

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### JUDICIARY COMMITTEE

Thursday, November 12, 1998  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator Wayne Stenehjem, Chairman, called the meeting to order at 12:00 noon.

**Members present:** Senators Wayne Stenehjem, Marv Mutzenberger, Carolyn Nelson, John T. Traynor, Darlene Watne; Representatives Charles Axtman, Duane L. DeKrey, Lois Delmore, G. Jane Gunter, Scot Kelsh, William E. Kretschmar, Andrew G. Maragos, Shirley Meyer, Paul Murphy, Darrell D. Nottestad, Leland Sabby, Allan Stenehjem, Gerald O. Sveen

**Members absent:** Senator Rolland W. Redlin; Representatives Kathy Hawken, Roxanne Jensen

**Others present:** See attached appendix

#### CLERK OF COURT STUDY

At the request of Chairman Stenehjem, Representative Kretschmar presented the findings and recommendations of the Clerk of Court Consensus Process. Representative Kretschmar said the group of persons who participated in the Consensus Process consisted of representatives of the North Dakota Clerks Association, State Bar Association of North Dakota, North Dakota Association of Counties, North Dakota County Commissioners Association, and the interim Judiciary Committee. He said the Consensus Process conducted five meetings during which numerous clerk of court issues were discussed and debated. He said it is incumbent upon the Legislative Assembly to provide adequate clerk of district court services in every county and that the plan proposed by the Consensus Process would provide for the state to pay for the costs of clerk of court services in every county that wants the funding. He said the only issue not completely resolved at the conclusion of the final meeting of the Consensus Process was the number of full-time equivalent employees that triggers the options available to a county.

Chairman Stenehjem requested that testimony from Mr. Fred Strege, Attorney and member of the Consensus Process, Wahpeton, be distributed. In his testimony, Mr. Strege discussed his concerns regarding the proposed legislation of the Consensus Process and the point at which a county is treated as a large county. A copy of Mr. Strege's testimony is on file in the Legislative Council office.

Chairman Stenehjem said the committee was very appreciative to each member of the Consensus

Process for the time and effort expended in developing the plan.

At the request of Chairman Stenehjem, Mr. Jim Ganje, Staff Attorney, Supreme Court Administrator's office, presented the legislation proposed by the Consensus Process. Mr. Ganje said the plan developed by the Consensus Process includes two study resolutions. The first resolution, he said, directs the Legislative Council to review and monitor the implementation of legislation providing for the delivery of clerk of district court services through state funding and alternative methods. The second resolution, he said, directs the Legislative Council to study the feasibility and desirability of an equitable sharing, between the state and counties, of the cost of providing facilities for the delivery of state-funded judicial and clerk of court services. Copies of the proposed resolutions are on file in the Legislative Council office.

Mr. Ganje also reviewed a bill draft proposed by the Consensus Process. He said the bill draft would create a new chapter to North Dakota Century Code Title 27. He said the bill draft contains a definition of clerk of district court services. Under the plan of the Consensus Process, state funding would be provided for those services considered to be clerk of district court services, but would not be provided for those services now performed by clerks of court which are determined to be noncourt services. He said the bill draft provides that after January 1, 2003, the clerk of court will no longer be an elected office. He said the bill draft provides counties with options regarding its clerk of court and the number of options a county has is dependent upon the number of FTEs the Supreme Court determines are necessary to provide adequate clerk of court services. The plan further provides that the options available to a county regarding state funding of clerk of district court services would depend on the number of FTEs the Supreme Court determines are necessary to provide adequate clerk of district court services. Under the plan, he said, a county in which the Supreme Court determines that two or more FTE employees are necessary to provide adequate clerk of district court services would have two options: (1) state-funded clerk of district court services; or (2) provide clerk of district court services at its own expense. He said in a county in which the Supreme Court determines that more than one but

fewer than two FTE employees are necessary to provide adequate clerk of district court services would have three options: (1) state-funded clerk of district court services; (2) contract with the Supreme Court for the provision of clerk of district court services; or (3) provide clerk of district court services at its own expense. He said a county in which the Supreme Court determines that less than one FTE employee is necessary to provide adequate clerk of district court services would have two options: (1) contract with the Supreme Court for the provision of clerk of district court services; or (2) provide clerk of district court services at its own expense. A copy of the bill draft presented by Mr. Ganje is on file in the Legislative Council office.

In response to a question from Senator Traynor, Mr. Ganje said the majority of the sections in the bill draft amend statutes to separate the clerk of district court services for which the state will provide funding from the noncourt services for which the county will be responsible for funding.

In response to a question from Representative Sveen, Mr. Ganje said the salaries of those clerks of court and staff who become state employees will be consistent with other state employees. If a county opts to contract with the state for the provision of clerk of court services, the funding will be based upon county compensation levels.

In response to a question from Representative Axtman, Mr. Ganje said a formula was used to determine how many employees are necessary in each county.

In response to a question from Representative Nottestad, Mr. Ganje said the bill draft does not change the distribution of fees collected by the clerk of court.

At the request of Chairman Stenehjem, Representative DeKrey provided testimony on the Clerk of Court Consensus Process. Representative DeKrey said the participants in the process agreed that the plan developed by the Consensus Process was a better solution than the plan that resulted from the National Center for State Court's study. He said the only issue unresolved at the conclusion of the Consensus Process was the trigger point for determining county options and that the issue should be addressed by the Legislative Assembly when it considers the legislation. He said the plan holds every county harmless because each county has the

option to fund its own clerk of court services, which is how the services are currently funded, or to have the state fund those services.

Chairman Stenehjem called on Senator Bill L. Bowman, District 39, for comments concerning the Consensus Process plan. Senator Bowman said he is concerned that if a county elects the option to fund its own clerk of court services that the county is being double-taxed. He said the most important issue is to keep clerk of court services in each county.

In response to a question from Senator Stenehjem, Mr. Keith Nelson, Supreme Court Administrator's office, said the Supreme Court has developed its budget based on the plan and on all counties opting under the plan for state employment of clerks of court or contracting with the state for clerk services.

### HOUSING DISCRIMINATION BILL DRAFT

Chairman Stenehjem said the housing discrimination bill draft approved and recommended by the committee at the October 12-13, 1998, meeting would designate the Labor Department as the agency responsible for receiving and investigating housing discrimination claims.

### RECOMMENDATIONS

**It was moved by Representative DeKrey, seconded by Representative Kretschmar, and carried on a roll call vote that the committee endorse the concepts in the bill drafts and resolutions developed by the Clerk of Court Consensus Process and that the committee be adjourned sine die.** Senators Stenehjem, Mutzenberger, Nelson, Traynor, and Watne and Representatives Axtman, DeKrey, Delmore, Gunter, Kelsh, Kretschmar, Maragos, Meyer, Murphy, Nottestad, Sabby, Stenehjem, and Sveen voted "aye." No negative votes were cast.

Chairman Stenehjem adjourned the meeting sine die at 12:55 p.m.

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Vonette J. Richter  
Counsel

ATTACH:1