved the proposal for replacement of the drivers with personal computers, replacement of the monitors, and use of the existing software.

Harvest Room Projection Screen

The committee approved a request from the chairman of the Senate Appropriations Committee for a ceiling-mounted projection screen in the Harvest Room.

Harvest Room and Roughrider Room Microphones

The committee received a request for replacement of the lectern microphone in the Harvest Room with a microphone accessible by disabled persons. Two committee rooms have sound systems—the Harvest Room and the Roughrider Room—and the microphone at the lectern in each room was replaced with a “clip-on” type microphone that is intended to be used at the lectern, handheld, or clipped on the clothing of a person who testifies before the committee.

Prairie Room Committee Table

The committee approved a request from the chairman of the House Judiciary Committee that a modesty bar be added to the committee table in the Prairie Room.

Brynhild Haugland Room Acoustics

Although the Budget Section traditionally has met in the Brynhild Haugland Room, that committee discontinued meeting there because of the poor acoustics in that room. The company that installed the sound systems in the legislative wing indicated that the sound system in the Brynhild Haugland Room is state of the art and any replacement of the audio system would not cause any noticeable improvement because of the poor acoustics of the room.

The committee received five proposals from an acoustical engineering firm to improve the acoustics of the Brynhild Haugland Room. These proposals were to treat the faces of the pillars, back walls, and ceiling near the back walls with a sound-absorbent plaster; change the ceiling to a “V” surface, with a ridge down the center of the ceiling approximately two feet lower at the center than at the outer edges of the ceiling or treat certain ceiling areas with sound-absorbent plaster; place a curtain in front of the folding panel stage doors; treat the entryways with a sound-absorbent plaster; and angle the windows. The committee received an estimate of the costs of implementing each proposal, except for the proposal to angle the windows.

The committee approved the installation of sound-absorbent surface on the ceiling over the table area and the installation of a curtain in front of the folding doors on the stage. These items are subject to the approval of the Capitol Arts and Historic Preservation Advisory Committee. Because of the heavy use of the room before and during the legislative session, these two changes are to be implemented immediately after the 1995 session.

Captain's Chairs

The committee approved the regluing of approximately 30 captain's chairs in the legislative wing.

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 legislative chambers and permanent displays in Memorial Hall. 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 displays.

MISCELLANEOUS MATTERS

Sponsorship of Legislative Council Measures - Recommendation

The committee discussed the need for support of individual legislators to Legislative Council interim committee recommendations. As a means of bringing attention to interim committee recommendations during a legislative session, the committee considered a proposal to again place legislators' names on bills and resolutions recommended by interim committees. Individual names were on Legislative Council bills and resolutions through the 1975 session. After that session, it was determined that the bills and resolutions were becoming identified with the individual legislators named, rather than with the interim committees, and those legislators became the focus of the merits of a bill or resolution.

The committee recommends that every interim committee bill and resolution include the names of up to six legislators who were members of the interim committee in addition to the name of the interim committee. The chairman of the interim committee is to select the names with the approval of the members listed. The members listed are to be determined considering both political parties and both houses. Committee members who are not members of the Legislative Assembly in which the measure will be introduced cannot be listed on the measure. The legislators named on Legislative Council recommendations will not be identified as prime sponsors or as sponsors in tables of sponsorship contained in the bill status report.

Measure Passage Rate

The committee reviewed statistics on the sponsorship of measures introduced in the 1987-93 Legislative Assemblies. For these sessions, 57 percent of

privately sponsored bills and resolutions passed, 74 percent of agency bills passed, 71 percent of Legislative Council bills and resolutions passed, 98 percent of the appropriations bills passed, and 100 percent of standing committee bills passed. The total average percentage passed was 64 percent.

1995 Session Length

The committee discussed the feasibility of concerted action to limit the 1995 legislative session to 60 legislative days. Suggestions of ways to meet this limitation included limiting the number of bills introduced, changing the committee structure, holding Appropriations Committee hearings immediately after the organizational session, holding joint hearings on appropriation bills, and revising the floor session procedure during the first two weeks of a session by having mini-floor sessions in the morning.

North Dakota Consensus Council Dialogue

The committee conducted a dialogue with representatives of the Legislative Branch Consultation of the North Dakota Consensus Council. The Legislative Branch Consultation was formed for the purpose of looking at the legislative system and predicting what it would look like in 15 years. Committee members suggested that if citizen legislators are favored, there should be an accepted definition of citizen legislator; that legislators need more support—from their employers and in the provision of constituent services; and that more positive information on legislative activities needs to be provided. Committee members questioned statements that there are single interest legislators; that too much time is spent on “trivial” bills; that there is no long-term policymaking by the Legislative Assembly; and that joint hearings will improve the process.

NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned three studies. House Concurrent Resolution No. 3050 directed a study of the state's hunting laws to determine changes that can be made to improve the relationship between hunters and private landowners including the issuance of gratis permits. Section 16 of 1993 Senate Bill No. 2006 directed a study of the feasibility and desirability of removing the environmental health functions and responsibilities of the Department of Health and Consolidated Laboratories from that department and establishing a department to handle all environmental functions and responsibilities. House Concurrent Resolution No. 3008 directed a study of the problems associated with solid waste management and the operation and effect of solid waste management districts and solid waste management plans. The Legislative Council assigned to the committee the responsibility to receive 1993 and 1994 reports filed by the Land Reclamation Research Center. The Legislative Council also assigned to the committee the responsibility to receive from the Office of Management and Budget, by July 1, 1994, a comprehensive solid waste management plan that assesses the ability of each state agency to reduce the amount of solid waste it generates and increase the amount of recycled products it uses.

Committee members were Representatives Lyle L. Hanson (Chairman), Gerald T. Bodine, Grant C. Brown, Ron Carlisle, James O. Coats, Pam Gulleon, Dale L. Henegar, Leonard J. Jacobs, Bill Oban, Alice Olson, Jennifer Ring, Orville Schindler, Al Soukup, and James Torgerson and Senators Joe Keller, Meyer Kinnoin, Byron J. Langley, Donna Nalewaja, Rolland W. Redlin, and Herb Urlacher.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

GAME AND FISH LAWS STUDY

This study was in response to the Legislative Assembly's concern regarding the relationship between hunters and private landowners. One goal of the study was to determine whether changes in North Dakota's game and fish laws would serve to improve relations between hunters and private landowners and whether incentives could be provided for private landowners to not post their lands and to open them to hunting.

Selected North Dakota Game and Fish Laws

Gratis and Landowner Preference Hunting Licenses

North Dakota law provides for five gratis or landowner preference hunting licenses. These include gratis hunting licenses for deer, antelope, and turkey and landowner preference hunting licenses for elk and moose. For purposes of this report, a gratis license is a license issued to a landowner without charge and a landowner preference license is a license that a landowner may be entitled to receive upon payment of the fee required for a resident big

game license.

A person who leases 160 acres of land for agricultural purposes and who actively farms or ranches that land or a landowner who owns 160 acres of land within a district open for the hunting of deer or antelope is entitled to receive a gratis license to hunt deer or antelope. The lessee or landowner must file an affidavit describing the land and the license may be used to hunt deer or antelope only upon that land.

A person who leases 160 acres of land for agricultural purposes and who actively farms or ranches that land or a landowner who owns 160 acres of land located within a district or unit open for the hunting of elk is entitled to receive a landowner preference license to hunt elk. The lessee or landowner must file an affidavit describing the land but is entitled to hunt throughout the entire district or unit in which the land is located. The lessee or landowner is required to pay the fee required for a resident big game license. A person who receives a landowner preference license for elk is not eligible to apply for a license to hunt elk in future years but may participate in the Rocky Mountain Elk Foundation raffle.

A person who leases 160 acres of land for agricultural purposes and who actively farms or ranches that land or a landowner who owns 160 acres of land located within a district or unit open for the hunting of moose is entitled to receive a landowner preference license to hunt moose. The lessee or landowner must file an affidavit describing the land and must pay the fee for a resident big game license. Unlike the landowner preference license for elk, the recipient of a landowner preference license to hunt moose may only hunt moose upon the land described in the affidavit. A person who receives a landowner preference license to hunt moose is not eligible to apply for a license in future years but may participate in the North Dakota Game Warden Association raffle.

By proclamation, the Governor may provide for a permit season to take wild turkeys in a manner, number, places, and times deemed in the state's best interest. Because wild turkeys are classified as small game and landowners are not required to possess a small game license to hunt on land owned or leased by them, landowners may hunt wild turkeys on their own land. However, in order to manage the state's wild turkey population, the Governor, in the wild turkey proclamation, requires landowners to obtain gratis licenses to hunt wild turkeys. The number of gratis licenses are then subtracted from the number of licenses authorized in the proclamation to determine the number of nongratis wild turkey licenses that will be issued. For example, the 1992 fall wild turkey hunting proclamation provided that gratis licenses were available to state residents owning or leasing, for agricultural purposes and actively farming or ranching, at least a quarter section of land located in an open hunting unit and were valid only upon land described on the application and subsequently on the license.

The following chart shows the gratis and landowner preference hunting licenses issued in North Dakota from 1981 through 1992.

Year	Deer (Gun) (Gratis)	Deer (Bow) (Gratis)	Antelope (Gun) (Gratis)	Antelope (Bow) (Gratis)	Elk (Landowner Preference)	Turkey (Spring) (Gratis)	Turkey (Fall) (Gratis)
1992	11,175	75	1,149	4	3	266	348
1991	10,737	60	987		3	260	362
1990	10,283	47	817		4	191	348
1989	10,683	57	632		5	119	347
1988	10,454	47	490		7	84	329
1987	10,739	26	356		11	57	247
1986	10,671	20	305		5	23	204
1985	9,922	29	310	3	4	44	120
1984	9,088	26	270	1		33	142
1983	7,742	51	263			156	
1982	6,413	35	200	1		156	
1981	5,819	19				109	

Posting

Another statute that impacts the relationship between hunters and the state's private landowners is the state's posting law. North Dakota Century Code (NDCC) Section 20.1-01-17 allows owners or tenants to prohibit hunting on their land by placing signs alongside the public highway or the land giving notice that no hunting is permitted on the land. The sign must contain in legible characters the name of the person posting the land, must be readable from the outside of the land and must be placed conspicuously not more than 880 yards apart. If land is entirely enclosed by a fence, the land may be posted by placing signs at all gates through the fence. It is illegal for anyone to deface, take down, or destroy posting signs.

Fee Hunting and the State's Recreational Use Statute

Another issue that impacts the relationship between hunters and private landowners is fee hunting. North Dakota is one of a large majority of states that has enacted a recreational use statute. North Dakota's recreational use statute (NDCC Chapter 53-08) provides that an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition on the premises to persons entering for recreational purposes. Recreational purposes include hunting and fishing. The chapter specifically provides that the person using the property does not become an invitee or licensee of the landowner and that the landowner does not extend any assurance that the premises are safe for any purpose, confer upon the persons using the property the legal status of an invitee or licensee to whom a duty of care is owed, or assume any responsibility for or incur any liability for injury to a person or property caused by an act or omission of the landowner. The only liability that a landowner may incur is for willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity or if the landowner charges the person or persons who enter or go on the land to be on the land. Thus, if a landowner charges a hunter a fee to hunt on the land, the recreational use statute is inapplicable, the hunter would probably be classified as an

invitee to whom a higher standard of care is owed, and the landowner could potentially be liable for a wide range of injuries that the hunter might incur.

Gratis and Landowner Preference Hunting Licenses in Adjacent States

South Dakota

South Dakota has established landowner preference licenses for deer, antelope, and elk. A farmer or rancher who owns or leases the prescribed minimum acreage of farm or ranchland and who is a resident of South Dakota qualifies for a landowner preference license. The farmer or rancher must actually reside on the land, own or operate the land, or be a member of the immediate family residing on the land.

The recipient of a landowner preference deer license may not have received a big game license during the deer season set by the Game, Fish, and Parks Commission and all available permits for the taking of antlered deer must have been issued for the hunting unit in which the person's land is located. The farmer or rancher may only hunt on farm or ranchland specified in the application and may not take deer from land owned or leased by other persons.

One-half of the available licenses for antelope and elk are reserved for landowners. If all eligible landowners receive a license, then the remaining licenses are allocated to a lottery. If all licenses reserved for landowners are taken by landowners, then unsuccessful landowners may participate in the lottery for the licenses allocated to nonlandowners.

Montana

Montana has established landowner preference licenses for deer, antelope, and antlerless elk.

Fifteen percent of the licenses available in a hunting district for deer and antelope are made available to landowners. A landowner must own 160 acres of land to be eligible for these licenses.

Fifteen percent of the antlerless elk licenses available in a hunting district each year are made available to landowners. To be eligible to receive a landowner preference antlerless elk license, a person must own or be contracting to purchase 640 acres or more of contiguous land, at least some of which is used by antlerless elk in a hunting district open to the

hunting of antlerless elk. An antlerless elk tag received by a landowner is transferable. However, the transferee may only hunt on land owned by the transferor.

Minnesota

Minnesota has established landowner preference licenses for moose, elk, and turkey. The commissioner of the Department of Natural Resources may conduct a separate selection for up to 20 percent of the moose licenses, elk licenses, and turkey licenses to be issued for an area. Owners of, and tenants living on, at least 160 acres of agricultural or grazing land for moose and elk, or 40 acres for turkey, in this area are eligible for the separate selection for moose, elk, or turkey licenses. Persons who are unsuccessful in the separate selection must be included in the selection for any remaining licenses. Persons who obtain an elk license in the separate selection must allow public elk hunting on their land during the elk season for which the license is valid and persons who obtain a license in the separate selection for turkey must allow public turkey hunting on their land during that turkey season.

Minnesota has also established a bonus deer license that may be made available to landowners. If there are fewer applicants than deer tags available in an area open to the hunting of deer, then a landowner with 10 acres or more of land may obtain a bonus deer hunting license. A landowner who receives a bonus deer hunting license may not post that land to prohibit deer hunting.

Posting Laws of Adjacent States

Montana posting law is similar to North Dakota's in that a landowner must post the land in order to prevent hunters from entering that property.

South Dakota law governing fishing, hunting, and trapping on private land is based on a different premise than North Dakota law. Rather than requiring a landowner to post the 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.

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.

Testimony and Committee Considerations

Gratis and Landowner Preference Hunting Licenses

The committee received testimony from representatives of the Game and Fish Department that gratis and landowner preference hunting licenses traditionally have been made available to private landowners to recognize and reward them for raising game on their land. Private landowners not only provide food and cover for wildlife, but they provide the majority of hunting opportunities for the state's hunters. Testimony indicated that it is fair and rea-

sonable that landowners receive recognition above and beyond that of others. However, several problems were identified concerning the present gratis and landowner preference hunting license system. These problems include determining whether a lessee or landowner is actively engaged in farming or ranching; determining whether land is leased for agricultural or other purposes; determining how to handle multiple applications for the same parcel of land, e.g., when a landowner and a tenant both apply for a landowner preference hunting license for the same parcel of property or when two individuals apply for the same parcel of property; and finally, determining how to dispose of applications for ineligible property. Concern was also expressed over the fact that the number of gratis and landowner preference licenses issued by the department has increased over the last 10 years while the number of agricultural producers has simultaneously decreased. Although some of the increase may be attributed to an increased interest in deer hunting, which is positive, a portion of the increase may be due to persons not truly involved in production agriculture taking advantage of the system to obtain a gratis or landowner preference hunting license. Another concern expressed was that deer herd management is also made more difficult by the gratis and landowner preference license system because these licenseholders may take any deer regardless of species or sex.

The committee studied three bill drafts to revise the present gratis and landowner preference hunting license system.

One bill draft would have required persons receiving a gratis hunting license for deer or antelope to pay the fee for a resident big game license but allowed them to hunt within the entire district or unit in which the land is located as opposed to only on that land. This bill draft also allowed a person obtaining a landowner preference license to hunt moose to hunt within the entire district or unit in which the land is located rather than only on that land. Testimony from representatives of the Game and Fish Department indicated the department did not support this bill draft. According to the testimony, requiring gratis license recipients to pay for the license would obviate the purpose of gratis licenses, which is to compensate private landowners for their contribution in providing habitat for wildlife and to allow farm or ranch families a chance to harvest wildlife that they have a major part in managing and producing.

The second bill draft would have established a separate gratis license for wild turkeys and provided that no gratis licenses for deer or antelope could be issued by the department after the first lottery for these species. Testimony from representatives of the Game and Fish Department indicated that requiring landowners to apply for a gratis turkey license and then deducting the number of gratis licenses issued from the number of licenses authorized in the Governor's proclamation works well and allows the department to manage the state's wild turkey population. Testimony indicated that prohibiting issuance of gratis licenses for deer or antelope after the first lottery would establish a clear cutoff date for the issuance of gratis or landowner preference hunting

licenses, but would cause administrative problems for the department. Recipients who are used to obtaining a gratis or landowner preference hunting license anytime before the hunting season begins probably would be upset if they missed a cutoff date and did not receive a gratis or landowner preference hunting license.

The third bill draft would have required a person receiving a gratis or landowner preference hunting license to be a resident of the state, required lessees to provide proof that the land described in the affidavit attached to the hunting license application is leased for agricultural purposes, allowed a resident to transfer eligibility to a spouse or legal dependent residing customarily with the resident, give the landowner preference if a lessee and the landowner applied for a license for the same parcel of land, and increased the ownership requirement to be eligible to receive a gratis or landowner preference hunting license from 160 acres to 320 acres. This bill draft was submitted by the Game and Fish Department. Representatives of the department described this bill draft as restricting gratis or landowner preference hunting licenses to residents, allowing these licenses to be transferred, and giving landowners preference over tenants in determining who is eligible for the gratis or landowner preference hunting license. The committee determined that any recommendation should include a provision that persons transferring gratis or landowner preference hunting licenses would not be eligible to receive another such license during the year in which the gratis or landowner preference hunting license was transferred, should specify that the landowner is entitled to receive the license if not otherwise specified in an agricultural lease, should remove the current requirement that at least one elk or moose permit be issued in a district or unit open for the hunting of elk or moose (thus making the number of gratis or landowner preference hunting licenses for elk and moose 15 percent of the total licenses issued), and should retain the 160-acre requirement. The current requirement that at least one elk or moose permit be issued in a district or unit open for the hunting of elk or moose complicates the formula for calculating the number of landowner preference hunting licenses for elk or moose to be issued in each district or unit.

Issuance of Nonresident Deer Hunting Licenses

The committee reviewed the present system of issuing deer hunting licenses to nonresidents. One percent of the total deer licenses and permits to hunt deer with guns to be issued in any unit or subunit as described in the Governor's proclamation must be allocated for nonresidents. Testimony indicated that nonresidents should be allocated not more than one percent of the licenses and permits in the first lottery and that nonresidents should be entitled to participate in any subsequent lottery for licenses and permits available after the first lottery on the same basis as residents. Allowing nonresidents to participate in the second lottery was described as benefiting former residents while having little impact on the state's residents. This system was also described as being

more efficient to administer than the current licensing system.

License Requirements

The committee studied a bill draft that would have established a \$30 checkoff per county for nonresident hunters and a \$5 checkoff per county for resident hunters, with the funds returned to the counties. Under this bill draft, the issuer of a resident or nonresident small game hunting license would indicate on the fishing, hunting, and fur-bearer certificate furnished by the director of the Game and Fish Department which counties in which a resident or nonresident would hunt. The issuer of the license would be required to collect a fee of \$5 for each county in which a resident desired to hunt and \$30 for each county in which a nonresident desired to hunt. Ninety-five percent of the fees would be returned to the respective county or counties to be distributed to the owners of unposted lands in that county. The remaining five percent would be placed in the game and fish fund for the purpose of administering the proposal. Proponents testified that it would improve the relationship between private landowners and hunters, decrease the prevalence of posted land, and reduce the practice of fee hunting whereby a landowner charges a hunter a fee to hunt on the landowner's land. The bill draft was opposed by representatives of the North Dakota County Auditors Association and the Game and Fish Department. Opponents testified that the proposal would be very difficult to administer. In addition, proposals to compensate landowners for allowing hunters access to their property are based on the assumption that access to private land for hunting is difficult to obtain, that the lack of access is negatively affecting hunting and hunters, and that the magnitude of the problem warrants government intervention with financial incentives to encourage landowners to allow hunter access. The committee received information that hunters gain access to private posted land roughly 82 percent of the time they ask permission, landowners grant permission to hunt on their land roughly 75 percent of the time they are asked, and that only one out of every 20 hunters indicate they now hunt less because of the practice of posting private land. Opponents also testified that the issue of access to private land for hunting should remain a private matter to be negotiated between landowners and hunters.

The committee studied a bill draft that would have established a landowner's habitat stamp for residents and a landowner's habitat stamp for nonresidents. Under the bill draft, the fee for the landowner's habitat stamp for residents would be \$10 and the fee for a landowner's habitat stamp for nonresidents would be \$30. Moneys generated by the landowner's habitat stamp would be placed in a landowner's habitat stamp fund to be used to purchase easements and to lease suitable privately owned lands for wildlife habitat from private landowners. Proponents testified that landowners would open their lands to hunting because they would be compensated for not posting their lands. Opponents testified that surveys conducted by the Game and Fish Department indi-

cated that posting is not preventing people from hunting and that posting is merely an irritant for the hunter at most; that the fee increases in the bill draft could not be supported by the department in light of the fee increases enacted in 1993; that dedicating the proceeds of the stamp for a specific purpose ties the hands of the department in managing the state's game and fish resources; and that the department is experiencing declining revenues with its stamp art print programs and would not support the use of an art print for the habitat stamp.

The committee studied a bill draft that established a nonresident wild turkey permit. Under the bill draft, one percent of the total wild turkey permits to be issued in any unit as described in the Governor's proclamation would be set aside or designated for nonresidents. The committee was informed that the National Wild Turkey Federation was working with the Game and Fish Department on a number of wild turkey habitat and management issues in the state even though the nonresident members of the federation are not eligible to hunt wild turkeys in the state. Representatives of the department testified that setting aside one percent of the wild turkey licenses would have virtually no impact on the state's residents and yet would allow nonresidents, who are in many ways supporting wild turkey management in the state, an opportunity to hunt wild turkey in the state. However, after submitting the bill draft to review by department personnel and public discussion at Game and Fish Advisory Board meetings, the department withdrew its support for the bill draft.

Payments in Lieu of Taxes

The committee studied a bill draft that would have allowed the director of the Game and Fish Department to deduct from payments in lieu of taxes due to a county any amount paid to that county by the United States or any agency or instrumentality of the United States in lieu of real estate taxes on that property. The Game and Fish Department is required to pay the fully assessed property taxes on all land owned or leased by the department (which includes lands owned by the United States Army Corps of Engineers, the Bureau of Reclamation, and other federal agencies which are leased by the department). Under federal law, federal agencies are required to make payments in lieu of taxes on lands they own to the counties in which the lands are located. These federal payments in lieu of taxes average between 70 and 75 percent of the property taxes assessed on the property. The committee received information that when the payment in lieu of taxes payment made by the federal agency is added to the full payment made by the department on land leased by the department from the federal agency, a county may receive more than the assessed taxes. The department would save approximately \$34,138 a year if it could deduct the in lieu of taxes paid by a federal agency on land leased by the department. Representatives of the North Dakota County Auditors Association and the North Dakota Association of Counties opposed this bill draft. Representatives of the North Dakota Association of Counties indicated

that counties may incur more expenses if land is leased by a governmental entity because expenses for fire protection, ambulance, rescue, and weed control may not be incurred if the land is privately held. In response to the position of the North Dakota Association of Counties, representatives of the department testified that it does a good job controlling weeds on the lands it owns or leases and that department personnel assist county law enforcement officers in many instances; that the department is funded from fees paid by sportsmen and it is the duty of the department to ensure that it is not overpaying for lands it leases for habitat; and that the Bureau of Land Management has asked the department to take over management of the Lonetree Wildlife Management Area and if this bill draft is not enacted by the Legislative Assembly, it would be unlikely that the department would accept management responsibilities for this area unless directed to do so by the Legislative Assembly.

Recommendations

The committee recommends Senate Bill No. 2072 to revise the North Dakota gratis and landowner preference hunting license system. Under the bill, a person entitled to a gratis or landowner preference hunting license must be a resident and if the person receiving the license is a lessee, that person must be able to provide proof that the land described in the affidavit is leased for agricultural purposes. The bill allows a person who is eligible for a gratis or landowner preference hunting license to transfer that eligibility to a spouse or legal dependent residing customarily with the resident. The bill provides that no more than one license for any species may be issued for the same qualifying land. In addition, a person transferring eligibility may not receive a license for the same species for the season for which the eligibility was transferred. The bill provides that the landowner is entitled to receive the gratis or landowner preference hunting license unless otherwise specified in an agricultural lease. Finally, the bill removes the minimum number of elk and moose landowner preference hunting licenses that must be made available and provides that the number of these licenses may not exceed 15 percent of the total licenses issued for each district or unit open for the hunting of each species.

The committee recommends Senate Bill No. 2073 to provide that nonresidents may be allocated not more than one percent of the licenses and permits for each sex and species of deer issued in any unit or subunit in the first lottery and that nonresidents may participate on the same basis as residents in any subsequent lottery for licenses and permits available after the first lottery.

The committee recommends Senate Bill No. 2074 to provide that if property leased by the Game and Fish Department is leased from the United States, the director of the Game and Fish Department is to deduct from payments in lieu of taxes due to the county the amount paid to that county by the United States or any agency or instrumentality of the United States in lieu of real estate taxes on that property.

ENVIRONMENTAL HEALTH SECTION STUDY

This study was in response to the Legislative Assembly's concern regarding the environmental health functions and responsibilities of the Department of Health and Consolidated Laboratories and whether the needs of the state would be best served by removing the environmental health functions and responsibilities from the department and establishing a separate department to handle all environmental functions and responsibilities.

Department of Health and Consolidated Laboratories

The primary goal of the Department of Health and Consolidated Laboratories is to preserve, promote, and enhance the health and well-being of North Dakotans through a range of programs in public health and environmental health. The department is headed by the State Health Officer who is appointed by the Governor. The department is organized into four sections—Administrative Services, Health Resources, Preventive Health, and Environmental Health.

Administrative Services Section

The Administrative Services Section is composed of accounting, food and lodging, forensic science, personnel, registration, and vital records divisions. This section provides support services within the department in the areas of personnel administration, fiscal and data management, and health statistics and certification of all vital events occurring in the state.

Health Resources Section

The Health Resources Section is composed of the emergency health services, health facilities, and health resource analysis divisions. This section is responsible for the emergency health services system and certification of medical technicians, health care data programs, health planning and certificate of need program, and licensing inpatient and outpatient health care facilities, basic care facilities, home health agencies, ambulance services, hospices, electrologists, and electronic hair removal technicians.

Preventive Health Section

The Preventive Health Section is composed of the disease control, health promotion and education, local health services and public health nursing, maternal and child health, and microbiology divisions.

Environmental Health Section

The Environmental Health Section is composed of the chemistry, office of enforcement, environmental engineering, municipal facilities, waste management, and water quality divisions.

The Chemistry Division provides laboratory services for the department. The division also provides assistance in interpreting test results and in designing appropriate sampling protocol for tests performed

by the division.

The Office of Enforcement provides legal counsel for all divisions in the Environmental Health Section. The staff attorney in the Office of Enforcement is assigned by the Attorney General and drafts documents, notices of violation, orders, court papers, and opinions. The Office of Enforcement also conducts hearings, reviews rules and contracts for the department, and is responsible for enforcement procedures that may be required for the state's environmental laws.

The Environmental Engineering Division is responsible for air pollution control, radiation control, and occupational safety and health onsite consultation. Under the state's radiation control program, the division monitors the development and utilization of sources of ionizing and nonionizing radiation to protect the health and safety of radiation users and the general public.

The Municipal Facilities Division administers the state's public water supply supervision or drinking water program, the operator training and certification and facility inspection program, and the construction grants - state revolving fund program. In administering the state's public water supply program, the division enforces the Safe Drinking Water Act. In enforcing the Safe Drinking Water Act, the division monitors the bacteriological, chemical, and radiological quality of drinking water provided by public water systems; reviews plans and specifications for construction or modification of public water supply systems; provides technical assistance on drinking water-related matters to private and public water supply systems; administers the state's voluntary fluoridation program; and administers a voluntary lead contamination control program to test and remediate lead in drinking water associated with schools and licensed day care facilities. Under its operator training and certification and facility inspection program, the division is responsible for the training and certification of individuals in charge of the day-to-day operation of water and wastewater distribution, collection, and treatment facilities. The construction grants - state revolving loan fund program is designed to provide funds for eligible political subdivisions for the construction and upgrading of wastewater treatment facilities.

The Waste Management Division is responsible for solid waste management, hazardous waste management, regulation of underground storage tanks, the polychlorinated biphenyl inspection program, and abandoned motor vehicle program.

The Water Quality Division administers the state's surface water program, nonpoint source management program, ground water protection program, wellhead protection program, pollutant discharge elimination system permit program, feedlot program, and septic tank program. The division is charged with preserving and protecting the quality of waters of the state by ensuring that all wastewater discharges are of an acceptable quality and meet federal and state regulations established under the Clean Water Act.

Structure of Health and Environmental Departments in Adjacent States

Minnesota

Health-related responsibilities in Minnesota are handled by the Health Department. The department consists of several bureaus including the Administration Bureau, the Health Care Resources and Systems Bureau, the Health Delivery Systems Bureau, and the Health Protection Bureau. Environmental responsibilities are handled by the Pollution Control Agency. The Pollution Control Agency consists of several divisions including the Hazardous Waste Division, the Air Quality Division, the Ground Water Solid Waste Division, and the Water Quality Division.

Montana

Health and environmental responsibilities in Montana are handled by the Montana Health and Environmental Sciences Department. The department consists of several divisions and programs including the Health Services Division, the Health Board and Environmental Service, the Natural Resource Damage Program, the Environmental Services Division, and the Centralized Services Division. The Centralized Services Division consists of the Public Health Laboratory Bureau, the Chemistry Laboratory Bureau, the Records and Statistics Bureau, and the Support Services Bureau. The Health Services Division consists of the Emergency Medical Services Bureau, the Health Planning and Resource Development Bureau, the Licensing and Certification Bureau, the Family, Maternal and Child Health Bureau, and the Preventive Health Services Bureau. The Environmental Sciences Division consists of the Air Quality Bureau and the Food and Consumer Safety Bureau. The Natural Resource Damage Program consists of the Occupational Health Bureau, the Solid and Hazardous Waste Bureau, and the Water Quality Bureau.

South Dakota

Health-related responsibilities in South Dakota are handled by the Health Department. The Health Department consists of the Support Services Division, the Public Health Division, the Services Division, and the Policy and Statistics Division. South Dakota also has a State Health Laboratory independent of the Health Department. Environmental responsibilities are handled by the Environment and Natural Resources Department. This department consists of several divisions including the Geological Survey Division, the Water Resources Management Division, the Water Rights Division, and the Environmental Regulation Division. The Environmental Regulation Division consists of the Drinking Water Office, the Surface Mining Office, the Ground Water Quality Office, the Point Source Control Office, and the Waste Management Office.

Other States

In addition to reviewing the structure of health and environmental departments in other selected states in conjunction with its study, the committee

reviewed the structure of environmental agencies in each of the other 49 states. The committee received information on how each state's environmental agency's director is selected, including whether the director is appointed or elected; information on educational requirements for the position, if any; and an overview of the budget of each state's environmental agency. The committee reviewed the budget of each state's environmental agency by funding source, i.e., federal funds, state general funds, and special funds as well as the percentage change from fiscal year 1993 to fiscal year 1994. The committee also studied the structure and composition of state health councils or similar entities in the other states and territories. The committee discovered that state boards or councils of health are used for citizen input into the operation of the state health agency by 40 states. These boards or councils function in a policymaking capacity in 21 states, in an advisory capacity in 17 states, and in both capacities in two states. In reviewing the structure and composition of each state's health board or council, the committee also studied the composition, method of appointment, roles, and responsibilities of the board or council.

Testimony and Committee Considerations

Environmental Health Section Functions

The Department of Health and Consolidated Laboratories has 315 full-time equivalent positions, with 100 of these positions allocated to the Environmental Health Section. The 1993-95 budget of the department is \$63 million, with \$17 million of this total allocated to the Environmental Health Section. The department received \$14.3 million in general fund moneys for the 1993-95 biennium, with \$3.9 million allocated to the Environmental Health Section.

Sponsors of the study suggested that a separate department to administer the functions and programs currently administered by the Environmental Health Section of the Department of Health and Consolidated Laboratories may be more efficient and a new department would be able to focus on these environmental issues without having to compete internally within the department for priority with the public health functions of the department. Also, the recent proliferation of state and federal laws and rules concerning environmental protection requires increased expertise on the part of the department.

Testimony from representatives of the Department of Health and Consolidated Laboratories indicated that the two major functions of the department are the assessment of health problems and then management of health problems identified by the assessments with much of the management function being performed by the Environmental Health Section. The underlying concern is the safety of the people of the state and particularly the protection of the air and water resources of the state. Representatives of the department testified that there are three basic ways in which the department ensures the health and safety of the people—assessing the needs and risks that exist in the state, developing policies to assess these needs and risks, and ensuring that necessary health services are provided to the people.

Testimony emphasized that it is important to maintain the assessment and management functions of the Department of Health and Consolidated Laboratories within the same department in order that they may work together.

The committee discussed transferring environmental health functions and responsibilities from the Department of Health and Consolidated Laboratories to a separate department. Information from the Administrative Services Section of the Department of Health and Consolidated Laboratories indicated that separating the Environmental Health Section from the Department of Health and Consolidated Laboratories would result in net additional administrative costs of approximately \$435,000 per biennium. Increased costs include \$443,033 for salaries and wages, \$13,680 for information services, \$101,287 for operating expenses, and \$42,000 for office furniture and equipment; and offsetting savings include \$136,468 in salaries and wages and \$28,532 in general operating costs. Approximately one-half of this total would be reimbursed from federal funds while the remaining one-half would have to come from additional state funds.

The committee identified these disadvantages to establishing a separate Environmental Health Department: the additional administrative costs that may be incurred because the present department provides administrative services, such as accounting and personnel, for both the public health and environmental sections of the department; the fact that the department would probably be headed by a political appointee or an elected official who might politicize the office, whereas under the current system the head of the Environmental Health Section is a classified state employee chosen for professional reasons and who has the technical expertise needed to perform the duties required of the Environmental Health Section; and the Environmental Health Section may lose its public health function in that the function of the section is to protect the health of the public as well as to protect the environment.

Other Agencies' Environmental Functions

The committee reviewed the environmental functions of the Public Service Commission, Water Commission, State Engineer, Industrial Commission's Oil and Gas Division, Geological Survey, and the Commissioner of Agriculture. This review was to determine whether there is any significant duplication between the Department of Health and Consolidated Laboratories and these state agencies and whether the services performed by these agencies should be incorporated into a new environmental health agency, if one is established. A member of the Public Service Commission testified that the environmental responsibilities placed with the Public Service Commission are well placed. The assignment of mining and siting responsibilities with the Public Service Commission affords the state with a unified approach to working with the needs of mining companies and the investor-owned utilities in the state. Also, because the Public Service Commission issues coal mining permits, certificates of corridor and site compatibility for energy conversion and transmis-

sion facilities, and certificates of public convenience and necessity, it affords entities using these services with a "one-stop shopping" system. The testimony indicated that the present system is efficient and that if any of the Public Service Commission's environmental functions and responsibilities were transferred to a new environmental agency, loss of this efficiency would result.

Representatives of the Public Service Commission's Abandoned Mine Lands Division and Reclamation Division testified that there are no areas of significant duplication between the Environmental Health Section's gathering and testing and the activities of the Abandoned Mine Lands and Reclamation divisions.

The State Engineer testified that the functions and duties of the State Water Commission and the State Engineer's office do not overlap with the environmental functions carried out by other state agencies and that the State Water Commission and State Engineer's office work very well and coordinate with other agencies on environmental matters. The State Water Commission and State Engineer's office focus on water from a water quantity point of view with less emphasis on water quality which is handled by the Environmental Health Section.

The director of the Oil and Gas Division of the Industrial Commission testified that the Oil and Gas Division has developed specific expertise in the oil and gas area which is not duplicated by other environmental agencies and may be lost if this function were incorporated into a new environmental agency.

The State Geologist testified that the Geological Survey is responsible for mapping the geology of the state and providing information on the geology of the state to the public and other state agencies. Although the state Geological Survey was originally established to determine the location, extent, and value of economically important resources for the state, the mission of the Geological Survey has evolved over the years to include environmental concerns. Five percent of the current workload of the Geological Survey involves regulatory functions, 30 percent petroleum geologic studies, 15 percent environmental studies, 20 percent education and public information, 25 percent geologic mapping and other geologic studies, and five percent with miscellaneous activities. The testimony indicated that the present arrangement between the various entities involved in the natural resources and environmental sector of state government works well and that the system is efficient.

The committee did receive testimony that there is potential duplication between the Department of Health and Consolidated Laboratories and the Pesticide Division within the office of the Commissioner of Agriculture. The Department of Health and Consolidated Laboratories is charged with the responsibility for the registration of pesticides and the labeling of fertilizers and feeds while the Pesticide Division is the enforcement agency for pesticide label requirements. In 42 of the 50 states, the responsibility for pesticides resides with that state's Department of Agriculture. Except for California and Indiana, the remaining six states where authority for pesticides resides with that state's health department are small,

nonagricultural states.

Testimony indicated that consolidating the enforcement and registration of pesticides, fertilizer, and feeds with the existing responsibilities of the Commissioner of Agriculture would result in cost savings because the Pesticide Division has inspectors stationed throughout the state. Other efficiencies would include elimination of a dual inspection system, increased educational opportunities as a customer could turn to one source for information, and more efficiency in that if the Pesticide Division received an inquiry concerning pesticide label registration the Pesticide Division would have the necessary information at hand.

Representatives of the North Dakota Agricultural Association, the North Dakota Agricultural Association's legislative committee, the North Dakota Farmers Union, and the North Dakota Corn Growers Association testified that enforcement of the state's pesticide, fertilizer, and feed laws should be administered at the state level by one agency. However, representatives of the Department of Health and Consolidated Laboratories testified that the department requires the information gathered in its pesticide registration function for other purposes such as administration of the state's vector control program and the department has the laboratory expertise to perform tests now required which the Pesticide Division does not have and would either have to develop, contract for, or use the department's laboratory function.

The committee considered a bill draft that would have designated the Department of Health and Consolidated Laboratories the lead or primary state environmental agency. The department has been designated by statute as the agency with responsibility for air quality management, water quality management, and solid waste management in the statutes dealing with those specific areas. However, no agency has been designated by state law to have overall responsibility for environmental matters. Committee members suggested that naming the Department of Health and Consolidated Laboratories the lead or primary state environmental agency would establish the department as the coordinator of all environmental matters and identify the department as the contact for members of the public on environmental matters.

Name Change Proposals

The committee considered bill drafts that would have changed the name of the Department of Health and Consolidated Laboratories to the Department of Health, Environmental Protection, and Consolidated Laboratories; or the Department of Health and Environment; or the Department of Health and Natural Resources. The committee also considered bill drafts that would have changed the name of the State Health Officer to the State Health and Environment Officer or the State Health and Natural Resources Officer.

Proponents of a name change suggested that the name of the department should be changed to better reflect the environmental mission of the department. The State Health Officer did not object to changing

the name of the Department of Health and Consolidated Laboratories to the Department of Health and Environment but did indicate that changing the name of the State Health Officer to the State Health and Environment Officer or the State Health and Natural Resources Officer would be cumbersome.

The committee studied a bill draft that would have renamed the State Health Council the State Health and Environment Council and expanded the membership of the council from 17 members to 34 members by adding the members of the Air Pollution Control Advisory Council and the State Water Pollution Control Board to the council. The bill draft also repealed the Air Pollution Control Advisory Council and State Water Pollution Control Board and provided that the State Health and Environment Council would assume the duties performed by those entities. The committee received testimony that having 34 members on the State Health Council would make the council unwieldy and that any revision of the name or duties of the council to reflect the environmental mission of the council should not increase its membership.

The committee revised the bill draft in order to reduce the membership of the council to 13 voting members. New members were representatives of air interests, water interests, soil sciences, natural resource interests with expertise in pollution prevention and environmental quality matters, and American Indians. The State Health Officer, chief of the Department of Health and Consolidated Laboratories Environmental Health Section, and the director of the Game and Fish Department were added as ex officio nonvoting members of the council. One of the two representatives of the State Hospital Association, a representative of the State Dental Association, a representative of the State Optometric Association, and a representative of the State Pharmaceutical Association were removed from the council and the Air Pollution Control Advisory Council and Water Pollution Control Board were repealed and their duties assumed by the State Health and Environment Council. A representative of the State Medical Association opposed the bill draft because it appeared to deemphasize the role of health and public health on the State Health Council. Testimony indicated that the State Medical Association is not opposed to changing the name of the Department of Health and Consolidated Laboratories to reflect the environmental role of the department, but is opposed to changing the membership of the State Health Council. The committee also received testimony from the State Optometric Association and the State Hospital Association opposing the bill draft. The committee received testimony from a representative of the Department of Health and Consolidated Laboratories that the duties of the Air Pollution Control Advisory Council and Water Pollution Control Board should be assigned to the department rather than the State Health and Environment Council.

The committee revised the bill draft to replace the proposed member representing natural resource interests with a member representing energy interests, to remove the proposed ex officio members, and to transfer the duties of the Air Pollution Control

Advisory Council and Water Pollution Control Board to the Department of Health and Consolidated Laboratories.

Testimony from the State Health Officer indicated that the department supports eliminating the Water Pollution Control Board and the Air Pollution Control Advisory Council and that if the membership of the council is revised it should be revised downward. Downsizing the membership of the council would allow for balanced efficient government and still provide for broad representation from three different areas including health, environment, and consumers.

Recommendations

The committee recommends Senate Bill No. 2075 to transfer administration of the commercial feed; insecticide, fungicide, and rodenticide; and fertilizer and soil conditioner laws from the Department of Health and Consolidated Laboratories to the Commissioner of Agriculture.

The committee recommends House Bill No. 1057 to designate the Department of Health and Consolidated Laboratories the primary state environmental agency.

The committee recommends House Bill No. 1058 to rename the Department of Health and Consolidated Laboratories the Department of Health and Environment.

The committee recommends House Bill No. 1059 to rename the State Health Council the Health and Environment Council and to reconstitute the Health and Environment Council. The Health and Environment Council would consist of 13 members appointed by the Governor. The Health and Environment Council would include a representative of the State Hospital Association, a representative of the State Medical Association, a representative of the State Long Term Care Association, a representative of the State Nurses Association, a person representing air interests, a person representing water interests, a person representing the soil sciences, a person representing energy interests with expertise in pollution prevention and environmental quality matters, a person representing agricultural interests, a person representing labor interests, a person representing business interests, a person representing elderly persons, and a person representing American Indians. One of two representatives of the State Hospital Association, the representative of the State Dental Association, the representative of the State Optometric Association, and the representative of the State Pharmaceutical Association would be removed as members of the State Health and Environment Council. The Air Pollution Control Advisory Council and Water Pollution Control Board would be repealed and their duties assigned to the Department of Health and Consolidated Laboratories.

SOLID WASTE MANAGEMENT STUDY

This study reflected the Legislative Assembly's concern regarding solid waste management and the operation and effect of solid waste management districts and solid waste management plans.

Federal Law

The Resource Conservation 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.

The administrator of the Environmental Protection Agency is required to adopt rules for the identification of characteristics of hazardous wastes and to list the hazardous wastes subject to regulations; to adopt standards applicable to transporters and generators of hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities; and to establish regulations requiring owners or operators to obtain a permit to operate or construct facilities for the treatment, storage, or disposal of hazardous wastes. The administrator is also required to adopt guidelines to assist states in developing and administering state hazardous waste programs. States and political subdivisions are prohibited from imposing requirements less stringent than those imposed by federal laws and rules. Each state is required to undertake a continuing program to compile, publish, and submit to the administrator an inventory of hazardous waste storage or disposal sites in the state.

The administrator of the Environmental Protection Agency is required to adopt guidelines for state or regional solid waste plans adopted by states and regional authorities. The Act prescribes certain requirements for approval of state plans. One requirement is that the state plan provide for resource conservation and recovery and for the disposal of solid waste in landfills in a manner that is environmentally sound.

The administrator is also required to adopt guidelines relating to landfills. Disposal facilities that fail to satisfy the criteria for sanitary landfills must be classified as open dumps. State solid waste management plans must provide for the closing or upgrading of all open dumps and must prohibit the establishment of open dumps.

State Law

The Department of Health and Consolidated Laboratories is responsible for solid waste management regulation in the state. The department also is responsible for regulating hazardous waste, ionizing radiation, air pollution, water distribution and waste water systems, and ground water protection.

North Dakota Century Code Chapter 23-29 addresses the transportation and disposal of solid waste. The department is authorized to adopt rules governing solid waste storage, collection, transportation, handling, resource recovery, and disposal. The department is required to adopt rules to establish categories of solid waste and solid waste management facilities based on waste type, facility operation, or other facility characteristics; to establish standards and requirements for each category of solid waste management facility; to establish financial assurance requirements that must be met by any person proposing construction or operation of a solid

waste management facility; and to conduct environmental compliance background reviews for applicants for permits to construct or operate solid waste management facilities.

The department is also required to establish procedures for permits governing the design, construction, operation, and closure of solid waste management facilities and systems. Operators of solid waste management facilities and solid waste transporters are required to obtain a permit from the department.

All land in the state must be within a solid waste management district. The boundaries of each district correspond to the boundaries of the eight regional planning councils. Each district is governed by a board consisting of representatives of cities, counties, and licensed waste disposal facilities and waste haulers.

Political subdivisions are permitted to enact and enforce solid waste management ordinances if the ordinances are equal to or more stringent than NDCC Chapter 23-29 and any rules adopted pursuant to that chapter. The governing bodies of political subdivisions participating in a solid waste management district may establish and operate a waste management authority and provide solid waste management services and determine charges for those services. Boards of county commissioners were required to establish zoning requirements for solid waste disposal incineration facilities before July 1, 1994. Solid waste disposal or incineration facilities must meet the zoning requirements of both the county and township where the facility is located unless the township has relinquished zoning authority to the county. Boards of county commissioners may also impose tipping or other fees on solid waste management and incineration facilities.

The Statewide Coordinating Committee coordinates solid waste management between the solid waste management districts and state agencies and coordinates the development, implementation, and revision of district solid waste management plans and the state plan to resolve conflicts, achieve consistency, and to assure adequate and appropriate solid waste management capacity.

State law establishes a solid waste management fund for the purpose of providing grants or low interest loans to political subdivisions for waste reduction, planning, resource recovery, and recycling projects with an emphasis on marketing. Revenue for the fund is generated by a monthly surcharge imposed on each person or political subdivision that provides municipal waste collection services. The surcharge for each household account is 20 cents per month. The monthly surcharge for commercial accounts varies based upon the amount of the monthly waste collection fee.

Testimony and Committee Considerations

Inspection Programs

The Department of Health and Consolidated Laboratories requires landfill permit applicants and landfill operators to select and pay for tests, such as hydrology tests, required by state law. The committee considered a bill draft that would have required

the department to conduct monitoring, testing, or inspection programs required by state law for solid waste management facilities.

The second version of the bill draft required the department to "provide for" the monitoring, testing, or inspection program.

The third version of the bill draft provided that the department could authorize a permitholder to conduct onsite monitoring, testing, or inspection of a solid waste management facility owned or operated by the permitholder, if the person performing the monitoring, testing, or inspection for the permitholder had been certified by the department. Under this bill draft, the department was required to establish certification standards and criteria for persons performing monitoring, testing, or inspections onsite for a permitholder and a permitholder was prohibited from discharging, disciplining, or threatening discrimination, or penalizing any person who performs monitoring, testing, or inspection onsite for a permitholder regarding that person's compensation, conditions, location, or privileges of employment because of the results of monitoring, testing, or inspection conducted in an appropriate manner.

The fourth version of the bill draft extended the certification requirements to all persons conducting monitoring, testing, or inspection programs under NDCC Chapter 23-29. Representatives of the department testified that the revised certification provision applied to all monitoring, testing, or inspection programs conducted under NDCC Chapter 23-29, including soil testing, surveys, and the engineering at solid waste management facilities as well as ground water testing. Presently, the department requires the owner or operator of a solid waste management facility to conduct only ground water monitoring and thus this proposal expanded monitoring required of the department. The testimony indicated that the department might have to add additional employees to implement the certification requirements contained in the provision.

The committee revised the bill draft to limit the certification to ground water monitoring, testing, or inspection programs required under Chapter 23-29. Under this bill draft, the department would be required to establish certification standards and criteria for persons performing ground water monitoring, testing, or inspections under Chapter 23-29. This bill draft retained the provisions prohibiting permitholders from discharging, disciplining, threatening discrimination, or penalizing persons regarding their compensation, conditions, location, or privileges of employment because of the results of monitoring, testing, or inspections conducted under Chapter 23-29 in an appropriate manner. The prohibition would apply to any monitoring conducted under Chapter 23-29 in addition to ground water monitoring or testing.

Solid Waste Management Boards and Bonds

A representative of the Region III Solid Waste Management Board identified several concerns that the board has with the solid waste management laws. One concern was the membership of a solid waste management board. The governing board of each

solid waste management district consists of a representative of each county within the district, a representative from cities from each county within the district, a representative of each city in the district which has a population of more than 10,000, a representative of the licensed disposal facilities within the district, and a representative of the waste haulers within the district. However, there is no provision that a representative of an Indian reservation located within a solid waste management district be a member of the governing board. There are two reservations located within Region III. Testimony indicated that both reservations have sent representatives to solid waste management board meetings; but there is no mechanism in state law for a representative of an Indian reservation to be a voting member of the board. The committee determined that a representative of each Indian reservation within a solid waste management district should be added to the governing board of the district.

A representative of the Region III Solid Waste Management Board reported that the financing of solid waste disposal facilities, trucks, and equipment is difficult and that a mechanism should be developed to allow solid waste management districts to issue bonds to finance the purchase of these facilities and equipment.

The committee studied a bill draft that would have allowed solid waste management districts to issue general obligation bonds for the construction, repair, and maintenance of solid waste management facilities and for the purchase of trucks, garbage collectors, and other vehicles, equipment, and materials for the collection, removal, disposal, storage, and transportation of solid waste. Testimony concerning this bill draft indicated that solid waste management districts are designed to manage and plan for adequate capacity, accessibility, and waste flow control while solid waste management authorities are designed to provide solid waste management services and determine the charges for those services. Thus, it would be more appropriate for authorities rather than districts to issue bonds. A representative of the Municipal Bond Bank testified that it may be difficult to obtain the 60 percent vote required under state law to issue general obligation bonds and recommended that solid waste management authorities be authorized to issue revenue bonds pursuant to NDCC Chapter 40-35, the state's general revenue bond law. Testimony also indicated that solid waste management authorities should be able to include recycling equipment as a purpose for which revenue bonds may be issued. Also, it was suggested that if a solid waste management authority is authorized to issue revenue bonds to finance the construction, acquisition, operation, repair, closure, maintenance, improvement, and enlargement of solid waste management facilities and resource recovery projects, the authority board should be elected rather than appointed.

A representative of the Municipal Bond Bank presented a bill draft that would have allowed any political subdivision to establish a solid waste management authority by resolution or any two or more political subdivisions to establish a regional solid

waste management authority by resolution. The governing body of the authority would be authorized to borrow money and issue evidences of indebtedness to construct, acquire, own, operate, repair, close, maintain, improve, and enlarge a solid waste management facility and resource recovery projects, purchase land on which to locate the facility, and purchase trucks, garbage collectors, or other vehicles, equipment, or material for the collection, removal, disposal, storage, use, reuse, recycling, or transportation of solid waste. The governing body would be required to conduct an annual review to determine whether its net revenues will be sufficient to pay the interest and principal on any evidences of indebtedness and adjust the authority schedule of rates, fees, and charges as required by any covenant or pledge given for the benefit of the holders of the evidences of indebtedness in order to provide sufficient revenues to make the payments of interest and principal on the evidences of indebtedness. If the revenues of an authority are insufficient to pay interest and principal then due on evidences of indebtedness, the governing body of the authority was required to levy a general tax for the deficiency upon all of the taxable property within the political subdivisions that comprise the authority. If it appears that a deficiency is likely to occur within one year, the governing body would be authorized to levy a general tax for the deficiency upon all of the taxable property within the political subdivisions that comprise the authority. Evidences of indebtedness would be payable from taxes levied and collected by the governing body, revenues or income derived by a governing body from facilities funded by the evidences of indebtedness, or revenues or income received by a governing body from the issuance of revenue or general obligation bonds.

The committee expressed concern over allowing an appointed body to levy a tax. The committee amended the bill draft to require the governing body of a solid waste management authority or a regional solid waste management authority be elected and to provide that if an authority encompassed an Indian reservation, the tribal council of each Indian reservation appoint a director to represent the reservation on the authority. The committee considered bill drafts to require that any tax levied by a solid waste management authority or regional solid waste management authority be approved by a majority vote of the electors of the authority at any regular or special election, that establishment of a solid waste management authority or regional solid waste management authority must be approved by a majority vote at any regular or special election, and that all entities under a joint powers agreement have the same authority to levy a tax to finance evidences of indebtedness to fund solid waste management facilities that any political subdivision that is a party to the joint powers agreement possesses.

Recycling Equipment Tax Exemptions

The committee reviewed legislation enacted by the 1993 Legislative Assembly which created a sales tax exemption for machinery or equipment used directly in the recycling of tangible personal property. The exemption applies to machinery or equipment used

in a new recycling facility or in physical or economic expansion of an existing recycling facility. This exemption expires on July 1, 1995. Because the State Tax Commissioner will not provide information regarding taxes in instances where fewer than five taxpayers are involved, no information was available on the extent to which this exemption has been used.

The committee reviewed a bill draft that would have established a corporate income tax credit for recycling machinery and equipment expenditures equal to eight percent of the qualified expenditures for recycling machinery and equipment purchased during the taxable year up to 50 percent of a corporation's liability for taxes under NDCC Chapter 57-38. Testimony from representatives of entities engaged in the recycling industry indicated that providing a corporate income tax credit for recycling machinery and equipment expenditures would be beneficial to entities using such equipment. Although the State Tax Commissioner was unable to provide an estimate of the likely fiscal impact of the bill draft, it was noted that the bill draft did not limit the tax credit to companies expressly engaged in the recycling business and that as a result the fiscal impact could be quite large. The committee amended the bill draft to require that a corporation be primarily engaged in the business of recycling in order to use the credit. After receiving approval from the chairman of the Legislative Council, the committee referred the bill draft to the interim Taxation Committee for review in conjunction with that committee's study of the state's tax structure.

Road Surfacing Materials Used by the Department of Transportation

The Department of Transportation has studied three materials from the solid waste stream for use as road surface material. The department is reviewing the use of glass, fly ash, and crumb rubber from recycled tires for use as road surface material. The department uses approximately 8,000 tons of fly ash a year as a substitute for cement in road surface material. The department is considering two experimental projects to use crushed glass as a road surface material, but needs a sufficient quantity of crushed glass to develop the experimental projects.

North Dakota Solid Waste Management Plan

The committee reviewed the North Dakota solid waste management plan. The eight solid waste management districts were each required to prepare and submit to the Department of Health and Consolidated Laboratories, by January 1, 1993, a solid waste management plan that included each district's ability to manage and plan for adequate capacity, accessibility, and waste flow control, and that took into consideration existing waste transportation patterns and the ability of existing landfills to handle solid waste. The department incorporated all the district solid waste management plans into a comprehensive statewide solid waste management plan. The plan reviews existing conditions in the state, including the state's demographics, economics, geology, hydrology, and climate, and the existing solid waste management systems in the state. The plan reviews the

governmental role in solid waste reduction and recycling and summarizes the goals of each of the eight solid waste management districts. The plan contains recommendations relating to education, waste reduction, recycling, yard waste management and composting, incineration and energy recovery, waste disposal, and ordinances and enforcement. Representatives of the department reported that the primary focus of solid waste management in the state will be on educating the public concerning the recycling and composting alternatives available. The committee received testimony from representatives of the department that the regional solid waste management plans are adequate to handle changes that have been occurring in the flow of solid waste within the solid waste management districts, that the department has sufficient statutory authority to implement the recommendations contained in the solid waste management plan, and that legislation is not required to implement any of the recommendations contained in the plan.

Recommendations

The committee recommends Senate Bill No. 2076 to require the Department of Health and Consolidated Laboratories to certify persons to conduct ground water monitoring, testing, or inspection programs required under NDCC Chapter 23-29. The department is required to establish certification standards and criteria for persons who perform ground water monitoring, testing, or inspections under this chapter. The bill also prohibits solid waste management facility permit holders and solid waste transporter permit holders from discharging, disciplining, threatening discrimination, or penalizing any person regarding that person's compensation, conditions, location, or privileges of employment because of the results of monitoring, testing, or inspection conducted under NDCC Chapter 23-29 in an appropriate manner.

The committee recommends House Bill No. 1060 to add a representative of each Indian reservation within a solid waste management district to the governing board of the district.

The committee recommends House Bill No. 1061 to allow political subdivisions to establish solid waste management authorities or two or more political subdivisions to establish regional solid waste management authorities. The governing body of the authority would be elected and could exercise any power necessary or appropriate to construct, acquire, own, operate, repair, close, maintain, improve, and enlarge a solid waste management facility and resource recovery projects, purchase land in which to locate the facility, and purchase trucks, garbage collectors, or other vehicles, equipment, or material for the collection, removal, disposal, storage, use, reuse, recycling, or transportation of solid waste. The bill provides that the governing body of an authority may borrow money and issue evidences of indebtedness. If the revenues of an authority are insufficient to pay interest and principal then due on evidences of indebtedness, the governing body of the authority is required to levy a general tax for the deficiency upon all of the taxable property within the political subdivi-

visions that comprise the authority and if it appears that a deficiency is likely to occur within one year, the governing body is authorized to levy a general tax for the deficiency upon all of the taxable property within the political subdivisions that comprise the authority.

The committee recommends Senate Bill No. 2077 to make permanent the sales tax exemption for machinery or equipment used directly in the recycling of tangible personal property.

COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN

The Legislative Council assigned the duty of receiving a comprehensive solid waste management plan that assesses the ability of each state agency to reduce the amount of solid waste it generates and increase the amount of recycled products it uses from the Office of Management and Budget. The plan includes information on how the comprehensive solid waste management plan was developed, the history of waste management efforts in state government, and the future of waste management in state government. The plan also reviews existing state government waste management efforts and the existing solid waste management system in the state. The plan also contains goals and objectives for state solid waste management. The goals identified by the plan are to manage the cost of waste disposal for state government, reduce the amount of waste generated by state government, identify current and possible recycling efforts by state government, identify current and possible uses for recycled products by state government, make waste management a responsibility of all state government employees, and assure state government waste is managed in an environmentally sound manner. The plan also contains objectives concerning education, the reduction in the volume of waste generated, the reuse of waste materials, recycling and composting efforts, energy recovery efforts, the use of landfills and incinerators, review of the procurement of recycled products, and the control of costs through waste management.

The plan recommends that each state agency, facility, or institution designate an employee as a solid waste coordinator and educator. The plan recommends that all state agencies begin aggressive paper product recycling programs within the next year and that state agencies responsible for waste negotiate waste disposal fees on a volume or weight basis. The plan specifies that state agencies, facilities, or institutions should identify their current costs for waste disposal and those state agencies that handle large volumes of inert waste should manage this material separately from other municipal solid waste.

LAND RECLAMATION RESEARCH CENTER REPORTS

Senate Bill No. 2005 (1993) appropriated \$1,424,067 to the Land Reclamation Research Center. Of this total, \$289,822 was from the general fund. 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. Section 7 of 1993 Senate Bill No. 2005 requires the Land Reclamation Research Center to file annual reports with the Legislative Council and the Lignite Research Council on August 1, 1993, and on August 1, 1994, containing a description and analysis of the conclusions reached from each reclamation research project that has been completed during the preceding fiscal year and a brief description and analysis of any conclusions reached from all ongoing projects. The report is also required to include any recommendation for reducing unnecessary and duplicative regulatory costs that do not contribute to effective reclamation practices. Annual reports have been required by law since August 1, 1983.

The committee received reports entitled *Soil Depth and Quality Requirements for Reclamation of Rangelands; Relation of Compaction and Soil Physical Parameters to Productivity of Reclaimed Soils; Predicting Regraded Soil Quality From Overburden Quality; Research on the Reclamation of Prime Farmland in North Dakota; Status of a Productivity Index for Evaluating Reclamation Success for Bond Release; and Revegetation Influence on Reclaimed Mineland Soil Erosion*. The committee also received the August 1, 1993, and August 1, 1994, reports of the Land Reclamation Research Center, Agricultural Experiment Station, North Dakota State University. The 1993 report recommended that subsoil tillage done by mining companies to reduce compaction is unnecessary; that there is no advantage to subsoiling following the replacement of topsoil; that five centimeters of good quality soil can be used as replacement for topsoil over sodic soil; that chemical treatments of gypsum, calcium chloride, or power plant ash were not effective in reclaiming sodic soil and cannot be recommended; that the topofactor may be successfully used to quantify the relationship between moisture redistribution in the landscape and spring wheat yields; that the topofactor was able to quantify the redistribution of water in a landscape on reclaimed land; and that yields, cover, and diversity requirements for reclaimed rangelands may be met with less replaced soil depth than is currently required.

The 1994 report recommended that reclamation technology and postreclamation land management focus on increasing effective porosity of soil to at least one meter and that future mining and land reclamation plans consider setting aside additional acreage under wetlands and other biohabitats for ground water recharge purposes. The report found that no consistent improvement in wheat yields may be obtained based upon the prior forage crop grown at a site.

Conclusion

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

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 North Dakota telecommunications law on an ongoing basis during the interims between the 1993 and 1999 legislative sessions. The commission is required to submit reports regarding its operation and effect to the Legislative Council in 1994, 1996, and 1998.

Membership of the commission, established by NDCC Section 49-21-22, consists of one member of the Public Service Commission who has responsibility for telecommunications regulation, 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. Commission members during the 1993-94 interim were Senators Rolland W. Redlin (Chairman) and David E. Nething; Representatives John Mahoney and Ben Tollefson; and Public Service Commissioner Bruce Hagen.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

1989 SENATE BILL NO. 2320

Senate Bill No. 2320, enacted by the 1989 Legislative Assembly, exempted telecommunications companies and services from rate or rate of return regulation by the Public Service Commission unless the telecommunications company notified the commission that it wanted 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. Essential telecommunications service is service that is necessary for switched access to interexchange telecommunications companies and necessary for two-way switched communications for both residential and business service within a local exchange area.

1993 LEGISLATION

The Legislative Assembly enacted four bills in 1993 which affected telecommunications law—Senate Bill Nos. 2440, 2317, 2385, and 2393.

Senate Bill No. 2440 changed the definition of “essential telecommunications price factor” for purposes of telecommunications regulation from the annual change in a company’s input cost index reduced by 50 percent of that company’s productivity incentive adjustment to a factor determined annually which is the lower of 41.6667 percent of the percentage change of the average annual gross na-

tional product price index or the percentage change of the average annual gross national product price index minus 2.75 percentage points for group I telecommunications companies or a factor determined annually which is the lower of 52.0834 percent of the percentage change of the average annual gross national product price index or the percentage change of the average annual gross national product price index minus 2.0625 percentage points for group II telecommunications companies. Group I telecommunications companies are those companies with over 50,000 subscribers and group II telecommunications companies are companies with 50,000 or fewer subscribers. The bill also revised the distinction between essential telecommunications services that are regulated or subject to the essential telecommunications price factor cap and nonessential services that are not subject to the essential telecommunications price factor cap. The bill also revised the definition of telecommunications services that are not subject to the telecommunications deregulation law such as coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment, inside wire and premise cable installation and maintenance, and directory services that are not essential, such as “yellow pages” advertising and boldface or color listings in “white pages.”

Senate Bill No. 2317 exempts a public utility operated as a nonprofit cooperative or mutual telecommunications company or a telecommunications company having fewer than 3,000 local exchange subscribers from regulation under NDCC Chapters 49-02 and 49-21. However, these public utilities are still subject to Sections 49-21-01.4, 49-21-08, 49-02-02(7), 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10 regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies.

Senate Bill No. 2385 provides that dialing parity on an intraLATA basis, otherwise known as 1+ intraLATA equal access, may not be required to be provided by any company providing local exchange service. This bill is effective through July 31, 1999, and after that date is ineffective.

Senate Bill No. 2393 changed the membership of the commission from the public service commissioners and four legislative members to one member of the Public Service Commission who has responsibility for telecommunications regulation and four members of the Legislative Assembly. The bill required the Legislative Council to provide staff services instead of the Public Service Commission. (Before 1991, the Legislative Council provided staff services. In 1991 the Legislative Assembly transferred this responsibility to the Public Service Commission.) The bill provided that the legislative members of the commission are entitled to the same compensation as provided for members of committees of the Legislative Council. The bill also required the commission to submit a report regarding the operation and effect of North Dakota telecommunications law in 1996 and 1998 in addition to a report in 1994.

POSTSESSION ACTIVITY

Industry Reports

The commission received reports from representatives of the telecommunications industry indicating general satisfaction with the statutory and regulatory telecommunications environment in North Dakota. A representative of the Public Service Commission summarized Public Service Commission activity with respect to telecommunications. The summary included a review of tariff filings, consumer contacts, telecommunications transactions, equal access conversions, certified resellers, rulemakings, and industry complaints.

A representative of U S West Communications summarized U S West Communications activity concerning the operating environment of the telecommunications industry, consumer protection in the telecommunications industry, and infrastructure implications in the telecommunications industry. U S West Communications described its modernization plan to upgrade telecommunications technology in North Dakota. Testimony indicated that more telecommunications jobs are available in North Dakota because of the state's telecommunications infrastructure, that a state's telecommunications infrastructure is a necessary factor to attract high-technology companies to locate in a state, and that the state's telecommunications law allows U S West Communications flexibility in the marketplace and the ability to focus on customers instead of regulations.

The commission reviewed U S West Communications business prices in North Dakota and other states where U S West Communications provides service. In the 14 U S West Communications states, U S West Communications business prices range from a base rate of \$28 to \$48. The average U S West Communications business price in North Dakota is \$35.

The commission reviewed **MCI Telecommunications Corp. v. Heitkamp**, Civ. No. 940100 (N.D. Nov. 2, 1994), relating to a challenge of Senate Bill No. 2385, which was enacted by the 1993 Legislative Assembly and is contained in a note to NDCC Section 49-21-08. Senate Bill No. 2385 provided that the provisioning of dialing parity on an intraLATA basis, otherwise known as 1+ intraLATA equal access, may not be required to be provided by any company providing local exchange service. At issue was whether this provision was a special law, in violation of Article IV, Section 13, of the Constitution of North Dakota. The North Dakota Supreme Court determined that it is reasonable to classify companies based on the type of service provided, e.g., local exchange service or long-distance toll service. The court further determined that it is reasonable to allow the companies providing local exchange service to maintain a slightly more convenient dialing disparity requiring customers desiring to use an interexchange carrier to dial an extra four-digit access code. Thus, the court concluded that the provisions did not violate the special laws provision of the constitution.

Also at issue was whether Senate Bill No. 2385 constituted an unlawful delegation of legislative authority to private entities. The court determined that

the bill did not give companies providing local exchange service the authority to make a law, but pertains only to the execution of a law.

Federal Legislation

The commission reviewed proposed federal telecommunications legislation. The three prominent telecommunications bills before Congress were H.R.3636, H.R.3626, and S.1822.

H.R.3636, within one year of enactment, would have mandated equal access and interconnection with local exchange carriers at technically feasible and economically reasonable points. The bill would have directed the Federal Communications Commission to establish regulation for actual collocation at the premises of local exchange companies and virtual collocation in instances when it is not practical. Also, the bill would have prohibited states from prohibiting any carrier from providing interstate or intrastate telecommunications services or information services and also would have prohibited states from impeding access or interconnection rights. In addition, the bill would have required the Federal Communications Commission to establish a federal-state joint board to recommend actions to the Federal Communications Commission and state commissions for the preservation of universal service.

H.R.3626 would have authorized the regional bell operating companies to provide interexchange telecommunications services and alarm monitoring services. After one year from enactment, the regional bell operating companies would have been allowed to manufacture or provide telecommunications equipment or to manufacture customer premises equipment.

S.1822 would have allowed the regional bell operating companies to offer intraLATA service, would have permitted cable television companies into the local telephone business, would have permitted local telephone companies into the cable television market, and would have authorized the regional bell operating companies to manufacture telecommunications equipment.

Commission Discussion

The commission discussed the blocking by telecommunications companies of the use of consumer access codes on public telephones. Under NDCC Section 49-21-01.5, a person who makes telephones available to the public or to transient users of that person's premises for intrastate telephone calls using a provider of operator services is required to ensure that each of those telephones allows the consumer to use "800," "950," or "10XXX 0+" access code numbers to obtain access to the provider desired by the consumer. However, Section 49-21-01.1(4) excludes home, business, and coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment from telecommunications regulation. The requirement in Section 49-21-01.5 that providers of public telephones allow a consumer to use access code numbers to obtain operator services has been considered unenforceable by the Public Service Commission because Section 49-

21-01.1(4) removes public telephones from regulation. The commission reviewed a bill draft that would have specifically excepted Section 49-21-01.5 from the exclusion from regulation provided by Section 49-21-01.1(4).

The commission also discussed the effect of Section 17 of Chapter 600 of the 1991 Session Laws, which repeals NDCC Section 49-21-22, effective January 1, 1995. Section 49-21-22 was amended in 1993 to extend the Regulatory Reform Review Commission from 1995 to 1999. The commission reviewed a bill draft that would have reenacted the establishment of the Regulatory Reform Review Commission until December 31, 1998.

Recommendations

The commission recommends Senate Bill No. 2078 to provide that NDCC Section 49-21-01.5, which requires providers of public telephones to allow a consumer to use access code numbers to obtain operator services, is not subject to the provisions of Section 49-21-01.1(4), which removes public telephones from telecommunications regulation.

The commission recommends Senate Bill No. 2079 to reenact the establishment of the Regulatory Reform Review Commission to review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1993 and 1999 legislative sessions.

SOVEREIGN IMMUNITY COMMITTEE

The chairman of the Legislative Council appointed the Sovereign Immunity Committee to address the abolition of the doctrine of sovereign immunity by the North Dakota Supreme Court.

Committee members were Senators David E. Nething (Chairman), Rolland W. Redlin, Wayne Stenehjem, and Harvey D. Tallackson and Representatives Ole Aarsvold, Jack Dalrymple, Everett Dobrinski, William E. Kretschmar, and Jennifer Ring.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

BACKGROUND

In September 1994 the North Dakota Supreme Court abolished the doctrine of sovereign immunity in a 4-1 decision. In **Bulman v. Hulstrand Constr. Co. and State of North Dakota**, 521 N.W.2d 632, (N.D. 1994), the Supreme Court held that Section 9 of Article I of the Constitution of North Dakota "does not bestow exclusive authority upon the legislature to waive or modify sovereign immunity of the State from tort liability and does not preclude this Court from abolishing that common-law doctrine."

Section 9 of Article I of the Constitution of North Dakota provides:

All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct. (emphasis supplied)

The doctrine of sovereign immunity originated in the common law and was included in the Constitution of North Dakota in 1889. Before **Bulman**, the North Dakota Supreme Court had held that Section 9 of Article I granted the Legislative Assembly exclusive authority to modify or waive sovereign immunity from tort liability. In **Bulman**, the Supreme Court indicated that previous decisions of the court misconstrued Section 9 of Article I and ignored the first sentence of that section which guarantees that "all courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay."

In **Bulman**, the court held that the second sentence of Section 9 of Article I is neutral in that it neither mandates nor prohibits a substantive rule of absolute sovereign immunity. The court determined that the sentence only authorizes the Legislative Assembly to "direct the manner, the courts, and the cases in which suits may be brought against the State." The court stated that the sentence authorizes the Legislative Assembly to waive or modify the common-law doctrine of sovereign immunity and does not preclude the court from also abolishing the common-law doctrine if the doctrine no longer meets

the needs of the time.

The court further stated that nothing in Section 9 of Article I "elevates the common law doctrine of sovereign immunity to constitutional status . . ." In addition, the court indicated that whatever justifications existed for sovereign immunity in the past are no longer valid in today's society.

Although the court abolished sovereign immunity, the court indicated that its decision should not be interpreted to impose tort liability for the exercise of discretionary acts, including legislative and quasi-legislative acts and judicial and quasi-judicial acts. In addition, the court concluded that the abrogation of sovereign immunity should be prospective so that the Legislative Assembly may "implement and plan in advance by securing liability insurance, or by creating funds necessary for self-insurance." Thus, the court abrogated sovereign immunity for the **Bulman** parties and two other cases heard contemporaneously with **Bulman** and for any claims arising 15 days after adjournment of the 1995 Legislative Assembly.

TESTIMONY AND COMMITTEE CONSIDERATIONS

The committee worked closely with representatives of the Attorney General and the Commissioner of Insurance in attempting to determine the potential impact of **Bulman**. To help determine the impact of the decision, the committee also contracted with an independent risk management consulting firm.

Extent of Current Insurance Coverage

The Commissioner of Insurance surveyed all state agencies to determine the extent and types of insurance coverage carried by state agencies. The survey indicated that several state agencies are purchasing insurance through commercial insurance companies or through the North Dakota Insurance Reserve Fund. The types of coverage purchased by state agencies varies greatly from general liability coverage to special event coverage. Over the last five years, state agencies have paid an average of approximately \$1.5 million per year in premiums for insurance coverage to the North Dakota Insurance Reserve Fund.

The Commissioner of Insurance also surveyed all 50 states regarding the liability of the states. Sovereign immunity appears to have been abolished in most states, but the vast majority of the states have some type of limited immunity, particularly for discretionary acts. Most states appear to have statutory claims acts that regulate the types of claims that may be brought against the state and that limit judgments in actions against the state. Judgments are limited by capping the maximum amounts recoverable, generally by per individual and per occurrence limitations.

Types of Risks

The Attorney General surveyed state agencies to determine what types of risk to which state agencies may be subject and to attempt to determine potential

areas of liability. The survey indicated that state agencies perform a number of unique duties or functions that could result in tort liability. The risks include risks associated with the operation of the aviation program at the University of North Dakota; the operation of a medical school and other medical facilities; the performance of various research activities; the handling and disposal of hazardous wastes; and the design, manufacture, and modification of specialized products.

The committee received testimony from representatives of the North Dakota Insurance Reserve Fund. The North Dakota Insurance Reserve Fund was established in 1986 to act as a self-insurance pool for political subdivisions. The North Dakota Insurance Reserve Fund provides general liability coverage, automotive liability and physical damage coverage, and inland marine and scholastic injury coverage. The North Dakota Insurance Reserve Fund also provides risk management and loss control services for fund participants. Over 2,100 governmental entities in North Dakota, including approximately 70 state agencies, participate in the North Dakota Insurance Reserve Fund.

Risk Assessment

The Legislative Council contracted with Advanced Risk Management Techniques, Inc., for risk management consulting services. Although the consultant did not have sufficient time to complete the risk assessment before the committee completed its study, the preliminary assessment indicated that general liability and automobile liability and property damage coverage may cost the state between \$1,100,000 and \$1,500,000 per year. The estimate did not include coverage for medical malpractice liability or liability for special or unique risks, e.g., the aviation program at the University of North Dakota.

Committee Discussion

The committee discussed various approaches to addressing the abolition of sovereign immunity. The two approaches identified to be feasible and desirable were to: (1) propose a constitutional amendment to reinstate sovereign immunity; and (2) establish a process through which certain claims may be brought against the state.

Although committee members generally agreed that the state should be responsible for the acts of its employees, they also agreed that there should be limitations on the liability of the state.

The committee reviewed the laws governing actions against the state in other states and determined that exceptions from liability should be provided for certain acts such as discretionary acts, legislative and quasi-legislative acts, and judicial and quasi-judicial acts. The committee also generally determined that the amount of damages which may be obtained in an action against the state should be limited.

Committee members agreed that a constitutional amendment reinstating sovereign immunity, by itself, would not be a responsible solution to the problem the committee was directed to address. The committee determined, however, that the Legisla-

tive Assembly should be presented with an option to propose a constitutional amendment reinstating sovereign immunity and reaffirming that only the Legislative Assembly can waive the state's immunity.

RECOMMENDATIONS

The committee recommends Senate Concurrent Resolution No. 4014 to propose an amendment to the Constitution of North Dakota. The constitutional amendment, if approved, would reinstate the doctrine of sovereign immunity and provide that no suit may be brought against the state or an employee of the state acting within the employee's official capacity unless the Legislative Assembly provides by law the type of claims and the procedure through which those claims may be brought against the state or its employees.

The committee recommends Senate Bill No. 2080 to establish procedures for bringing claims against the state for personal injury or property damage. The bill incorporates many of the limitations and exclusions from liability contained in North Dakota Century Code Chapter 32-12.1, relating to liability of political subdivisions and the Minnesota Claims Act. The bill limits recovery to a total of \$250,000 per person and \$750,000 for any number of claims arising from a single occurrence and prohibits punitive damages in actions against the state. The bill permits a claimant to request the Legislative Assembly to provide for payment of any judgment in excess of the \$250,000 and \$750,000 damage caps.

The bill provides that the state may not be held liable for claims:

1. Based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statutory rule.
2. Based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty.
3. Based upon the decision to undertake or the refusal to undertake any legislative or quasi-legislative act.
4. Based upon the decision to undertake or the refusal to undertake any judicial or quasi-judicial act.
5. Based upon the assessment and collection of taxes.
6. Based upon snow or ice conditions, water, or debris on a highway or a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent acts of a state employee.
7. Resulting from wild animals in their natural state.
8. Resulting from the condition of unimproved real property owned by the state.
9. Resulting from the loss of benefits or compensation due under a program of public assistance.
10. Resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state medical or corrections facility where reasonable use of available appropriations has been made to provide care.
11. Resulting from damage to the property of a patient or inmate at a state institution.

12. Resulting from an injury caused to a resident or an inmate of a state institution by another resident or inmate.

The bill provides that an action for an injury proximately caused by the alleged negligence, wrongful act, or omission of a state employee occurring within the scope of the employee's employment must be brought against the state. The bill requires the state to indemnify and save harmless a state employee for a claim and final judgment for any act or omission occurring within the scope of the employment of the employee.

The bill establishes notice requirements for bringing a claim against the state or a state employee and establishes procedures for the handling of claims by the state. The bill provides a procedure for arbitration of claims against the state or a state employee.

The bill establishes a state risk management fund. Each state entity is required to participate in the

fund. State entities may contract for insurance through a commercial insurance company or an insurance pool for coverage not provided by the fund. The Commissioner of Insurance is designated as the administrator of the risk management fund and is to provide a state risk management program under the fund. The bill requires the Commissioner of Insurance to determine specifications for liability insurance for the state.

The bill appropriates \$6 million to administer the state risk management program and to pay from the risk management fund settled claims and judgments against the state.

The bill will become effective fifteen days after the adjournment of the 1995 Legislative Assembly (the date the Supreme Court declared the general abolition of the doctrine effective), and thus contains an emergency clause so it can become effective on that date.

TAXATION COMMITTEE

The Taxation Committee was assigned five studies. House Concurrent Resolution No. 3045 directed a study of the state's tax structure, particularly the balance among the various tax systems. House Concurrent Resolution No. 3015 directed a study of tax preferences under existing law, with emphasis on prevention of unfair competitive advantages to entities receiving tax preferences. House Concurrent Resolution No. 3053 directed a study of the imposition and administration of sales, use, motor vehicle excise, and aircraft excise taxes. House Concurrent Resolution No. 3052 directed a study of imposition of state income taxes for individuals, estates, and trusts. The chairman of the Legislative Council directed the committee to monitor the effects of House Bill No. 1520 as passed by the 1994 special legislative session, relating to property, sales, and use tax exemptions for new industry.

Committee members were Senators Tish Kelly (Chairman), Jerome Kelsh, Meyer Kinnoin, Byron J. Langley, Jens Tennefos, Steven W. Tomac, and John T. Traynor and Representatives Wesley R. Belter, Tom D. Freier, Mick Grosz, John Hokana, Robert Huether, Lee Kaldor, Bruce Laughlin, Clarence Martin, Ronald Nichols, Alice Olson, Earl Rennerfeldt, Mike Timm, Rich Wardner, Janet Wentz, and Gerry L. Wilkie.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

TAX SYSTEM STRUCTURE AND BALANCE STUDY

Background

Comparison of North Dakota's tax system with tax systems of other states is not an exact science. Comparisons are available from many sources but these comparisons show very different rankings for this state. Among the problems that must be recognized in considering interstate tax comparisons are the following:

1. Comparisons are out of date before they are completed. The most recent data available is two or three years old and this must be recognized when using comparisons for consideration of present or future tax policy.
2. Comparisons limited to tax rates are misleading. Tax bases of states differ substantially and comparing only tax rates will lead to mistaken conclusions.
3. The preparers of comparisons may not be familiar with each state's tax laws, which means important features of state and local tax policies may be ignored.
4. Tax burden comparisons present only the revenue side of the picture. A low level of services provided by government may be the reason for a low tax burden.
5. Per capita tax burden comparisons are often prepared by dividing total revenues by population. This may be misleading because severance

taxes, corporate taxes, some sales taxes, and certain other taxes that may be "exported" are not attributable to each taxpayer within the state. A tax burden comparison may not present a true picture of actual taxes paid by each resident of the state.

6. Comparisons may not include taxes collected by local governments. States that provide a low level of assistance to political subdivisions for expenses of local government are able to maintain low state tax levels by shifting a substantial tax burden to local government.

The committee examined tax burden comparisons from more than 30 sources covering different tax years from 1986 through 1991. To illustrate the diversity of findings of various comparisons, North Dakota ranked from 17th to 42nd among the states in tax burden comparisons. In most of these comparisons, North Dakota ranked between 30th and 40th among states in state and local tax burden comparisons on a per capita or income basis. When severance taxes and corporate income taxes are eliminated from comparisons of state government tax burden per capita, the state tax burden in North Dakota ranks 42nd among the states according to United States Department of Commerce Bureau of the Census computations for tax collections in fiscal year 1990.

From 1970 to 1987 North Dakota's state and local tax revenue per \$100 of personal income of taxpayers decreased by 19 percent, with a 3.5 percent increase in state tax revenue and a 43.7 percent decrease in local tax revenue. There is evidence to suggest that the 1970-87 increased reliance on state taxes and decreased reliance on local property taxes has reversed in recent years. In 1985 revenue raised by local governments constituted 25.6 percent of all state and local tax revenue in North Dakota. In 1991 local tax revenue collections had increased to 31.4 percent of all state and local tax collections. Comparing the years 1985 and 1991, the growth in North Dakota per capita tax revenue for state taxes was 48th among the states and the growth in per capita local tax revenue in North Dakota was 15th among the states.

Comparisons of individual income tax burdens among the states rank the North Dakota individual income tax burden as lowest or second lowest among individual income tax burdens of the 41 states that impose individual income taxes.

Comparison of the balance of a tax system is usually based on the relative reliance on the "big three" tax sources of property tax, sales tax, and income tax. Of the big three taxes, North Dakota generated 37 percent of revenue from property taxes, 50 percent from sales taxes, and 13 percent from individual income taxes for fiscal year 1991. In that year the average state drew from the big three taxes 36 percent of revenue from property taxes, 40 percent from sales taxes, and 24 percent from individual income taxes. Comparison of North Dakota's reliance on these three tax sources in 1985 and 1991 indicates North Dakota has had a growing reliance on property

and sales taxes and a declining reliance on personal income tax revenues to support the functions of government. Because the personal income tax is based on the relative income of the taxpayer, decreasing reliance on the personal income tax while increasing reliance on property and sales taxes means North Dakota's tax system has become more regressive in recent years.

North Dakota per capita income increased slightly less than the national average from 1970 to 1980 but increased at a greater rate than the national average from 1980 to 1992. State and local tax revenues as a percentage of personal income in North Dakota were 12 percent above the national average in 1965 and three percent below the national average in 1990.

Nationwide, state taxes rose faster than local taxes during the 1970s but that trend reversed in the 1980s. State income tax rates were being reduced until 1987 but since that time many states have increased income tax rates, especially on high-income households. States in general moved to reduce reliance on property taxes until about 1982 but since that time property tax revenue has grown faster than personal income. For most of the past 20 years, states narrowed sales tax bases by granting exemptions but recently more attention has been paid to broadening sales tax bases.

An examination of the substantial amount of data comparing tax systems of all states supports the following conclusions (the data does not compare rankings more recent than 1991):

1. It appears that the tax burden imposed in North Dakota is well below the national average.
2. It appears that the trend from 1970 to 1987 to a decreased reliance on local property taxes has reversed in recent years and that an increased reliance is being placed on local property tax revenues.
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 1991. On the basis of taxes as a percentage of personal income, 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 had a fairly well-balanced reliance on sales, income, and property taxes throughout most of the period for which comparisons are available, but the balance of reliance on the "big three" tax revenue sources has shifted to increasing reliance on property and sales taxes and a decreasing reliance on personal income taxes.

National Tax Policy Recommendations

The committee reviewed the publication *Financing State Government in the 1990s*, published by the National Conference of State Legislatures and the National Governors Association. This publication gained substantial national attention with its basic premise that state tax systems are out of date. State tax systems were described as based on a manufacturing and production economy that has dramatically and rapidly changed to an economy concerned with the furnishing and use of services. State sales

taxes and corporate income taxes were described as not having kept pace with the shift from production and consumption of goods to furnishing and consumption of services. Interstate tax competition was viewed as a problem because a state is reluctant to review its tax system due to a neighboring state's tax policies, which are a competitive consideration. Federal preemption of state taxing authority was described as undercutting state tax bases. The publication recommends an accurate evaluation of state tax climate, a review of existing economic development incentives to determine whether they work, an expansion of the state sales tax base to include the sale of services, and implementation of a balanced tax system, with reliance on a broad range of tax sources.

Property Tax Levy Limits

Since 1981 each Legislative Assembly has enacted legislation allowing political subdivisions to increase levy authority in dollars by a specified percentage. This optional levy increase authority was added when the property tax system was restructured in 1981 to avoid substantial increases or decreases in property tax bases which would have occurred when property was reassessed. Compounding of the percentage increases in property tax levy authority for the period 1981 to 1992 would have allowed a cumulative increase in property tax levy authority for political subdivisions of approximately 70 percent. Testimony indicated that county officials are aware of the growing property tax burden but that they are forced to increase property taxes to meet increasing human service, education, public safety, and transportation demands that are beyond their control. An example cited was the increase in human service levies by counties by an average of 14 percent per year over the 11-year period.

Consultant Study

After examination of available statistical comparisons from national sources, the committee concluded that there is no single comparison that presents a true picture of where North Dakota's tax system stands in relation to other states. The committee perceived a need for a comparison, specific to North Dakota's tax system, which would allow comparison of North Dakota's tax structure with tax structures of neighboring states and which would present a historical comparison of where North Dakota's tax system stands in relation to its recent history. Comparison with neighboring states was considered more significant than comparisons with states in other parts of the country because of differences in those states' economies. The committee recognized that many opinions have been expressed about what has happened to North Dakota's tax structure in recent years and determined that it is necessary to obtain factual information from an independent source that would provide answers to questions raised by these expressions of opinion. At the request of the committee, the Legislative Council contracted with a consultant from the Agricultural Economics Department at North Dakota State University to conduct the study. The committee requested that the study

compare tax burdens with neighboring states and in North Dakota during the period from 1960 to the present.

Dr. Jay A. Leitch, Mr. Richard Taylor, and Mr. Brad Hovde of the Agricultural Economics Department completed the study of North Dakota's state and local tax burden in August 1994. North Dakota's tax system was assessed for the period 1960 to 1992 and compared to Minnesota, Nebraska, South Dakota, Montana, and Wyoming.

The study converted tax collections to "real" dollars for comparison. Comparison of tax trends over time can be misleading unless adjustments for inflation are made. For example, a \$300 tax per capita in 1960 would have reduced a person's disposable income more than a \$1,400 tax did in 1992. All tax collections reported in nominal dollars were converted into real 1994 dollars using the consumer price index.

The statistics used for the study were collected for the six states for the period 1960 to 1992. More recent statistics were not available, but the study preparers contacted each state's tax department and confirmed that no changes in state tax policies had occurred through July 1994 that would appreciably affect the results.

In 1960 local tax collections accounted for 55 percent of all state and local taxes in North Dakota, but in 1992 state taxes accounted for 66 percent of all state and local taxes in North Dakota. During the period from 1960 to 1984, the local share of the overall tax burden decreased steadily. The state and local tax burdens were about equal in 1970. By 1984 the state share of tax collections was at 73 percent, a maximum for the period from 1960 through 1992. Since 1984 the trend has reversed and the local portion of tax collections is increasing while the state share of tax collections has decreased.

The relative share of collections among tax types also shifted over the period from 1960 to 1992. The most notable change is that the proportion of property taxes in total tax collections fell during the years 1960 through 1984. The steepest decline in property tax collections occurred after 1969 when personal property was exempted and eliminated from the local property tax base. Increases in the sales tax rate and a business privilege tax were used to offset the loss of tax revenue resulting from exemption of personal property. Energy tax collections had a sharp peak in 1982 due to high energy prices. The loss in energy tax revenues after 1982 was replaced by increasing sales tax and individual income tax revenues. Local sales taxes have begun to become a factor in the overall tax structure during the 1980s. In 1992 state sales and use taxes accounted for about 37 percent of all state and local tax collections in North Dakota and property taxes accounted for approximately 34 percent.

State shares of all state and local taxes for the study states range from 56 percent in South Dakota to 68 percent in Minnesota. North Dakota, with 66 percent of state and local tax revenues collected at the state level, is slightly above the six-state average of 63 percent.

Differences in tax balance were identified among

the six study states. North Dakota and South Dakota rely most heavily of these states on sales tax revenues and South Dakota also has relatively heavy reliance on property taxes. Minnesota relies approximately evenly on sales and income taxes. Montana relies most heavily on income taxes and Wyoming and Nebraska rely on property taxes more than the other states in the region.

In North Dakota the share of the overall property tax burden on different classes of property has changed over the past three decades. Shares of the total property tax burden for agricultural and centrally assessed property have remained steady or declined slightly while shares for residential and commercial properties have increased. In 1960 residential and commercial property represented 10 percent and 11 percent, respectively, of all taxable value in the state. By 1992 their shares of statewide taxable value had increased to 28 percent and 20 percent, respectively.

Comparisons were made of county, township, school district, and city property tax revenues. Taxes levied by school districts increased 37 percent between 1960 and 1969, but by 1981 school tax levies fell 39 percent from the 1969 level and were approximately the same in real dollars as they had been in 1960. Township taxes declined by 60 percent between 1960 and 1991. County and city levies increased by 16 percent and 14 percent, respectively. Special assessments levied by local governments have become an increasingly important part of local government revenues, rising to about \$50 million per year.

North Dakota has relied heavily on stable tax sources such as sales and property taxes. This policy maintains tax collections in times of a stable or declining economy but does not capture benefits of a growing economy as would occur with heavier reliance on an income tax, which grows with the economy. For a time, North Dakota placed a heavy reliance on energy taxes, which are subject to the state of the world economy and the vagaries of the international oil market. This reliance diminished the degree of reliability of the tax system to generate a reliable flow of revenue.

The study pointed out that the effect of state and local taxes on federal income tax liability affects the total impact of taxes on taxpayers. For example, a Minnesota taxpayer equal in all ways to a North Dakota taxpayer would pay less in federal income taxes than the North Dakota taxpayer. This is because a greater share of Minnesota's state and local tax burden consist of property taxes and income taxes, which are deductible for federal income tax purposes. In Minnesota a taxpayer is able to deduct approximately 68 percent of state and local taxes while a North Dakota taxpayer is able to deduct only 46 percent. Reliance on taxes that are deductible for federal income tax purposes allows a taxpayer to "export" a part of his state and local tax burden to other federal taxpayers through federal income tax deductions.

The study points out that taxes as a percentage of personal income do not differ substantially among the six study states, especially when factors such as federal tax liability and energy tax shifting are con-

sidered. The difference among the tax systems is mainly in the perception of the burden, based on the type of tax. For example, income taxes are highly visible and most taxpayers realize exactly how much they pay in income taxes each year. Sales taxes may be perceived as less onerous, because few taxpayers know precisely how much sales taxes they pay each year and the taxes are collected from taxpayers in relatively small increments. Even less visible to taxpayers are energy, commercial property, and corporate income taxes, which may be part of the prices of products or passed on to shareholders.

Total state and local tax collections in North Dakota rose from about \$1,100 per capita in 1960 to about \$1,800 per capita in 1992. The 1992 per capita tax burden in North Dakota is approximately four percent lower than the national average. Comparison of North Dakota with neighboring states shows that North Dakota falls in the middle of the range of tax per capita. Minnesota, Wyoming, and Nebraska collect more state and local taxes per capita while Montana and South Dakota collect less. On a regional basis, current state and local tax collections as a percentage of personal income ranged from eight percent in South Dakota to 13 percent in Wyoming. As a percentage of personal income, North Dakota state and local taxes fell from 11.7 percent in 1960 to 11.2 percent in 1991. The only other state in the study that had a similar reduction of taxes as a percentage of personal income during the study period was South Dakota.

The study concluded that North Dakota relies on sales taxes more than the other states considered in the study except South Dakota. North Dakota's sales and use taxes paid by a typical family of four are the highest of any state in the study. However, local sales taxes were not included in these computations and many South Dakota cities impose a two percent local sales tax.

The study concluded that North Dakota's reliance on property tax is the lowest of the six states in the study, even though North Dakota has shown a recent increased reliance on property tax revenues. Some of the burden of North Dakota property taxes has shifted from agricultural and centrally assessed property to residential and commercial property. Notwithstanding the study conclusion, the committee received testimony indicating that recent increased reliance on property tax revenues has been too extensive. Whether this is a result of what was described to the committee as "taxation by referral" is debatable, but several groups and individuals suggested that tax policy should reverse the trend to increased reliance on property tax revenues.

The study concluded that assessment of the size of the tax bite, its burden on taxpayers, and its adherence to principles of public finance depend in large part on perspective. North Dakota's tax burden has shifted from local to state sources while increasing in real terms, and, at the same time, decreasing relative to income. Personal income has grown faster than the cost of government in North Dakota, causing taxes as a percentage of personal income to decline. Compared to neighboring states, North Dakota's tax structure is about average in the amount collected and

distribution of the tax burden.

Exportability of the Big Three Tax Types

Taxes are considered "exportable" when the tax burden ultimately falls on nonresidents. Property taxes and income taxes are considered exportable because some are paid directly by nonresidents and because residents are able to deduct these tax payments from income for federal income tax purposes, thus reducing income tax paid to the federal government and shifting a portion of the federal income tax burden to residents of states that collect a higher proportion of taxes from nondeductible sources. Sales taxes are considered exportable because nonresidents make purchases in the state, either as tourists or for other reasons. However, sales taxes are not deductible for federal income tax purposes. The committee requested the Tax Department to analyze the three major tax types to determine the portion of the tax burden under each tax type that is exported to nonresidents.

The analysis of these questions pointed out that it is often very difficult to determine where the ultimate burden of a tax falls. For example, approximately 32.4 percent of property taxes are paid by businesses and the question is whether the taxes paid by businesses ultimately fall within the state in terms of increased prices or are passed through business structures or sales to ultimately fall outside the state. A similar limitation applies to sales taxes, of which approximately 18.6 percent are paid by businesses. Subject to these limitations, the analysis indicated that approximately 9.5 percent of income taxes is exported to the federal government or nonresidents; approximately 12.5 percent of sales taxes is exported to nonresidents or the federal government; and approximately 6.2 percent of property taxes is exported to the federal government. It is not possible to determine how much of the property tax burden is exported to nonresidents.

Corporate Income Tax Changes Considered

Several times in recent years the issue has been raised of repealing the deduction for federal income taxes paid which is allowed to corporations for North Dakota income tax purposes. Due to the recurring question on this issue, the committee requested the Tax Department to determine what corporate income tax rates would be revenue neutral if the federal income tax deduction is eliminated.

The analysis indicated that if the federal income tax deduction for corporate income tax purposes is eliminated, the highest corporate income tax rate could be reduced from 10.5 percent to 7.5 percent and generate the same revenue. This change would give the appearance of a better tax climate due to a lower top rate of corporate income tax and would also simplify the law, simplify tax return preparation and administration, and eliminate a significant audit issue. Only five states continue to allow the deduction of federal income taxes paid for state corporate income tax purposes. The substantial difficulty with such a change is that although the change would be revenue neutral at the state level, significant differences in income tax liability for individual corpora-

tions would result. There was no support from organizations representing businesses for making this change. It was suggested that a method might be determined to phase in the elimination of the deduction over a period of time to address the problem of tax increases for some corporate taxpayers. The committee did not pursue the issue.

Governor's Tax Study Team

During the interim, a tax study team appointed by the Governor conducted meetings to review the tax structure of North Dakota in a manner similar to the study of the committee. The committee requested and received a report on the activities of the Governor's tax study team.

The committee was informed that the tax study team intends to recommend to the Governor the elimination of the long-form individual income tax return and the elimination of the corporate federal income tax deduction and adjustment of corporate income tax rates and other adjustments to make the income tax deduction elimination approximately revenue neutral for all taxpayers. The tax study team intended to make its report to the Governor in November and, if the Governor agreed with the recommendations, bill drafts would be prepared to implement those recommendations for presentation to the 1995 Legislative Assembly.

Current Revenue Receipts

The committee gathered information throughout the interim on current revenue collections. Through the first 13 months of the 1993-95 biennium (July 1, 1993, through July 31, 1994) all major revenue categories for the state general fund were higher than forecasted amounts with the exception of oil tax revenues and interest earnings. Sales and income tax collections were \$33 million above forecasted amounts, helping total state general fund revenues to be more than \$25 million ahead of the forecasts through July 1994. It is anticipated that revenues at the end of the 1993-95 biennium will be approximately \$20 million more than was anticipated in March 1993; and that there will be growth of \$66 million in additional state general fund revenues for the 1995-97 biennium. This represents growth of 6.5 percent in the next biennium over what was forecasted for the current biennium.

Miscellaneous Information

The committee received information indicating that fire districts are likely to lose up to \$700,000 per year in allocations of insurance premium taxes beginning in 1995. The reason for the revenue loss is that the Federal Crop Insurance Corporation adopted a regulation in 1990 attempting to preempt states from collecting insurance premium taxes on properties of the corporation. North Dakota and other states continued to collect the tax, believing the federal regulation to be an invalid attempt to preempt state laws. The state of Kansas challenged the validity of the regulation in federal court and lost because the federal court determined that federal regulations can preempt state laws, essentially ruling that a federal agency regulation is of the same status as a

statute enacted by Congress.

North Dakota officials believe there is no point in pursuing satisfaction through the courts on this issue. It appears that the result is that insurance premium taxes will not be paid on properties of the Federal Crop Insurance Corporation and that the resulting loss of revenues will reduce the amount available for distribution to fire districts by approximately \$700,000 per year. Of further concern is the possibility that states could be required to repay all premium taxes paid on property of the corporation for the years 1990 through 1993, requiring the state to refund \$2 million to \$3 million.

The American Telephone and Telegraph Company presented concerns at the committee's final meeting. The committee was informed of concerns with the manner in which property of long-distance telecommunications service providers is taxed. The perceived problem is that in North Dakota real and personal property of utilities is subject to assessment and taxation by the State Board of Equalization while only real property of other business entities is subject to taxation. The competitors of American Telephone and Telegraph in the interstate telecommunications market are not treated as utilities in North Dakota and are subject to taxation in the same manner as the general business community, i.e., the competitors pay taxes only on real property. It appears that American Telephone and Telegraph will bring this issue before the 1995 Legislative Assembly.

Recommendations

The committee recommends Senate Concurrent Resolution No. 4015 to direct the Legislative Council to study the property tax assessment system of the state, with emphasis on potential benefits to the system from improved technology and sharing of resources. The committee was informed that the North Dakota Association of Counties was recently approved for a grant to conduct a study of the property tax assessment system of the state. The stated intention of that study is to focus on benefits that could be derived if methods can be devised to allow sharing of data among state and local governments to improve the uniformity, equity, and accuracy of property tax assessments. Another potential benefit of improved technology might be that linking computer systems with property tax data could improve the information available to the Legislative Assembly regarding the fiscal impact of proposed legislation on political subdivisions. The study resolution directs an interim Legislative Council committee to receive the report on the study conducted by the North Dakota Association of Counties and to take appropriate action.

The committee recommends Senate Bill No. 2081 to allow taxing districts of the state to levy the same amount in tax years 1995 and 1996 as the taxing district was eligible to levy in tax year 1994. This bill is essentially the same legislation as has been enacted by the Legislative Assembly in each session since 1981, with the exception that the bill does not include authority for a percentage levy increase. The bill allows political subdivisions to preserve levy authority that has accumulated in recent years through use

of percentage levy increase authority enacted by the Legislative Assembly. Committee members were of the opinion that taxpayers have growing concerns with property tax levels and that, if political subdivisions should be granted authority to increase levies by a percentage, they should justify the level of increase to the 1995 Legislative Assembly.

TAX PREFERENCES STUDY

Background

This study focused on tax preferences under existing law, with emphasis on preferences under sales, income, and property tax laws and with the goal of eliminating unfair competitive advantages when tax-exempt activities are in direct competition with "private business concerns."

There are numerous tax credits, exemptions, rate reductions, deductions, and subsidies provided by state law. The sales tax law lists 43 specific exemptions that exempt sales of hundreds of products, the property tax law lists 39 specific exemptions, and the income tax law contains 21 specific deductions for individuals on the long-form income tax return and six specific deductions for corporations. In addition to these provisions, sales tax, property tax, and income tax laws all contain additional deductions, exemptions, credits, and definitions or other provisions that exclude or reduce tax liability of certain potential taxpayers. Every tax imposed under state law is limited in application by credits, exemptions, rate reductions, subsidies, or definitional exclusions. Some of these preferences are mandated by federal law or the Constitution of North Dakota, but the great majority of tax preferences are policy decisions made by the Legislative Assembly over a long period of time. The committee reviewed tax preferences allowed under the various tax types. Because of the large number of existing tax preferences, the committee focused on a handful of tax preferences that were the subject of much controversy and consideration by legislative entities in the past.

Competitive Considerations

The committee received testimony to the effect that nonprofit organizations serve worthy purposes but can get into situations in which they compete directly with private enterprise. If a nonprofit organization enjoys a tax preference that competing private enterprises do not enjoy, an unfair competitive situation may exist. An example cited to the committee was a business providing pet grooming and boarding and pet cemetery services. The local chapter of the Humane Society began operation of a pet cemetery and charges lower rates than the private business. Although testimony indicated that a private business would be at a disadvantage if a competitor were not subject to workers' compensation premiums, employment taxes, Social Security and Medicare taxes, income taxes, or property taxes, the committee determined that the treatment of employees of nonprofit organizations and for-profit business concerns under workers' compensation, unemployment compensation, Social Security, and Medicare laws is very similar. The major competitive advan-

tage a nonprofit organization has over a for-profit business with respect to employment expense results from the use of volunteer labor that may be available to the nonprofit organization. Any advantage with respect to property taxes depends on the nature and use of the property. For example, all property used exclusively for a cemetery is exempt from property taxes under North Dakota Century Code (NDCC) Section 57-02-08(5), which apparently includes pet cemeteries. Thus, both a private business and a nonprofit organization operating a pet cemetery are entitled to property tax exemptions.

To qualify for the public charity property tax exemption under NDCC Section 57-02-08(8) requires that the property be owned by the charity and the property's use be devoted to carrying out the charitable purposes of the organization claiming the exemption. If a property is used partly for the charitable purposes of the public charity and partly for other uses, the dominant use determines whether the property is exempt. Assessments may be prorated if it can be shown that parts of the property are used exclusively for charitable purposes.

The committee reviewed the administration of charitable property tax exemptions. A property owner claiming an exemption for property within city limits must file a claim for the exemption with the city assessor and county auditor, but property located outside city limits is not subject to a similar requirement. Extending this requirement to all property in the state would tighten the review process for property tax exemptions, but the principal impact of such a change would be for farm building exemptions.

The committee reviewed past considerations of changes to the charitable property exemption, including a provision that tax-exempt property would lose its exempt status when it is used in competition with taxable property. It was pointed out that this type of provision would be extremely difficult to administer because the broad range of competitive activities of exempt individuals and organizations would make it practically impossible to establish a definite line beyond which competition with taxable enterprises would be impermissible. The committee also considered the possibility of allowing any person to challenge a property tax exemption allowed to another person or organization. The practical effect of this type of provision was questioned because under current law an inquiry to local tax officials regarding the exempt status of property is likely to cause a careful review of the exempt status of the property in question.

Committee discussion and testimony from individuals identified many occasions when tax-exempt enterprises will come into competition with activities of nonexempt business enterprises. Discussion of examples of these competitive situations illustrated the difficulty of establishing limitations that would clearly define when exempt organizations should not be allowed to engage in these activities without losing their exempt status.

Sales Tax Exemptions

Because the sales tax is the major state revenue source, the committee gave special attention to the

fiscal impact of sales tax exemptions. Biennial revenue loss from sales tax exemptions is estimated to be \$378.5 million. Biennial revenue loss from reduced sales tax rates for farm machinery and parts and mobile homes is estimated to be \$8.2 million. Biennial revenue loss from sales tax deductions allowed for businesses for collecting taxes and filing returns is estimated to be \$2.9 million.

The major exemptions and the amount of biennial revenue loss from each exemption are grocery foods, \$60 million; gasoline, \$51.5 million; electricity, \$36.5 million; coal, \$26.5 million; agricultural fertilizer, \$10.8 million; fungicides, herbicides, and insecticides, \$9.35 million; livestock and poultry feed, \$9 million; prescription drugs, \$8 million; agricultural seed, \$6.75 million; sales to hospitals and nursing homes, \$5.25 million; interstate telephone calls, \$4.25 million; manufacturing and recycling machinery, \$4.25 million; sales at auction, \$3.5 million; cable television, \$3 million; sales to residents of Montana, \$2.5 million; newspapers, \$2.4 million; magazine subscriptions, \$1.2 million; hearing aids, eyeglasses, artificial limbs, and similar medical devices, \$1.2 million; and various exempt sales of services, \$129 million.

The volume of sales that are exempt from sales and use taxes is estimated to be approximately equal to the volume of sales that are subject to sales and use taxes. The state general sales tax rate could be reduced to approximately 2.75 percent and still generate approximately the same total revenue if all sales and use tax exemptions were eliminated.

Farm Building Property Tax Exemption

A recurring subject of debate during interim studies and Legislative Assembly deliberation of tax policy is the property tax exemption for farm residences and buildings. Several assessment officials testified that administration of this property tax exemption is the biggest administrative headache faced by local tax officials.

Numerous examples were cited in which application of the farm residence and farm building exemption is difficult and often perceived as unfair. Because the exemption is not available unless at least 50 percent of income is earned from farming activities, off-farm income earned to make ends meet during difficult times results in loss of the exemption. It was suggested that wealthy farmers do not face this difficulty and, because struggling or young farmers often are forced to pay taxes because of loss of the exemption, there is a perception that the exemption is punitive to struggling or young farmers.

Assessment officials pointed out that many years ago farm homes were all in a relatively close price range and of relatively low value. In recent times, many very expensive farm homes have been built. The current range of value of farm homes is estimated to be from \$5,000 to well over \$300,000. At issue was whether a property tax exemption for a home of extremely high value reflects the intention of the Legislative Assembly in originally enacting the exemption for farm homes. It was also pointed out that many expensive farm homes are located near city limits, giving the occupants essentially the same

benefits of public services enjoyed by other taxpayers whose homes are not exempt from taxes.

The committee reviewed a proposal to eliminate the farm home exemption and provide a corresponding reduction in valuation of agricultural lands. It was suggested that this would eliminate an assessment difficulty and would better provide tax relief to persons who are actually farming. A survey of assessment officials in 14 counties indicated that adding farm homes to the assessment rolls could be offset by reducing the valuation of agricultural property from 10 percent of assessed value to 9.25 percent of assessed value. Although this reduction would offset the statewide gain to the property tax base from adding farm homes to tax rolls, this change would not be revenue neutral for each individual farm operation, or within a county or township. The proposal would cause some shifting of property tax burdens among farmers, depending on the ratio of home value compared to agricultural land value for each farmer. This information was received by the committee at its final meeting and committee members were of the opinion that this proposal required more detailed analysis.

New Homes Property Tax Exemption

The committee requested that the North Dakota Association of Counties survey its members to determine the level of property tax exemptions granted for new residential property. The two-year exemption that may be granted by the governing body of a city, for property within city limits, or by the governing body of a county, for property outside city limits, has been in existence for several years, but estimates have not been available on the amount or value of property subject to the exemption.

The survey of 53 counties indicated that the true and full value of new residential property exempt for the 1992 tax year was approximately \$79.3 million. Cass County, with approximately \$33 million exempt value, and Burleigh County, with over \$25 million exempt value, have more than one-half of the value of new residential property tax exemptions in the state.

The tax revenue that would have been generated on these exempt new residences at 1992 mill rates was estimated at \$271,000 for counties, \$897,000 for schools, \$330,000 for cities, and \$140,000 for other political subdivisions. It must be noted that the existence of a property tax exemption does not mean the tax revenue is not collected by political subdivisions. The tax revenue of political subdivisions is determined by the amount budgeted by the political subdivision, which is then applied against the tax base of the district and that amount is collected from owners of taxable property, assuming mill levy limitations do not interfere. Although the political subdivision collects the amount it levies, it loses the opportunity to levy taxes on property that is exempt and the amount of taxes not paid on exempt property is shifted and paid by owners of taxable property. Thus, the determination that an exemption should be granted is a determination that other property owners should pay the tax burden for the exempt property.

Representatives of the Superintendent of Public Instruction, the North Dakota School Boards Association, and the North Dakota Education Association suggested that property tax exemptions that may be granted at the discretion of county or city governments should include some provision for involvement of school districts in the decision of whether the exemption should be granted. Because school district levies are a major factor in determining property tax levels, it was suggested that school districts should either be notified of pending exemption decisions or have some level of authority to participate in the decisionmaking process.

Fiscal Analysis of Economic Development Legislation

Committee members expressed concern that fiscal notes prepared on legislation providing economic development tax incentives will generally show the anticipated loss of tax revenue but not estimate potential gains of tax revenue from the intended economic development. The Tax Commissioner pointed out the difficulties of predicting whether positive economic impact will occur as a result of legislation and the fact that many factors other than legislation may combine to contribute to the future state economy. As a result of these difficulties, forecasting the impact of proposed tax incentive legislation on the economy is speculation at best. If the expertise of the universities in North Dakota and other consultants is used to assist in this kind of complex analysis, additional funding would be required and more time than is available for fiscal note preparation during the legislative session would need to be provided.

The committee requested information on the feasibility of establishing a component within state government to address questions of economic development potential of proposed legislation. Contacts were made with staff at North Dakota State University, the University of North Dakota, and the Tax Department with regard to this issue. Those contacted were in agreement that computer models exist to make the kinds of analysis requested. The limitation pointed out by those contacted is that the assumptions made as the basis for running the computer model are speculation on someone's part and that there is no scientific way to establish these basic assumptions. The committee was advised that to determine the cost to establish a component to estimate economic development potential of proposed legislation, it would be necessary to obtain expert advice from a consultant.

Corporate Income Tax Credit for Recycling Businesses

The interim Natural Resources Committee referred for consideration by the interim Taxation Committee a bill draft that would have provided a corporate income tax credit equal to eight percent of expenditures for recycling machinery and equipment purchased by a corporation primarily engaged in the business of recycling. The bill draft limited the credit to no more than 50 percent of the corporation's income tax liability for the year. A fiscal note on the

bill draft stated that it is not possible to estimate the fiscal impact because no information is available on how many recycling plants may be established in the future and it is not possible to estimate the potential expansion of existing facilities that might occur.

The bill draft was developed to encourage recycling and reduce the amount of waste deposited in landfills. However, no business interests expressed opinions on whether the bill draft proposal would serve as an incentive. The 1993 Legislative Assembly enacted a two-year sales tax exemption for recycling machinery, scheduled to expire in 1995. Committee members noted that this sales tax exemption is probably a far more significant incentive to recycling businesses.

Conclusions

The committee makes no recommendation regarding loss of tax exemptions when exempt entities are in competition with private business concerns. The committee determined that any limitation would be extremely difficult to administer because of the unlimited variety of situations that exist in the operation of exempt and taxable activities.

The committee makes no recommendation regarding changes to the farm building exemption from property taxes. It appears further analysis is necessary regarding the proposal to add farm homes to the tax rolls and make an offsetting adjustment in agricultural land values. The committee makes no recommendation with regard to school district involvement in decisions of whether property tax exemptions should be granted by counties or cities. The committee makes no recommendation regarding the corporate income tax credit for recycling businesses.

Continued study of all tax preference laws would be included as part of the study recommended by the committee under Senate Concurrent Resolution No. 4016 as the result of its study of the effects of House Bill No. 1520, described later in this report.

SALES TAX STUDY

Background

The first general sales tax in North Dakota became effective in 1935. From that time until 1963, the sales tax was imposed at a rate of two percent. In 1963 the sales tax rate was increased to 2.25 percent and the base was broadened by applying the tax to hotel accommodations, repair and cleaning services, admission fees, and rentals of property. In 1967 the sales tax rate was increased to three percent and the motor vehicle excise tax was created as a companion tax. Motor vehicle purchases had previously been taxable under sales and use tax laws and the new provisions were essentially the same except that one-half of the excise tax revenue from out-of-state purchases was allocated to the motor vehicle registration fund.

In 1969 the personal property tax was repealed and the general sales and use tax rate was increased to four percent. Sales of milk and milk products and meat, including fish and poultry, were exempted and the sales tax was imposed on sales of alcoholic beverages.

ages, tobacco products, and oleomargarine.

In 1971 the sales tax exemption for purchases by Montana residents was expanded to exempt purchases of \$500 or more by residents of Canada. In 1973 the sales tax exemption for dairy products and meat and similar products was expanded to exempt all food and food products for consumption off the premises where purchased. In 1973 the minimum purchase by a Canadian resident to qualify for the sales tax exemption was reduced to \$25. In 1975 sales tax exemptions were created for sales of certain devices for handicapped persons, sales of coal, sales to nursing homes and intermediate care facilities, and sales of certain religious books to nonprofit religious organizations.

In the general election of 1976 the voters approved an initiated measure that reduced the general sales tax rate from four percent to three percent, eliminated the tax on electricity, and reduced the rate from four percent to two percent on sales of farm machinery and irrigation equipment.

From 1977 through 1981 there were no changes in sales tax rates, but exemptions were added for sales to hospitals and homes for the aged and sales of ostomy devices and supplies, certain devices to aid handicapped persons, magazine subscriptions, water, used mobile homes, and coins and currency. New mobile homes were added to the purchases subject to the reduced tax rate of two percent.

In 1983 the general sales tax rate was increased from three percent to four percent and from two percent to three percent for sales of farm machinery, irrigation equipment, and mobile homes; the rate of sales tax for alcoholic beverage sales was increased to five percent; the aircraft excise tax was created as a companion tax to the sales and use tax (the sale of aircraft was previously taxable under the sales and use tax laws); and retailers with gross sales tax collections above certain amounts were required to file returns on a monthly basis rather than a quarterly basis.

In 1985 the sales tax exemption for sales of candy, chewing gum, carbonated beverages, soft drinks, and powdered drink mixes was removed. Legislation that would have reduced the sales tax rate to two percent for sales of gas for heating was vetoed by the Governor.

In both 1983 and 1985, special legislation was passed which would have triggered a one percentage point increase in the sales tax rate if general fund receipts fell below established amounts by specified dates. Neither the 1983 nor 1985 contingent sales and use tax increase was triggered.

In a special legislative session in December 1986, the Legislative Assembly approved legislation increasing the general rate of sales tax from four percent to five percent. The sales tax rate on sales of farm machinery, irrigation equipment, and mobile homes was left at three percent and farm machinery repair parts were added to the list of sales taxable at the three percent rate. The rate of tax on sales of alcoholic beverages was increased to six percent by this legislation.

In 1987 legislation was passed imposing sales taxes on cable television services and increasing the

rate of sales taxes by one-half of one percentage point for a period of two years. The portion of this legislation imposing sales taxes on cable television services was referred and defeated at the 1988 primary election.

The state aid distribution fund was created in 1987. This fund was to receive the net revenue from six-tenths of one percentage point of the rate of sales, use, and motor vehicle excise taxes. The revenue was to be allocated in equal amounts for personal property tax replacement and revenue sharing allocations to political subdivisions. In 1987 purchases made with food stamps were exempted from sales taxes to comply with requirements of federal law; regular retail sales in direct competition with retailers were excluded from the exemption for educational, religious, or charitable activities; the exemption for purchases by hospitals and nursing homes was limited to sales of goods to be used for the benefit of a patient or occupant of the facility; and legislation provided that sales taxes apply only to 80 percent of the gross receipts from coin-operated amusement devices. The 1987 Legislative Assembly approved legislation expanding the definition of "retailer" to include out-of-state retailers doing mail order business in the state. This legislation and subsequent attempts by the State Tax Commissioner to collect taxes from out-of-state mail order retailers proved unsuccessful as ultimately determined by the United States Supreme Court in **Quill Corp. v. North Dakota**. In this decision, the United States Supreme Court determined that without congressional action states lack authority to tax out-of-state mail order businesses without some other contact or "nexus" with the taxing state.

In 1989 the Legislative Assembly enacted legislation providing a one percentage point sales tax rate increase and repealing the one-half of one percentage point increase approved in 1987 and scheduled to expire June 30, 1989. The portions of this legislation increasing sales tax rates, except for the rate increase applicable for sales of alcoholic beverages, were referred and defeated at a special election on December 5, 1989. Because the rate increase was passed as an emergency measure, it was not suspended by filing of referral petitions and the increased rate remained in effect until disapproval by the voters at the special election. Thus, during 1989 the general sales tax rate was 5.5 percent from January 1 through April 30, six percent from May 1 through December 5, and five percent after December 5. The sales tax rate for sales of alcoholic beverages is seven percent, as established by the portion of the 1989 legislation which was not referred.

Other 1989 legislation provided that sales taxes applied to purchases of bingo cards; provided for a reduced tax rate of three percent for purchase of equipment used in a new manufacturing facility; changed the exemption for Canadian residents to a refund provision and increased the minimum purchase for a Montana resident to qualify for exemption from \$25 to \$50; eliminated the exemption for sales of coffee, tea, cocoa, and bottled water in containers of less than one gallon; and provided that net revenues from one-tenth of one percentage point of sales taxes

are to be transferred to the capital construction fund beginning in 1991.

In the 1990 primary election the voters defeated an initiated measure that would have added a one percentage point sales tax rate increase and dedicated the additional revenue to a special fund for elementary, secondary, adult, and vocational education.

In 1991 an exemption for property used in construction of a new power plant and an exemption for rental of housing, including hotel accommodations, for 30 days or more were created; the Governor's veto of legislation to reduce the sales tax rate for sales of natural gas to four percent in 1993, three percent in 1994, and two percent after 1994 was overridden; a complete sales tax exemption for new manufacturing machinery and equipment, which was subject to a three percent sales tax rate after the 1989 legislation on this topic, was provided; and all aircraft excise tax revenue was to be deposited in the Aeronautics Commission special fund rather than the state general fund.

In the November 1992 general election, the voters defeated an initiated measure that would have provided an increase of one-half of one percentage point in sales tax rates and dedicated the revenues to water development projects.

In 1993 the exemption for manufacturing machinery and equipment was expanded by providing that certain equipment necessary for, but not directly used in, the manufacturing process is exempt from sales taxes; sales of certain recycling machinery were exempted; admissions to activities held in publicly owned facilities and sponsored by nonprofit music or dramatic arts organizations exempt from federal income taxes were exempted; and the exemption for an out-of-state political subdivision was limited to a political subdivision exempt from sales taxes in its home state.

In 1994 the Legislative Assembly passed legislation expanding the exemptions for manufacturing machinery and creating an exemption for materials used to construct an agricultural processing facility. This legislation is described in the portion of this report relating to the committee study assigned to monitor the impact of this legislation.

Comparisons With Other States

Forty-four other states and the District of Columbia levy sales taxes. Thirteen states (including North Dakota) have a five percent sales tax rate; 17 states have a higher rate; and 15 states have a lower rate. Of equal importance to comparison of sales tax rates is consideration of the sales tax base. The sales tax base means those sales of goods and services which are subject to sales taxes. Sales tax bases of the states vary considerably, and it appears each state is unique in what it chooses to tax and what rate of tax it chooses to impose on specific sales.

Recent interest among states has focused on the taxation of services. Most comparisons identify 164 services as a basis for comparison. North Dakota taxes 21 of the 164 services and South Dakota taxes 130. In South Dakota grocery foods, electricity, natural gas, and water are subject to sales tax while in

North Dakota these sales are exempt except sales of natural gas, which will be taxed at a rate of two percent after 1994. Because South Dakota's sales tax applies to these kinds of sales and to a much broader range of services than North Dakota's sales tax, South Dakota's sales tax base is said to be much broader. South Dakota also allows imposition of a two percent local sales tax, which is imposed in most South Dakota cities. Comparison of the sales tax burden for a family of four shows a North Dakota state sales tax burden of \$414 compared to a South Dakota state sales tax burden of \$401. When local sales taxes are included, however, the sales tax burden for a family of four in North Dakota is \$497 compared to a South Dakota sales tax burden of \$601. These examples illustrate the difficulty of comparing sales tax burdens among the states and the need for caution in considering the rate, base, and whether local sales taxes are included in the comparisons. The committee reviewed sales tax base information for all states and more detailed information for surrounding states and provinces.

It was noted that if the sales tax base is broadened in North Dakota, there would be a resulting windfall to cities imposing sales taxes. The reason is that if sales that are presently exempted are subjected to tax, the city sales tax would apply to those sales and generate additional revenue to the city which was not anticipated at the time the city tax was enacted. Committee members noted that this would be a concern if the Legislative Assembly considers broadening the sales tax base and that the level of concern would increase as local sales tax rates increase.

Motor Vehicle Excise Tax Enforcement

The seller of a motor vehicle must provide a valid title to the buyer within 15 days after sale. The buyer is required to register the vehicle within 30 days after receiving the title and to pay the excise tax of five percent of the purchase price at the time of registration. The seller has no responsibility for collecting this tax. Many motor vehicle dealers perform the registration and tax payment function as a part of their service to purchasers.

One concern expressed to the committee is the sale of motor vehicles under open title. A sale under open title is made when the purchaser's name is not put on the motor vehicle title and the purchaser can resell the vehicle at a later time without an additional title transfer. Under these arrangements, a vehicle could be resold several times without payment of motor vehicle excise taxes. These sales are usually among private parties and not by motor vehicle dealers.

Another concern is with understatement of purchase prices, especially in sales of motor vehicles between private parties. As many as one-half of private sales are estimated as resulting in understated values to avoid taxes. It was estimated that a million dollars in revenue is lost each biennium because of understated motor vehicle values. When the Motor Vehicle Division staff suspects that the value of a motor vehicle has been understated, the registration is forwarded to the Tax Department for investigation.

At the request of the committee, the staff of the

Motor Vehicle Division reviewed laws of other states with regard to enforcement of motor vehicle excise tax laws. Other states face the same difficulty that exists in North Dakota. At the committee's request, the Tax Commissioner and the director of the Department of Transportation met. They subsequently informed the committee that they intended to present legislation to the 1995 Legislative Assembly to improve motor vehicle excise tax enforcement.

Motor Vehicle Excise Tax Imposition for Rental Cars

It was brought to the committee's attention that Minnesota imposes a surcharge equal to six percent of the rental fees for a motor vehicle and that imposition of an equal charge in North Dakota would generate approximately \$1.8 million to \$2 million per biennium. This information was suggested for consideration because the tax would be highly "exportable" since car rentals are often made by nonresidents.

In discussion of this issue, it was pointed out that North Dakota does not impose sales taxes or motor vehicle excise taxes on the rental of a motor vehicle. The state imposes motor vehicle excise taxes at the time a vehicle is purchased for a rental fleet. Some members of the rental industry had proposed 1991 legislation that would have eliminated the motor vehicle excise tax at the time of purchase of a vehicle for a rental fleet and substituted imposition of sales tax on each motor vehicle rental. This legislation was opposed by the Motor Vehicle Dealers Association. The Motor Vehicle Dealers Association has not changed its position and representatives of the automobile rental industry are not interested in pursuing any legislative change at this time.

City and County Sales Tax Rate Limitations

The committee reviewed the legal authority and background for imposition of county and city home rule sales taxes and for city restaurant and lodging taxes. Committee members expressed concern that because the state and cities share sales tax revenues as a revenue source, the growth of city sales taxes could impinge upon legislative prerogatives regarding the sales tax, which has traditionally been the greatest source of revenue to the state. The growth of sales taxes among cities has been rapid in recent years. Home rule sales taxes were imposed by six cities in 1990, 12 cities in 1991, 14 cities in 1992, 19 cities in 1993, and 27 cities in 1994. Two cities will begin imposition of sales taxes in January 1995 and several cities have ballot measures in November 1994 to authorize imposition of city sales taxes. The committee reviewed the most current information available on city sales tax revenues and the purposes for which each city uses sales tax revenues.

All cities imposing home rule sales taxes impose the tax at a rate of one percent. Committee members expressed concern that if city sales tax rates exceed one percent, the Legislative Assembly would face difficult questions if the need arises to consider a state sales tax rate increase in the future. The committee was informed that 20 states limit the rate of sales tax that may be imposed by local governments, 12 states allow imposition of local sales taxes but do

not limit the rates, and 17 states do not allow local governments to impose sales taxes.

Committee members expressed concern with use of city sales tax revenues to provide property tax relief for city residents. Rural residents believe that city sales taxes used for property tax relief shift a share of the city property tax burden to rural residents. Rural residents apparently are more supportive of using city sales tax revenue for economic development projects and infrastructure enhancement. Another problem pointed out by committee members is that use of city sales tax revenues for property tax relief distorts school funding equalization decisions made at the state level because this property tax relief is only available in some communities.

The North Dakota League of Cities opposed limiting the rate of sales tax cities may levy under home rule authority.

Conclusion

Although the committee considered a bill draft that would have limited the sales tax rate for city and county home rule sales taxes to not more than one percent, the committee makes no recommendation regarding a limitation on city and county home rule sales tax rates.

INCOME TAX STUDY

Background

The committee studied individual income taxes, with emphasis on determining a unified method of determining individual income taxes which is simple to administer and understand, contains a minimal number of exemptions and credits, and is approximately revenue neutral.

An individual, estate, or trust has the option of choosing the more advantageous of two filing methods for state income tax purposes in this state. The standard filing method, commonly called the long-form return, has been used since the state income tax was enacted in 1919. The optional method of filing, commonly called the short-form return, was created in 1981. The long-form return uses federal taxable income as a starting point and has a substantial number of available deductions and credits. The short-form return uses federal income tax liability, before federal credits, as a starting point and allows use of extremely limited deductions and no credits.

The initial income tax established in 1919 imposed rates from one-fourth of one percent on the first \$1,000 to 10 percent for taxable income over \$40,000. In 1923 the rates were adjusted to range from one percent on the first \$2,000 to a high of six percent on taxable income over \$10,000. In 1933 the rates were changed so that the top rate was 15 percent on taxable income over \$15,000. In 1953 income tax rates were decreased, with a low rate of one percent of the first \$3,000 and a top rate of 11 percent of taxable income over \$15,000. In 1973 income tax rates were changed to include a low rate of one percent on taxable income up to \$1,000 and a top rate of 10 percent on taxable income over \$8,000.

In 1978 the voters approved initiated measure No.

2 on the general election ballot, which reduced individual income tax rates and increased corporate income tax rates. The initiated measure adjusted the individual income tax brackets and provided for a low tax rate of one percent on the first \$3,000 of taxable income and a top rate of 7.5 percent on taxable income in excess of \$30,000.

In 1980 the voters approved initiated measure No. 6 on the general election ballot, which enacted the energy cost relief credit to allow individual income taxpayers a credit of up to \$100 against state income tax liability.

In 1981 a simplified optional method of computing individual income taxes was created to allow most individual income taxpayers a substantial income tax liability reduction. The simplified optional method of computing individual income tax liability, or short-form return, established individual liability equal to 7.5 percent of the individual's adjusted federal income tax liability. For the great majority of individuals this was a considerably lower tax than the tax determined by using the state long-form return, even though the long-form return allows a substantial number of deductions and credits.

In 1983 several temporary measures were enacted which suspended the \$100 energy cost relief credit, increased the rate on the short-form return from 7.5 percent to 10.5 percent of adjusted federal income tax liability, and adjusted the rates on the long-form return to provide a low rate of two percent on taxable income up to \$3,000 and a high rate of nine percent on taxable income in excess of \$50,000.

In 1985 the temporary changes made to the income tax laws in 1983 were made permanent. The Legislative Assembly also created a tax credit for investments in North Dakota venture capital corporations and provided a deduction for each adopted child under the age of 21. The credit and deduction were made available only on the long-form return.

During the 1986 special legislative session, legislation was passed to provide mandatory state income tax withholding for all employees subject to federal income tax withholding. Previously, mandatory withholding applied only to nonresident employee wages. The legislation also increased the short-form tax rate from 10.5 percent to 14 percent of federal tax liability and increased long-form rates by a corresponding amount to provide a top rate of 12 percent on income exceeding \$50,000. These changes were referred and on March 18, 1987, voters approved the changes.

In 1987 a 10 percent surtax on state income tax liability was enacted only for taxable year 1987. Tax credits were provided for long-form returns for investments in the Myron G. Nelson Fund, Inc., and for wages paid to a developmentally disabled or chronically mentally ill employee.

In 1989 long-form deductions were created for all federal retirement benefits not previously eligible for deduction and for investments in a venture capital corporation or the Myron G. Nelson Fund, Inc.; a long-form income tax credit was created for investments in a nonprofit development corporation; permanent federalization of state income tax laws was enacted (previously, the definitions for income tax purposes had to be amended to incorporate federal

changes each legislative session); taxpayers were required to use the same filing status and deductions used for federal purposes; and the short-form income tax rate was increased from 14 percent to 17 percent and the long-form rates were increased by corresponding percentages. The legislation providing these rate increases was referred and defeated by the voters in the December 1989 special election.

In 1991 long-form deductions were created for National Guard and reserve members activated for Operation Desert Shield or Operation Desert Storm and for distributions from mutual funds holding only federal obligations, and agricultural labor employees were excluded from withholding requirements.

The 1993 Legislative Assembly provided a long-form credit equal to 25 percent of premiums paid by the taxpayer for long-term care insurance coverage for the taxpayer or the taxpayer's spouse, parent, or stepparent. Other 1993 legislation provided a program of government-assisted job training in new or expanding primary sector businesses paid for by funds from the "new jobs credit from withholding," which is the amount of North Dakota income tax withholding on wages paid by the employer to each new employee participating in a qualifying project. This legislation is scheduled to expire after the 1995 tax year.

The 1993 Legislative Assembly created a long-form seed capital investment income tax credit. The credit is equal to 30 percent of the amount invested by the taxpayer in qualified North Dakota businesses. The credit is subject to various limitations and may not exceed 50 percent of the taxpayer's tax liability as otherwise determined. The 1993 Legislative Assembly also provided a long-form credit for the cost of equipment used to convert a North Dakota licensed vehicle to operate on natural gas or other alternative fuel. The credit is limited to 10 percent of the cost of conversion of the vehicle.

The 1993 Legislative Assembly changed the provisions governing deductions of dividend income from regulated investment companies operating mutual funds. Previous law limited deductions to income from mutual funds fully invested in federal obligations. The 1993 legislation redefines a qualified investment fund as one that has any investments and obligations issued by this state, a political subdivision of this state, or the federal government. The bill provides that any portion of income attributable to these investments is deductible or may be factored out of federal tax liability for short-form tax return purposes. The 1993 Legislative Assembly also imposed penalties for employers who have failed to file required withholding returns on numerous occasions.

Committee Considerations

North Dakota has the second lowest individual income tax burden of the 41 states that impose individual income taxes. Across income levels, North Dakota has the lowest individual income tax burden at middle income ranges of states that impose individual income taxes and the tax burden is slightly higher at low or high income levels.

At the end of the 1993 Legislative Assembly, revenue from the North Dakota individual income tax

was estimated to total \$124.5 million for fiscal year 1994 and \$130.9 million for fiscal year 1995. The most recent forecast projects that actual collections will be approximately 7.6 percent higher than those estimates.

Individuals, estates, and trusts filed 288,492 returns for tax year 1992 (returns filed in 1993). Of these returns, only 17,793 were filed on the long-form return. The short-form return accounted for 94 percent of returns filed and 97 percent of total individual income taxes paid. At the request of the committee, the Tax Department conducted a random sample of 46 long-form returns and found that nine of them would have paid less tax by filing the short-form return. For these nine taxpayers, the average overpayment attributable to using the wrong form was \$418. These taxpayers were notified of their right to file an amended short-form return. This random sample indicated an error rate of approximately 20 percent, on which taxpayers should have paid an average of \$399 rather than the average of \$817 they actually paid. Erroneous filing of long-form returns was approximately evenly distributed between returns prepared by paid tax preparers and returns prepared by taxpayers.

The committee reviewed the short-form filing method and long-form filing method on a line-by-line basis. The committee reviewed each credit and deduction allowed on the long-form return. The committee reviewed statistical information on the number of individual short-form and long-form income tax returns filed by taxpayers in various income increments. The committee reviewed statistical information on each deduction or credit allowed on the long-form return including the number of taxpayers claiming the deduction or credit and the total dollar amount deducted or claimed as a credit.

No taxpayer claimed the deduction for investments in venture capital corporations or the Myron G. Nelson Fund, Inc., and no taxpayer claimed the credits for investments in the Myron G. Nelson Fund, Inc., or for investments in certified nonprofit development corporations. Fewer than 20 taxpayers claimed the deduction for sale of land to a beginning farmer or sale of a business to a beginning businessman. Fewer than 20 taxpayers claimed the credits for investment in a venture capital corporation, installation of energy conservation devices, or wages paid to a developmentally disabled or chronically mentally ill employee. Fewer than 100 taxpayers claimed the deductions for rental of land to a beginning farmer or for dividends from a North Dakota corporation and fewer than 100 taxpayers claimed credits for contributions to a nonprofit private college or a nonprofit private high school.

The greatest total dollar amounts deducted for individual long-form deductions are attributable to deductions for federal income tax, interest on federal obligations, federal civil service and government retirement pay, medical expenses not allowed on the federal return, interest income from financial institutions in North Dakota, and miscellaneous military pay exclusions. The credit allowed on the long-form return for venture capital investments accounted for total credits to taxpayers of \$26,415. The cumulative

amount allowed as credits for contributions to a nonprofit private college or a nonprofit private high school, credits for installation of energy devices, and wages paid to a developmentally disabled or chronically mentally ill employee amount to less than \$10,000.

The committee requested assistance from the Tax Department to determine whether there is any identifiable constituency, age group, or other group that consistently benefits from the existence of the long-form return. The Tax Department prepared and reviewed several sample returns for the committee. From consideration of these examples, it appears there is no identifiable group of taxpayers on the basis of age, income, occupation, or other common factor who benefit from use of the long-form return. It appears that the long-form return is a benefit to a taxpayer only when circumstances combine fortuitously and there is no common factor that makes liability lower on the long-form return. Short-form return liability is so much less for the average taxpayer that a single deduction or credit does not make the long-form return useful. Even when the long-form return is more advantageous, it is often so only by a small margin. It was pointed out that there is a "cost" involved in using deductions or credits on a long-form return. For example, if a taxpayer has a \$250 credit on the long-form return but his resulting income tax liability is only \$50 less than his short-form return liability would have been, that taxpayer has not really received a \$250 income tax credit.

Committee members expressed the opinion that deductions and credits that have been enacted by the Legislative Assembly in recent years create an illusion that taxpayers will benefit when, in reality, the great majority of taxpayers could receive no benefit from a deduction or credit because short-form income tax liability is so much lower than long-form liability even with credits and deductions.

The North Dakota Society of Certified Public Accountants recommended the elimination of the long-form individual income tax return. A society representative pointed out the additional cost to taxpayers of having tax preparers prepare both long-form and short-form returns, which is necessary to determine which has the lower tax liability. Because approximately 94 percent of taxpayers use the short-form return and an even higher percentage should use that return, there is a substantial waste of taxpayer money from the expense of preparing both returns.

Testimony indicated that of the six percent of taxpayers who use the long-form return, perhaps one-fourth of them should be using the short-form return. Approximately 57 percent of long-form return filers are nonresidents and it was suggested that they may file the long-form return under the mistaken assumption that it results in lower tax liability because it is more difficult to prepare or because they are unfamiliar with the short-form return. Testimony indicated that most taxpayers do not seem to understand that the 14 percent of federal tax liability rate on the short-form return is in fact a very low income tax rate.

The North Dakota Society of Certified Public Ac-

accountants considered proposing changes to the short-form return filing method, including the possibility of changing the basis of the tax by imposing a graduated rate scale and using a starting point of federal taxable income. It was determined that this option would result in approximately equal tax liability if the income brackets are the same brackets used under federal law and the federal rates are multiplied by 14 percent to determine the state rate. However, it was pointed out that this change would be accompanied by difficulties in handling of federal alternative minimum income, capital gains, and certain pension income for which averaging is allowed. Because of these difficulties and the extreme ease in preparing the existing short-form return, no recommendations were made to change the short-form return.

Recommendation

The committee recommends House Bill No. 1062 to eliminate the long-form individual income tax return. This would make the optional short-form income tax return filing method the only method for filing individual income tax returns. The bill eliminates all deductions and credits currently available for individuals on the long-form return by repealing the deductions and amending tax credits that are also available to corporate income taxpayers so that these credits remain available to corporations but not to individuals. The estimated fiscal impact of the bill to eliminate the long-form return option is a net gain of approximately \$1 million per biennium for the state general fund.

The committee recommended House Bill No. 1062 on a very close vote. Some committee members expressed the opinion that deductions and credits available on the long-form return should be retained and rate adjustments made so that the deductions and credits are usable by taxpayers.

1994 HOUSE BILL NO. 1520

Background

During the interim, an announcement was made that the Northern Corn Processors Cooperative intended to construct a \$250 million corn processing facility in the Red River Valley to be located in Minnesota, South Dakota, or North Dakota. The Governor called the Legislative Assembly into special session in June 1994 to consider legislation intended to create tax incentives for location of the facility within this state.

During the 1994 special legislative session, House Bill No. 1520 was enacted. The bill relates to property tax exemptions and payments in lieu of taxes and sales tax exemptions for which the Northern Corn Processors facility and other facilities could qualify.

House Bill No. 1520 repealed the provisions in NDCC Chapter 40-57.1 which prohibited the property tax and income tax exemptions available for new industries from applying to a project if the cost of the project exceeded \$150 million, if gross annual sales of the project were projected to exceed \$150 million, or if projected employment exceeded 1,000 employees during construction or operation.

Before passage of House Bill No. 1520, a city or county could grant a five-year property tax exemption for a new industry. If the new industry manufactured a product from agricultural commodities, this exemption could be extended as a phased-out exemption through the 10th year of operation. House Bill No. 1520 replaced the phased-out exemption with the option of allowing a full or partial exemption in years six through 10 of operation of an agricultural commodity processing facility.

House Bill No. 1520 created a "payments in lieu of taxes" option that could be used in combination with, or in place of, property tax exemptions for a project that begins construction after June 30, 1994. The payments in lieu of taxes option allows the governing body of the city or county to negotiate with the project operator to establish any level of payments in lieu of taxes for up to 20 years of operation of the project. Payments in lieu of taxes could apply to any kind of facility and are not limited to agricultural processing facilities. Payments in lieu of taxes are to be allocated among taxing districts, administered, enforced, and subject to penalties as though they were property taxes except:

1. No discount for early payment of payments in lieu of taxes is available, as is available for property taxes.
2. The valuation of property subject to payments in lieu of taxes is not to be considered in valuation of the taxing district for purposes of determining the mill rate for the district.
3. Payments in lieu of taxes must be subtracted from the taxing district's budget before the remaining amount is certified as a tax levy to be spread against valuation of property in the taxing district.

If the governing body of the city or county determines that there is no competing business for the project within the city or county, House Bill No. 1520 eliminates the requirement of publishing notice to competitors before granting an exemption or option to make payments in lieu of taxes.

Before passage of House Bill No. 1520, reapplication was required for a new industry exemption to the extent of the added value of the project whenever the valuation of the project exceeded the original valuation by 10 percent or more. House Bill No. 1520 replaced valuation of the project with the capital investment in the project as a measure of value, because prior law did not provide how valuation would be determined. Under prior law, a passive valuation increase could trigger a requirement for reapplication, while under House Bill No. 1520 only a capital investment increase due to expansion could trigger a reapplication requirement. In addition, House Bill No. 1520 raised the level of increased value from 10 percent to 20 percent to trigger the reapplication requirement and required a reapplication each time capital investment increases by 20 percent over the amount that was most recently approved for exemption.

House Bill No. 1520 made no change in existing law regarding income tax exemptions for new industries under NDCC Chapter 40-57.1. That chapter allows a project operator to obtain an income tax

exemption for the net income of the project for up to five years from the commencement of project operations, if the exemption is approved by the State Board of Equalization.

Before passage of House Bill No. 1520, a sales and use tax exemption was provided for manufacturing machinery and equipment used in a new plant or in physical or economic expansion of an existing plant. House Bill No. 1520 expanded application of the exemption in these ways:

1. Machinery and equipment is exempt if it is used at any point from receipt of raw materials at the plant site through any process prior to transporting the product from the site, rather than from the time when raw material is first acted upon in the manufacturing process through the completion and packaging of the product.
2. Computer equipment is exempt if it controls or monitors the functions of machinery used in manufacturing operations.
3. Machinery or equipment is exempt if used "primarily" in the manufacturing process and "primarily" is defined as a majority of the time the machinery or equipment is used, rather than the previous requirement of use solely in the manufacturing process.
4. Machinery and equipment used to conduct research, development, and design activities related to the manufacturing process of the plant is exempt.

House Bill No. 1520 created a sales and use tax exemption for construction materials incorporated in the structure of an agricultural commodity processing facility or used in the construction process to the point of having no residual value. The exemption does not apply to a facility that provides only storage, cleaning, drying, or transportation of agricultural commodities. The exemption applies only to parts of the facility used in a process primarily for processing of agricultural commodities. The exemption does not apply to sales or use of tools or machinery used to construct an agricultural commodity processing facility or machinery or equipment exempted under the manufacturing machinery exemption.

Committee Considerations

Little has occurred since the 1994 special session with regard to the Northern Corn Processors facility. Northern Corn Processors Cooperative changed its name to Golden Growers Cooperative and announced that the site selection decision for the project has been delayed until March 1995. Available information indicates that the plan now is to make a site selection decision in March 1995 and break ground in April 1995. Committee members expressed concern that the short timetable between site selection and groundbreaking is not a realistic expectation of the time necessary from site selection until the beginning of construction.

It appears that several engineering and design questions remain to be resolved regarding the Northern Corn Processors facility. One of the major considerations is disposal of wastewater generated at the facility. It was reported to the committee that the project operators are now considering production of

ethanol at the facility in addition to the originally planned production of high fructose corn syrup. If the facility produces ethanol, it may be necessary for the Legislative Assembly to reconsider the amount of ethanol subsidies that have been approved by recent Legislative Assemblies. With regard to the property tax status of the proposed facility, it was reported that it appears the project operators prefer a 10-year property tax exemption rather than a 20-year period of payments in lieu of taxes.

In response to a request from the committee, the Tax Department reported that \$93,000 in sales and use tax revenue losses occurred from July 1, 1994, through August 19, 1994, due to the existence of new sales tax exemptions from passage of House Bill No. 1520. Separate sales tax information on purchases exempt under the 1994 law will be maintained to provide the Legislative Assembly with information on the effect of House Bill No. 1520.

A complete listing of property tax exemptions granted for new industries is not available. At the request of the committee, the North Dakota Association of Counties conducted a survey to determine the extent of use of property tax exemptions for new and expanding businesses. The North Dakota Association of Counties conducted a sample of two larger population counties, two medium population counties, and four smaller population counties to determine the extent of use of these exemptions. The survey obtained information on property tax exemptions for tax year 1993. From this survey it appears that larger counties grant more exemptions and that counties in eastern North Dakota have granted more exemptions than central and western counties. From the survey, all exemptions granted were for the maximum of five years allowed under the law at that time with the exception of projects in Cass County, for which exemptions were granted for various time periods of up to five years.

If property exempted from taxes were added to the tax rolls, it would reduce taxes on all other taxable property. For this reason, the North Dakota Association of Counties calculated the tax reduction that would have been available to taxpayers in affected counties if property subject to the new industry exemption were not exempt. In Sargent County, adding these exempt properties to the tax rolls would roughly equal a reduction of 75 cents on an average quarter section of land and \$9 on a \$70,000 home. In Cass County, including the exempt new industry property on the tax rolls could have reduced taxes by \$8 for a quarter section of agricultural land and \$10 on a \$70,000 home.

A representative of the Association of Counties suggested that consideration be given to a notification process so that school districts and other affected political subdivisions would receive notice of hearings on proposed property tax exemptions for new industry projects.

The committee received testimony that the possibility of obtaining an abatement of property taxes on a new home is important under the property tax exemption that may be granted for new residential property because homeowners may not have been aware that they could qualify for the exemption at

the time they paid taxes on a residence. It was suggested that the possibility of abatement should be considered under the property tax exemption for new industries, because the exemption for new industries must be applied for before the beginning of construction on a project, or occupancy of a building if the exemption is granted for use of an existing building.

The committee received information on property and income tax exemptions granted for new industries by the State Board of Equalization in recent years. The Legislative Assembly eliminated the approval of property tax exemptions for new industries by the State Board of Equalization after 1989. The board retains authority over approval of income tax exemptions. The information presented illustrates that the rate of denials of income tax exemptions by the board appears to have significantly increased after 1991. The reason is that 1991 legislation limited the income tax exemption to primary sector and tourism businesses. The statistical information shows that income tax exemption requests to the State Board of Equalization in 1990 were approved 26 times and denied twice, in 1991 were approved 19 times and denied once, in 1992 were approved 27 times and denied 14 times, in 1993 were approved 18 times and denied 19 times, and in 1994 were approved 17 times and denied 10 times through August 29, 1994.

The Tax Department surveyed project operators who had income or property tax exemptions in effect or approved in 1992. Ninety-two percent of the businesses that received exemptions that were in effect or approved in 1992 responded to the survey. Nineteen percent of those businesses had failed, 19 percent were pending commencement, and 62 percent were operating at the end of 1992. Seventy-six of these businesses were involved in durable manufacturing and 40 in nondurable manufacturing. Services, retail trade, wholesale trade, agriculture, and other industries represented the remainder of the businesses surveyed. Of 166 responses to the question of why the business located in North Dakota, 18 respondents listed business climate or tax structure as a motivating factor and 11 listed tax incentives. Factors cited more frequently included sense of home and community, market, and work force.

The committee requested views from representatives of political subdivisions on property tax exemptions and payments in lieu of taxes that may be granted for new industries. A representative of the North Dakota Association of Counties indicated the expanded authority of cities and counties to grant exemptions or allow payments in lieu of taxes is a good economic development tool. County officials will face pressure to grant the maximum tax break allowable. Some concern was expressed that there is no minimum size for a business to qualify for property tax exemptions as a new industry and that convenience stores and other retail businesses could obtain approval of a property tax exemption. It was suggested that a minimum size requirement be considered.

A representative of the North Dakota League of Cities supported the flexibility given to local government to structure economic development tax incentives under House Bill No. 1520 but the flexibility

adds pressure to grant exemptions to new businesses. It was suggested that property tax exemptions and payments in lieu of taxes should be limited to nonretail businesses and primary sector industries, manufacturers, and businesses.

The Superintendent of Public Instruction expressed concern that property tax exemptions deny schools access to new revenue from new businesses while the new business may substantially impact the school district. It was suggested that cities and counties should communicate with school districts when making property tax exemption decisions.

A representative of the North Dakota School Boards Association suggested that school districts should have access to information on how a proposed project will impact the school district so the district can present its concerns to city and county officials.

The committee requested the opinion of the Department of Economic Development and Finance on whether state law should establish a minimum size, investment, number of employees, or other threshold requirement to qualify for exemptions. The issue was described by a department representative as being whether the state has the ability to establish limitations that will work in every situation or whether it is better to give local officials the flexibility to decide when exemptions should apply. The representative of the department said local officials would like the authority and flexibility to make decisions on who should qualify for tax exemptions and that local officials do not take this responsibility lightly.

The Department representative recommended that economic development tax incentive decisions made at the local level should include consideration of the use of written contracts and "clawback" provisions with developers. A contract may be an effective way to get a project operator involved in community projects. A clawback provision would provide that if the project operator does not comply with requirements regarding duration of operation in the community or other standards established by agreement, all or part of the taxes avoided would have to be repaid.

The department representative recognized that many surveys have been conducted showing that tax incentives are not the major determining factor in business location decisions. Tax incentives were described as a supplement to the business atmosphere of the state and the lack of tax incentives in comparison to surrounding jurisdictions was said to be a disadvantage for North Dakota communities.

House Bill No. 1520 was so recent that its impact cannot be measured. It was reported that shortly after the special session representatives of some businesses visited the state and inquiries about the state were received from several sources. Enactment of the legislation was described as stimulating business interest in the state.

Recommendations

The committee recommends Senate Bill No. 2082 to provide that payments in lieu of taxes allowed for new industries will be equalized for foundation aid program purposes. The bill provides that if payments in lieu of taxes are received, they are to be treated in the same manner as property tax revenues for foun-

dation aid equalization purposes. The bill requires that any payments in lieu of taxes received are to be divided by the mill rate for the school district and the resulting amount is to be added to the valuation of the district against which the deduction factor for foundation aid purposes is applied. This works the property tax formula in reverse to establish an assumed value for the property because an actual value does not exist.

The committee recommends House Bill No. 1063 to allow applications for new industry property tax exemptions to be made after the commencement of project operations. Because of concern over the effects of obtaining retroactive exemptions, the bill requires an application to be made within one year after beginning project operations and the bill is

effective only for taxable years beginning after 1994.

The committee recommends Senate Concurrent Resolution No. 4016 to direct the Legislative Council to study property tax preferences, with emphasis on property tax preferences that may be granted at the discretion of political subdivisions or that were created as economic development incentives. The committee was assigned the responsibility of monitoring the implementation of 1994 House Bill No. 1520 but very little time remained in the interim for this monitoring activity. Because House Bill No. 1520 has had little impact in the state at the time of the final report of the committee, the committee recommends that further study be conducted during the 1995-96 interim. The study resolution is phrased in broad terms to allow study of all property tax preferences.

WORKERS COMPENSATION COMMITTEE

The Workers Compensation Committee was assigned two studies. Section 12 of Senate Bill No. 2200 directed a study of the feasibility and desirability of replacing the workers' compensation permanent partial impairment benefit system with a permanent partial disability system and of requiring that the medical basis for certifying disability be established by medical evidence supported by objective medical findings and a study of the impact of consortium awards on third-party subrogation settlements and cases. Senate Concurrent Resolution No. 4038 directed a study of the workers' compensation system, including the cost and delivery of medical care, the cost of rehabilitation, legal fees, previous legislation, premium structure, alternate insurance concepts and the impact on the fund of those concepts, administration and staffing of the bureau, the number of injured workers receiving social service benefits, and employer and employee fraud.

Committee members were Representatives John Dorso (Chairman), LeRoy G. Bernstein, Al Carlson, Chris Christopherson, Glen Froseth, RaeAnn Kelsch, Keith Kempenich, Robert Kilichowski, John Mahoney, Barbara Pyle, Bob Skarphol, Al Soukup, and Francis J. Wald and Senators Jayson Graba, Jay Lindgren, Jim Maxson, Larry W. Schoenwald, and Ken Solberg.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1994. The Council accepted the report for submission to the 54th Legislative Assembly.

STUDY OF THE WORKERS' COMPENSATION SYSTEM, THE PERMANENT PARTIAL IMPAIRMENT BENEFIT SYSTEM, CERTIFYING DISABILITY, AND THE EFFECT OF CONSORTIUM CLAIMS ON THIRD-PARTY SUBROGATION CASES

Background

The study directed by Section 12 of 1993 Senate Bill No. 2200 reflects the Legislative Assembly's concern that permanent partial disability and loss of consortium issues, which had been the subject of bills during the 1993 legislative session, needed further study before being addressed. Senate Bill No. 2200 did require, however, that the medical basis for certifying disability be established by objective medical findings.

The study directed by Senate Concurrent Resolution No. 4038 reflects the Legislative Assembly's concern over a number of issues affecting the workers' compensation system. Because both studies addressed specific concerns about the workers' compensation system, the committee consolidated the studies.

North Dakota Workers' Compensation Law

The North Dakota workers' compensation law, enacted in 1919, is contained in North Dakota Century Code (NDCC) Title 65. The law is to provide sure and certain relief for an employee who is injured while engaged in hazardous employment, to provide

relief for the employee's family and dependents, and to provide this relief to the exclusion of every other remedy. All civil actions against an employer for injuries incurred on the job are abolished.

North Dakota is one of six states that have exclusive state funds for their workers' compensation systems and one of two states that are monopolistic, i.e., the states do not allow workers' compensation insurance to be provided through self-insurance or private insurance. The other four state-fund states allow self-insurance.

Studies Since 1981

During the 1981-82 interim, the Legislative Council's interim Business Operations Committee studied the workers' compensation premium determination system. The committee reviewed premium rates for various job classifications using different payroll maximum levels. The committee noted that legislation had been introduced to raise the maximum wage base used for payroll determination in each session since 1971. The committee, partly as a result of prior failed legislation, did not recommend any bill to change the maximum payroll upon which premiums were calculated.

During the 1983-84 interim, the Legislative Council's interim Government Reorganization Committee studied the possibility of consolidating the Commissioner of Labor, Job Service North Dakota, and the Workers Compensation Bureau. The committee concluded that the three agencies should cooperate in an attempt to provide better labor and employment services. The committee recommended 1985 Senate Bill No. 2073 to allow the sharing of payroll information data between the Commissioner of Labor and the Workers Compensation Bureau. That bill was enacted by the 1985 Legislative Assembly.

During the 1991-92 interim, the Legislative Council's interim Industry, Business and Labor Committee studied workers' compensation issues as directed by Section 76 of 1991 Senate Bill No. 2206 and by 1991 Senate Concurrent Resolution No. 4036. Section 76 provided for a study of the feasibility and desirability of consolidating the Workers Compensation Bureau and Job Service North Dakota and Senate Concurrent Resolution No. 4036 directed a study of the structure, organization, or consolidation with Job Service, and administration of the Workers Compensation Bureau, including the qualifications of the bureau's claims analysts and rehabilitation staff. The committee recommended House Bill Nos. 1039 and 1040 to repeal the provisions providing for the merger and to repeal the merger and require the Workers Compensation Bureau and Job Service North Dakota to be established as divisions under the Labor Department, respectively. House Bill No. 1039, rather than House Bill No. 1040, was passed by the 1993 Legislative Assembly.

Permanent Partial Impairment v. Disability

Permanent partial impairment benefits are determined by identifying the level of impairment, or loss

of function of, a particular part of the body as a result of a work injury. Part of the evaluation may take into account subjective evidence of pain or other variables not readily measurable, but which add to the amount of impairment suffered by an injured worker.

Permanent partial disability benefits, as discussed in hearings on workers' compensation during the 1993 legislative session, are determined by identifying the extent to which a work injury causes an injured worker to suffer a loss of wages or earnings capacity. The evaluation does not rely on subjective evidence of a person's reduced ability to function. Testimony during the 1993 legislative session indicated that a majority of the states use a system of permanent partial disability as opposed to permanent partial impairment and only a "handful" of states ("maybe five") use a permanent partial impairment system.

In addition to the pure wage loss system of permanent partial disability identified above, two other variations are the loss of wage-earning capacity approach, in which compensation is based on the worker's ability to compete in the labor market, and the impairment approach, in which compensation is based on the extent of physical or mental loss of use of bodily function. The latter approach is comparable to the permanent partial impairment system used in this state.

Objective Medical Findings

Section 9 of 1993 Senate Bill No. 2200 amended NDCC Section 65-05-08.1 to require a doctor who is certifying disability to provide the medical basis established by medical evidence supported by objective medical findings for the certification of disability in the doctor's report filed with the bureau (underscored language was added by Senate Bill No. 2200). The language added is based on similar language adopted in Oregon as a requirement for determining compensability. The purpose of studying this change was to monitor the impact of the requirement on claims paid, costs affected, and litigation.

Third-Party Recoveries for Subrogation

North Dakota Century Code Section 65-01-09 allows an injured employee or the employee's dependents to bring an action against a party other than the employer or the workers' compensation fund, when that other party is liable for the damages suffered by an employee who is injured in the workplace. These actions are referred to as third-party actions. The workers' compensation fund is subrogated to the rights of the injured employee or the employee's dependents to the extent of 50 percent of the total amount the fund has paid or would otherwise pay in the future in compensation and benefits for the injured employee.

In third-party lawsuits, it is becoming more frequent to have the spouse or children of the injured worker be named as plaintiffs and be requesting money for loss of consortium or companionship. These cases are frequently settled out of court and provide a specific dollar amount to be applied to the consortium or companionship claims of the spouse and children. After the settlement is reached, the bureau's

subrogation interest is applied to the portion of the award applied to the injured worker and not to any award to the spouse or children for loss of consortium or companionship. Fewer than 10 states provide that the insurer's subrogation interest does not extend to consortium. During the 1993 session, representatives of the bureau indicated that settlements are being made without the bureau's knowledge or over the bureau's objections and are being structured in an attempt to avoid the bureau's subrogation interest.

Cost and Delivery of Medical Care

North Dakota Century Code Section 65-05-07 requires the workers' compensation fund to furnish an injured employee with reasonable and appropriate medical, surgical, and hospital service and supplies as the injury requires. Conditions imposed on treatment of, and payment of services for, varying injuries or illnesses under varying circumstances are defined in Chapter 65-05. The 1991 Legislative Assembly passed legislation requiring the bureau to establish a managed care program to effect the best medical solution for an injured employee. The bureau was required to contract with a third-party administrator to implement the program and to monitor the medical treatments of injured employees and the payment of medical expenses for workers' compensation claims.

The 1991 Legislative Assembly also passed legislation requiring the bureau to implement a fee reimbursement schedule for medical and hospital services and supplies for claims for workers' compensation based on rates paid for Medicare if the bureau failed to do so under existing authority. Upon approval by the 1991-92 interim Administrative Rules Committee, the bureau adopted a fee schedule for medical and hospital services in February 1992.

In addition to the programs mandated by the 1991 Legislative Assembly, the bureau contracts with a medical audit firm to audit medical bills that are presented to the bureau for payment. The firm, Health Care Cost Control, reviews medical bills for excess charges and charges for treatments that are inappropriate for the injury or illness being treated.

Rehabilitation

The Workers Compensation Bureau provides for a program of vocational rehabilitation for injured workers to return injured workers to substantial gainful employment. The bureau uses private vendors and rehabilitation facilities located within the state. Rehabilitation may include a return to work or a period of retraining not to exceed two years, except in the case of a catastrophic injury. The bureau monitors all aspects of training and rehabilitation and provides for payment of books, tuition, and supplies for retraining. Benefits may be paid during and after the rehabilitation program as a monthly payment, in lieu of temporary total disability payments, to an injured worker who is undergoing an approved rehabilitation program or to replace lost wages for an injured worker who has successfully completed a rehabilitation program but whose earning capacity postrehabilitation is not sufficient to restore the

worker to substantial gainful employment based on the worker's preinjury wage.

Legal Fees

North Dakota Century Code Section 65-02-08 requires the bureau to establish, by administrative rule, a reasonable maximum hourly rate and a maximum fee to compensate a claimant's attorney for legal services following constructive denial of a claim, notice of informal decision, or issuance of an administrative order reducing or denying benefits. Attorneys' fees and costs are paid from the bureau's general fund and are not charged against an employer's account.

Administration and Staffing

The Workers Compensation Bureau is administered by a director and is divided into these departments: administrative services, claims, medical and technical services, legal, loss prevention, and policyholder services. The Governor appoints the director.

The administrative services department consists of the personnel director, information systems manager, accounting division, office services manager, and the research manager.

The claims department is divided into four claims units. Each unit contains a unit supervisor, three long-term disability claims analysts, one short-term disability claims analyst, two medical expense only analysts, and three clerks. The special projects manager, trainer/auditor, rehabilitation coordinator, and steno pool are also part of the claims department.

Rehabilitation services are administered through the claims department. The bureau contracts with private rehabilitation firms to provide hands-on services to injured workers. The bureau requests the rehabilitation companies to submit bids to determine which companies will be awarded a contract with the bureau.

The medical and technical services department is responsible for computerizing the data on medical bills that have been received by the bureau for payment. The medical director is also under the supervision of the director of medical and technical services.

The legal department is staffed by legal assistants and information processing operators. The assistant Attorneys General who are assigned to the bureau are also within the legal department; however, the Attorney General has supervisory responsibility over the attorneys. The legal department also administers the arbitration program. One attorney, one legal assistant, and one information processing operator are located with each claims unit.

The loss prevention department has seven loss prevention specialists who investigate accidents on the job when an investigation is warranted and who work with employers on developing a safer workplace. The public information officer is also under the supervision of the director of loss prevention.

The policyholder services department administers employer accounts and is responsible for collecting employer assessments and maintaining the data on the assessments. The policyholder services department has six field representatives who are located throughout the state.

Other Study Issues

Senate Concurrent Resolution No. 4038 also suggested studying the premium structure of the bureau, alternate insurance concepts and the impact of those concepts on the fund, the number of injured workers receiving social service benefits, and the extent of employer or employee fraud.

The premium structure of the bureau is revised annually. An employer's premium is affected, not only by the nature and degree of hazard of the particular industry or work undertaken by that employer's employees, but also by that employer's history of workplace injuries or work-related illnesses.

Alternate insurance concepts include self-insurance, through which an employer, upon a showing of financial ability to do so, is responsible for payment of all workers' compensation-related medical expenses and disability payments; private insurance through which a private insurance company underwrites the workers' compensation coverage for an employer; and workers' compensation pools in which several employers within a like industry form a single group through which those employers jointly obtain workers' compensation coverage. Any of these alternatives may coexist with a state fund. The impact of any of these concepts on the state fund would be dependent upon the extent to which the particular form of insurance is implemented.

Another insurance concept is 24-hour coverage. The idea of 24-hour coverage is to allow the medical costs of work injuries to be covered by the employer's health care plan so no distinction is made between work-related and nonwork-related injuries and illnesses. One of the most frequently voiced concerns about 24-hour coverage is the need for a waiver from the federal government to avoid conflicts between the coverage plan and the Employee Retirement Income Security Act of 1974.

Whether injured workers are receiving social service benefits cannot be examined on a case-by-case basis because of confidentiality laws. One of the purposes of the workers' compensation system, however, is to provide "sure and certain relief" to injured workers and their dependents, both for their injuries and for preventing economic hardship as a result of wages lost as a result of an injury. The receipt of disability benefits as wage replacement would limit the eligibility of an injured worker applying for social service benefits.

The bureau has recently implemented a toll-free telephone number to provide for the reporting of suspected and actual cases of fraud. The impact of implementing that program will be helpful in assessing the extent of the problem of workers' compensation fraud.

1993 Legislation

The 1993 Legislative Assembly considered several bills relating to workers' compensation and this portion of the report describes that legislation not described previously.

The 1993 legislation provided for alternative dispute resolution to resolve issues arising from the recommendations of the managed care administra-

tor for the bureau; provided that bids for vocational rehabilitation services be solicited on a biennial basis instead of an annual basis; allowed the bureau to renew, renegotiate, or rebid a contract for administrative services or a contract for administration of the managed care program based on specific factors and required the bureau to rebid these contracts for the 1995-97 biennium and at least every four years after that; reduced the time period for constructive denial of a claim from 90 days to 60 days and required the bureau to define the elements of filing; required the bureau to issue an order within 60 days, instead of 90 days, after a request for an informal decision has been made, and also required the bureau to issue an informal decision on an initial determination of disability; and allowed the bureau to establish a means for providing extraterritorial or other states' insurance coverage for employers covered by the North Dakota workers' compensation law.

The 1993 legislation that affected the payment of benefits to injured workers accomplished these changes: the arbitration panel was changed to one arbitrator for claims that are not "complex;" the application of the Social Security retirement offset statute was clarified; a formula was established to determine the average weekly wage of a self-employed person; the consequences of an employee's voluntary intoxication having caused an injury were established; employers were required to post the toll-free telephone number of the safety and fraud hotline; an injured employee was prohibited from collecting benefits from the bureau when the employee is receiving benefits through another state's workers' compensation system for the same injury; the definition of "wages" was changed to include all remuneration, lost as a result of a compensable work injury, from all employment which is reportable to the Internal Revenue Service as income for federal income tax purposes; the bureau was required, in determining the amount of Social Security offset, to deduct the fees and costs paid to an authorized representative of the employee for representation of that employee before the Social Security Administration, from the primary insurance amount prior to determining the offset; and the members of the board of directors of a business corporation who are not employees of the corporation were excluded from the definition of "employee" and the president, vice presidents, secretary, treasurer, or board of directors of certain corporations were included in the definition of "employer."

The 1993 legislation relating to premiums established a premium discount for an employer who implements or maintains a risk management program approved by the bureau; provided that the common law test is the only test to be used to determine independent contractor status; and established the basis for calculating the experience rating of an employer and the basis for determining "weekly wage" for premium purposes for a person who is self-employed.

Among the proposals not approved by the 1993 Legislative Assembly were those to replace the director with a three-member commission; to remove the presumption clause for law enforcement officers and full-time paid firefighters; to describe additional cir-

cumstances under which a claim would be presumed inactive; to allow an employer to pay up to its entire \$250 assessment directly to the provider without going through the bureau; and to provide substantial amendments to the permanent partial impairment benefit payment system.

Testimony and Committee Considerations

The chairman focused the committee's work on gathering information to identify how the workers' compensation system is working and to help the 1995 Legislative Assembly understand the workings of the Workers Compensation Bureau, rather than on recommending legislation.

Permanent Partial Impairment v. Disability

The committee received testimony that permanent partial impairment awards are add-on payments for medical findings in addition to wage loss and any injured worker who has received medical treatment for an injury compensated by the bureau may be able to get a permanent partial impairment award. In most jurisdictions, after an injured worker has received temporary total disability benefits for a specified time, payments are converted to permanent partial disability payments and after permanent partial disability benefits are exhausted, the claim is closed. Testimony indicated that this type of a system is not fair to an injured worker who is unable to return to work because when permanent partial disability benefits are no longer paid, that person receives no more compensation for time lost from work.

Prior to 1974, an injured worker in this state did not receive both temporary total and permanent partial impairment benefits. In 1974 the North Dakota Supreme Court, in **Buechler v. North Dakota Workmen's Compensation Bureau**, 222 N.W.2d 858, determined that an injured worker could receive both temporary total disability and permanent partial disability benefits. As a result of that decision, the 1975 Legislative Assembly created the current permanent partial impairment system.

For an injured worker to receive a permanent partial impairment award from the Workers Compensation Bureau, the worker needs a documented injury and proof of medical care. The bureau uses the *American Medical Association Guides to the Evaluation of Permanent Impairment* to determine an injured worker's percentage of impairment for purposes of providing the award. The system used by the bureau allows benefits to be paid for degenerating conditions that are not necessarily caused by the injury.

While each state has some type of permanent partial impairment benefit system, there are differences in the systems from state to state. The use of "permanent partial impairment" versus "permanent partial disability" does not necessarily describe the basis on which benefits are paid. Most jurisdictions provide an award either for scheduled or for non-scheduled injuries. North Dakota, however, provides awards for both scheduled and nonscheduled injuries arising out of the same incident. The action taken by the Legislative Assembly in 1975, in response to

Buechler, made impairment equivalent to loss of function without regard to the effect the injury had on earnings capacity.

During the 1993 legislative session, several changes were proposed to the permanent partial impairment statutes. Ultimately, there was an attempt to convert the system back to a permanent partial disability system. Uncertainties surrounding the proposal prompted this study.

After further consideration during the 1993-94 interim, the Workers Compensation Bureau determined that rather than attempt to change the system into a permanent partial disability system, changes to the permanent partial impairment system already in effect would be more effective. The committee reviewed a bill draft, prepared by the bureau, which would have established a minimum threshold to qualify for an impairment award, increased awards to more severely injured workers, and required that an impairment be objectively measurable before an award is made.

Objective Medical Findings

The committee received testimony that the bureau has always used a standard of requiring objective medical findings to prove a workers' compensation claim. The codification of this standard by the 1993 Legislative Assembly has not had an identifiable impact on the claims processing procedures at the bureau. In defining "objective medical findings," consideration is given not only to demonstrable, reproducible evidence confirmed by diagnostic testing, but also to the clinical examination conducted by a medical provider which aids the provider in making a diagnosis.

Third-Party Recoveries for Subrogation

The committee received testimony that only one state other than North Dakota provides for a workers' compensation subrogation interest as low as 50 percent of the total recovery. Four or five states have less than 100 percent subrogation but the majority of the states allow an insurer a 100 percent subrogation interest in the injured workers' recovery after a suit has been instituted for injuries caused by a third party for which workers' compensation benefits have been paid.

The committee reviewed the decision of the North Dakota Supreme Court in **Meyer v. North Dakota Workers Compensation Bureau**, 512 N.W.2d 680 (N.D. 1994). In that case, the court determined that the bureau's right to subrogation in an injured worker's third-party recovery does not extend to a claim for consortium filed by the injured worker's spouse. The committee was informed that the bureau will continue to monitor third-party awards for reasonableness as the Supreme Court also said that an injured worker cannot circumvent the bureau's subrogation interest by attributing a disproportionate share of a recovery to a family member's loss of consortium claim.

Cost and Delivery of Medical Care

Medical cost containment at the Workers Compensation Bureau consists of three components—

medical bill audit, managed care, and medical and hospital fee schedules. In 1987 the bureau implemented its medical bill audit program. The bureau implemented the managed care program and the fee schedule program in response to 1991 and 1993 legislation.

The company that reviews and audits medical bills looks for errors in billing, items that should have been credited, duplicate charges, treatments not related to a compensable injury, lab tests and x-rays not related to the diagnosis, services or treatments that were not performed, and services or treatments that were unnecessary. Registered nurses perform the reviews and audits and they contact the medical providers if explanations of the providers' recommendations are needed. The medical audit firm also educates claims analysts and legal personnel in medical bill processes. The bureau calculates the return on its investment in the medical bill audit program to be 16.29 percent.

The Workers Compensation Bureau issued a request for proposal for managed care services in September 1991, and a contract was awarded in December 1991 to Healthmarc-Workers Compensation Casualty Services, a subsidiary of United Healthcare Corporation, Minneapolis, Minnesota. The managed care program was implemented January 2, 1992. The primary purpose of the program is to ensure that injured workers receive quality medical care in a cost-effective manner. An independent audit of the program in November 1992 showed that the program appeared to be meeting legislative intent and has resulted in cost savings to the workers' compensation fund. The committee received testimony that the concept of managed care is new to the workers' compensation industry across the nation and the transition to managed care was not without its problems. Two of the main problems identified were problems with educating and interfacing among the managed care vendor, the bureau, and the medical providers, and a lack of appropriate dispute resolution mechanisms for the managed care process. As a result, the 1993 Legislative Assembly enacted legislation to allow the bureau to create binding dispute resolution for managed care disputes.

Medical and hospital fee schedules were developed after the 1991 legislative session and were put into effect for all services performed after December 31, 1991. The committee heard testimony that medical providers think the level of reimbursement is too low and that the levels of reimbursement offered through the fee schedules may restrict access to medical care. The bureau, however, found no evidence that the implementation of the fee schedules resulted in restricted access. The bureau has found that the fee schedules are serving to generate savings on payments for medical services.

In November 1993 the Workers Compensation Bureau requested the interim Administrative Rules Committee, as required by NDCC Section 65-02-08, to approve amendments to the fee schedules. The overall average increase in the fee schedules was 7.2 percent. No individual fee was increased more than \$10. Paid medical losses for the fiscal year ending 1993 were less than paid medical losses for the fiscal

year ending 1992. The Administrative Rules Committee approved the changes.

Rehabilitation

The committee received testimony on the rehabilitation process through which an injured worker must go if the work injury prevents the worker from returning to the job at which the injury was received. Vocational rehabilitation counselors identify vocational plans pursuant to priority options established by statute. The rehabilitation program emphasizes a return to work, early intervention, early education to employers, cost containment, and the impact of the Americans with Disabilities Act on return-to-work situations. All of these efforts are focused on the ideal of assisting an injured worker in reaching maximum vocational recovery.

An important tool that the Workers Compensation Bureau has implemented in the last few years is the initial contact disability assessment form. This form requires a three-point contact with doctors, employers, and employees. After the assessment form is completed, it is attached with recommendations of whether rehabilitation services are necessary. If services are necessary, a vocational counselor reviews an injured worker's job history, prior claims, work station, job analysis, essential functions of the job, employer options, and loss prevention. The vocational consultant's report is due at the bureau within 60 days if a return-to-work or on-the-job training option is identified as the priority rehabilitation option. If formal training is identified as the priority rehabilitation option, the vocational consultant's report is due at the bureau within 90 days. In April 1993 the bureau instituted a job search program for injured workers who have completed schooling.

The bureau has determined that the success ratio of bureau-initiated rehabilitation is 93.54 percent. This success ratio is based on the 1,037 injured workers who went through the rehabilitation process from 1991-93, of whom 67 received disability benefits after completing their rehabilitation program.

Testimony indicated that the bureau has experienced decreasing costs in rehabilitation in recent years because it has actively pursued early intervention on claims, which aids in returning injured workers to their jobs without the need for extensive rehabilitation.

Administration and Staffing

Third-party administrator - In 1992 the Workers Compensation Bureau contracted with Sedgwick James for third-party administrator services. Sedgwick James viewed the contract as a significant opportunity for real social engineering as North Dakota had one of the last pure workers' compensation systems and the opportunity for change had never been better. The contract required Sedgwick James to provide basic administrative services, training to claims staff, reserve monitoring, resolution of claims older than two years, and time lines for completion of its duties. Sedgwick James attempted to develop a controlled environment by which activities could be monitored and measured. Sedgwick James began by trying to establish a change in the management

philosophy at the bureau.

During its contract term, Sedgwick James worked to develop a procedure manual for the bureau claims staff, and its facilitators actively worked with bureau personnel on a daily basis. Sedgwick James also made several recommendations to the bureau designed to address administrative inefficiencies at the bureau. Those recommendations were:

1. Assign claims to analysts by employer instead of by alphabetically grouping according to name. The bureau set up a pilot project on this recommendation.
2. Implement a three-point contact claim investigation process. The three-point contact requires the analyst to contact the employer, employee, and medical provider involved in an injured worker's claim as soon as any part of the claim application is received. This allows all parties to work toward early resolution of or early medical intervention on a claim. The bureau implemented this recommendation.
3. Implement an index system. This would access a national clearinghouse to bodily injury claims that would assist in the investigation of claims without a lot of added activity by analysts.
4. Allow Sedgwick James to critically evaluate analysts' workloads. The bureau implemented this recommendation by allowing a monthly review of analysts' workloads. A manual count of the active claims at the bureau showed the claims count for each analyst was elevated and additional personnel were needed.
5. Require claims reserving be done by individual analysts. The bureau implemented this recommendation.
6. Add a new level of claims analysis—a claim technician. As a result of this recommendation, the bureau established a level of claims review that covers all short-term disability claims.
7. Standardize the daily routine of handling mail. The bureau implemented this recommendation when the bureau enacted a system of mail handling that is done on the basis of employer assignment.
8. Streamline the workers' compensation mail processing function. The bureau implemented this recommendation when the bureau relocated and was able to establish a mailroom.
9. Establish a report or document of claim file activity through the use of running notes, a type of diary of the day-to-day activity on the claim which is entered in the computer. The bureau implemented this recommendation.
10. Separate medical only expense claims to remove those with complex medical issues to more experienced claims analysts, making it easier to process the remainder of the claim load. As a result of this recommendation, the bureau hired additional analysts to decrease the high caseload of medical only analysts.
11. Reevaluate clerical support for efficiency of operations. The bureau, through the enactment of the three-point contact, has increased the speed with which claims are resolved.

In June 1992 the bureau changed the focus of the contract with Sedgwick James. Sedgwick James began reviewing claims that were less than two years old, in addition to its other duties. The committee received testimony that this change in focus eliminated the controlled environment in which Sedgwick James had been working and the new focus lacked a defined purpose for the completion of responsibilities by Sedgwick James. The new focus decreased the effectiveness of Sedgwick James and the bureau did not get the value of the services for which it paid.

After Sedgwick James' contract with the bureau expired, the bureau, rather than continue to contract with a third-party administrator, chose to pursue contracts with different entities on a fee-for-service basis to address specific needs identified by the bureau. Representatives of the bureau testified that through this approach, there should be reduced costs of third-party administration while receiving the contracted services.

Policyholder services - There are several hundred employer accounts that are being paid according to payment plans. Representatives of the bureau testified that the bureau attempts to collect premium that is past due and 1991 legislation, which established corporate officer personal liability for nonpayment of premium, has helped in collecting delinquent premium.

Other Study Issues

Premium structure of the bureau - The committee received testimony regarding the workers' compensation rate increases for 1994. An average rate increase of 23 percent was recommended by the bureau's actuary, of which 13 percent would have been needed to keep the unfunded liability of the workers' compensation fund from growing. The bureau implemented an average rate increase of 10 percent, which was the increase the Governor recommended. Five percent of the increase is expected to be applied toward the unfunded liability. The bureau also reviewed rate class expansion options to create more equitable premium charges.

The Workers Compensation Bureau attempts to notify employers of expected rate increases in April of each year and uses the emergency rulemaking procedures under NDCC Chapter 28-32 to allow the increases to go into effect on July 1. Committee members suggested that the bureau attempt to provide earlier notice to employers of expected rate increases to allow employers to budget for those increases.

Alternate insurance concepts - The committee received testimony on self-insurance as an alternate insurance concept to the current workers' compensation system. Because self-insurance is not suitable for all employers, allowing self-insurance would not eliminate the need for the bureau. In order to self-insure, an employer has to be proven to be financially stable and able to provide workers' compensation coverage to its employees. Medical and disability benefits would be paid pursuant to benefits allowed under North Dakota law; however, the benefits would be administered through the self-insured employer. It would not be prudent for an employer to choose to self-insure if that employer did not have a proactive

safety or loss control program. An employer could also partially self-insure and reinsure for excess coverage that would cap a company's liability for each claim.

The committee received testimony that allowing self-insurance would probably require the bureau to establish another division such as a self-insurance guarantee fund. The bureau is considering a pilot program to offer retrospective rating to companies that are interested in self-insuring. Retrospective rating would allow the bureau to charge a base insurance rate to an employer, make the employer responsible for a specified amount of claims costs, and provide a cap on the employer's ultimate claims exposure. Each year the bureau would review the losses attributable to that employer for the years the employer had been involved in the retrospective rating program and would make adjustments in the amount paid by the employer either in the form of an additional charge or a refund to the employer.

If self-insurance were allowed, it is conceivable that entire classifications could self-insure. If the bureau lost its 20 largest premium payers to self-insurance, it is estimated that \$40 million of the bureau's total \$110 million in premium income would be lost. The actual effect of losing the 20 largest accounts depends on the loss ratios and premiums of those accounts.

Injured workers receiving social service benefits - The committee received testimony on the number of workers' compensation claimants who receive social service benefits. There have been 531 workers' compensation benefit recipients who received medical assistance for the period from July 1, 1991, through June 30, 1994. Payment of medical assistance benefits was for medical services unrelated to the work injury. The bureau has responsibility for paying for medical expenses related to the work injury and medical assistance pays other medical expenses for which the injured worker might be eligible.

A person who is receiving workers' compensation disability benefits will rarely be eligible to receive aid to families with dependent children benefits because receipt of workers' compensation disability usually raises the family income higher than allowed to receive aid to families with dependent children benefits. There was no information available to indicate how long a workers' compensation recipient had been receiving aid to families with dependent children benefits prior to being terminated once they began receiving workers' compensation benefits.

Employer and employee fraud - The committee heard testimony that the workers' compensation statutes prohibiting fraudulent activity are not strict enough to keep a person from trying to defraud the bureau. The bureau is reviewing strengthening its fraud detection activities. Typically, an employer who is trying to defraud the bureau will pay wages in cash, falsify certificates of premium payment, or misrepresent the amount of payroll. Employees who are trying to defraud the bureau may give false information about the way the injury happened or the extent of the injury, or may return to work while continuing to receive disability benefits. Representa-

tives of the bureau supported an increase in its investigation and prosecution of fraud cases to reduce the incidences of fraud.

The committee received testimony on a bill draft presented by a committee member which would have established workers' compensation fraud as theft under the Criminal Code. The bill draft also required the bureau to establish a fraud detection and investigation unit.

Miscellaneous

The committee also received testimony on the arbitration program at the bureau and the other states' coverage program established as a result of legislation enacted in 1993. In addition, the committee received information on recent North Dakota Supreme Court cases addressing the agricultural exemption to workers' compensation and the workers' compensation presumption clause.

Arbitration

The bureau established an arbitration program as required by legislation enacted in 1991. Since the inception of the program, the bureau has continuously worked to improve the efficiency of the program. The 1993 Legislative Assembly amended the arbitration statutes to allow the bureau to establish a more efficient system that should continue to provide fair results. The changes authorized by the 1993 Legislative Assembly were put into effect on January 1, 1994.

Other States' Coverage

The committee received testimony on other states' coverage options for North Dakota employers. Other states' coverage is a very limited coverage that is intended to close gaps in coverage. The Workers Compensation Bureau implemented this coverage by a system whereby a claim for workers' compensation benefits filed in another state against a North Dakota employer by a North Dakota employee would be handled by a third-party administrator in the state in which the injury occurred. The third-party administrator would receive the claim and assign the claim to the workers' compensation unit in the state that had jurisdiction over the injury. The bureau would pay benefits to an injured worker according to the benefits laws of the state in which the injury occurred. This system does not guarantee that an employer would be considered insured in the jurisdiction in which the injury occurred.

The bureau rejected a proposal that would have provided a fronting company to administer workers' compensation insurance coverage for North Dakota employers in other jurisdictions. The company would be licensed and admitted to provide coverage in the other states. This proposal would have provided certainty and absolute protection from liability for employers with incidental operations in other jurisdictions.

Presumption Clause

The presumption clause, found in NDCC Section 65-01-02(18)(d), provides that any condition or impairment of health of a full-time paid firefighter or

law enforcement officer caused by lung or respiratory disease is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence.

The committee reviewed **Burrows v. North Dakota Workers Compensation Bureau**, 510 N.W.2d 617 (N.D. 1994). In that case, the North Dakota Supreme Court determined that a long-time law enforcement officer who died of lung cancer was not entitled to the presumption that the cancer was work-related as the bureau had successfully rebutted the presumption by medical evidence.

Agricultural Exemption

Agricultural employment has been exempt from the definition of hazardous employment since the workers' compensation law was enacted in 1919. In 1971, 1973, 1975, and 1977, the Legislative Assembly considered bills to repeal the agricultural employment exemption.

In 1979 three justices of the Supreme Court determined that the agricultural exemption was unconstitutional because it violated the equal protection clause. The exemption stayed on the books, however, because at least four justices must agree to overturn a statute on constitutional grounds.

The committee reviewed **Haney v. North Dakota Workers Compensation Bureau**, 518 N.W.2d 195 (N.D. 1994). In that case, the North Dakota Supreme Court upheld the constitutionality of the provision that exempts agricultural employment from the definition of "hazardous employment."

Although agricultural workers are not required to be covered by workers' compensation insurance, the law allows optional agricultural worker coverage. There are 513 accounts with the Workers Compensation Bureau for coverage of agricultural workers. There are two classes of agricultural employment—row cropping and grain farming and ranching. If agricultural workers were required to be covered, more than 30,000 employers would be brought into the workers' compensation system. The system currently has 20,000 policyholders.

Committee Recommendations

The committee received information that the Governor had directed agencies to seek individual legislators as sponsors of bills during the 1995 session. The committee recommended that the Workers Compensation Bureau introduce its bill proposing changes to the permanent partial impairment benefit system as an agency bill because of the technical nature of the bill.

The committee makes no recommendation as the result of its study of the feasibility and desirability of requiring that the medical basis for certifying disability be established by medical evidence supported by objective medical findings or its study of the impact of consortium awards on third-party case settlements and subrogation.

The committee makes no recommendation as the result of its study of the workers' compensation system.

STUDY RESOLUTIONS AND ASSIGNMENTS FOR THE 1993-94 INTERIM

The following table identifies the bills and resolutions prioritized by the Legislative Council for study during the 1993-94 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 (Committee)
	including those set forth in the constitution or statutes of this state (Education Finance Committee)
3015	Study tax preferences under existing law, with emphasis on prevention of unfair competitive advantages to entities receiving tax preferences (Taxation Committee)
3020	Study the data collection systems relating to the criminal justice and quasi-criminal civil systems in North Dakota, including law enforcement, prosecutors, and courts, and the data collection systems of other states (Court Services Committee)
3023	Study railroad crossing safety to improve railroad crossing safety (Health and Communications Committee)
3024	Study the feasibility and desirability of making the North Dakota Century Code, the North Dakota Administrative Code, the North Dakota Session Laws, and other legislative publications available in mediums other than published volumes, including CD-ROM and diskettes (Legislative Management Committee)
3026	Study the loss of employment by teachers and administrators as a result of school district reorganizational, cooperative, and restructuring programs, including the possibility of changes in retirement benefits for those teachers and administrators (Education Finance Committee)
3043	Study the medical assistance eligible population in this state to determine if there is a need for a more equitable distribution of medical assistance reimbursement to certain providers (Budget Committee on Human Services)
3045	Study the tax structure, particularly the balance among the various tax systems in North Dakota (Taxation Committee)
3049	Study noxious weed laws to determine the feasibility and desirability of identifying purple loosestrife as a noxious weed and instituting appropriate methods of control or eradication (Agriculture Committee)

Bill or Resolution No.	Subject Matter (Committee)
1003, §11	Study the use of nonproperty factors in financing education, quality of education, legal action in this state regarding education finance issues, and the effect of any legislation passed by the 1993 Legislative Assembly that relates to education financing, and may consider any other matters related to education (Education Finance Committee)
2006, §16	Study the feasibility and desirability of removing the environmental health functions and responsibilities of the Department of Health and Consolidated Laboratories from that department and establishing a department to handle all environmental functions and responsibilities (Natural Resources Committee)
2016, §6	Study children and youth services in the state (Budget Committee on Youth Services)
2021, §22	Study methods and coordinate efforts to initiate and sustain new economic development in this state (Jobs Development Commission)
2200, §12	Study the feasibility and desirability of replacing the workers' compensation permanent partial impairment benefit system with a permanent partial disability system and of requiring that the medical basis for certifying disability be established by medical evidence supported by objective medical findings and study the impact of consortium awards on third-party subrogation settlements and cases (Workers Compensation Committee)
3008	Study the problems associated with solid waste management and the operation and effect of solid waste management districts and solid waste management plans (Natural Resources Committee)
3013	Study accreditation standards utilized by the Department of Public Instruction,

Bill or Resolution No.	Subject Matter (Committee)	Bill or Resolution No.	Subject Matter (Committee)
3050	Study the state's hunting laws to determine changes that can be made to improve the relationship between hunters and private landowners including the issuance of gratis permits (Natural Resources Committee)		come criteria, and of establishing criteria to allow persons eligible for those programs to earn income without losing their eligibility for benefits (Budget Committee on Human Services)
3052	Study the imposition of state income taxes for individuals, estates, and trusts (Taxation Committee)	4012	Study the optimum structure and staff development services necessary to meet the needs of middle-level adolescents identified as the at-risk group in North Dakota schools (Education Services Committee)
3053	Study the imposition and administration of sales, use, motor vehicle excise, and aircraft excise taxes (Taxation Committee)	4018	Study means of gathering data on sentencing in all felony cases and in all misdemeanor cases involving violations of NDCC Chapters 12.1-17, 12.1-20, and 14-07.1 (Court Services Committee)
3057	Study the problems and resources available to meet the needs of North Dakota youth age 17 through 21 who are released from the state foster care or court system (Budget Committee on Youth Services)	4019	Study legislative employee pay scales to determine if inequities exist and study the feasibility and desirability of providing additional compensation to legislative employees based on prior employment by the Legislative Assembly (Legislative Management Committee)
3058	Study the provision of services to blind and visually impaired children and adults (Education Services Committee)	4023	Study the development of a noxious weed trust fund (Agriculture Committee)
3061	Study and establish procedures necessary to implement annual sessions of the Legislative Assembly beginning in 1995 and 1996 (Legislative Management Committee)	4025	Study the North Dakota Educational Telecommunications Council (Health and Communications Committee)
3066	Study products liability statutes as they relate to the aircraft industry (Jobs Development Commission)	4027	Study methods to improve the development of biennial revenue estimates (Budget Section)
3072	Study charitable gaming laws and rules and the effects of Indian gaming on charitable gaming in this state (Judiciary Committee)	4031	Study problems relating to the use of contracts for the sale of agricultural commodities (Agriculture Committee)
4002	Monitor the continued development of a continuum of services for the mentally ill and chemically dependent, including changes in the role of the State Hospital, expanded community services, and the development of partnerships between the public and private sectors (Budget Committee on Government Services)	4038	Study the workers' compensation system including the cost and delivery of medical care, the cost of rehabilitation, legal fees, previous legislation, premium structure, alternate insurance concepts and the impact on the fund of those concepts, administration and staffing of the bureau, the number of injured workers receiving social service benefits, and employer and employee fraud (Workers Compensation Committee)
4005	Study the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction (Court Services Committee)	4042	Study the feasibility and desirability of allowing all North Dakota residents to participate in the uniform group insurance program (Health and Communications Committee)
4010	Study the eligibility criteria for economic and medical assistance programs and study the feasibility and desirability of standardizing income and asset criteria for those programs, standardizing pass-through, disallowance, and disregard in-	4043	Study the feasibility and desirability of

Bill or Resolution No.	Subject Matter (Committee)	Bill or Resolution No.	Subject Matter (Committee)
	establishing a family court for the resolution of domestic relations cases for low income persons (Court Services Committee)		forts (Agriculture Committee)
4048	Study the long-term care needs of veterans and the use of state and other existing facilities for long-term care for veterans in North Dakota (Budget Committee on Home and Community Care)	4063	Study the feasibility and desirability of establishing a women's correctional facility off the State Penitentiary grounds (Budget Committee on Government Finance)
4049	Study the need for optional Medicaid programs and the impact of discontinuing those programs (Budget Committee on Human Services)	4064	Study the desirability and necessity of requiring various state agencies to prepare and publish annual or biennial reports, including an analysis of the cost of preparing, printing, and distributing the reports (Budget Committee on Government Finance)
4050	Study the placement of students with developmental disabilities in regular classroom settings and the teacher training curricula or specific study courses designed to assist teachers in accepting and teaching students with mental retardation and other developmental disabilities (Education Services Committee)	4067	Study the feasibility and desirability of developing a program to assist single parents and their children in becoming independent of the social service system (Budget Committee on Human Services)
4052	Study accusations of child abuse or child sexual abuse by one parent against the other during contested custody and visitation cases (Judiciary Committee)	4070	Study open records, open meetings, and bidding laws for nonprofit corporations and organizations (Jobs Development Commission)
4055	Study the provision of services for children, including services related to child care, education, health, corrections, and foster care (Budget Committee on Youth Services)	4071	Study and monitor the social economic impact of defense-related downsizing, closures, and loss of federal contracts (Jobs Development Commission)
4056	Study tax, regulatory, marketing, and other business incentives that can be enacted by the state of North Dakota to maintain and encourage development of our state's abundant lignite resources (Jobs Development Commission)	4073	Study the cost effectiveness and economic impact of permitting Roughrider Industries to manufacture and sell products that may be produced and sold by the private sector (Budget Committee on Government Finance)
4057	Study the Uniform Interstate Family Support Act and its relationship to existing North Dakota law to determine the desirability of adopting it (Judiciary Committee)	4075	Study methods for funding state, county, and city law enforcement, correctional, and emergency medical technician training facilities and programs and the feasibility and desirability of establishing centralized training for law enforcement, correctional, emergency medical assistance personnel, and other emergency service providers (Budget Committee on Government Finance)
4061	Study the feasibility and desirability of pooling all sources of funding for health care benefits in conjunction with the study by the North Dakota Health Task Force in exploring the control of costs and the redistribution of dollars toward improved access to services through a health care reimbursement system (Health and Communications Committee)		
		NDCC Citation	Subject Matter (Committee)
		4-02.1-18	Receive annual audit report from State Fair Association (Legislative Audit and Fiscal Review Committee)
4062	Study the adequacy of current noxious weed laws, regulations, and control ef-	4-19-01.2	Approve use of moneys deposited in State Forester reserve account (Budget Section)

NDCC Citation	Subject Matter (Committee)	NDCC Citation	Subject Matter (Committee)
10-23-03.2	Receive annual audit report from corporation receiving ethyl alcohol or methanol production subsidy (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)
15-10-12.1	Approve any gift of a higher education facility (Budget Section)	54-16-01	Approve excess transfers from state contingency fund (Budget Section)
15-10-18	Approve nonresident student tuition fees (Budget Section)	54-27-22	Approve use of capital improvements planning revolving fund (Budget Section)
20.1-02-05.1	Approve comprehensive statewide land acquisition plan established by director of the Game and Fish Department and every land acquisition of more than 10 acres or exceeding \$10,000 by Game and Fish Department (Budget Section)	54-27-23	Approve use of cash flow financing (Budget Section)
		54-27.2-03	Receive report on transfers of funds from the budget stabilization fund to the state general fund to offset projected decrease in general fund revenues (Budget Section)
25-04-17	Receive report on writeoff of patients' accounts at Developmental Center at Grafton (Legislative Audit and Fiscal Review Committee)	54-34.3-04	Receive annual reports from the Department of Economic Development and Finance on loan performance and performance of the department (Jobs Development Commission)
28-32-02	Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)	54-35-02	Review uniform laws recommended by Commission on Uniform State Laws (Judiciary Committee)
28-32-02	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)	54-35-02	Establish guidelines for use of legislative chambers and displays in Memorial Hall (Legislative Management Committee)
28-32-15	Receive notice of appeal of an administrative agency's rulemaking action (Administrative Rules Committee)	54-35-02	Determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents (Legislative Management Committee)
46-02-04	Determine contents of contracts for printing of legislative bills, resolutions, and journals (Legislative Management Committee)	54-35-02.2	Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review Committee)
50-06-05.1	Approve termination of federal food stamp or energy assistance program (Budget Section)	54-35-02.4	Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans (Employee Benefits Programs 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)	54-35-02.6	Study and review rules of administrative agencies (Administrative Rules Committee)
54-10-01	Determine frequency of audits of state agencies (Legislative Audit and Fiscal Review Committee)	54-35-02.7	Overview the Garrison Diversion Project and related matters (Garrison Diversion Project Committee)
54-10-01	Determine necessary performance audits by State Auditor (Legislative Audit and Fiscal Review Committee)		

NDCC			
Citation	Subject Matter (Committee)		
	son Diversion Overview Committee)		tion for purpose of acquiring title to Hastings Hall on the North Dakota State University campus from the State Seed Department (Budget Section)
54-35-11	Make arrangements for 1995 session (Legislative Management Committee)	Chapter 319	Receive report from Commissioner of Insurance relating to basic health insurance coverage (Health and Communications Committee)
54-35.2-02.1	Receive annual report from the Advisory Commission on Intergovernmental Relations on planning grants administered by the commission (Budget Section)	Chapter 404	Receive certified statement from any ethanol plant receiving production incentives from the state as to whether the plant produced a profit from its operation in the preceding fiscal year (Budget Section)
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)		
57-01-11.1	Receive requested reports on auditing enhancement program and settlement of tax assessments (Budget Section)		
65-02-08	Approve fee schedules for medical and hospital services proposed for adoption by the Workers Compensation Bureau (Administrative Rules Committee)		
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 29	Administer legislative wing improvements appropriation (Legislative Management Committee)		
1989			
Session Laws			
Citation	Subject Matter (Committee)		
Chapter 25	Administer legislative wing and Capitol grounds improvements appropriation (Legislative Management Committee)		
Chapter 63	Approve expansion of Oxford House (Budget Section)		
1991			
Session Laws			
Citation	Subject Matter (Committee)		
Chapter 19	Approve lease purchase agreement entered by Board of Higher Educa-	Chapter 2	Receive report from Department of Human Services on the effectiveness of the clubhouse project in Minot and continuation of the project for the

1993 Session Laws	
Citation	Subject Matter (Committee)
	1995-97 biennium (Budget Committee on Government Services)
Chapter 2	Receive periodic reports from Department of Human Services on alternatives for a formula to allocate funding to human service centers (Budget Committee on Government Services)
Chapter 2	Receive report from Department of Human Services on the development of a basic care facility ratesetting methodology, which must be used to set rates beginning July 1, 1995 (Budget Committee on Home and Community Care)
Chapter 2	Receive information from the Department of Human Services regarding costs and utilization of the service payments to the elderly and disabled program (Budget Committee on Home and Community Care)
Chapter 5	Authorize the director of the Office of Management and Budget to transfer appropriation authority within the appropriation to the department (Budget Section)
Chapter 5	Authorize all state agencies to transfer appropriation authority between grants line item and grants to state agencies line item (Budget Section)
Chapter 7	Receive report from Adjutant General on funds received and spent for the Veterans Cemetery (Budget Section)
Chapter 12	Approve appropriation of excess moneys in the game and fish operating fund (Budget Section)
Chapter 18	Receive report after August 1, 1994, from the Office of Management and Budget on amounts provided by state agencies and institutions for salary increases the second year of the biennium (Budget Section)
Chapter 22	Approve terms of conveyance of property by the Board of Higher Education to Ramsey County (Budget Section)
Chapter 26	Receive report in October 1994 from the Land Reclamation Research Center regarding additional reclamation research needed to reduce regulatory costs and on appropriations needed for

1993 Session Laws	
Citation	Subject Matter (Committee)
	1995-97 biennium (Budget Section)
Chapter 26	Receive 1993 and 1994 reports filed by Land Reclamation Research Center (Natural Resources Committee)
Chapter 35	Authorize director of the Department of Transportation to transfer appropriation authority within the appropriation to the department (Budget Section)
Chapter 35	Receive report at each meeting from the Department of Transportation on its progress in matching federal highway construction funds and on plan to complete four-lane highway system throughout the state (Budget Section)
Chapter 37	Approve transfer of appropriation authority from Legislative Council to Children's Services Coordinating Committee (Budget Section)
Chapter 37	Receive reports from Children's Services Coordinating Committee on the status of the implementation of the state children's services plan during the 1993-95 biennium (Budget Committee on Youth Services)
Chapter 38	Receive report at first meeting from Industrial Commission on changes in housing finance agency (Budget Section)
Chapter 39	Authorize the director of the Department of Corrections and Rehabilitation to transfer appropriation authority within the appropriation to the department (Budget Section)
Chapter 42	Receive report from Department of Economic Development and Finance regarding the impact of income level requirement in NDCC Section 10-30.3-11 (Jobs Development Commission)
Chapter 281	Authorize Developmental Center at Grafton to provide services under contract with a governmental or nongovernmental person (Budget Section)
Chapter 314	Receive annual report from Commissioner of Insurance on the progress of the partnership for long-term care program (Health and Communications Committee)
Chapter 475	Approve expenditure of moneys in

**1993
Session Laws**

Citation	Subject Matter (Committee)
	the traumatic brain injury fund (Budget Section)
Chapter 484	Receive progress reports and findings of Department of Human Services concerning its study of the medical assistance property cost reimbursement system for the nursing home industry in the state (Budget Committee on Home and Community Care)
Chapter 493	Receive reports from Tax Commissioner, executive director of Job Service North Dakota, and director of Department of Economic Development and Finance with respect to jobs training program (Budget Section)
Chapter 526	Receive from Office of Management and Budget, by July 1, 1994, a comprehensive solid waste management plan that assesses ability of each state agency to reduce amount of solid waste it uses and increase amount of recycled products it uses (Natural Resources Committee)
Chapter 529	Receive reports from the Information Services Division regarding access surcharges and expenditures for specialized telecommunications equipment for the communications impaired (Budget Section)
Chapter 631	Authorize establishment of casualty insurance organization to provide extraterritorial workers' compensation insurance (Budget Section)
Chapter 669	Hold legislative hearings on block grants (Budget Section)

Added Committee Responsibilities

The following table identifies additional assignments by the Legislative Council or the Legislative Council chairman to interim committees. The table lists the subject matter and the interim committee to which it was referred:

Responsibility	Interim Committee
Study systems used in the testing of wheat protein content	Agriculture Committee
Monitor status of state agency and institution appropriations	Budget Committee on Government Finance
Review and report on budget data prepared by the director of the budget	Budget Section
Review report from the Department of Health and Consolidated Laboratories regarding costs and feasibility of establishing a state repository for medical documents	Budget Section

Overview state compliance with requirements of international trade treaties	International Trade Committee
Statutory and constitutional revision	Judiciary Committee
Review legislative rules	Legislative Management Committee
Address the abolition of the doctrine of sovereign immunity by the North Dakota Supreme Court	Sovereign Immunity Committee
Monitor effects of House Bill No. 1520, relating to property, sales, and use tax exemptions for new industry	Taxation Committee

STUDY RESOLUTIONS NOT PRIORITIZED

The following table lists the resolutions not prioritized by the Legislative Council for study during the 1993-94 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
3004	Study the North Dakota early childhood tracking system
3005	Study the provision of services to special needs children from a multiagency perspective
3018	Study the feasibility of forming multicounty health districts statewide
3019	Study veterans' preference employment laws
3028	Study whether the state of North Dakota may be eligible to receive lands transferred pursuant to the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act
3029	Study livestock industry concentration and the resulting problems faced by livestock producers
3041	Study the short-term and long-term capital construction needs of state agencies and institutions and methods of financing capital construction projects
3042	Study the feasibility and desirability of consolidating counties
3044	Study the feasibility of the Legislative Assembly establishing teacher salaries and benefits
3046	Study the need for and development of a statewide trauma care system in this state
3047	Study issues related to the employment of minors, including the need for employment, the academic and financial impact

Bill or Resolution No.	Subject Matter	Bill or Resolution No.	Subject Matter
	of employment, and safety requirements in the workplace	4036	Study the doctrine of governmental immunity of the state
3054	Study the supplying of water to rural areas and small towns	4039	Study the feasibility and desirability of implementing programs to assist first-year teachers
3055	Study the structure and organization of the Division of Emergency Management and local emergency management organizations	4044	Study the implementation of the North Dakota historic sites, state parks, and tourism development plan and potential funding mechanisms for specific projects listed in the plan
3056	Study the feasibility and desirability of implementing a funding program for child care licensing reforms, child abuse prevention, and child injury prevention through the purchase of personalized motor vehicle license plates	4045	Study political subdivision record retention
3059	Study state laws affecting the relationship between local housing authorities and the North Dakota Housing Finance Agency	4046	Study geographical boundaries defining educational service areas
3060	Study authorized investments of political subdivision funds	4047	Study the feasibility and desirability of requiring real estate licensing for auctioneers selling or offering to sell real property at public auction
3063	Study alternatives for establishing mechanisms for facilitating long-term policy development and other foresight processes in North Dakota state and local government	4051	Study the various forms of education and the environments in which education is provided and the flexibility of legislative and administrative systems for reviewing and evaluating different methods of providing education
3064	Study the membership, duties, and responsibilities of all statutory boards, councils, committees, and commissions	4053	Study the application of federal law prohibiting discrimination against the handicapped to school districts
3065	Study alternative administrative structures for forecasting state revenues	4054	Study the feasibility and desirability of state regulation of the cable television industry
3069	Study the substantive criminal laws of North Dakota	4058	Study the programming offered at the North Dakota State Hospital at Jamestown and the relationship of the programming to the community-based services offered throughout the state, and to include in the study an audit of the admissions procedures of the North Dakota State Hospital
4003	Monitor the implementation of the total quality management initiative by the Department of Human Services	4059	Study state agency office space needs, with emphasis on evaluation of whether rental of office space is the best use of state resources
4004	Monitor progress of the Department of Human Services in improving its administrative structure	4060	Study the statutory definition of home health agency and home health services and develop a solution to the problems and confusion that may arise due to the state registry requirements
4013	Study the establishment of a state repository for living wills, durable powers of attorney for health care, and other medical documents	4065	Study the relationship of state, county, and city government to determine the
4015	Study methods for providing civil legal representation and dispute resolution services for poor citizens		
4021	Study the feasibility of establishing a Department of Developmental Disabilities and Mental Health		

**Bill or
Resolution
No.**

Subject Matter

- feasibility and desirability of expanding
autonomy of counties and cities through
statewide county and city home rule
- 4066 Study the impact on the state's economy
of parity prices for various agricultural
commodities
- 4068 Study gift and estate tax laws and their
relationship to medical assistance pay-
ments

1995 NORTH DAKOTA LEGISLATIVE COUNCIL BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1023 - Administrative Rules Committee Authority. This bill eliminates the need for the Administrative Rules Committee to request the approval of the chairman of the Legislative Council to study and review administrative rules, allows the committee to consider oral comments concerning administrative rules, and requires the committee to consider expression of dissatisfaction with administrative rules or related laws from any person, rather than only from a court or agency. (Administrative Rules Committee)

House Bill No. 1024 - Environmental Rules. This bill requires an agency to repeal or amend any rule that was adopted from federal environmental guidelines which is not relevant to state regulatory programs, prohibits an agency from adopting rules from federal guidelines which are not relevant to state regulatory programs, and allows an agency to adopt by reference any applicable existing permit or procedural rules that are adaptable for use in new or existing programs. (Administrative Rules Committee)

House Bill No. 1025 - Agricultural Production Contract. This bill provides that any party to a contract for the production of an agricultural commodity may require any other party to the contract to participate in mediation through the North Dakota agricultural mediation service. The bill also provides that a parent entity is liable to a producer for the amount of any unpaid claim incurred as a result of a subsidiary's failure to pay or perform according to the terms of the contract. (Agriculture Committee)

House Bill No. 1026 - Biennial Report Requirements. This bill repeals North Dakota Century Code (NDCC) Section 54-06-04, relating to biennial report requirements for state agencies and institutions. The bill deletes the requirements for 47 biennial reports. (Budget Committee on Government Finance)

House Bill No. 1027 - Sentencing of Inmates. This bill requires judges to sentence inmates to the Department of Corrections and Rehabilitation rather than to the State Penitentiary or the Missouri River Correctional Center; changes the name of the State Industrial School to the State Youth Correctional Center; and provides that all statutory provisions pertaining to the State Penitentiary also apply to the Missouri River Correctional Center. (Budget Committee on Government Finance)

House Bill No. 1028 - Workers' Compensation Coverage of Inmates in the Private Sector Prison Industry Enhancement Certification Program. This bill authorizes Roughrider Industries to secure workers' compensation coverage for Penitentiary inmates employed in the private sector prison industry enhancement certification program. (Budget Committee on Government Finance)

House Bill No. 1029 - Law Enforcement Training Facility. This bill provides for a \$2 surcharge on

motor vehicle registrations beginning after December 31, 1995, and ending December 31, 1996, and appropriates \$1.4 million generated from the \$2 surcharge to the Highway Patrol for the purpose of a building addition for law enforcement training. (Budget Committee on Government Finance)

House Bill No. 1030 - Basic Care Facility Rates. This bill provides that the Department of Human Services basic care facility ratesetting methodology applies only to facilities that receive payments from the state or any political subdivision. (Budget Committee on Home and Community Care)

House Bill No. 1031 - Motor Vehicle Operator's License Suspension. This bill provides that an individual who has accumulated child support arrears of at least \$1,000 or three months of child support and has failed to comply with arrangements made with the Department of Human Services for payment of arrears would, after a 30-day notice period, have that individual's motor vehicle operator's license suspended or nonrenewed. The bill allows issuance of a temporary work license and does not apply to a commercial motor vehicle operator's license. (Budget Committee on Human Services)

House Bill No. 1032 - Voluntary Acknowledgment of Paternity. This bill provides assistance in establishing paternity acknowledgments in the birthing hospital, identifies the effect of a voluntary acknowledgment of paternity, establishes hospital responsibilities, and allows the Department of Human Services to withhold medical assistance payments from any noncomplying hospital. (Budget Committee on Human Services)

House Bill No. 1033 - Purchase of Game and Fish License. This bill makes it unlawful to purchase a hunting, fishing, or trapping license if the applicant has accumulated child support arrears of \$1,000 or more and has failed to comply with arrangements made with the Department of Human Services for payment of the arrears. (Budget Committee on Human Services)

House Bill No. 1034 - Employer Reporting Requirement. This bill requires employers of 25 or more employees to report to the Department of Human Services the hiring of each full-time employee within 30 days of hiring for the purpose of child support enforcement. (Budget Committee on Human Services)

House Bill No. 1035 - High School Minimum Curriculum. This bill changes the minimum curriculum requirements for high schools by adding two units of the same foreign language, requiring two units of vocational education, and requiring two units in any course areas not otherwise listed. (Education Finance Committee)

House Bill No. 1036 - Teacher Certification. This bill repeals the requirement that teachers must be citizens of the United States. (Education Finance Committee)

House Bill No. 1037 - Comprehensive State-wide Plans for Education. This bill directs the Superintendent of Public Instruction, the director of Vocational and Technical Education, and the chancellor of the North Dakota University System to develop a comprehensive statewide plan for the equitable and accessible provision of elementary and secondary education and for the provision of inservice training to elementary and high school teachers. (Education Finance Committee)

House Bill No. 1038 - Inspection of Schools. This bill provides for the inspection of schools at least once every three years and authorizes the State Fire Marshal to close schools when an inspection reveals the existence of an imminent fire hazard. (Education Finance Committee)

House Bill No. 1039 - Regional Committees for the Reorganization of Schools. This bill replaces county reorganization boards with regional committees for the reorganization of schools. Each of the state's eight regions is to have a committee consisting of one member appointed by the board of county commissioners from each county in the region. The bill also raises the compensation of committee members from \$25 to \$50 per meeting. (Education Finance Committee)

House Bill No. 1040 - School Board Meetings Schedule. This bill requires that a school board operating under a cooperative agreement issue, at its annual meeting, a schedule of multiboard meetings in which it may participate for the purpose of pursuing joint or cooperative activities. (Education Finance Committee)

House Bill No. 1041 - County Superintendent of Schools Repealed. This bill repeals the position of county superintendent of schools. (Education Finance Committee)

House Bill No. 1042 - Annexation Petitions and Dissolutions. This bill requires that annexation petitions identify at least one student who resides in the area to be annexed. In the case of a dissolution, attachment is prohibited unless a minor resides within the territory to be attached. (Education Finance Committee)

House Bill No. 1043 - High School Districts Required. This bill requires all land in the state to be in a high school district by July 1, 1997. (Education Finance Committee)

House Bill No. 1044 - Provision of Student Transportation. This bill defines the roles of the district of residence and the admitting district in providing student transportation. The student's district of residence may provide transportation, but if the district of residence does not, the admitting district may provide the transportation and be eligible to receive transportation payments. (Education Finance Committee)

House Bill No. 1045 - Educational Telecommunications Council. This bill adds a representative of the Public Service Commission, a representative of the Board for Vocational and Technical Education, a representative of private elementary and secondary schools, and an additional schoolteacher to the Educational Telecommunications Council. (Education Finance Committee)

House Bill No. 1046 - Professional Growth and Development. This bill provides that the Board of Higher Education, the Board for Vocational and Technical Education, and the Board of Public School Education are to discuss, at their annual joint meeting, opportunities for the professional growth and development of elementary, middle school, and high school staff. (Education Services Committee)

House Bill No. 1047 - Education of Children in the Least Restrictive Environment. This bill states, as legislative intent, that with respect to special education children are to be educated in the least restrictive environment. (Education Services Committee)

House Bill No. 1048 - Long-Range Professional Growth and Development Plans. This bill requires each school district superintendent to develop a district long-range professional growth and development plan that includes academic and pedagogical training components as well as a needs assessment and which addresses methods by which the training will be extended to the parents and families of students enrolled in the district. (Education Services Committee)

House Bill No. 1049 - Political Subdivision Participation in the Pretax Benefits Program. This bill allows political subdivisions to participate in the state pretax benefits program. (Employee Benefits Programs Committee)

House Bill No. 1050 - Health Care Reform. This bill provides for health care cooperatives; health care provider cooperatives; a Health Care Commission as a permanent subcommittee of the Health Council; a cost and quality review program; medical savings accounts; insurance market reforms including portability, guaranteed issue and renewal of health insurance products, and modified community rating; medical malpractice damages limitations; medical malpractice attorneys' fees limitations; medical malpractice alternative dispute resolution; expansion of medical assistance to specified populations to the greatest extent possible without needing a waiver from the federal government; an income tax deduction for health insurance premiums paid; and an income tax rate increase. The bill includes appropriations to expand the medical assistance program to certain children and pregnant women in the amount of \$18,779,731 and to expand the medical assistance program to certain other populations in the amount of \$1,871,086. The bill also includes a \$3 million appropriation to establish a cost and quality review program and a \$1.5 million appropriation to cover the expenses of the Health Care Commission established by the bill. The bill contains an effective date, provides for retroactive application, and contains an emergency clause. (Health and Communications Committee)

House Bill No. 1051 - Aircraft Product Liability. This bill establishes a disputable presumption that an aircraft or aircraft component is free from defects if the product was in compliance with applicable government or industry standards at the time of manufacture; and provides a state-of-the-art defense, a useful safe life defense, and a 10-year statute of repose for manufacturers of small aircraft and

aircraft components. (Jobs Development Commission)

House Bill No. 1052 - Pull Tab Expense Limitation. This bill permits an organization that conducts the game of pull tabs at an authorized site to deduct as an expense 2.5 percent of the gross proceeds for the game of pull tabs. (Judiciary Committee)

House Bill No. 1053 - Wager Limit for Twenty-One. This bill provides for an increase in the wager limit to \$25 for the game of twenty-one and requires that at least one table at a site must accept wagers in increments of \$1 up to a maximum set by the organization which may be below the maximum for any other table at the site. (Judiciary Committee)

House Bill No. 1054 - Documentation of Leases. This bill requires every state agency and institution to prepare a written analysis documenting the decision to acquire any asset as the result of a lease. The bill also requires the director of the budget to include in the executive budget a list of all proposed asset acquisitions through lease arrangements when the value of the asset is at least \$10,000 or the value of the group of assets comprising a single system has a combined value of at least \$10,000. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1055 - State Agency Clearing Accounts. This bill removes the authorization of state agencies and institutions to have bank clearing accounts outside of the Bank of North Dakota. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1056 - Department of Human Services Accounts Receivable Writeoff Report. This bill changes the date the Department of Human Services must present a detailed report to the Legislative Audit and Fiscal Review Committee on the status of accounts receivable for that fiscal year from 30 days after the close of each fiscal year to September 1 after the close of each fiscal year. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1057 - Primary State Environmental Agency. This bill designates the Department of Health and Consolidated Laboratories the primary state environmental agency. (Natural Resources Committee)

House Bill No. 1058 - Department of Health and Consolidated Laboratories Renamed Department of Health and Environment. This bill renames the Department of Health and Consolidated Laboratories the Department of Health and Environment. (Natural Resources Committee)

House Bill No. 1059 - State Health Council Renamed Health and Environment Council. This bill renames the State Health Council the Health and Environment Council and reconstitutes the Health and Environment Council. (Natural Resources Committee)

House Bill No. 1060 - Solid Waste Management Districts. This bill adds a representative of each Indian reservation within a solid waste management district to the governing board of the district. (Natural Resources Committee)

House Bill No. 1061 - Solid Waste Management Authorities. This bill allows political subdivisions to establish solid waste management

authorities and authorizes the governing body of an authority to borrow money and issue evidences of indebtedness to finance solid waste management facilities and resource recovery projects. (Natural Resources Committee)

House Bill No. 1062 - Individual Income Tax Long-Form Elimination. This bill eliminates the long-form individual income tax return as a filing option and retains use of the short-form individual income tax return as the only individual income tax filing method. (Taxation Committee)

House Bill No. 1063 - Time of Application for New Industry Tax Exemptions. This bill allows applications for new industry property tax exemptions to be made after the commencement of project operations. (Taxation Committee)

House Concurrent Resolution No. 3001 - Federal Grain Inspection Service Urged to Disseminate Information. This resolution urges the Federal Grain Inspection Service to disseminate useful information about technological and regulatory changes affecting the grading of wheat and encourages the use of first official grades at destination ports. (Agriculture Committee)

House Concurrent Resolution No. 3002 - Mentally Ill and Chemically Dependent Services Study. This resolution directs the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent, including changes in the role of the State Hospital, expanded community services, and a review of the clubhouse projects in Minot and Grand Forks. (Budget Committee on Government Services)

House Concurrent Resolution No. 3003 - Child Support Enforcement Study. This resolution directs the Legislative Council to study methods to improve the cost effectiveness and efficiency of the Department of Human Services child support collection system, including a review of the roles of clerks of court, regional child support enforcement units, and the department in providing a coordinated and effective child support enforcement program. (Budget Committee on Human Services)

House Concurrent Resolution No. 3004 - Criminal Justice Information System Study. This resolution directs the Legislative Council to monitor the development and operation of criminal justice information systems and to study policies and issues relating to confidentiality, dissemination, and retention of criminal justice information. (Court Services Committee)

House Concurrent Resolution No. 3005 - Court Unification Study. This resolution directs the Legislative Council to study the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction, with emphasis on a review of venue statutes. (Court Services Committee)

House Concurrent Resolution No. 3006 - Educational Options Study. This resolution directs the Legislative Council to study the use of institutions of higher education in the provision of educational options and opportunities to high school students. (Education Finance Committee)

House Concurrent Resolution No. 3007 - Inte-

gration of Regular and Special Education. This resolution urges the institutions of higher education and the Education Standards and Practices Board to integrate regular and special education within teacher preparation programs and also urges the institutions of higher education which offer teacher preparation programs to encourage collaboration and consultation within individual institutions, the university system, the communities they serve, and with the Education Standards and Practices Board. (Education Services Committee)

House Concurrent Resolution No. 3008 - Health Care Reform Study. This resolution directs the Legislative Council to study health care reform, including continued study of additional recommendations of the North Dakota Health Task Force and any programs that are implemented by the

1995 Legislative Assembly. (Health and Communications Committee)

House Concurrent Resolution No. 3009 - New Executive Branch Article. This resolution proposes a constitutional amendment to create a new executive branch article and to repeal the present Article V of the Constitution of North Dakota. (Judiciary Committee)

House Concurrent Resolution No. 3010 - Terms of Representatives. This resolution proposes a constitutional amendment to change the term of members of the House of Representatives from two years to four years and to authorize the Legislative Assembly to establish a procedure whereby one-half of the members of the House of Representatives are elected biennially. (Judiciary Committee)

SENATE

Senate Bill No. 2031 - Noxious Weed Educational Fund. This bill establishes a noxious weed educational fund and appropriates \$50,000 to the Commissioner of Agriculture for the provision of noxious weed and integrated pest management educational programs. The bill also appropriates \$310,000 from the environment and rangeland protection fund for cost-share assistance programs, the training of biological control officers, the training of weed officers, and the training of state and federal land managers. (Agriculture Committee)

Senate Bill No. 2032 - Powers of the Emergency Commission. This bill clarifies the powers and duties of the Emergency Commission. The bill provides that a transfer of moneys or spending authority may not be made which would eliminate a program or make impossible an objective intended by the Legislative Assembly, unless the transfer has been approved by the Budget Section. (Budget Section)

Senate Bill No. 2033 - Veterans' Basic Care Facilities. This bill authorizes the acquisition or construction of a western veterans' home at a cost not to exceed \$3 million, including up to \$1,050,000 from proceeds of a loan from the veterans' postwar trust fund and \$1,950,000 from a United States Veterans' Administration state home grant. The bill also provides for a Cedar Grove basic care veterans' home, authorizes a loan from the veterans' postwar trust fund, and provides an appropriation for operations to begin during the second year of the 1995-97 biennium. (Budget Committee on Home and Community Care)

Senate Bill No. 2034 - Nursing Home Property Cost Payment System. This bill requires the Department of Human Services to include in its ratesetting system for nursing homes a payment mechanism for property providing for depreciation and related interest costs. The system is to recognize, to the extent allowable by the federal government, the valuation of assets limited to the lowest of purchase price, fair market value, or seller's cost basis, increased by one-half of the consumer price index or one-half of the increase in the Dodge construction index; and is to recognize depreciation over a useful life determined by a qualified appraiser, eliminate depreciation recapture when a facility is held for a certain number of years, provide interest expense limitations, establish a per bed property cost limitation, and recognize increased lease costs of a nursing home operator. (Budget Committee on Home and Community Care)

Senate Bill No. 2035 - Welfare Reform Demonstration Project. This bill requires the Department of Human Services to seek a federal waiver to establish a welfare reform demonstration project that includes uniform eligibility criteria, budgeting, benefit computation, and reporting, and provides necessary child care and employment and training opportunities to assist individuals in becoming independent of welfare. (Budget Committee on Human Services)

Senate Bill No. 2036 - Child Support Receipt and Distribution Center. This bill establishes the

Department of Human Services as the child support payment center, allows the department to collect interest on unpaid child support, requires payments to be made to the department rather than clerks of court, and continues to require clerks of court to send notices of child support arrears to the child support obligor. (Budget Committee on Human Services)

Senate Bill No. 2037 - County Poor Relief Statutory Changes. This bill provides for statutory reference changes from poor relief to county general assistance; defines county of residence for general assistance and basic care purposes; changes multicounty social service governing board membership; and requires the Department of Human Services with the cooperation of county agencies to develop a method to allocate basic care assistance costs to each county. (Budget Committee on Human Services)

Senate Bill No. 2038 - Services for Children Victims and Witnesses of Domestic Violence. This bill establishes a community visitation center grant program within the Department of Health and Consolidated Laboratories, provides that a district judge may order a parent's visitation with a child to occur at a community visitation center, establishes a grant program to provide support services for children victims and witnesses of domestic violence, expands the juvenile court guardian ad litem program, allows the sharing of confidential information among public agencies, requires parents to be involved in their child's treatment, and allows the removal of suspected perpetrators from the home in child abuse and neglect situations. (Budget Committee on Youth Services)

Senate Bill No. 2039 - Child Abuse and Neglect Awareness. This bill expands and provides training for mandated child abuse and neglect reporters; provides training to professionals involved in child sexual abuse cases; provides assessment and treatment services for child sexual abuse victims, perpetrators, and their families; requires background checks on all out-of-home child care providers; and establishes a child sexual abuse public awareness program. (Budget Committee on Youth Services)

Senate Bill No. 2040 - Sentencing of Convicted Sex Offenders. This bill extends the allowable length of probation for a person found guilty of a sexual offense against a minor from five to 10 years for a felony, and from two to four years for a misdemeanor, and allows a judge to sentence a convicted sex offender to a treatment program. (Budget Committee on Youth Services)

Senate Bill No. 2041 - Duties of the Governor and Children's Services Coordinating Committees. This bill requires the Governor to present reports to the Legislative Assembly on the status of children and families and proposals for addressing the needs of children and families, expands the responsibilities of the state Children's Services Coordinating Committee, establishes the regional and tribal children's services coordinating committees and their responsibilities, and provides an appropriation to begin implementing the Budget Committee on Youth Services recommendations. (Budget Committee on

Youth Services)

Senate Bill No. 2042 - Public Health Nursing Services in Homes and Schools. This bill requires the State Department of Health and Consolidated Laboratories to provide public or community health nursing services to students enrolled in public schools and to all newborn children and their families in their homes. (Budget Committee on Youth Services)

Senate Bill No. 2043 - Child Care Licensing. This bill establishes a state child care licensing authority responsible for licensing early childhood facilities. The bill also requires all child care providers to be licensed except when child care is provided by a relative or a person caring for children from only one family other than their own. (Budget Committee on Youth Services)

Senate Bill No. 2044 - Children and Family Early Intervention and Treatment Services. This bill expands intensive in-home family preservation services; establishes children and family units in regional human service centers; and provides child care assistance for teen parents in schools, treatment services for severely emotionally disturbed children, and diagnostic crisis beds for children needing mental health, substance abuse, or sexual abuse treatment. (Budget Committee on Youth Services)

Senate Bill No. 2045 - Child Abuse and Neglect Investigations. This bill lessens the level of evidence needed in child deprivation cases, expands the membership and duties of state and local child protection teams, expands the administrative appeals process within the Department of Human Services for parents to challenge government intervention into their family, changes child abuse and neglect terminology, provides assistance to state's attorneys in juvenile court deprivation cases and in child sexual abuse criminal cases, and establishes a state's attorney review board. (Budget Committee on Youth Services)

Senate Bill No. 2046 - School Health and Child Care Programs. This bill establishes a before and after school child care grant program under the Superintendent of Public Instruction; requires schools to offer voluntary life skills, health education, and tobacco usage cessation programs; and provides training for teachers on identifying and assessing potential suicide victims. (Budget Committee on Youth Services)

Senate Bill No. 2047 - Blood Alcohol Level for Driving While Under the Influence. This bill reduces the blood alcohol level for individuals under the age of 21 to be charged with driving while under the influence from .10 percent to .02 percent and also reduces the level for which individuals under the age of 21 will lose their hunting and motorboat operating privileges from .10 percent to .02 percent. (Budget Committee on Youth Services)

Senate Bill No. 2048 - Noncriminal Traffic Violation Appeals. This bill provides that a person cited for a noncriminal traffic violation may appeal to the district court from the initial hearing held before a municipal judge, a magistrate, or other qualified person. (Court Services Committee)

Senate Bill No. 2049 - North Dakota Governor's Schools. This bill appropriates \$250,000

for the purpose of funding two additional North Dakota Governor's schools—one to offer programs in the areas of fine arts and communication and the other to offer programs in the areas of vocational education and entrepreneurship. (Education Finance Committee)

Senate Bill No. 2050 - Elementary Summer School Programs. This bill appropriates \$700,000 for the purpose of providing remedial, maintenance, and gifted elementary summer school programs. (Education Finance Committee)

Senate Bill No. 2051 - Professional Development Plans. This bill appropriates \$500,000 for the purpose of assisting school districts in the implementation of professional development plans that must provide for the professional development of teachers and administrators, address methods for improving student achievement levels, and provide for the development of life-long learning activities. (Education Finance Committee)

Senate Bill No. 2052 - Professional Development Centers. This bill appropriates \$640,000 for the purpose of funding professional development centers in the state's eight service regions. The bill requires the Superintendent of Public Instruction to establish one board to define the purpose of the centers, to provide for their governance, and to ensure that each center conducts outreach activities throughout its region. (Education Finance Committee)

Senate Bill No. 2053 - Bond Issue Approval. This bill authorizes the issuance of general obligation bonds by public school districts upon the approval of a majority rather than 60 percent of the qualified voters in a school district. (Education Finance Committee)

Senate Bill No. 2054 - State Payments to School Districts. This bill requires that state payments to school districts be made in roughly equal increments over a 10-month period beginning July 15 and continuing on the first day of the following nine months. (Education Finance Committee)

Senate Bill No. 2055 - English Language Proficiency Programs. This bill appropriates \$500,000 for the purpose of assisting school districts in the development of academic programs designed to improve the English language proficiency of students who by reason of ancestry or foreign birth speak a language other than English and understand or speak little or no English. (Education Finance Committee)

Senate Bill No. 2056 - Discounted Rates for Telecommunications Services. This bill requires the Public Service Commission to establish discounted rates for telecommunications services to public and private institutions of higher education and to public and private elementary and secondary schools. (Education Finance Committee)

Senate Bill No. 2057 - Variable Mill Deduct. This bill establishes a mathematical formula to determine the mill deduct. The deduct, which varies depending on the amount of foundation aid distributed, may not fall below 24 mills, nor rise above 25 percent of the latest available statewide average school district general fund mill levy. The bill also provides a foundation aid amount equal to the 1993-

95 appropriation plus \$80 million. (Education Finance Committee)

Senate Bill No. 2058 - Weighting Factors - Small But Necessary Elementary Schools. This bill provides for the application of weighting factors to the first 74 students in average daily membership in grades 9 through 12, the next 75 students, the next 400 students, and to any remaining students. The bill adjusts elementary school weighting factors by setting categories based on the first 99 students in average daily membership in grades 1 through 6, the next 900 students, and any remaining students. Students in grades 7 and 8 are weighted independently. The bill also defines small but necessary elementary schools and requires that those schools receive the additional payments of 30 percent of an amount equal to 15 times their weighted per student payments. (Education Finance Committee)

Senate Bill No. 2059 - Transportation Payments. This bill raises the per student transportation payment for students transported by schoolbuses to \$1 per day. The bill maintains a 90 percent cap on transportation payments and requires use of a uniform cost accounting system developed by the Superintendent of Public Instruction. (Education Finance Committee)

Senate Bill No. 2060 - Funding of Special Education. This bill requires the categorization of disabilities as mild, moderate, and severe and uses a mathematical formula to arrive at a weighting factor for each category. (Education Finance Committee)

Senate Bill No. 2061 - Distribution of Common Schools Trust Fund Proceeds. This bill requires the proceeds of the common schools trust fund to be distributed in the same manner as foundation aid. (Education Finance Committee)

Senate Bill No. 2062 - Additional Payments for Accredited Middle School Programs. This bill provides that each school district having a program-accredited middle school is entitled to receive an amount equal to seven percent of the contract salary payable to each full-time equivalent classroom teacher in the middle school program. The bill appropriates \$500,000 and provides that one-half of the money is to be made available for distribution during each year of the biennium. (Education Services Committee)

Senate Bill No. 2063 - Funding of Special Education. This bill directs the Superintendent of Public Instruction to distribute all moneys appropriated for special education each biennium, less \$12 million, to school districts according to the number of students each district has in average daily membership. (Education Services Committee)

Senate Bill No. 2064 - Penalty for Going Around Railroad Grade Crossing Barrier. This bill increases, from \$50 to \$100, the fine for going around lowered gates or any other barrier at a railroad grade crossing. (Health and Communications Committee)

Senate Bill No. 2065 - Expansion of the Uniform Group Insurance Program. This bill expands the uniform group insurance program administered by the Public Employees Retirement System to allow voluntary participation for persons

who meet medical underwriting requirements of the program. (Health and Communications Committee)

Senate Bill No. 2066 - International Trade Coordinating Council. This bill establishes an International Trade Coordinating Council to coordinate policies and activities relating to international affairs of the state. The bill appropriates \$111,900 to the Governor for the purposes of providing staff to the International Trade Coordinating Council for the biennium beginning July 1, 1995, and ending June 30, 1997. (International Trade Committee)

Senate Bill No. 2067 - Tribal-State Gaming Compacts. This bill provides for the ratification of tribal-state gaming compacts executed before February 1993. This bill does not ratify portions of gaming compacts which close tribal records in the possession of state agencies, nor does it ratify any amendments that may be made to present compacts or any new compacts that may be negotiated. (Judiciary Committee)

Senate Bill No. 2068 - Child Abuse and Neglect. This bill amends NDCC Chapter 50-25.1 regarding the use of certain terminology when dealing with child abuse and neglect matters and clarifies the duties of the state child protection team. (Judiciary Committee)

Senate Bill No. 2069 - Uniform Interstate Family Support Act. This bill enacts the Uniform Interstate Family Support Act, which provides for methods of addressing interstate child support matters, and repeals the Revised Uniform Enforcement of Support Act. (Judiciary Committee)

Senate Bill No. 2070 - Technical Corrections Act. This bill eliminates inaccurate or obsolete name and statutory references or superfluous language in the code. (Judiciary Committee)

Senate Bill No. 2071 - Effective Dates of Legislation. This bill establishes rules of construction for use in determining the effective dates of bills enacted by the Legislative Assembly. (Legislative Management Committee)

Senate Bill No. 2072 - Gratis and Landowner Preference Hunting Licenses. This bill revises the gratis and landowner preference hunting license system by limiting eligibility to residents; requiring proof that any leased land is used for agricultural purposes; allowing transfer of eligibility to a spouse or legal dependent residing customarily with the resident; providing that no more than one license for any species may be issued for the same qualifying land; providing that the landowner is entitled to receive the license unless otherwise specified in an agricultural lease; and providing that the number of elk and moose landowner preference hunting licenses may not exceed 15 percent of the total licenses issued for each district or unit open for the hunting of each species. (Natural Resources Committee)

Senate Bill No. 2073 - Nonresident Deer Hunting Licenses. This bill provides that nonresidents may be allocated not more than one percent of the licenses and permits for each sex and species of deer issued in a unit or subunit in the first lottery and that nonresidents may participate on the same basis as residents in a subsequent lottery for licenses and permits available after the first lottery. (Natural

Resources Committee)

Senate Bill No. 2074 - Payments in Lieu of Taxes. This bill provides that if property leased by the Game and Fish Department is leased from the United States, the director of the Game and Fish Department is to deduct from payments in lieu of United States or any agency or instrumentality of the United States in lieu of real estate taxes on that property. (Natural Resources Committee)

Senate Bill No. 2075 - Administration of the Commercial Feed; Insecticide, Fungicide, and Rodenticide; and Fertilizer and Soil Conditioner Laws. This bill transfers administration of the commercial feed; insecticide, fungicide, and rodenticide; and fertilizer and soil conditioner laws from the Department of Health and Consolidated Laboratories to the Commissioner of Agriculture. (Natural Resources Committee)

Senate Bill No. 2076 - Certification of Persons Conducting Ground Water Monitoring. This bill requires the Department of Health and Consolidated Laboratories to certify persons to conduct ground water monitoring, testing, or inspection programs required under NDCC Chapter 23-29 and prohibits solid waste management facility permitholders and solid waste transporter permitholders from penalizing any person regarding that person's conditions or privileges of employment because of the results of monitoring, testing, or inspection conducted under Chapter 23-29. (Natural Resources Committee)

Senate Bill No. 2077 - Sales Tax Exemption for Recycling Machinery and Equipment. This bill makes permanent the sales tax exemption for machinery or equipment used directly in the recycling of tangible personal property. (Natural Resources Committee)

Senate Bill No. 2078 - Public Telephones Subject to Telecommunications Regulation. This bill specifically excepts NDCC Section 49-21-01.5, which requires providers of public telephones to allow a consumer to use access code numbers to obtain operator services, from NDCC Section 49-21-01.1(4), which excludes public telephones from telecommunications regulation. (Regulatory Reform Review Commission)

Senate Bill No. 2079 - Regulatory Reform Review Commission. This bill establishes the Regulatory Reform Review Commission to review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1995 and 1999 legislative sessions. The bill contains an expiration date of December 31, 1998. The bill contains an emergency clause. (Regulatory Reform Review Commission)

Senate Bill No. 2080 - Regulation of Claims Against the State. This bill establishes procedures for bringing claims against the state for personal injury or property damage. The bill limits recovery to a total of \$250,000 per person and \$750,000 for any number of claims arising from a single occurrence and prohibits punitive damages in actions against the state; provides that the state may not be held liable for certain claims; requires that an action for an injury proximately caused by the alleged negligence, wrongful act, or omission of a state employee

occurring within the scope of the employee's employment must be brought against the state; requires the state to indemnify and save harmless a state employee for a claim and final judgment for any act or omission occurring within the scope of the employment of the employee; establishes procedures for the handling of claims by the state; and provides a procedure for arbitration of claims against the state or a state employee. The bill also establishes a risk management fund through which state entities must participate for insurance coverage and appropriates \$6 million to administer the state risk management program and to pay from the risk management fund settled claims and judgments against the state. The bill contains an emergency clause and an effective date of 15 days after the adjournment of the 1995 Legislative Assembly. (Sovereign Immunity Committee)

Senate Bill No. 2081 - Taxing District Levy Limitations. This bill allows a taxing district to levy the same amount in tax years 1995 and 1996 as the taxing district was eligible to levy in tax year 1994. The bill allows political subdivisions to preserve levy authority that has accumulated in recent years through percentage levy increase authority enacted by the Legislative Assembly, but the bill does not allow a percentage increase in levy authority as has been authorized in the past. (Taxation Committee)

Senate Bill No. 2082 - Foundation Aid Equalization of New Industry Payments in Lieu of Taxes. This bill requires payments in lieu of taxes allowed for new industries to be equalized for foundation aid program purposes by dividing the payment by the mill rate for the school district and adding the result to the valuation of the district against which the deduction factor for foundation aid purposes is applied. (Taxation Committee)

Senate Concurrent Resolution No. 4001 - Court Procedures in Child Sexual Abuse Cases Study. This resolution directs the Legislative Council to study dispositional alternatives available to judges in cases involving sexual offenses against children, the disposition of cases involving perpetrators who do not attend court-ordered treatment, and the courts' use of and compliance with alternative testimony provisions. (Budget Committee on Youth Services)

Senate Concurrent Resolution No. 4002 - Children's Services Delivery System Study. This resolution directs the Legislative Council to study the implementation of the 1993-94 Budget Committee on Youth Services recommendations and to receive reports from the Children's Services Coordinating Committee on its progress toward meeting its goals and objectives for improving the status of children and families. (Budget Committee on Youth Services)

Senate Concurrent Resolution No. 4003 - Housing Needs Study. This resolution directs the Legislative Council to study the feasibility of a long-term funding initiative to make available housing for families who are low income, homeless, or disabled, or who require transitional housing to assist them toward independent living. (Budget Committee on Youth Services)

Senate Concurrent Resolution No. 4004 - School Buildings and Facilities Study. This resolution directs the Legislative Council to study the needs of school districts with respect to buildings and facilities and the role of the state in the construction, maintenance, and renovation of school buildings and facilities. (Education Finance Committee)

Senate Concurrent Resolution No. 4005 - Elementary and Secondary Education Finance Study. This resolution directs the Legislative Council to study education finance issues. (Education Finance Committee)

Senate Concurrent Resolution No. 4006 - Middle School Study. This resolution directs the Legislative Council to study statutory and systemic changes necessitated by the implementation of middle school concepts. (Education Services Committee)

Senate Concurrent Resolution No. 4007 - Teacher Professional Growth and Development Plan Study. This resolution directs the Legislative Council to study the delivery of, and costs associated with, professional growth and development plans for teachers. (Education Services Committee)

Senate Concurrent Resolution No. 4008 - Investment Process and Investment of State Funds Study. This resolution directs the Legislative Council to study the state's investment process and the investment of state funds. (Employee Benefits Programs Committee)

Senate Concurrent Resolution No. 4009 - Congress Urged to Amend the Employee Retirement Income Security Act. This resolution urges Congress to amend the Employee Retirement Income Security Act to subject employers' self-funded insurance plans to regulation by the states to facilitate health care reform at the state level. (Health and Communications Committee)

Senate Concurrent Resolution No. 4010 - In-

terim International Trade Committee. This resolution directs the Legislative Council to establish an International Trade Committee to study requirements, deadlines, and effects of international trade agreements and to stimulate the further development of international trade in this state. (International Trade Committee)

Senate Concurrent Resolution No. 4011 - Open Records Laws Study. This resolution directs the Legislative Council to study open records laws and exceptions to the open records laws. (Jobs Development Commission)

Senate Concurrent Resolution No. 4012 - Tribal-State Compact Study. This resolution directs the Legislative Council to study the tribal-state compact negotiation process. (Judiciary Committee)

Senate Concurrent Resolution No. 4013 - Removal of Lieutenant Governor as Presiding Officer of Senate. This resolution proposes a constitutional amendment to remove the Lieutenant Governor as presiding officer of the Senate and allows the Senate to select the presiding officer from among its members. (Judiciary Committee)

Senate Concurrent Resolution No. 4014 - Sovereign Immunity Reinstated. This resolution proposes a constitutional amendment to reinstate sovereign immunity. (Sovereign Immunity Committee)

Senate Concurrent Resolution No. 4015 - Property Tax Assessment System Study. This resolution directs the Legislative Council to study the property tax assessment system of the state, with emphasis on potential benefits from improved technology and sharing of resources among political subdivisions and the state. (Taxation Committee)

Senate Concurrent Resolution No. 4016 - Tax Preferences Study. This resolution directs the Legislative Council to study tax preferences. (Taxation Committee)