

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY COMMITTEE

Monday, April 10, 2000
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Wayne Stenehjem, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Wayne Stenehjem, Joel C. Heitkamp, Carolyn Nelson, John T. Traynor, Darlene Watne; Representatives Duane DeKrey, Lois Delmore, Dennis E. Johnson, Scot Kelsh, Lawrence R. Klemin, Amy N. Kliniske, Kim Koppelman, John Mahoney, Shirley Meyer, Phillip Mueller

Members absent: Senators Dennis Bercier, Judy Lee, Stanley W. Lyson; Representatives G. Jane Gunter, Kathy Hawken

Others present: See attached appendix

It was moved by Representative DeKrey, seconded by Representative Delmore, and carried on a voice vote that the minutes of the September 27, 1999, meeting be approved as distributed.

CLERK OF DISTRICT COURT AND COURT UNIFICATION STUDY

Chairman Stenehjem called on Chief Justice Gerald W. VandeWalle, North Dakota Supreme Court, for comments concerning the implementation of the 1999 legislation regarding clerks of district court. Chief Justice VandeWalle said 52 counties have informed the Supreme Court about their decisions with regard to clerks of court. He said 11 counties (Burleigh, Cass, Grand Forks, Morton, Ramsey, Richland, Stark, Stutsman, Walsh, Ward, and Williams) have opted for state funding of their clerks of court; four counties (Billings, Bowman, Oliver, and Sioux) have opted to fund their clerk of court operations themselves, although Bowman County may reconsider its decision; one county (Sheridan) has yet to respond; and the remaining 32 counties have opted to enter an agreement with the state for clerk of court services. He said the court has looked at the credit for clerk of court work on administrative traffic cases. He said this work was not considered in the original FTE formula of one FTE for every 600 filings. He said a study group consisting of nine clerks of court and three administrators has studied the issue and determined that nine minutes of credit should be allowed for each administrative traffic case. He said the mathematical formula is being developed by the state court administrator's office and credit will be given to all the counties. He said for those counties in which

contracts have already been signed, the contracts will be adjusted accordingly. He said for those counties with a large number of administrative traffic cases, the adjustment will make a significant difference.

Chief Justice VandeWalle said because of the lack of a substantive basis for the formula, the 600 filings per FTE formula used in the 1999 legislation has been criticized. He said the court has contracted with the National Center for State Courts to conduct a workload assessment to document the number of FTEs requested. He said the study will be done in cooperation with the clerks of court and the study should resolve the issue of the number of FTEs that is required. He said the study, which will begin in mid-April and conclude on September 1, 2000, will be completed in time to incorporate the findings into the court's 2001-03 budget request. He said the personnel board is drafting a clerk of court and deputy clerk of court positions' descriptions. He said the board is also working on pay grades for the new state employees for those 11 counties that have opted for state funding of clerk of court services.

Chief Justice VandeWalle said the Supreme Court's Court Services Committee has proposed a rule to address clerk of district court appointments, duties, and related matters. He said the composition of that committee has been supplemented to include several clerks of court and county commissioners. He said two areas of concern are under consideration by the committee. The first, he said, is preparation of criminal judgments. He said in the two largest counties, Cass and Burleigh, the clerks of court do not prepare the criminal judgments in felony cases. In those counties, he said, the judgments are prepared by the state's attorney's offices. He said in Grand Forks County and Ward County, the clerks of court prepare the judgments. The second area of concern, he said, is the collection of restitution. He said in two of the larger counties, the clerks of court collect the restitution, and in the other two larger counties, the clerks do not collect the restitution. He said in the remaining counties, for the most part, the clerks of court prepare the judgments and collect the restitution. He said if the court requires those two larger counties that do not prepare criminal judgments and collect restitution to do those tasks, the court will need to look at adding additional FTEs to the staff in those counties.

Chief Justice VandeWalle said throughout the entire process, the clerks of court have been very cooperative and have done a wonderful job of providing information to the court. He said the court's staff is also doing an excellent job. He said he is optimistic about the process and is pleased with the progress that has been made so far. He said there is still a concern about the funding for the period from April through June of 2001. He said the court received \$1 million of the \$1,228,597 requested and required for the clerk of court operations during this period.

In response to a question from Senator Watne, Chief Justice VandeWalle said the budget for the full 2001-03 biennium has not been prepared.

In response to a question from Senator Traynor, Chief Justice VandeWalle said he has not noticed a difference between the criminal judgments that have been prepared by state's attorneys and those prepared by clerks of court. He said those clerks who have been preparing those judgments have become skilled at doing so. He said it could be a problem in those counties where clerks have not previously prepared the judgments and will now have to prepare them. He said the biggest area of concern is in the preparation of felony judgments. He said while misdemeanor judgments are fairly routine, felony judgments are more complex because of the number of conditions they contain, such as parole, probation, and possible treatment requirements.

In response to a question from Representative Mahoney, Chief Justice VandeWalle said in counties in which the state has contracted for services, the counties will be paid based upon the number of FTEs times the salary in that county as of January 1, 2000. He said, for example, if a county has one employee who is earning \$20,000 per year and the court determines that one-half of an FTE is needed to do clerk of court duties, the state will pay that county \$10,000. He said the court may have to ask the legislature for a deficiency appropriation for the final three months of the biennium. He said any clerk of court, regardless of the option selected by the county, may contact the court for information and assistance.

In response to a question from Representative Delmore, Chief Justice VandeWalle said most of the substantive salary inequities have been resolved.

In response to a question from Senator Watne, Chief Justice VandeWalle said personnel policies regarding accumulated annual leave and sick leave are being resolved. He said with the cooperation of the clerks of court, substantial progress has been made to resolve personnel issues.

Chairman Stenehjem called on Ms. Linda Rohrbach, Register of Deeds, Clerk of Court, McIntosh County, for comments concerning the clerk of court issues. Ms. Rohrbach said there are still some concerns regarding the non-court-related functions. She said it is unclear in some counties as to where

the person doing these functions should be located and where the records should be located.

JUDICIAL SALARIES

Chairman Stenehjem called on Chief Justice VandeWalle for information regarding the issue of judicial salaries. Chief Justice VandeWalle introduced Judge Ralph Erickson, cochairman of the Judicial Conference's Compensation Committee, to the committee.

Judge Erickson said the judiciary is responsible for guarding society. He said the duties of the judiciary are to uphold the law and to act as a check and balance on the other branches of government. He said the judiciary is the ultimate protector of the rights and duties of persons and businesses. He said court unification in North Dakota was the result of too few people and too much infrastructure. As a result of court unification and the merging of county judges into district judge positions, he said, the number of judgeships has been reduced from 54 to 42. He said over that same timeframe during which the number of judgeships was being reduced, the caseload of those judges has increased from 2,100 cases in 1989 to 3,200 cases in 1998. He said even though the number of judges has been reduced and caseloads have increased, the court calendars are more current than they have ever been. He said this is due, in part, to technology and to the efficient management of cases by the courts.

Judge Erickson provided to the committee information on the salaries of judges and justices in North Dakota and how those salaries compared to similar judicial positions in other states. He said in the late 1970s, North Dakota judges ranked above the national average and the national median for salaries. He said as of July 1, 1999, the national average for trial court judges was about \$101,000 and for court of last resort judges (similar to North Dakota's Supreme Court), the national average was about \$112,000. He said North Dakota district judges are paid approximately \$77,000 and North Dakota Supreme Court justices are paid approximately \$83,000. He said in 1999 North Dakota district judges ranked 50th in salary and North Dakota Supreme Court justices ranked 49th in salary.

Judge Erickson said adequate salaries are important for attracting the most qualified candidates for the job. He said an ambitious, competent, and qualified judiciary is essential to economic development. He said businesses do not want to transact business in a place where they cannot predict what the courts are going to do and that predictability in the application of laws is important. He said lawyers do not become judges for the money, but rather do so for the ability to perform public service for the greater good of all the people. He said most judges find the job intellectually challenging. He said being a judge puts the person and the judge's family at the risk of personal harm. He said he received threats, including death threats.

Judge Erickson said the average district judge salary for the three states bordering North Dakota is \$87,200. He said among states of less than one million in population, the high is Rhode Island with a salary of \$106,800 and the low is Wyoming with a salary of \$83,700. He said the average of these states is \$93,500. He said with states with a population of less than that of North Dakota, the salaries range from a high in Alaska with a salary of \$103,000 to a low in Wyoming of \$83,700. He said South Dakota's equivalent of North Dakota's district judges, as of July 1, 2000, will be paid \$88,600, and South Dakota Supreme Court justices will be paid about \$93,000. He said if North Dakota district judges' salaries had kept pace with inflation, salaries for district judges would be approximately \$98,000.

Judge Erickson said judges want to be treated fairly, and judges believe they have done a better job than 50th. He said judges believe that in reducing the size of a branch of government and in continuing to deliver services in a timely manner, the judiciary has demonstrated that government can be both leaner and more responsive. He said judges should be compensated fairly for the work they do. Judge Erickson said the judges would like a bill either introduced or endorsed by the Judiciary Committee that would provide for a fair and equitable wage for judges in North Dakota.

Judge Erickson provided a written copy of his presentation which is on file in the Legislative Council office. Judge Erickson also provided to the committee copies of letters of support for increased judicial salaries. Copies of these letters are on file in the Legislative Council office.

In response to a question from Representative Delmore, Judge Erickson said according to the United States Department of Labor, North Dakota's overall salaries rank 45th in the nation. He said this is based on all professions. He said the number of judges in states similar in size to North Dakota tends to vary greatly. He said judges on the East Coast tend to have lighter caseloads than those in the West. He said it is hard to compare numbers because states count their number of cases differently. South Dakota, he said, has 37 circuit court judges, 13 magistrate judges, and four or five municipal court judges. He said South Dakota's circuit court judges and magistrate judges compare roughly to North Dakota's district judges and referees.

In response to a question from Senator Traynor, Judge Erickson said it is not unheard of for a state to levy a property tax to fund its judiciary.

In response to a question from Representative Mueller, Judge Erickson said the Judicial Compensation Committee would like to see judges in this state paid at least what South Dakota judges are paid.

In response to a question from Representative Kelsh, Judge Erickson said with salaries similar to those of South Dakota judges, North Dakota judges would rank 47th or 48th. North Dakota, he said,

would move ahead of Wyoming, Montana, and possibly New Mexico.

Chairman Stenehjem called on Representative Shirley Meyer for comments concerning the study. Representative Meyer said she was appearing before the committee as a concerned citizen. She said there is a segment of North Dakota society that is not being guarded. She said in the last several weeks, a group of citizens in southwestern North Dakota have formed a group known as North Dakota Citizens for Legal Reform. She said the group is concerned about the financial exploitation of the state's senior citizens by some unethical attorneys and judges. She said the elderly need protection against attorney and judicial misconduct. She said there is a need for improving access for senior citizens to our civil justice system. She said the group has developed three main goals and objectives. The first goal, she said, is to provide the citizens of North Dakota with the knowledge and support to report unethical attorneys to the disciplinary board. She said the current process for reporting unethical attorney behavior is confusing, lengthy, intimidating, and expensive. The second goal, she said, is to take control of attorney discipline from the State Bar Association and give the authority to a professional board that does not have an attorney majority. The third goal, she said, is to bring attorneys under the authority of the Consumer Fraud and Unlawful Credit Practices Act. She said if citizens had the authority to sue attorneys under this Act, it would level the playing field because a client would only have to prove that he or she was intentionally misled by inaccurate information. She said the group intends to send a strong message to the state's court, judges, and legislature that the citizens of the state will no longer tolerate the financial exploitation of the state's vulnerable elderly citizens. Representative Meyer distributed a copy of two newspaper articles, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Representative Meyer said state's attorneys are not bringing charges against attorneys because the charges are so difficult to prove in court. She said criminal charges should be brought but are not. She said the problem occurs when an elderly person, usually a woman, seeks legal advice. She said an elderly woman goes to an attorney in search of professional legal advice and within a few visits is stripped of her assets, her income, and her home. She said these women are advised by lawyers to sign documents, but the women may not understand what they are signing.

JUVENILE DRUG COURTS

Chairman Stenehjem called on Justice Mary Muehlen Maring, North Dakota Supreme Court, for a presentation regarding the implementation of juvenile drug courts in the state. Justice Maring said two pilot juvenile drug courts are set to begin on May 1, 2000, in Fargo and Grand Forks. She said the traditional

drug offense process for dealing with juvenile drug offenders is not working. She said in 1989 the first drug court system was developed in Miami, Florida. She said the model is a team-based model led by a judge with a state's attorney, a defense counsel, a treatment provider, and a probation officer making up the remainder of the team. She said the first drug courts were developed for adults; however, in 1995 the idea has been expanded to include juveniles. She said as of February 2000 there were 81 juvenile drug courts across the country, and 65 more are being planned. She said the drug courts have been successful in reducing recidivism rates and have had an increased rate of retention in treatment and in the success of that treatment.

Justice Maring said in October 1998 the Juvenile Policy Board, an advisory board to the Supreme Court, organized a study committee to determine whether the resources were available in the state to operate a pilot juvenile drug court and to determine whether there was a need for a juvenile drug court in the state. She said the advisory committee was comprised of representatives of the Department of Public Instruction, the Department of Human Services, the Department of Corrections and Rehabilitation, the State Department of Health, the Attorney General's office, the president of the State's Attorneys Association, indigent defense counsel, a judicial referee, a district judge, and a juvenile probation officer. She said the committee concluded that the resources were available and that there was a need for a juvenile drug court in the state.

Justice Maring said from 1995 to 1998 controlled substance violations doubled. She said alcohol violations during that same time period increased from 1,700 to 2,700. She said a survey of North Dakota high school students indicated that 61 percent had experimented with alcohol. She said nationally that percentage is 51 percent. She said the committee applied for and received a \$30,000 Department of Justice planning grant. She said the grant was used to develop the juvenile drug court pilot project in Fargo and Grand Forks.

Justice Maring said the following criteria will be used to determine a juvenile drug offender's eligibility for the juvenile drug court:

1. The referring offense does not have to be a drug or alcohol offense;
2. The juvenile must be between 14 and 18 years old;
3. No prior felony level adjudication;
4. No previous dangerous antisocial behavior;
5. No previous referral to the drug court;
6. No prior or pending charges of selling or manufacturing controlled substances;
7. An admission to the offense or a court order to the program; and
8. A drug or alcohol assessment has been made.

Justice Maring said the juvenile drug court team will include the judge, a juvenile court supervisor officer, the state's attorney, a defense counsel, a school representative, and the treatment coordinator. She said the team will decide who is eligible for the program. She said the team will design the program and make weekly reports to the judge. She said in Cass County a juvenile drug offender will remain in the program for six to nine months. In Grand Forks County, she said, the juvenile will remain in the program for 9 to 12 months. She said drug court hearings before the juvenile court judge will take place on a weekly basis. She said the program will include sanctions for noncompliance and incentives for compliance. She said the program will require scheduled and random drug and alcohol screenings. Parental involvement, she said, will be required, and the juvenile and the parents will be required to sign a drug court contract. She said 20 hours of community service will be required, and the judge may order educational classes.

Justice Maring said a juvenile in the program can be removed from the program for falsifying a urinalysis, if the juvenile is charged with a felony, or by a decision of the judge. She said if the juvenile successfully completes the program, there will be a full dismissal of the charges. If the juvenile is able to "stay clean" for two years following the completion of the program, she said, the juvenile can petition the court to erase the entire juvenile record.

Justice Maring said additional grants are being sought to fund the drug court for an additional two years. She said there may be a need to seek a legislative appropriation if the grant requests are unsuccessful.

In response to a question from Representative Delmore, Justice Maring said Judge Debbie Kleven will be operating the drug court in Grand Forks County from 4:00 to 6:00 p.m. on Thursdays and Judge Erickson will be operating the drug court in Cass County from 3:00 to 5:00 p.m. on Mondays. She said these judges will have added responsibilities without taking any reduction in their caseloads. She said 16 juveniles have been identified as being ready for the program in Grand Forks. She said that program could handle up to 30 juveniles. She said the grant request to continue the program beyond the first two years includes the possible expansion of the program in Minot. She said Bismarck will be considered the control group. She said Bismarck is being considered for an adult drug court program.

In response to a question from Senator Watne, Justice Maring said the family will be responsible for the treatment costs. She said the counselors for the program will be addiction counselors from the regional human service center.

In response to a question from Representative Mahoney, Justice Maring said participation in the program is voluntary which is why incentives are needed. She said once the program is operational, it

may be necessary to add more incentives. She said there may also be a need to widen the eligibility criteria.

In response to a question from Senator Stenehjem, Justice Maring said the major costs of the program include the drug screenings, the cost of hiring intensive trackers, and the use of electronic monitoring. She said the \$89,000 Burn grant will be used to operate the two courts for one year.

In response to a question from Representative Meyer, Justice Maring said both the Turtle Mountain and Spirit Lake Reservations have applied for the grants.

In response to a question from Representative Klemin, Justice Maring said the team will meet before each weekly hearing and make recommendations to the judge. She said the judge will make the decisions regarding incentives and sanctions.

In response to a question from Representative Delmore, Justice Maring said the team members are volunteers.

Chairman Stenehjem called on Judge Erickson to describe the juvenile drug court process. Judge Erickson said the project will be both therapeutic and restorative. He said one of the incentives for juveniles to stay in the program is that being in the program will keep them in their home rather than being sent to the Youth Correctional Center.

In response to a question from Representative Mahoney, Judge Erickson said there may be a need for state's attorneys and defense attorneys to work together to make the program work. He said there are certain jobs, such as the military, for which it may be important that the juvenile record is "dismissed" rather than "sealed."

Chief Justice VandeWalle said the project is very labor intensive, and it could not be implemented on a statewide basis without an increase in the number of judges.

Representative Mahoney said he supports the juvenile drug court program and would like to see the program expanded.

FAMILY LAW STUDY

Chairman Stenehjem called on Ms. Sandra L. Tabor, Executive Director, State Bar Association, for information regarding the status of the family law study working groups. Ms. Tabor said the family law study subcommittee was further divided into four working groups--property division and spousal support; guardian ad litem; mediation; and statutory review. She said the Guardian Ad Litem Working Group is primarily looking for a source of funding for both the administrative costs involved in training and supervising guardians ad litem and for providing guardians ad litem for indigent families. She said the group has heard testimony from the Department of Human Services and several private party providers. She said the group is also reviewing the need for an immunity statute for guardians ad litem. She said the

group may recommend that the Supreme Court include funding for guardians ad litem in the court's budget request.

Ms. Tabor said the Mediation Working Group is reviewing the use of mediation in family law cases. She said the group is reviewing the qualifications and standards for mediators in other states. She said a mediation pilot project is in place in Bismarck and Jamestown.

Ms. Tabor said the Property Division and Spousal Support Working Group is reviewing three issues. The first, she said, relates to the disclosure of assets by parties to a divorce. She said a disclosure requirement could be used to address fraud and to provide a remedy to the other party. The second issue, she said, is whether North Dakota should be a "marital" or "nonmarital" property state. She said there is concern over whether inheritances and gifts should be considered marital property for the purposes of property division. The third issue under consideration by the working group, she said, is whether there may be some workable type of spousal support guidelines to assist attorneys and parties to a divorce.

Ms. Tabor said the Statutory Review Working Group will be considering a bill draft that would incorporate the state's separation laws into the state's divorce laws. She said the working group is also working on updating some of the language in the family law statutes.

UNIFORM LAWS

Chairman Stenehjem called on Mr. Jay E. Buringrud, Secretary, North Dakota Commission on Uniform State Laws, for testimony regarding the recommendations of the commission for the enactment of the several uniform laws.

Revised Uniform Commercial Code Article 9 (1998)

Mr. Buringrud said the Revised Uniform Commercial Code Article 9 provides a statutory framework that governs secured transactions. He said secured transactions are transactions that involve the granting of credit secured by personal property. He said the revised Act has been adopted in seven states and has been introduced in 16 other states. He said the Act should be sent to interested parties for comment.

In response to a question from Representative Johnson, Mr. Buringrud said Article 9 deals with attachment and perfection and would not affect the priority of agricultural supplier and processor liens. Ms. Marilyn Foss, Counsel, North Dakota Bankers Association, said priority of liens is not included in this Act but is found in another section of the North Dakota Century Code.

In response to a question from Representative Klemin, Mr. Buringrud said a copy of the Act with comments is available, and it could be made available to any member of the committee who is interested.

Uniform Foreign Money - Judgments Recognition Act

Mr. Buringrud said the Uniform Foreign Money - Judgments Recognition Act was completed by the Uniform Law Commission in 1962. He said the Act has been adopted by 29 states, and its purpose is to simplify international business by recognizing money judgments obtained in other countries. He said North Dakota adopted the Enforcement of Foreign Judgments Act in 1969 and the Foreign Money Claims Act in 1991.

Uniform Disclaimer of Property Interests Act

Mr. Buringrud said the Uniform Disclaimer of Property Interests Act updates and replaces the earlier Uniform Disclaimer of Property Interests Act, the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act, and the Uniform Disclaimer of Transfers under Nontestamentary Instruments Act. He said the Act allows beneficiaries of intestate testamentary and nontestamentary interests to execute a disclaimer of those interests. He said the major change in this Act is the elimination of the time limit within which interests may be disclaimed.

Uniform Electronic Transactions Act

Mr. Buringrud said the Uniform Electronic Transactions Act allows the use of electronic records and electronic signatures in transactions. He said the fundamental purpose of this Act is to remove perceived barriers to electronic commerce. He said two states have adopted the Act and nine others have introduced it. He said there is a big push to adopt the Act quickly to avoid federal preemption. He said the Act would validate automated transactions. He said Sections 16 through 18 of the bill draft affect state government records. He said the bill draft provides for the authority of the state records administrator to develop rules for electronic records.

In response to a question from Representative Mueller, Mr. Buringrud said the Act addresses issues relating to the transaction itself and does not deal with the taxing of Internet sales.

In response to a question from Senator Traynor, Mr. Buringrud said the comments for the Act provide information as to the exclusions and the reasons why the national conference did not include them in the Act. He said the exclusions include trusts, powers of attorney, real estate transactions, and consumer protection statutes. He provided a copy of the comments, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Klemin, Mr. Buringrud said the Act would govern transactions with respect to North Dakota. He said if North Dakota does not pass this Act, the transaction would be governed by the law of the state where the other party to the transaction is located.

Chairman Stenehjem called on Ms. Foss for comments regarding the proposed uniform acts.

Ms. Foss said lending institutions will be reviewing the proposed Revised Article 9 and will offer comments at a future meeting.

Regarding the proposed Uniform Electronic Transactions Act, Ms. Foss said the legal recognition of both electronic records and electronic signatures is a matter which interests and is generally supported by North Dakota financial institutions. She said there are several areas of the Act upon which the North Dakota Bankers Association may have more specific comments on the Act in the future. She said there are certain exceptions to the Act. She said although the bill draft does not set out the bracketed language or possible alternate exceptions, the committee may want to consider whether additional transactions should be excepted from the Act. Ms. Foss submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Mahoney, Ms. Foss said she does not envision the transferring of hard copies of documents to enter an agreement to conduct transactions electronically.

In response to a question from Representative Delmore, Ms. Foss said the drafters of the Uniform Electronic Transactions Act were sensitive to protecting parties from fraud. She said the Act does not extensively mandate any particular technology nor does it address how fraud is proved or disproved.

Chairman Stenehjem called on Mr. Curtis L. Wolfe, Chief Information Officer, Information Technology Department, for comments regarding the Uniform Electronic Transactions Act. Mr. Wolfe said an e-commerce team has been created within the department to create a state portal. He said a "green book" of state forms is now available electronically and can be downloaded. He said a number of those documents require original signatures. He said his department would like to have the authority to accept those signatures electronically. He said Section 16 of the bill draft refers to government agencies. He said the definition of "governmental agencies" includes political subdivisions and other nonstate governmental agencies. He said Section 16 should be made more specific to apply to only state agencies.

Chairman Stenehjem called on Mr. Alvin A. Jaeger, Secretary of State, for comments concerning the Uniform Electronic Transactions Act. Mr. Jaeger said there are several areas of concern within the proposed Act. He said the bill draft contains an erroneous reference to Chapter 41-06, which was repealed in 1993. He also said he was concerned with Section 10 of the Act and about the lack of procedural clarity in relationship to the state's existing notary laws. He also said there potentially may be confusion over the term "governmental agencies" as it is defined in the Act. Mr. Jaeger submitted written testimony, a copy of which is on file in the Legislative Council office.

VOTER REGISTRATION AND VOTER RESIDENCY STUDY

Chairman Stenehjem called on Ms. Monica Larivee, Chairman, Voter Registration Committee of the North Dakota Federation of Republican Women, Grand Forks, for comments concerning voter registration. Ms. Larivee said she is from Grand Forks, the home of the best college hockey team in the nation.

Ms. Larivee said she is in favor of voter registration for North Dakota. She said the purpose of voter registration is to protect the integrity of the voting process before the votes are cast. She said a simple, unrestricted, uniform method of registration is needed. She said North Dakota should not be proud to be the only state without voter registration. She said voter registration would keep people voting in the proper district, would eliminate multiple voting by one person, and would provide a list of eligible voters for election boards. She said there is widespread concern among election board members, particularly in precincts with large numbers of rental units, students, and transient workers. She said the high turnover of residents creates a need for hundreds of affidavits to be used.

Ms. Larivee said a change in residency requirements will not preclude the need for voter registration. She said a registration system need not be complicated, and with an adequate publicity campaign, the citizens of the state would be able to adjust to the change. She said a simple and easy registration system like the one used in Minnesota could be used. She said funds will be required to implement voter registration, but a statewide computer network would permit easier tracking of people for voting purposes. She said good government demands that the voting process begin with home elections of public officials at whatever the cost. Ms. Larivee submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Heitkamp, Ms. Larivee said voter fraud is witnessed at the polls but is not being reported. She said voter registration will not cure all evils but will help resolve some voter fraud problems. She said poll workers contend the lack of voter registration allows noneligible voters to vote and is stressful for election clerks. She said voter registration would speed up the election process because there would be a reduced need for affidavits.

In response to a question from Senator Nelson, Ms. Larivee said a computer system would allow precincts to keep track of voters when they move. She said she would not object to same-day registration.

In response to a question from Representative Koppelman, Ms. Larivee said an adequate computerized voter registration system would prevent one person from attempting to register twice.

Chairman Stenehjem called on Ms. Janelle Knott Gibson, North Dakota Federation of Republican Women, New Rockford, for comments concerning voter registration. Ms. Gibson read to the committee

a letter written by Ms. Lois Altenberg, President, North Dakota League of Women Voters. In the letter, Ms. Altenberg said the League of Women Voters supports a centralized and easily accessible voter registration system by allowing and encouraging local officials to establish branch offices and by deputizing additional registrars as needed. She said the system should allow for registration by mail and same-day registration. She said the system should allow for the transferring of registrations from one precinct to another, and a citizen's registration should not be canceled unless that person has not voted for a period of four years. She said the system should include a procedure for purging registration lists on a regular basis and that the voter be notified of the purging and be given an opportunity to respond. She said the registration form should not include party preference and that registration lists should not be made available for any purpose other than election-related matters.

Chairman Stenehjem called on Ms. Irene Troske, North Dakota Federation of Republican Women, New Rockford, for comments regarding voter registration. Ms. Troske said she supports voter registration for North Dakota.

Chairman Stenehjem called on Ms. Eileen D. Larson, North Dakota Federation of Republican Women, Hatton, for comments regarding voter registration. Ms. Larson said she supports voter registration for North Dakota. She said voter registration is important because one vote can make a difference. She said voter registration would save money on recounts. She said because of our mobile society, such as military and students, voter registration would be helpful for persons who work at the polls. She said voter registration would be a deterrent for college students who may be voting in both their college precincts and their home precincts. Ms. Larson also read and provided to the committee a copy of a letter from Senator Rod St. Aubyn, Grand Forks. In his letter Senator St. Aubyn expressed his support for voter registration. A copy of Senator St. Aubyn's letter is on file in the Legislative Council office.

Chairman Stenehjem called on Mr. Jaeger for comments concerning voter registration. Mr. Jaeger said according to state law, the Secretary of State is the state's chief election officer. He said his office has worked closely with county auditors to ensure that elections are conducted fairly and in accordance with the law. He said it is important to provide the committee with a balance of information regarding voter registration. He said if North Dakota adopted a voter registration system, the simplified registration procedures used by Minnesota could not be used in North Dakota. He said if North Dakota adopts a voter registration system, the state would be subject to the provisions of the National Voter Registration Act. He said Minnesota is exempt from the Act and can operate differently from other states. He said voter registration is not an issue to be taken lightly. He said

although North Dakota was one of the first states to enact voter registration legislation, that legislation was repealed in 1951 with only five dissenting votes. He said other states envy North Dakota for not having a voter registration system. He said if fraud is occurring at the polls, then those persons committing fraud should be reported and referred to state's attorneys for prosecution. He said poll workers are required to take an oath to uphold the laws of the state. He said all election officials receive a copy of the *Election Official's Manual*.

In response to a question from Representative Meyer, Mr. Jaeger said residency issues should be addressed before a voter registration system is considered. He said voter registration would create a large bureaucracy and registration process that would not be "simple."

Chairman Stenehjem called on Mr. Cory Fong, Elections Officer, Secretary of State's office, for a presentation regarding voter residency and voter registration. Mr. Fong distributed testimony regarding the National Voter Registration Act and the Act's requirements. He said the Act prohibits the purging of voters' names from voter registration solely for failure to vote and requires a program for positively confirming the accuracy and currency of the registration lists. He said the Act sets out very specific, detailed, and cumbersome requirements for the maintenance of voter lists that require multiple confirmation mailings in most cases. He said only those states that had "same-day registration" in place at the time of the enactment of the Act were permitted to continue with that type of registration. A copy of Mr. Fong's testimony and information regarding the National Voter Registration Act is on file in the Legislative Council office.

Mr. Fong also discussed improvements that have been made to North Dakota's voting procedures. He said legislation passed in 1999 clarified voting procedures for persons who have not yet gained residency in their new voting precincts, strengthened challenge procedures by providing criteria for election boards to use when deciding to challenge voters, and clarified voter affidavit and challenge procedures. He said since the passage of that legislation, the Secretary of State's office has stepped up its efforts to train state election officials at a variety of levels about the law changes made and the importance of the challenge process. He said the Secretary of State's office has developed voting assistance materials specifically designed to answer the voting and residency-related questions that arise for members of the military. He said the Secretary of State's office has highlighted the importance of maintaining poll books and entering complete names and addresses for voters during this year's election training conference for the state's county auditors. Mr. Fong submitted written testimony and a copy of the state's *Election Official's Manual*, copies of which are on file in the Legislative Council office.

Mr. Fong said regarding the use of a unique identifier for voting purposes, a person's Social Security number may not be used. He said the Privacy Act of 1974 prohibits the use of the number.

In response to a question from Representative Mueller, Mr. Fong said the National Voter Registration Act requires a "fail-safe" method to ensure that the right to vote prevails when a voter's name is eliminated or left off a voter registration list. He said many states are using an affidavit method or provisional ballot method to meet this requirement. Mr. Jaeger said the larger cities in the state are using computerized poll books. He said it would be a good investment to require the use of computerized poll books throughout the state.

In response to a question from Representative Klemin, Mr. Fong said states that are subject to the National Voter Registration Act regularly forward registration lists from other states, and those lists are forwarded to county auditors. He said every state maintains its centralized data base in a different way, and it would be difficult to electronically cross-check registrations between states. He said he would research the possibility of cross-checking voter registration lists with the neighboring states.

In response to a question from Senator Heitkamp, Mr. Jaeger said because of the costs and because there are other ways to address voting concerns without implementing voter registration, he would have great concerns over North Dakota implementing a voter registration system and being subject to the National Voter Registration Act.

In response to a question from Representative Koppelman, Mr. Jaeger said the idea of a provisional ballot for challenged voters may be a possibility.

At the request of Chairman Stenehjem, committee counsel presented a bill draft that would permit election board members and poll challengers to request identification from voters.

In response to a question from Representative Mueller, Mr. Fong said the bill draft should include the reason why a poll challenger would request identification. He also said the bill draft would raise the issue as to what type of identification an "appropriate form of identification" may be. He said a "fail-safe" measure may also be included for a person who is unable to produce some form of identification, such as having another person vouch for the voter's identity.

COMMITTEE DISCUSSION

Chairman Stenehjem said the committee may be conducting public hearings on the constitutional measures scheduled to appear on the June primary ballot.

It was moved by Representative Klemin, seconded by Representative Koppelman, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft that would allow for the ballot of a challenged

voter to be considered a provisional ballot until the voter's eligibility is verified.

Chairman Stenehjem adjourned the meeting at 3:10 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:1