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# **Summary**

## **Briefly - - - This Report Says**

### **BUDGET**

To adequately analyze the Executive Budget with special reference to sources of revenue, trends in governmental spending and finance, policies followed and inconsistencies in such policies, and proposed new or substantially expanded or reduced areas of spending, or to actually visit State agencies, departments, or institutions to review their needs, or to conduct studies that are of special interest to the Legislature involving the budgetary process in the State, the Legislature requires more time than that available to the Appropriation Committees during the Legislative Session.

With the recognition of the need for constant legislative attention in the budgetary process, the Committee on Budget was created within the Legislative Research Committee to provide the opportunity to review the Executive Budget and conduct other studies and projects of interest to the members prior to the meeting of the Legislative Assembly.

In recognition of this role, the Committee has progressed during its first biennium. The most important Committee function is the analysis of the Executive Budget. Because the Executive Budget Office does not, under the law, submit its budget early enough for the Committee's legislative recommendations from its review to be included in this report, the Committee recommendations relating to the Budget will be distributed as a supplement to this report at a later date.

### **CONSTITUTIONAL REVISION**

The Subcommittee on Constitutional Revision in its second biennium's work reviewed the majority of those provisions of the State Constitution which had not been previously studied. This report primarily covers those constitutional provisions relating to one voting franchise, municipal corporations, education, school and public lands, county and township organization, revenue and taxation, public debt and public works, methods of amending the Constitution, recall, public institutions, the Board of Higher Education, dedicated gasoline taxes, and schedule. The Committee's proposed changes include repeal of many obsolete or unnecessary provisions and con-

solidation of other provisions although many sections were left unchanged because of being adequate or necessary in their present form.

A detailed explanation of each proposed constitutional change is contained in the main body of the report.

## **EDUCATION**

Extension activities through correspondence and by classroom methods carried on by institutions of higher learning are expanding greatly and will continue to expand in view of the necessity of retraining in so many fields. In order to promote economy, efficiency, and strength of programs, it is essential that coordination of these activities be obtained. The Committee recommends that an extension council consisting of representatives of all institutions of higher learning work toward the end of ascertaining, developing, and recommending an integrated program of extension activities. This recommendation can then be implemented by the State Board of Higher Education under present authority. The Committee's recommendation will require no legislative action if carried out successfully.

A comprehensive study of all problems facing school districts and elementary and secondary education in North Dakota is in progress. This study will extend into the next biennium. The report will present the clearest picture possible of North Dakota's educational problems, needs, and strengths. Much progress has been made in this study and it is expected that many recommendations will be forthcoming in the next biennium.

## **LEGISLATIVE EMPLOYMENT AND LEGISLATIVE HANDBOOK AND LEGISLATIVE ARRANGEMENTS**

### **Legislative Employment and Legislative Handbook**

The Committee made a complete review of all of the employee positions as to their number, duties, and necessity. The Committee found some positions were unnecessary, some areas needed more employees, and some new positions should be established. The Committee has recommended that its list of employee positions be incorporated into the Senate and House Rules with the title, number, and the salary for each. The Committee also recommends that the appointments to the employee positions be allocated to each party based upon each party's relative strength. This allocation does not pertain to the "desk force", secretaries of the legislative leaders, and several other key positions.

The Committee has prepared a handbook for use of the legislators and legislative employees. This handbook is composed of two parts. Part I relates to the legislative process and information useful to legislators, and Part II relates specifically to legislative employees.

The Committee also has proposed changes in the House Rules regarding the number of members serving on the standing committees of the House because of the smaller membership.

### **Legislative Arrangements**

The Committee has proposed several changes in the use of the physical facilities of the legislative wing, such as providing the presiding officers and majority and minority floor leaders with office space, creating a joint bill room, eliminating the chart room, and making other related changes.

The Committee prepared a Pre-Session Orientation Conference Agenda which incorporates all of the subject matter required by law to be covered at the three day orientation session.

The Committee recommends a bill which would allow the establishment of a committee, composed primarily of citizens and some legislators, to make a study of the overall legislative process covering such areas as legislative procedure, employee and staff requirements, legislators' compensation, physical facilities, and any other areas which affect the basic policy-making branch of our State government.

The Committee has made several miscellaneous recommendations relating to standing committee report forms, calendar, general decorum, lunch facilities for legislators, and similar matters.

### **POLITICAL SUBDIVISIONS**

#### **Election Law Study**

Due to the Federal court reapportionment decision and the fact that North Dakota's election laws have proved to be inadequate in providing smooth election machinery, the Committee was directed to study North Dakota's election laws for the purpose of updating and revision. The reapportionment decision changed all legislative districts from a county basis to a legislative district basis which cross county lines in many cases. Since the election laws anticipated a county basis for all elections, a major revision appeared necessary in order to reflect the legislative district concept.

The Committee found the election laws to consist of a hodgepodge of amendments made without reference to each other and designed to correct one small problem without consideration being given to the total election process. Many procedures in the election process were found to be based upon tradition, not law. The Committee recommends a bill amending almost every chapter of law in North Dakota pertaining to the election process. The amendments are designed to correct so many defects, and in some cases initiate new procedures, that it would be very difficult to list them in this portion of the report. Reference should be made to the main body of the report for a detailed explanation of the bill being submitted.

#### **Municipal Law Study**

The study of municipal laws was a composite effort of the Committee, the Legislative Committee of the League of Municipalities, and interested municipal officials. The staff of the Legislative Research Committee conducted an exhaustive examination of Attorney General opinions and North Dakota Supreme Court decisions which had interpreted statutes contained in title 40 of the North Dakota Century Code. From this effort precipitated various recommendations concerning revision of the municipal laws.

The powers possessed by a municipality vary with the form of government adopted. It was the opinion of the municipal officials involved in the study that the smaller political subdivisions should have at their disposal the same powers that the larger cities possess. A single set of municipal laws would also do away with confusion that occasionally arises when citizens or municipal officials attempt to work with two sets of laws. To accomplish this goal, the Committee has recommended a bill which would do away with the village form of municipal government. Procedures are also provided for converting villages to cities.

The Committee discovered that as the statutes now read, there is no provision in the laws governing the conduct of municipal courts that allows for the use of an affidavit of prejudice or a motion for a change of venue. The statutes are also unclear as to the procedures to be followed when a municipal judge has been disqualified. Another problem encountered in this area was the fact that municipal officials are precluded from serving warrants outside the city limits. To correct these deficiencies, the Committee has recommended a bill which would provide for an affidavit of prejudice and change of venue in municipal courts and which would give municipal officials the authority to serve warrants issued by the city anywhere in the State.

Many of the sections of the municipal laws do not reflect interpretations by the Attorney General's office or the Supreme Court. Subtleties of language have often produced confusion. Other areas of the municipal laws have proved difficult to administer. The Committee recommends a bill which would amend these sections of the municipal laws. Some of the areas which appear in this bill are sections relating to the issuing of bonds by municipalities, removal of buildings when taxes or special assessments are due, claims and accounts against municipalities, the publication of proceedings of municipalities, and public libraries and reading rooms.

Brought to the attention of the Committee was the fact that many of the smaller municipalities experience a great deal of difficulty in determining and allocating special assessments. Officials and employees of smaller municipalities have very little experience in this area since special assessments are infrequently levied in these communities. Consequently, the project engineer is often given this job to perform. In order to provide municipalities with an optional system of determining and allocating special assessments, the Committee has recommended a bill which provides an alternate mathematical method of spreading special assessments.

## **SOCIAL WELFARE**

The Committee carried out an intensive study in three areas. The first concerned the feasibility, advantages, and disadvantages of establishing the printing vocation at the State Penitentiary; the second was the study of the laws pertaining to the mentally retarded; and the third was the study of the possibility of establishing a second institution for the mentally retarded in North Dakota.

### **Printing Vocation at State Penitentiary**

The Committee does not recommend the establishment of the printing vocational program at the State Penitentiary. The number of inmates at the Penitentiary has declined substantially in the past ten years and, consequently, the number of inmates who would participate in a printing

course would be minimal. In addition, the number of years of apprenticeship required in the printing trade compared to the average length of sentence of the inmates does not allow sufficient time in most cases to complete a printing course, and the aptitudes of most inmates do not fall within the printing field.

### **Revision of Mentally Deficient Laws**

North Dakota's laws pertaining to the mentally retarded have been subject to some criticism for a number of years. Such terms as "feeble-minded," "imbecile," and "idiot" are prevalent in the law, and somewhat reflect the philosophy apparent in the present law that mentally retarded persons should be confined rather than treated. The Committee recommends a bill designed to update the terminology of the law as well as reflect the treatment to be afforded the mentally retarded.

North Dakota's present law pertaining to the treatment of the mentally deficient adopts the procedures applicable to the mentally ill as to treatment, admission for treatment, court proceedings, and other similar matters. The bill submitted by the Committee would provide for separate laws for the mentally deficient, specifically designed to reflect more modern treatment both in and outside of an institution. The protection of the mentally deficient person and his estate is the foremost objective of the bill being submitted. Adequate safeguards of the individual are provided for through proper admission, treatment, and release programs. In addition, a type of public guardianship is being proposed which would ensure that every mentally deficient resident of the Grafton State School would have a guardian of his person and estate. Provision is made so that the parent of a minor resident at the Grafton State School might retain his natural guardianship if he should desire.

### **Establishment of a Second Institution for the Mentally Deficient**

The present facilities for the mentally deficient in North Dakota are not adequate to meet the demands of the public. The Grafton State School is presently overcrowded according to nationally recommended standards, and there is a waiting list of approximately one hundred persons. Because of the placement of buildings and the condition of the physical plant at Grafton, expansion possibilities are almost nonexistent.

The Committee considered several approaches to meeting the needs of the mentally deficient. The primary courses of action were the complete remodeling of the San Haven Institution for the care of the mentally deficient; the building of one large institution designed to care for more people in the western half of the State; and the building of several smaller-type institutions designed to provide care for the moderately mentally deficient and eventually return numbers of them to the community. It is the Committee's opinion that the planning of a larger-type institution for the future is a more practical course of action, although it is believed that available space at San Haven should also be used.

The Committee recommends a bill providing for a \$100,000 appropriation for the purpose of planning an institution for the mentally deficient of one hundred beds with an expansion possibility of up to five hundred beds. The funds would be used during the next biennium for surveying institutions in other states, consulting with architects and engineers, selecting a site for such institution, and acquiring the necessary land. Since there is such a wide legislative interest in this project it is provided in the bill that

a legislative committee work with the Board of Administration in an advisory capacity in carrying out the planning of this institution.

The Committee also recommends that a deficiency appropriation of \$75,000 be made to the Board of Administration in order to allow the transfer of approximately 48 to 60 persons from the Grafton State School to San Haven. Such funds will be used primarily to employ additional attendants who will be needed, since the persons to be transferred will be ambulatory and the present attendants at San Haven are not sufficient in number to care for the present non-ambulatory mentally deficient persons at San Haven and those to be transferred. Additional supplies will also be required and a minor amount of remodeling will be carried on. The Committee feels it is essential that this transfer be carried out in order that the population at Grafton will be reduced so that the emergency cases on the waiting list can be admitted.

#### **Other Recommendations**

The Committee recommends a bill providing for the compulsory testing of newborn infants for the disease phenylketonuria (PKU) and other metabolic diseases. PKU is a disease which results from certain nutritional deficiencies in the human body and causes mental retardation if not treated properly by a very strict and expensive diet. Although PKU tests are being given in many hospitals in North Dakota on a voluntary basis, a compulsory testing program appears to be needed.

A bill is also being recommended which provides that nonresident patients at the Grafton State School who cannot be accommodated without depriving resident patients of admission, be transferred to their home states. Also contained in this bill is a provision providing that residents and their responsible relatives need not be billed currently for their costs of care and may be billed only for the amount they have been determined to have an ability to pay.

The Committee is of the opinion that if a resident of the Grafton State School or his responsible relatives have the ability to pay the full costs of care at Grafton without hardship, such amount should be paid. A bill is recommended which would provide that such full costs be paid where the ability exists. If such ability does not exist, a determination would be made to such effect, and the patient or responsible relative would be billed for the lesser amount. Presently, the law provides for a maximum charge of approximately 80c a day for minors, whether the parent can afford more or not. Adults can be charged approximately \$4.32 a day, but such amount is not collectible from responsible relatives until their death. Other provisions for ascertaining the ability of a person to pay for the costs of care of a mentally deficient person are also found in this bill. It is hoped such provisions will provide a more realistic and flexible manner of basing charges on an ability to pay.

The Committee recommends a bill which would allow for the voluntary sterilization of residents of the Grafton State School when such operation is determined necessary for the protection of society or the improvement of the physical and mental well-being of the resident. The superintendent would be authorized to recommend such operation to the parent, spouse, or guardian of the resident after receiving the approval of a five-member board consisting of three physicians and surgeons, one professional psychiatrist, and one professional social worker. No operation would be performed unless the written consent of the parent, spouse, or guardian is received, and only after a detailed explanation of such operation is made to those of whom the consent was requested. Any parent could initiate

the procedure for the sterilization of his child if the child was a resident of the Grafton State School, but no parent could on his own volition have his child sterilized if such child is a resident of the Grafton State School, except pursuant to the provisions of the bill.

## **STATE, FEDERAL, AND LOCAL GOVERNMENT**

### **State Laboratories Study**

The State of North Dakota, through its various agencies and boards, maintains a variety of laboratory services. The increasing costs of maintaining competent laboratory services make important any changes which could reduce the overall cost or improve administrative procedures. The Committee determined, however, that there was little prospect for shifting large segments of workloads from one laboratory to another. There are some areas where duplication exists and the Committee, in an attempt to decrease duplication of effort, has recommended a bill which would transfer the sanitary functions from the State Laboratories Department to the State Department of Health. These sanitary functions concern the inspecting and licensing of restaurants, lodginghouses, boardinghouses, motels, and trailer courts. To avoid duplication, provision was made for allowing the municipal health authorities and district health units to do the inspecting where these agencies have been approved by the State Department of Health.

The State Laboratories Department is attempting to regulate certain aspects of the consumer protection with statutes of almost ancient vintage, which makes administration of these areas extremely difficult. To correct this deficiency, the Committee has recommended legislation which will modernize the statutes regulating the sale and distribution of commercial feeds, commercial fertilizers, and foods, drugs, and cosmetics.

Laboratories of the State Department of Health provide a number of serological and microbiological tests for diagnostic purposes to aid physicians. Some of these are or could be performed in the private clinical laboratories. In addition, pre-marital blood tests or serological tests are required to be performed by the State Department of Health. These tests could be performed by the private clinical laboratories. Many of these tests do, however, vitally concern public health. If these tests are to be performed by private laboratories, some assurance must be had that the quality of the performance of these tests be continued. The Committee felt that the licensing and inspecting of private laboratories is a logical means by which to accomplish this objective, and recommends a bill which would provide for the licensing and regulation of medical laboratories. This bill also provides minimum qualifications for directors and supervisors of these laboratories. To assist the State Department of Health in administering the provisions of this statute, an advisory committee was created which would consult with the Department in matters of policy affecting the administration of the statute and in the promulgation and enforcement of rules and regulations adopted thereunder.

The Health Department laboratory occupies a converted duplex, rented on a month-to-month basis. Additional space for health radiological work is rented in a nearby office building. Its location in downtown Bismarck makes this type of leasing arrangement undesirable since commercial developments will probably dictate the removal of the building within the

near future. It appears imperative that the State Department of Health be provided new laboratory facilities at an early date. To provide adequate laboratory facilities for the State Department of Health, the Committee has recommended a bill which provides for an appropriation to construct a public health laboratory. Realizing that the State Laboratories Department is also in dire need of a new laboratory facility, the Committee included within this appropriation a clause requiring the facility to be constructed in such a manner so as to be expandable to provide quarters for the State Laboratories Department.

### **Grain Exchange Study**

The results of this study indicated that the grain industry would not support the operation of a central cash grain market in North Dakota. It would appear that adequate accessibility could be gained to grain moving out of the State through the existing hold point and inspection services. Changes in patterns of grain flow and changes in other market factors could have a significant impact on the economic aspects of grain storage, processing, and merchandising in the State. Increasing westward movement of North Dakota grains through westbound freight rate reductions, continued westward shifts in population, and increased exports through westward ports are factors which, if realized, will change current grain flow patterns. The resulting increase in westward movement of grain would probably make the environment more favorable to the successful operation of a North Dakota market facility.

Since the establishment of a grain exchange in North Dakota at this time did not seem practicable, it was the opinion of the Committee that refinement of existing services should be attempted. To provide the grain purchaser with information from which to make timely and intelligent decisions, the Committee has recommended a bill which would establish a grain information service. This bill requires the Public Service Commission to survey, each business day, the grain-sampling stations in North Dakota and to make available to any one who so requests a report as to the grains available for purchase in North Dakota and the grade and owner or consignor of such grain.

### **Study of Department of Natural Resources**

The Committee reviewed the powers and duties of all the existing State agencies to determine which ones could best be combined into a central department. The State Water Conservation Commission, State Game and Fish Department, North Dakota Park Service, State Outdoor Recreation Agency, State Forester, and the Soil Conservation Committee were found to be agencies which were the most likely to be concerned in a multiple-use project which involved the use of water, land, wildlife, and outdoor recreation facilities. If these agencies were consolidated under the direction of a central department, economies in joint planning and maintenance would occur, and the State would be more assured that a multiple-use project would be planned to take best advantage of all the patented uses and the natural resources involved. This, the Committee felt, could be accomplished by lodging authority in a central department which would have the final decision-making power as to the various uses, and to ensure that all possibilities of multiple-use are fully considered. The head of the central department will have the power to determine whether a project is capable of being used for only one purpose or several purposes. Each existing agency will continue, however, to exercise those specific powers and duties or services which are not strictly involved in a multiple-use project, or when economies from joint planning, engineering, operation, or maintenance do not exist.

## **TAXATION**

The Committee spent a great deal of time in studying State real property transfer taxes and the Federal real property transfer tax system which is frequently known as the "documentary stamp tax." The Federal government has repealed its real property transfer tax effective January 1, 1968, with the thought that such a tax should be implemented by the states. For this reason many states have either implemented this tax system or are considering the possibility of adopting it.

A real estate transfer tax is usually not considered as a major part of any state's tax structure. The revenue received from such a tax system usually is not great when compared to other state taxes, but the information gained from such a tax system is quite valuable in the assessment of real property. The rates imposed by the various states and the Federal government are generally minimal, although a few states do impose fairly high rates. The Federal rate is 11¢ per \$100 consideration or value, and this is the rate most commonly imposed by the states which have adopted this tax system. It is estimated that such a rate would yield \$187,000 per year in North Dakota.

The Committee recommends the enactment of a real property transfer tax in North Dakota at the rate of 10¢ per \$100 consideration or value of the property transferred. Although the revenue to be gained from such a tax would be only \$187,000 per year, such revenue can profitably be used, and the information that can be gained from such a tax is of substantial importance to effective assessment administration at both the State and local governmental levels.

### **Other Areas of Study**

Although the Committee makes no detailed recommendation in regard to problems of replacement of personal property tax revenues, it did devote a substantial amount of time to this matter. The Committee studied a tax system used in several of the Canadian provinces, which can probably be best described as an "in lieu" tax for the replacement of the tax on retail inventories and fixtures. This tax is commonly termed the "Canadian business tax." Basically, the Canadian business tax is a municipal tax on business as a supplement to the tax on real property and is in lieu of the personal property tax on inventories and fixtures. Assessment and levy of the tax is computed on one of three bases: the area of the business premises, a fraction of the real property assessment, or the annual rental value of the property. Various rates are applied, depending upon the type of business.

The Committee believed that if such a tax were to be recommended for North Dakota municipalities, the support of the business interests in the State would be necessary. Since the business interests which appeared before the Committee did not recommend such a tax, the Committee postponed consideration of the Canadian business tax.

Other tax areas considered by the Committee were tax relief for the elderly, improvement of assessment methods, compilation of tax statistics, and an abandoned property act. The Committee has compiled information relating to the various methods employed by other states for granting tax relief for the elderly, which information is available in the office of the Legislative Research Committee. Information pertaining to the impact of various taxes upon income groups in North Dakota is also available. Since the Committee did not have the necessary time to provide for compre-

hensive hearings upon the possibility of enacting an abandoned property act, no action was taken in this field. The Committee believes, however, that this is a field which needs comprehensive study and consideration and should be studied in the future.

## **TRANSPORTATION**

Due to the complexity and breadth of the problem of highway safety, the Committee divided the study into five parts, each representing a function of State government that is vitally concerned with highway safety. To assist the Committee in the examination of these five functions, citizen study groups were formed. The Committee and the citizen study groups received reports from the participating departments. The recommendations made by the participating departments and the views of the Committee and the citizen study groups culminated in the production of technical reports for each of the functions involved in the study. These reports contained a number of recommendations which were then considered by the Committee for possible legislative action.

### **Accident Reporting and Records**

If the accident record function in North Dakota is to meet statutory requirements, expand in scope and concept, and accommodate expected growth in travel over the next ten years, added resources must be provided. To accomplish this objective, the Committee has urged the Highway Department to include in its budget a request for funds to establish the position of Manager of the Accident Record System and to hire clerical personnel to meet interim needs until added computer facilities are available.

Another problem encountered by the Committee was the confidentiality of accident reports. Frequently, these reports are the only accurate information available to assist citizens in recovering for some injury they have received. To coordinate North Dakota statutes with nationally recommended standards and to facilitate the flow of information concerning accident records to all interested parties, the Committee recommends that the confidential aspect of accident reports be removed from all but the investigating officer's opinion. Also considered in this area was the problem of forwarding this information to a national traffic accident data center. To ensure the easy flow of information to such a center, the Committee has recommended legislation which would revise the statutes so that no legal impediment would exist which would prevent the transfer of such information.

### **Driver Education**

The Committee noted that graduates of approved driver education courses have fewer traffic accidents and fewer traffic law violations than untrained drivers. That means that they are better drivers in terms of their personal safety and the safety and welfare of the public at large. Only 90 of the State's 290 high schools provide a complete driver education program. The primary reason for not offering the complete course is lack of funds. To assist the school districts in this function, the Committee has recommended legislation which would provide a state-aid program for high schools offering a complete driver education program approved by the Department of Public Instruction. Such schools would be paid ten dollars per student

per year for each full-time high school student enrolled in the driver education program. If funds are not available to make the full payment, pro rata payment is provided for.

### **Driver Licensing**

The Committee found that some of the statutes regulating the suspension and revocation of licenses contained loopholes and had proved to be difficult to administer. To assist the Highway Department in this area, the Committee has recommended amendatory legislation. Also included within this area was the revision of the Financial Responsibility Statutes.

In 1965, more than 350,000 citizens of North Dakota were lawfully licensed to operate more than 400,000 registered vehicles of every size, weight, and description. Once possessed of an operator's license, the driver can operate any type of vehicle within the state. No special recognition is given to the fact that many of the vehicles operated on the streets and highways of North Dakota are such that their safe operation requires substantially more knowledge, skill, and experience on the part of the driver than perhaps is required to operate a private passenger vehicle. For this reason, the Committee has recommended the adoption of a classified driver's license based on the competence displayed by a licensee in operating a particular type of vehicle.

Although North Dakota statutes accomplish some of the same purposes as the Driver License Compact, present compact states hesitate to cooperate with North Dakota because of these exceptions. The Committee has therefore recommended the adoption of the Driver License Compact by the State of North Dakota.

### **Highway Patrol Supervision and Services**

For more than a decade the Highway Patrol has not had sufficient manpower to meet North Dakota's needs. Meanwhile, traffic in the State has been growing at the rate of about four percent a year. In light of these factors, the Committee felt that the people of North Dakota have the choice of either strengthening the Patrol in keeping with growing needs or accepting a lower level of service in the traffic safety functions assigned to the Patrol. Considerations of the public safety and welfare made the second alternative unthinkable to the Committee. For this reason, the Committee has urged the Highway Patrol to include in their budget a request for funds to increase the size of the Patrol by 20 men during each year of the next biennium, and to raise salaries so as to be able to recruit and retain highly qualified personnel.

The State Patrol, with the responsibility for patrolling highways, is continually confronted with violations of general laws. Present statutory authorization does not empower patrolmen to act when confronted with these violations. To correct this deficiency, the Committee has recommended that patrolmen be given the authority of a peace officer over all violations committed in their presence upon any highway or when in pursuit of any actual or suspected law violator.

### **Highway Traffic Operations and Services**

Control of traffic by the designation of safe and reasonable speeds provides another means of reducing accidents and vehicular conflicts. Designated speeds should vary for different portions of the highway system in accordance with conditions. State statutes already provide maximum speed limits. It also is essential to safe and orderly traffic flow that mini-

mum speed limits be observed on routes where slow-moving vehicles would contribute unduly to hazard and delay. For this reason, the Committee has recommended that the Highway Commissioner be given the authority to establish minimum speed regulations where an engineering study of traffic and accidents indicates the need and where safe, alternate routes are available for slow-moving vehicles.

North Dakota does have a Manual on Uniform Traffic Control Devices which conforms closely to the national standards approved by the Federal Highway Administrator for the Federal-aid Highway Systems. The Highway Department continues to encourage cities and counties to adopt approved standards for uniform signing and marking of their streets and highways. Technical assistance in complying with such standards is given to cities and counties so requesting. To date, this encouragement and assistance has been only partly effective. Many local jurisdictions faced with alternate pressing needs and limited road funds have retained obsolete and non-uniform traffic control devices long past their proper retirement date. Studies made of traffic signing on rural roads other than State highways indicate that the situation is at least as serious as the case with traffic signals. A drastic difference in the kind and use of traffic control devices between highway systems is both inadequate service and a real hazard to travel. Adequate, uniform traffic control devices can make a significant safety contribution which, in terms of benefit per dollar expended, may well be higher than any alternate use of available funds. For these reasons the Committee has recommended that all jurisdictions be required to conform with the North Dakota Manual on Uniform Traffic Control Devices. It is anticipated that Federal funds under the Highway Safety Act of 1966 will be made available to the local political subdivisions to assist them in this task.

**REPORT  
OF THE  
NORTH DAKOTA  
LEGISLATIVE RESEARCH COMMITTEE**

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



**Fortieth Legislative Assembly  
1967**

# North Dakota Legislative Research Committee

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Chairman

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Wm. R. Reichert, Dickinson  
Elton W. Ringsak, Grafton  
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Serge H. Garrison, Code Revisor  
Duane R. Breitling, Assistant Counsel  
F. Joel Roth, Assistant Counsel  
Chester E. Nelson, Jr., Legislative  
Budget Analyst and Auditor

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Emil T. Nelson

NORTH DAKOTA

LEGISLATIVE RESEARCH COMMITTEE

STATE CAPITOL  
BISMARCK

●  
C. EMERSON MURRY  
DIRECTOR

January 3, 1967

SENATORS:

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ASSISTANT COUNSEL

The Honorable William L. Guy  
Governor of North Dakota

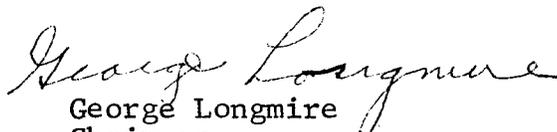
Members, Fortieth Legislative Assembly  
of North Dakota

Pursuant to law we have the honor to transmit to you the report and recommendations of the Legislative Research Committee to the Fortieth Legislative Assembly.

This report includes the reports and recommendations of the Legislative Research Committee in the fields of budgeting; constitutional revision; education; election laws; legislative procedure, organization, and administration; natural resources; political subdivisions; social welfare; state, federal, and local government; taxation; and transportation. In addition, you will find a short explanation of all bills being introduced by the Legislative Research Committee.

Respectfully submitted,

NORTH DAKOTA LEGISLATIVE  
RESEARCH COMMITTEE

  
George Longmire  
Chairman

# History and Functions of Legislative Research Committee

## HISTORY OF THE COMMITTEE

The North Dakota Legislative Research Committee was established by act of the 1945 Legislative Assembly.

The legislative research committee movement began in the state of Kansas in 1933 and has now grown until 42 States have established such interim committees with further States considering this matter at their 1965 legislative assemblies.

The establishment of legislative research committees is a result of the growth of modern government and the increasingly complex problems with which legislators must deal. Although one may not agree with the trend of modern government in assuming additional functions, it is nevertheless a fact which the legislators must face. There is a growing tendency among legislators of all states to want the facts and full information on important matters before making decisions or spending the taxpayers' money.

Compared with the problems facing present legislators, those of but one or two decades ago seem much less difficult by comparison. The sums they were called upon to appropriate were much smaller. The range of subjects considered was not nearly so broad nor as complex. In contrast with other departments of government, however, the Legislature in the past has been forced to approach its deliberations without records, studies, or investigations of its own. Some of the information that it has had to rely upon in the past has been inadequate and occasionally it has been slanted because of interest. To assist in meeting its problems and to expedite the work of the session, the legislatures of the various States have established legislative research committees.

The work and stature of the North Dakota Legislative Research Committee has grown each year since it was established in 1945. Among its major projects since that time have been revision of the House and Senate rules; soldiers' bonus financing; studies of the feasibility of a state-operated automobile insurance plan; highway engineering and finance problems; oil and gas regulation and taxation; tax assessment; drainage laws; reorganization of State education functions; highway safety; business and cooperative corporations; Indian affairs; licensing and inspections; mental

health; public welfare; credit practices; elementary and secondary education and higher education; special State funds and nonreverting appropriations; homestead exemptions; governmental organization; minimum wages and hours; life insurance company investments; partnerships; republication of the North Dakota Revised Code of 1943; legislative organization and procedure; securities; capitol office space; welfare records; revision of motor vehicle laws; school district laws; investment of State funds; mental health program, civil defense; tax structure; school district reorganization; school bus transportation; corporate farming; Indian affairs; legislative post audit and fiscal review; water laws; constitutional revision; and county government reorganization.

Among the major fields of studies included in the work of the Committee during the present biennium are: higher and secondary education; legislative procedure, organization, and administration; taxation; laboratory functions; local government functions; constitutional revision; mental retardation laws; institutions for the mentally retarded; highway safety; and budget procedures.

In addition, many projects of lesser importance were studied and considered by the Committee, some of which will be the subject of legislation during the 1967 Session of the Legislature.

## FUNCTIONS OF THE COMMITTEE

In addition to making detailed studies which are requested by resolution of the Legislature, the Legislative Research Committee considers problems of statewide importance that arise between sessions or upon which study is requested by individual members of the Legislature and, if feasible, develops legislation for introduction at the next session of the Legislature to meet these problems. The Committee provides a continuing research service to individual legislators, since the services of the Committee staff are open to any individual senator or representative who desires specialized information upon problems that might arise or ideas that may come to his mind between sessions. The staff of the Committee drafts bills for individual legislators prior to and during each legislative session upon any subject on which they may choose to introduce a bill. In addition, the Committee revises portions of our Code which are in

need of revision and compiles all the laws after each session for the session laws and the supplements to the North Dakota Century Code.

In addition to providing technical accounting assistance to the Subcommittee on Budget, the Legislative Budget Analyst and Auditor assists the Legislative Audit and Fiscal Review Committee by analyzing all of the audit reports prepared by the State Auditor and by conducting any other studies which the Legislative Audit and Fiscal Review Committee wishes to initiate in its program to improve the fiscal administration procedures and practices of State government. Also, during the interim, the Legislative Research Committee staff provides stenographic and bookkeeping services to the Legislative Audit and Fiscal Review Committee.

### **METHODS OF RESEARCH AND INVESTIGATIONS**

The manner in which the Committee carries on its research and investigations varies with the subject upon which the Committee is working. In all studies of major importance, the Committee has followed a practice of appointing a subcommittee from its own membership and from other members of the Legislature who may not be members of the Legislative Research Committee, upon whom falls the primary duty of preparing and supervising the study. These studies are in most instances carried on by the subcommittees with the assistance of the regular staff of the Legislative Research Committee, although on some projects the entire Committee has participated in the findings and studies. These subcommittees then make their reports upon their findings to the full Legislative Research Committee which may

reject, amend, or accept a subcommittee's report. After the adoption of a report of a subcommittee, the Legislative Research Committee as a whole makes recommendations to the Legislative Assembly and where appropriate the Committee will prepare legislation to carry out such recommendations, which bills are then introduced by members of the subcommittee.

During the past interim, the Committee, by contract, obtained the services of the Bureau of Business and Economic Research at the University of North Dakota, College of Education of the University of North Dakota, Department of Agricultural Economics at North Dakota State University, North Dakota Agricultural Experiment Station, and the Automotive Safety Foundation. In all other instances, the studies carried on by the Legislative Research Committee during this interim were handled entirely by the subcommittee concerned and the regular staff of the Committee. On certain occasions the advice and counsel of other people employed by the State, Federal, and local governments and various professional associations have been requested and their cooperation obtained.

### **REGIONAL MEETINGS AND INTERSTATE COOPERATION**

The Legislative Research Committee is designated by statute as the State's committee on interstate cooperation. The most important and noteworthy activity of the Committee in this field has been through the Midwestern Regional Conference and the Four-State Legislative Conference which held a meeting at Sheridan, Wyoming.

# Reports and Recommendations

## BUDGET

Senate Bill No. 222 of the Thirty-ninth Legislative Assembly directed the Legislative Research Committee to create a special Subcommittee on Budget to which the Director of the Budget would present the budget and revenue proposals recommended by the Governor. The law required the budget data to be complete and made available to the Legislative Research Committee's Subcommittee on Budget in such form as may be acceptable to it by December first of each year next preceding the session of the Legislature. The Chairman of the Legislative Research Committee's Subcommittee on Budget was required to set the time and place at which such budget data was to be presented.

Members serving on the Subcommittee on Budget are Representatives Oscar Solberg, Chairman, Emil Anderson, Richard J. Backes, Leonard J. Davis, Lawrence Dick, L. C. Mueller, Robert F. Reimers, and Wayne G. Sanstead; Senators H. O. Beck, Edwin C. Becker, Earl M. Kelly, Evan E. Lips, A. W. Luick, George Rait, Dave M. Robinson, Halvor Rolfsrud, George A. Sinner, and Oscar Sorlie.

The Legislative Research Committee's Subcommittee on Budget is an integral part of the Legislature's role in utilizing the contribution of the Executive Office of the Budget in the development of sound fiscal administration in the State. The Executive Office of the Budget was created by Senate Bill No. 222 of the Thirty-ninth Legislative Assembly. The Executive Office of the Budget is a part of the Department of Accounts and Purchases and the Director of the Department is ex officio State Budget Director.

Through the executive budget, it is the primary responsibility of the Governor, through his Budget Office, to recommend fiscal and program policies to the Legislature. This is accomplished by the submission of the executive budget and through the presentation of legislation, both tax and appropriation measures, to the Legislature. The Governor's role in proposing fiscal and program policy is implicit in his function as Chief Executive.

In specific, the powers and duties of the Executive Office of the Budget are the following:

1. Securing budget estimates and work programs from the several departments and agencies of the State Government;
2. Preparing revenue and fixed expense estimates;
3. Developing financial policies and plans as the basis for budget recommendations to the Legislature, and preparation of detailed documents in accordance with such financial policies and plans for presentation to the Legislature;
4. Coordinating the fiscal affairs and procedures of the State to assure the carrying out of the financial plans and policies approved by the Legislature;
5. Exercising of continual control over the execution of the budget involving approval of all commitments for conformity with the program provided in the budget through a system of semiannual, quarterly, or monthly allotments;
6. Investigating the structure and operation, functions and duties, books, records, and methods of accounting of the Executive Branch of State Government;
7. Developing a long-term capital improvement budget for consideration by the Legislature;
8. Having the authority to procure from the various officers, departments and agencies, and employees such information as may be necessary for the preparation and execution of the budget; and
9. Providing assistance to the Legislative Research Committee's Subcommittee on Budget and the Legislative Appropriations Committees by providing any information or material that they may need.

Prior to the creation of the Executive Office of the Budget, the responsibility for preparing budget and revenue estimates rested with the

State Budget Board. The Budget Board consisted of the Governor, representatives from the Legislative Branch, including the Chairman of the Appropriations Committees of the Senate and the House of Representatives of the preceding Legislative Assembly, the State Auditor, and the Attorney General. Under the Budget Board, the responsibility for recommending fiscal and program policy was unclear. The interrelated roles of the Governor, the Legislature, and the entity responsible for preparing the Budget was complex.

Even though the Budget Board did not lend to the development of responsibility in either the Executive Branch or the Legislative Branch, it did provide the Legislature with an interim opportunity for at least a surface-type review of the fiscal needs of the budgetary units within the State.

During the short length of time that the Legislature meets, the Appropriations Committees will not have time to adequately analyze the executive budget with special reference to sources of revenue, trends in governmental spending and finance, policies followed and inconsistencies in such policies, and proposed new or substantially expanded or reduced areas of spending, or to actually visit State agencies, departments, or institutions to review their needs, or to conduct studies that are of special interest to the Legislature involving the budgetary process in the State.

With the recognition of the need for constant legislative attention in the budgetary process, the Subcommittee on Budget was created within the Legislative Research Committee to provide the members of the respective Appropriations Committees of the preceding Legislative Assembly and those selected on the basis of the special interest in the legislative budgetary process, the opportunity to review the executive budget and conduct other studies and projects of interest to the members prior to the meeting of the Legislative Assembly.

The Committee's review of the executive budget and any other studies which may have been conducted by the Committee will serve as a basis for the Committee's recommendations to the next Legislative Assembly.

Prior to December first of each year next preceding the meeting of the Legislature, the Executive Office of the Budget will present the Governor's budget in total to the Legislative Research Committee's Subcommittee on Budget. It is anticipated that this presentation will include a detailed explanation of the budget requests of each agency and the recommendations on each budget

made by the Executive Office of the Budget. At this time the Subcommittee will examine the budget requests of each agency. It was decided by the Committee, however, that budget hearings with departmental or institutional representatives not be conducted except in unusual cases at the specific invitation of the Subcommittee.

Apart from work on budgets, the Committee can undertake fiscal research studies as a check on executive policies — studies which can best be done by an agency of fiscal specialists responsible solely to the Legislature. Such studies, for example, can examine existing or proposed State services for appropriateness of governmental concern or for the manner in which each should be financed; questions of need for more or less investment in specific programs; intergovernmental fiscal relationships, State fiscal management policies, and on-the-spot research services.

In recognizing the need for the Legislature to undertake detailed analysis of the executive budget and to conduct special studies, Senate Bill No. 324 was passed by the Thirty-ninth Legislative Assembly creating the office of the Legislative Budget Analyst and Auditor to provide the professional help needed for the legislative committees to meet their responsibility in improving the fiscal administration of State Government.

The Legislative Budget Analyst and Auditor is of special help to the Budget Subcommittee since he, by law, attends the Executive Budget Officer's budget hearings and has access to all budget material submitted to the Executive Budget Officer and all studies carried on by him.

In August of 1965, the Legislative Research Committee employed upon its staff as the Legislative Budget Analyst and Auditor, Chester E. Nelson, Jr. Mr. Nelson is a University of North Dakota graduate, having completed graduate work in accounting and economics. Prior to accepting this position he had practiced as a certified public accountant since 1961 with one of the larger public accounting firms in the State. The Committee was pleased to employ an accountant with the experience and background acquired by Mr. Nelson.

The Legislative Budget Analyst and Auditor assists the Budget Subcommittee and the Legislative Audit and Fiscal Review Committee. Among the services his office provides, or plans to provide to the Legislative Research Committee's Subcommittee on Budget and the House and Senate Appropriations Committees are the following:

1. Reviewing the executive budget in detail with the Subcommittee prior to the Legislative Session;
2. Requesting the fiscal notes from the agencies on bills drawn by the Legislative Research Committee and from departments on other bills if requested to do so by the Appropriations Committees' chairmen, and preparing all necessary forms for the implementation of fiscal note procedures;
3. Assisting in budget review by analyzing revenue estimates for existing and proposed revenue acts;
4. Assisting in reporting instances where the administration may be failing to carry out the expressed intent of the Legislature;
5. Assisting in calling attention to each proposed new service contained in the Governor's budget;
6. Assisting in pointing out each item in the budget which has previously been denied by the Legislature; and
7. Assisting in prescribing the format of the Governor's budget to facilitate program review of all State expenditures.

In addition, the Legislative Budget Analyst and Auditor assists the Legislative Audit and Fiscal Review Committee, which is responsible for reviewing the fiscal affairs of the State through post audit. From the information and material acquired from his work with the Legislative Audit and Fiscal Review Committee, and with the Legislative Audit and Fiscal Review Committee's permission, the Budget Analyst and Auditor is able to provide to the Legislative Research Committee's Subcommittee on Budget and the Senate and House Appropriations Committees with information, including the following:

1. Whether the funds which have been appropriated by the Legislature to State agencies have been expended in accordance with legislative intent;
2. Whether the collections and expenditures of revenues and receipts are in accordance with applicable laws and in accordance with accepted accounting principles applicable to governmental institutions; and

3. Whether funds and properties handled by any State department, institution, or agency, or held in trust have been properly administered.

In its first biennium, the Committee has conducted a study of Federal aid to State agencies, departments, and institutions, and has considered a number of other special problems presented to it for consideration.

At the direction of the Committee, the Legislative Budget Analyst and Auditor conducted a study of Federal aid received by the State agencies, institutions, and officers. This inventory was presented in report form to the Committee members for their use while analyzing budgets. The information in the report listed the Federal aid programs in which the agencies are participating; the amount received currently, along with the required State matching funds; and similar information based on estimates for the biennium ending June 30, 1969.

Along with the numerical information, a brief narrative giving the purpose of the grant was included. This report will be very useful to the Appropriations Committees in determining the scope of all programs carried on by the State, rather than just reviewing the State financed portions.

The Committee reviewed the budget forms designed by the Executive Office of the Budget. The new budget forms call for much new information. In addition to providing information on expenditures of the last biennium, the first year of the current biennium, and the net increase of the proposed budget over the current budget, the form calls for an analysis of the increase or decrease. The analysis of increase or decrease must be classified in terms of an amount to continue the present level of operations, workload change, merit salary increase, new or different services, or added facilities.

During past Legislative Sessions, representatives of agencies and institutions have appeared before the Appropriations Committees of each House of the Legislature. Not only does this procedure require the department to present its budget to the Legislature twice and thereby involve much extra time and travel for them, but by the nature of separate hearings and discussions both Houses do not receive the same amount or type of information necessary to coordinate the budgetary process and to reduce the differences of opinions and conflicts between the respective Houses.

In an effort to improve the process of budget hearings, the Committee has proposed a new joint rule requiring joint budget hearings to streamline and improve the appropriation process. Under the joint hearing system, budget presentations would be taped for later review if this were needed. These tapes would also be very useful to the Legislative Audit and Fiscal Review Committee and the Legislative Budget Analyst and Auditor in determining legislative intent.

In a further effort to develop the appropriation process, a change is recommended in the Appropriations Committee report upon each bill referred to it. Included as a part of this report would be a statement of the purpose of the amendments. In the past, legislative intent has not been recorded in the legislative journals, and not clearly recorded elsewhere. With the permanent record of legislative intent, the Office of the Budget, the Appropriations Committees, the Legislative Audit and Fiscal Review Committee, the State Auditor, and the Subcommittee on Budget will have an excellent tool for analysis of expenditures, and ensuring that the intent of the Legislature is followed.

The Committee reviewed aspects of the operations of some agencies and institutions. In the instance of the Veterans' Aid Commission, the Committee has proposed a bill which will discontinue the Veterans' Loan Program as soon as practicable, because few funds remain for lending and because of difficulties experienced in administering the Loan Program efficiently.

Control of the expenditure of public funds through appropriations is the most important single tool of the Legislature in determining public policy in regard to the Executive Branch of Government, and without it the Legislative Assembly cannot properly perform its constitutional role as an equal or coordinate branch of government. It is in cognizance of this role that the Committee has progressed during its first biennium. The most important Committee function is the analysis of the executive budget. As the Executive Budget Office does not, under the law, submit its budget early enough for the Committee's recommendations from its analysis to be included in this report, the Committee recommendations to the Legislature concerning the Executive Budget will be distributed as a supplement to this report at a later date.

# CONSTITUTIONAL REVISION

The Thirty-eighth Legislative Assembly directed the Legislative Research Committee to commence a study and revision of the State's then seventy - five - year - old Constitution. This study during the 1965 biennium was assigned to the Subcommittee on Constitutional Revision consisting of Senators William R. Reichert, Chairman, George A. Sinner; Representatives R. Fay Brown, Walter O. Burk, Herbert L. Meschke, Jacque Stockman, George M. Unruh, John S. Whittlesey; Public Members Ralph Beede, Adam Gefreh, F. W. Greenagel, Harold R. Hofstrand, Frank Jestrab, Thomas S. Kleppe, Henry J. Tomasek, Jerrold Walden, Aloys Wartner, Jr., and Frank A. Wenstrom.

## Introduction

The following Senate Concurrent Resolution passed by the Thirty-eighth Legislative Assembly, authorizing a study to revise our State Constitution, is a continuing directive until the revision has been completed. Under this resolution the Legislative Research Committee, through its Subcommittee on Constitutional Revision, studied and made proposed changes of the Declaration of Rights Article and the Legislative, Executive, and Judicial Branches to the Thirty-ninth Legislative Assembly. This Legislative Assembly deleted most of the changes in the Executive Branch but largely concurred with the changes made in the other branches. These proposed changes were submitted to the voters at the general election held in November 1966, and while receiving very substantial support, were rather narrowly defeated. This was heartening to Subcommittee members in view of the very limited public information about the measures when compared to the opposition efforts. Experience in other states indicates that the public is seldom sufficiently informed to accept such basic and complex changes the first time they are presented. For instance, almost nine years passed in New Jersey before the adoption of its new Constitution.

Included in this current report are the proposed changes to the remainder of the Constitution except for a restudy of the Executive Branch Article and other miscellaneous sections which the Committee did not have time to consider during this past biennium but hopes to complete during the next biennium.

Also included in this report is the statement "Why Change Our State Constitution" which was

included in the 1965 report and which sets forth the basic approach and philosophy followed by the Committee in its work. This statement has in the past biennium received national acclaim by being published in an abbreviated form in the State Legislatures Progress Reporter, a national magazine of the National Municipal League. It was also read into the Congressional Record by Senator Edmund S. Muskie of Maine. The Advisory Commission on Intergovernmental Relations has distributed many thousands of copies of this statement to other governmental units and persons interested in constitutional revision across the nation.

The remainder of this report includes the procedure of adopting each proposal and the actual constitutional provisions recommended for amendment or repeal.

## Senate Concurrent Resolution "P-P"

### Thirty-Eighth Legislative Assembly of North Dakota

A concurrent resolution directing the legislative research committee, with the assistance of outstanding citizens of the state, to conduct a study of the Constitution of the state of North Dakota, and to make its recommendations in regard to the revision thereof, to the Thirty-ninth Legislative Assembly.

WHEREAS, the basic Constitution of the state of North Dakota was adopted in the year 1889; and

WHEREAS, in spite of numerous amendments since that time, the basic Constitution remains mainly unchanged; and

WHEREAS, many of the ideas of the late 1800's which found their way into the Constitution have, in later state constitutions, been discarded as not the most desirable in light of modern conditions; and

WHEREAS, our present Constitution is quite lengthy and detailed when compared with more recently adopted constitutions or with the United States Constitution; and

WHEREAS, constitutions, while not designed to have the flexibility of laws, should be examined periodically with a view toward their adequacy in light of changing conditions;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the legislative research committee is hereby directed to conduct a study for the purpose of proposing revisions of the Constitution of the state of North Dakota. The committee may appoint such subcommittees as it may deem necessary for the purpose of studying and proposing revisions of various areas of the Constitution. The committee shall call upon citizens of the state who have distinguished themselves by service in and knowledge of fields of endeavor especially qualifying them to assist in the study. Citizens thus appointed shall participate fully in the conduct of the study and all subcommittee meetings but shall possess no vote in any final matter or recommendation to be decided by the committee or its subcommittees. Citizen members may be compensated at the same rates as are legislative members for their time spent on the business of the committee, and may be reimbursed for actual and necessary expenses at the same rates as are legislative members. The committee and its subcommittees shall hold such hearings throughout the state as may be necessary to enable it to ascertain the views of all interested citizens, and may contract for the employment of specialized personnel in such areas as may be deemed desirable. The committee shall submit its recommendations on the revision of the Constitution, or such portions thereof as shall have been completed, to the Thirty-ninth Legislative Assembly, together with such legislation and resolutions as may be required to carry out such recommendations.

### **Why Change Our State Constitution?**

Our state Constitution as adopted on October 1, 1889, consisted of twenty articles totaling 217 separate sections. In 77 years we have added to, amended, and repealed various sections 82 times. The United States Constitution is approaching 200 years of age and has been amended only 24 times. Most states have found it necessary at some time in their history to revise their constitutions to meet the rapidly changing times. Because so much specific detail had been written into the constitutions, they could not meet the current needs of citizens. If we had been all-knowing when our state Constitution was written, then we could very well have put in all detail and procedure which every person must follow. But men, then as now, do not have that all-knowing nature. However, we do know from our history what specific human rights, needs, and freedoms we want to secure for ourselves. These rights, needs, and freedoms are the ones which should be placed in our Constitu-

tion, not every detail of government or every procedure a public official must follow. Our constitutional creators fell into error by doing this very thing. They created a state and local government which could not, in most instances, change to meet the needs of the times. The Constitution continues state and local governmental structures and activities after the need for them has passed. Archaic procedures must be followed long after better ways of doing business have developed. What good does it do to elect heads of our state and local government and then not clothe them with the power to effectively meet their responsibilities. It is an old axiom that if you delegate responsibility you must also delegate power to meet that responsibility. Our Constitution is not only unreasonably restrictive in regard to the state executive branch, but also in county government, county reorganization, public land control, the state and local judicial branches, and municipal control.

As the basic policymaking branch, the Legislative Assembly remains the basic instrument of responsible state and local government. The respective legislatures are, therefore, the key to the vitality and strength of the states as vital political institutions in the American state-federal system. It is principally upon this branch that the self-imposed restrictions of state constitutions most effectively throttle vital decisions affecting state and local government.

It is the philosophy of constitutional law that the Congress is clothed only with such powers as are specifically delegated to it under the United States Constitution. The governmental power exercised by the legislative assemblies of the states is not circumscribed by such inherent limitations. Legislatures were intended to have all governmental power not delegated to the national government or specifically denied the legislative assemblies by their own state constitutions.

In practice, however, the specific limitations and restrictions found in states' constitutions are almost without number. In addition, most state constitutions contain specific delegations of power to the legislative assemblies which, in fact, become restrictions, for when a constitution states that a given matter "may" be handled by the legislative assembly in a certain way, it has been construed by the courts to mean that it must be handled in that way. We therefore have many specific and intentional restrictions and, often, accidental restrictions upon legislative power. Rather than serving as authority for the Legislative Assembly to act in the face of new problems, the Constitution has become a device which too often prevents an effective legislative response to growing and expanding needs and demands of the citizens and

local government. The people of the states have denied themselves their strongest instrument for effective state government. It has been denied to the only agency of state government that could exercise this over-all residual power effectively — the Legislative Assembly. A no-man's land results in which the state and its political subdivisions may not enter. The states themselves have created a vacuum which they refuse to permit themselves to fill. The political or governmental world is no more tolerant of a vacuum than is the physical world, and this self-denial on the part of the states has become one of the clear causes of the increase in the power of the federal government. Yet, while the states loudly lament this increase in federal power, they fail to put their own houses in order so as to make federal action unnecessary.

How did all this come about? By the end of the eighteenth century and during the early part of the nineteenth century popular confidence in state legislatures was shaken. Land scandals, improper issuance of special privilege corporate and banking charters, reckless spending, borrowing and investment of public funds in internal improvements, and the passage of notorious laws for the special interest of private persons and particular localities are perhaps to blame. This fear and distrust resulted in the detailed restrictions, specific delegations, and a huge volume of statutory material that is found in the constitutions. The philosophy of a strong governor did not exist among the states, a carry-over of the distaste we still felt as a nation against the early governors of the colonial days who were appointed by the King of England and sent forth to govern us without our consent. The scandalous action of the carpetbagger legislatures of the reconstruction days in the South contributed to this loss of prestige of the legislative assemblies and state government in general, from which it has never fully recovered.

These restrictions and inhibitions reached their height in 1889 when four new states — North Dakota, South Dakota, Montana, and Washington — were admitted to the Union. Their new constitutions were all similar in that they adopted the most restrictive provisions of legislative power found in the constitutions of older states, and went far beyond many of them in enacting extensive legislation and even administrative detail in the constitutions. Consequently, these states are locked in chain step to fears, details, and solutions to problems as they existed in 1889. The framers of these constitutions seemed to have thought that the governments of these states would be entrusted only to untrustworthy officials and scoundrels and that it was necessary to set forth the details of state government and compel them to forever follow the detailed course laid out by their opinions.

They failed to recognize that a constitution was to be a statement of principles for the protection of the people from their government, and not to protect people one from another, which is the purpose of statutes. They also failed to recognize that the constitution should provide only the solid framework to hang the provisions for state and local government upon, and not to completely create and forever govern them in detail.

In practice, state constitutional conventions have not been all wise and did not see into the future so completely that their judgment was better than that of the citizens who came after them. These restrictions have not prevented state legislatures from finding ways of occasionally repeating the shortcomings of the earlier day, and there is ample reason to believe that the good they accomplished by these restrictions has been far outweighed by the harm that has been done. Today, with a highly literate citizenry, rapid communication, and an alert press using radio, television, and newspapers, we need not rely only upon the Constitution to save us from bad public officials. The new and unforeseen problems that were naturally beyond the comprehension of the Constitution makers have served to prevent good legislators and other state and local officials from functioning effectively in meeting the challenges of state government today.

Fortunately, we have seen some recent moves to reverse this trend which existed for so many years in this country. There has been a move back in the direction of placing legislative power and responsibility in the Legislatures and confining constitutions to the job of establishing principles of government. This pattern can be seen to a greater or lesser degree in the new constitutions of Georgia, Missouri, New Jersey, Michigan, Alaska, and Hawaii.

The need today is for a state government capable of exercising all powers reserved to it under the federal system, able to act promptly and decisively in the face of new and critical public problems. The Legislative Assembly and state and local government must be unshackled from unreasonable constitutional restrictions to permit them to be capable of meeting this need. State government cannot be expected to fight the problems of this day with a Constitution tying one arm behind its back. The placing of greater authority and responsibility in state government will in itself create greater public interest in it, resulting in a greater challenge to a greater number of strong and able men to seek public offices, and begin the process of revitalization of state and local government. Perhaps if we are willing to give ourselves

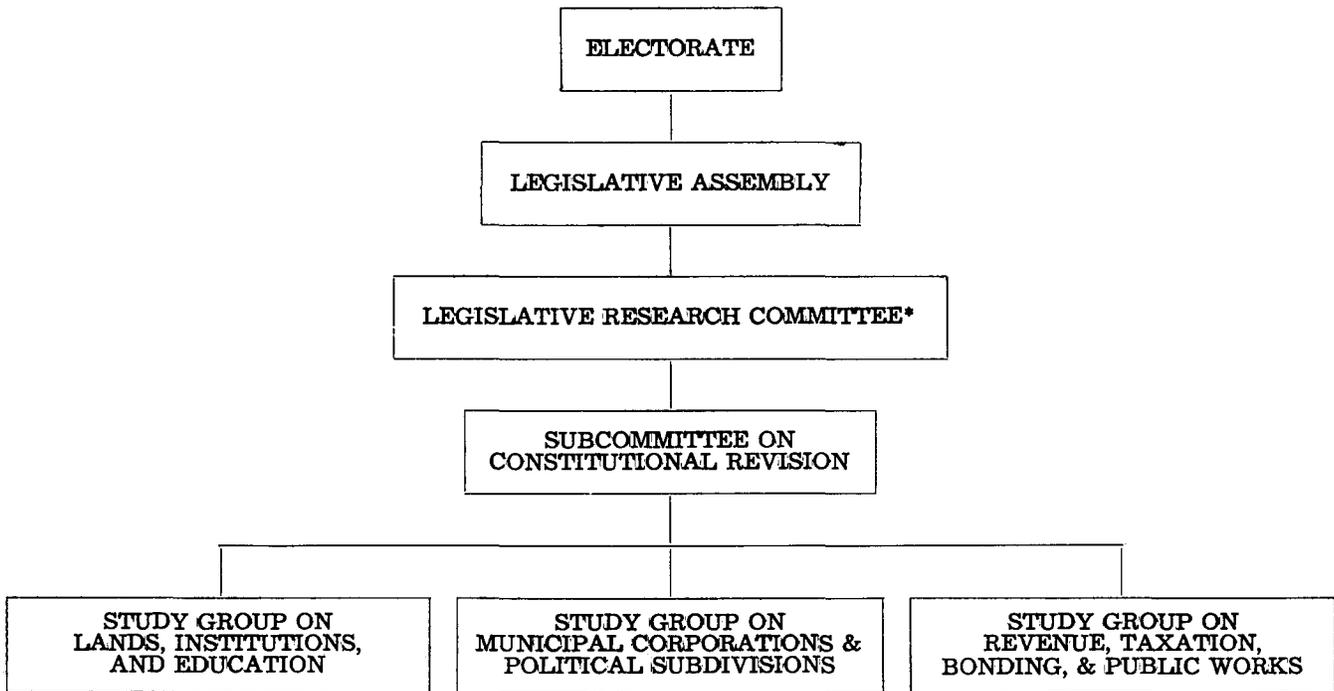
the capacity to govern, we might develop the will to govern.

Unless we have the desire and the will to do so, we are confessing the failure of our American dream of the American state-federal system.

**Constitutional Revision Committee Organization**

The Legislative Research Committee at its April 1965 meeting appointed Senator William R. Reichert as Chairman of the Subcommittee on

Constitutional Revision. Three study groups were appointed to separately study the various subject matter grouped as follows: Study Group on Lands, Institutions, and Education, chaired by Mr. Frank A. Wenstrom; Study Group on Municipal Corporations and Political Subdivisions, chaired by Mr. Thomas S. Kleppe; and the Study Group on Revenue, Taxation, Bonding, and Public Works, chaired by Representative R. Fay Brown. The following is an organizational chart showing the various committees and their relationship to each other:



\*The Legislative Research Committee has nine other Subcommittees, which are: Budget; Education; Legislative Arrangements; Legislative Employment and Handbook; Political Subdivisions; Social Welfare; State, Federal, and Local Government; Taxation; and Transportation.

### **Changes — How Proposed**

How does a proposed change in the Constitution come about under the present procedure? Let us take one section relating to state land, for example. This section is first reviewed and studied by the study group on Lands, Institutions, and Education. The study group does one of three things to the section: leaves it as is, prepares an amendment, or recommends its repeal. Whatever the study group does, it passes on its recommendation to the Subcommittee on Constitutional Revision. The Subcommittee then may concur, reject, or make further recommendations concerning this section. If the Subcommittee rejects or makes further recommendations, the section is sent back to the study group to consider these recommendations or suggestions. After further consideration by the study group, it is again re-submitted to the Subcommittee.

When the Subcommittee agrees to the section it is then submitted to the Legislative Research Committee. The section can undergo the same process between the Subcommittee and the Legislative Research Committee as it did between the study group and the Subcommittee.

When the Legislative Research Committee finally approves the section it will be presented to the Legislative Assembly. If the Legislative Assembly approves, it will be submitted to you for your approval or disapproval in the ballot box.

The following is a Statement of Purposes adopted by the Subcommittee on Constitutional Revision at their first meeting:

#### **Statement of Purposes**

“To recommend to the Legislative Research Committee of the State of North Dakota a good, workable, revised Constitution — a Constitution adapted to our state environment. A Constitution utilizing the experience of other states, but especially the experience of ourselves and our predecessors in this state. Retaining that which has proved good and workable — rejecting that which has hampered, hindered, or arrested our full growth and development in the national federation. To suggest changes, where change appears feasible, to promote and encourage the progress and development of our state.”

**Constitutional Provisions Acted Upon by the  
Legislative Research Committee**

**N. D. Constitution**

Section 121.	To be amended and includes most of the provisions of Articles 36 and 40 of the Amendments to the Constitution.	Section 140.	To be repealed.
Article 36 of Amend. to Const.	To be repealed and partially incorporated into section 121.	Section 141.	To be repealed.
Article 40 of Amend. to Const.	To be repealed and partially incorporated into section 121.	Section 142.	To be repealed.
Section 122.	To be repealed.	Section 143.	To be repealed.
Section 123.	To be repealed.	Section 144.	To be repealed.
Section 124.	To be amended.	Section 145.	To be repealed.
Section 125.	To be amended and incorporates the provisions of section 126.	Section 146.	To be repealed.
Section 126.	To be repealed and its provisions included in section 125.	Section 147.	No change made.
Section 127.	To be amended.	Section 149.	No change made.
Section 128.	To be repealed.	Section 150.	No change made.
Section 129.	To be amended.	Section 151.	To be repealed.
Section 130.	To be amended.	Section 152.	No change made.
Section 131.	No change made.	Section 153.	To be amended and incorporates parts of section 159.
Section 132.	To be repealed.	Section 154.	To be amended and incorporates parts of section 159.
Section 133.	To be repealed.	Section 155.	To be amended and incorporates the substance of sections 157, 158, 160, and 161.
Section 134.	No change made.	Section 156.	To be amended and the companion bill implements certain changes in investment procedures authorized under this section.
Section 135.	To be repealed.	Section 157.	To be repealed and the substance of this section is incorporated into section 155.
Section 136.	To be repealed.	Section 158.	To be repealed.
Section 137.	To be repealed.	Section 159.	To be repealed and the provisions of this section have been incorporated into sections 153 and 154.
Section 138.	To be repealed.		

- Section 160. To be repealed and the provisions of this section have been incorporated into section 155.
- Section 161. To be repealed and the provisions of this section have been incorporated into section 155.
- Section 162. To be repealed and the provisions have been incorporated into section 156. Also see the companion bill to section 156.
- Section 164. To be repealed.
- Section 166. To be repealed.
- Section 168. To be amended.
- Section 169. No change made.
- Section 170. To be amended.
- Section 172. To be amended.
- Section 173. To be amended.
- Section 176. To be amended.
- Section 178. No change made.
- Section 179. To be amended.
- Section 182. No change made.
- Section 183. No change made.
- Section 184. No change made.
- Section 185. To be amended.
- Section 186. To be amended.
- Section 187. To be repealed.
- New Section. This section sets forth a revenue bonding provision.
- Article 59 of Amend. to Const. To be repealed.
- Article 65 of Amend. to Const. To be repealed.
- Section 194. No change made.
- Section 195. No change made.
- Section 196. No change made.
- Section 197. No change made.
- Section 198. No change made.
- Section 199. No change made.
- Section 200. No change made.
- Section 201. No change made.
- Section 202. To be amended.
- Article 33 of Amend. to Const. To be amended.
- Section 206. No change made.
- Section 207. No change made.
- Section 208. No change made.
- Section 209. To be repealed.
- Section 210. No change made.
- Section 211. No change made.
- Section 212. To be amended.
- Section 213. No change made.
- Section 214. To be repealed.
- Section 215. To be amended. The provisions of section 216 have been incorporated into this section.
- Section 216. To be repealed. The provisions of this section have been incorporated into section 215.
- Article 19 of Amend. to Const. To be repealed.
- Article 54 of Amend. to Const. To be amended. This article has a companion bill.
- Article 56 of Amend. to Const. To be amended.
- Article 1 of Amend. to Const. No change made.
- Article 60 of Amend. to Const. No change made.
- Article 76 of Amend. to Const. No change made.
- Schedule. Sections 1 through 26 — to be repealed.

## **Voting Franchise**

**Section 121.** Every person of the age of twenty-one or upwards who is a citizen of the United States and who shall have resided in the state one year ((and in the county ninety days and in the precinct thirty days)) next preceding any election shall be a qualified elector ((at such election.)); provided such person meets county and precinct residence requirements as provided by law; ((Provided)) provided further that where a qualified elector moves from one precinct to another within the state he shall be entitled to vote in the precinct from which he moves until he establishes his residence in the precinct to which he moves.

**COMMENT:** This section as amended and with the repeal of Articles 36 and 40 of the Amendments to the Constitution would allow the legislative assembly to set by general law the time requirements for residence in counties and precincts for voting purposes. The year requirement would still be set forth in the Constitution. The legislature has already set forth these times in section 16-01-03 of the North Dakota Century Code which provides for 90 days in the county and 30 days in the precinct. Also, section 16-01-05 allows voters who are qualified but move from one precinct to another within the state, to vote in the precinct from which he moves until he establishes his resident requirements of 30 days in the new precinct. This law merely restates the last sentence of the above section 121.

### **Article 36 of the Amendments. Repeal.)**

**COMMENT:** This article of the amendments allowed a qualified voter who moved from one precinct to another within the county to vote at his old precinct until establishing residence in his new precinct. This section is not necessary because section 121 above allows a person to vote in his old precinct until he establishes his requirement in the new precinct anywhere in the state and is not limited to just counties.

### **Article 40 of the Amendments. Repeal.)**

**COMMENT:** This article of the amendments allowed a qualified voter who moved from a precinct to another anywhere in the state to vote in his old precinct until he qualifies in his new precinct. This provision is provided for in the last sentence of section 121 above and therefore is not needed.

## **Section 122. Repeal.)**

**COMMENT:** This section provided that the legislative assembly was empowered to make further extensions of suffrage by law except, when so done by passing a law, the law must be referred to the people who must approve it by a majority vote. This section requires exactly the same procedure as required when amending the Constitution. For this reason, the section is being repealed as any extension can as easily be done by constitutional amendment.

## **Section 123. Repeal.)**

**COMMENT:** This provision provides that electors on election days going to and from the polls shall be privileged from arrest except for the crimes of treason, felony, breach of the peace, or illegal voting and that no elector shall be obliged to perform military duty on the election day except in the time of war or public danger. The provisions of this section as now written exempt a person from arrest and detention for only those crimes classified as a misdemeanor and then only those misdemeanors which do not cause a public disturbance such as overparking, most traffic violations, etc. Therefore, this section although appearing to be of great protection is very slight in its protection to the voters. The exemption for military duty is outdated as we today are not subject to being called for duty for drill as we do not have an active state militia but instead have a national guard. We do not have the danger of Indian attack or bushwhackers of the times prior to 1876 which would justify this type of state militia consisting of every able-bodied man. If such a militia is ever again needed, the legislature can protect their voting rights by law.

**Section 124.** ((The)) A general ((elections)) election of the state shall be ((biennial, and shall be)) held biennially on the first Tuesday after the first Monday in November. ((; provided, that the first general election under this Constitution shall be held on the first Tuesday after the first Monday in November, A.D. 1890.))

**COMMENT:** The amendments to this section are self-explanatory. The provision for the first general election is obsolete since it was held immediately after the adoption of the Constitution.

**Section 125.** No elector shall be deemed to have lost his residence in this state solely by reason of his absence on business of the United States or of this state, or ((in the military or naval service)) while serving as a member of the armed forces of the United States. Nor shall voting residence be gained solely in consequence of being stationed in this state as a member of the armed forces of the United States.

COMMENT: This section is self-explanatory. The addition of the last sentence is the provision of section 126. There is no need to have two separate sections relating to the same subject matter.

**Section 126. Repeal.)**

COMMENT: The provisions of this section have been consolidated with section 125 above. This section provided that no person in the military service of the United States stationed here was a resident of this state merely by being stationed here.

**Section 127.** No person who is ((under guardianship, non compos mentis, or insane,)) legally incompetent shall be qualified to vote at any election; nor shall any person convicted of ((treason or)) a felony unless restored to civil ((social)) rights. ((; and the legislature shall by law establish an educational test as a qualification, and may prescribe penalties for failing, neglecting or refusing to vote at any general election.))

COMMENT: The phrase “legally incompetent” includes the words “non compos mentis” and “insane”. Guardianship should not be a test of voting ability unless the person is non compos mentis since the appointment of a guardian is not necessarily a determination of incompetency. The word “(social)” apparently was used for clarity, but in fact causes uncertainty and is unnecessary. An educational test for electors has not been provided for in 75 years of state history. It should be of even less need now in view of the level of education of the electorate, and, consequently, provisions for the test have been deleted.

**Section 128. Repeal.)**

COMMENT: This section, which has not been amended since 1889, allowed women to vote in

school elections and run for any school office as long as they had the qualifications enumerated in section 121. However, on November 2, 1920, women were given the right to vote at all elections and therefor this section has become obsolete.

**Section 129.** All elections ((by the people)) shall be by secret ballot, subject to such regulations as shall be provided by law.

COMMENT: This section is self-explanatory as the deleted words are unnecessary language.

**Municipal Corporations**

**Section 130.** Except in the case of home rule cities and villages as provided in this section the legislative assembly shall provide by general law for the organization of municipal corporations, ((restricting)) specifying their powers as to levying taxes and assessments, borrowing money, and contracting debts. Money raised by taxation, loan or assessment for any purpose shall not be diverted to any other purpose except by authority of law.

The legislative assembly shall provide by law for the establishment of home rule in cities and villages. ((It may authorize such cities and villages to exercise all or a portion of any power or function which the legislative assembly has power to devolve upon a non-home rule city or village, not denied to such city or village by its own home rule charter and which is not denied to all home rule cities and villages by statute.)) Home rule cities and villages shall have all powers of self government except:

1. Those powers withheld from them by law;
2. Those powers not accepted by the city or village by its home rule charter; and
3. Those powers prohibited by this Constitution or the law of the land; provided that ((The)) the legislative assembly shall not be restricted in granting of home rule powers to home rule cities and villages by section 183 of this Constitution.

COMMENT: Cities and villages presently have only the powers granted by the legislature or necessarily implied to them to carry out statutory duties. The word “restricting” could lead to an understanding that they have

all powers not restricted by law. Therefore, the word “specifying” is more descriptive of the legislative duties than the word “restricting”. In addition, the change will give the legislative assembly greater flexibility in prescribing the authority of cities and villages. The committee felt that the grant of all power to home rule cities with specific exemptions was a more easily comprehensible method of providing for home rule than the method used in chapter 480, 1965 Session Laws.

### Corporations Other Than Municipal

#### **Section 132. Repeal.)**

COMMENT: This section provided that all existing charters or grants of special or exclusive privileges to any organization which had not exercised such privileges prior to the effective date of the 1889 Constitution would have no validity. This section was obsolete after the first day the Constitution went into effect on November 2, 1889.

#### **Section 133. Repeal.)**

COMMENT: This section relates to changing of any corporate charter which had been granted prior to 1889 which stated that the legislative assembly shall not remit the forfeiture of the charter to any corporation now existing, nor alter or amend the same, nor pass any other general or special law for the benefit of such corporation except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution. This section is now obsolete. All North Dakota corporations are chartered within the present law and hold their charters subject to the Constitution. Sections 20 and 185 of this Constitution prevent the legislative assembly from granting special privileges to corporations.

#### **Section 135. Repeal.)**

COMMENT: This section provided that in all elections for directors or managers of a corporation, each shareholder could cast all of his votes for one candidate or spread them over more than one and that cooperative corporations could by bylaws limit the voting power of its stockholders. This section is not needed in the Constitution and is presently extensively covered under statutory provisions.

#### **Section 136. Repeal.)**

COMMENT: This section provided that no foreign corporation shall do business in the state without having one or more places of business and an authorized agent in the state upon whom process may be served. Jurisdictional requirements for foreign corporations doing business in a state have been prescribed by many decisions of the U. S. Supreme Court, and sections 10-19-09, 10-19-10, 10-19-11, 10-22-05, and 10-22-08 of the North Dakota Century Code adequately cover this material.

#### **Section 137. Repeal.)**

COMMENT: This section states “No corporation shall engage in any business other than that expressly authorized in its charter.”. By general law a corporation is a creature authorized by law and necessarily has only such powers as are granted to it by the state or which are necessarily implied therewith for its type of corporation.

#### **Section 138. Repeal.)**

COMMENT: This section provides that no corporation can issue stocks or bonds except for money, labor done, or money or property actually received and that all fictitious increase of stock is void and that stock and indebtedness of corporations shall not be increased except in pursuance of general law. Again, the provisions of this section are covered by statutes and there is no need to have this type of provision in a constitution.

#### **Section 140. Repeal.)**

COMMENT: This section is a general section relating to a railroad corporation organized under the law of this state and relating to its stocks and stock records, place of business, directors meetings and reports, etc. This section was repealed because the general business corporation sections of this Constitution and laws of this state adequately cover and include railroad corporations. There is no need to treat railroad corporations differently from other corporations.

#### **Section 141. Repeal.)**

COMMENT: This section relates to the consolidation of railroads. Railroads are regulated primarily by the federal government,

and, consequently, North Dakota has little jurisdiction over them, making this section almost completely ineffective.

**Section 142. Repeal.)**

COMMENT: This section declares that railroads are public highways and common carriers and that the legislative assembly has the power to enact laws regulating and controlling them. The legislative assembly has this power with or without this constitutional provision to regulate, control, and classify railroads except where state authority is pre-empted by the federal government. There is adequate statutory and case law declaring railroads to be common carriers if they are available to the general public. Section 25 of this Constitution includes legislative power to regulate railroads insofar as they are subject to state regulation.

**Section 143. Repeal.)**

COMMENT: This section states that any corporation organized for the purpose of constructing and operating a railroad within the state and to connect with points outside the state can do so. This section is superfluous. As this can be granted by law, it is not necessary to have such a provision in the Constitution. Further, under the interstate commerce clause of the Federal Constitution, Congress has pre-empted the state's control of interstate railroads and their connecting lines. They are extensively controlled at the federal level.

**Section 144. Repeal.)**

COMMENT: This section defines the term "corporation" as used in this article of the Constitution. Again, this is a superfluous section. There is no need to provide a definition in the Constitution as it is adequately done by statute.

**Section 145. Repeal.)**

COMMENT: This section relates to the issuance of tender by the banks. The section is obsolete because the United States treasury and the federal reserve banks are the only agencies authorized by federal law to issue legal tender today.

**Section 146. Repeal.)**

COMMENT: This section relates to the prohibition against any combination of individuals, corporations, or associations from restraining trade, price fixing, etc., and provides that if so done they would forfeit their franchises. There is statutory law regarding restraint on fair trade.

**Education**

**Section 151. Repeal.)**

COMMENT: This section states that the legislative assembly should take steps to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and promote industrial, scientific, and agricultural improvements. This section with its statement of intent is superfluous and is adequately covered in sections 25 and 148 of this Constitution.

**School and Public Lands**

**Section 153.** All proceeds of the public lands that have heretofore been, or may hereafter be granted by the United States for the support of the common schools in this state; all such per centum as may be granted by the United States on the sale of public lands; property and the proceeds of property that shall fall to the state by escheat; ((the proceeds of))) all gifts, ((and))) donations, or the proceeds thereof that come to the state for support of the common schools, or not otherwise appropriated by the terms of the gift, and all other property otherwise acquired for common schools, shall be and remain a perpetual trust fund for the maintenance of the common schools of the state. ((It shall be deemed a trust fund, the principal of which shall forever remain inviolate and may be increased but never diminished. The state shall make good all losses thereof.)) Only the interest and income of the fund may be expended and the principal shall be retained and devoted to the trust purpose. All property, real or personal, received by the state from whatever source, for any specific educational or charitable institution, unless otherwise designated by the donor, shall be and remain a perpetual trust fund for the creation and maintenance of such institution, and may be commingled only with similar funds for the same institution. Should a gift be made to an institution for a specific purpose, without designating a trustee, such gift may be placed

in the institution's fund; provided that such a donation may be expended as the terms of the gift provide.

**COMMENT:** The changes in the first paragraph merely clarify and do away with unnecessary language. Statutory law is extensive in this area, and therefore detailed constitutional provisions are surplusage. The additional paragraph adds the substance of section 159 to make it clear that all funds should be treated in a uniform fashion.

The last sentence is not a realistic restriction on trust fund investment. Normal market fluctuations might cause some securities to drop in value while the entire fund is actually increasing in value. Under the present language such losses would have to be made good by the legislature. When the school fund was small, this restriction was probably well worth having, but now that the fund is substantial in amount, it can stand on its own without needing the state's taxing power to keep it stable. There may be times when it would be prudent to sell some securities at a small loss in order to acquire cash with which to purchase more lucrative securities. Such sale and purchase may increase the value of the fund although there would be a paper loss involved in the sale, which the legislature would have to make good. In State Ex Rel. University Board v. Hanson, 65 N. D. 1, 7 (1934) the North Dakota Court said, regarding section 153:

"It is a warning to the board that all losses which arise through its administration fall on the general public and that the acts of the board may place the state in such position that the legislature will be compelled to levy taxes to maintain the fund intact because of mistakes of judgment on the part of the board, or because of conditions which may arise and which are unforeseen. . . . No matter how carefully the board may act, yet if there be a loss the state is obligated to make it good."

**Section 154.** The interest and income of ((this)) the common school fund together with the net proceeds of all fines for violation of state laws and all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the common schools of the state, and shall be ((for this purpose)) apportioned among ((and between all the several)) the common school corporations of the

state ((in proportion to)) according to the number of children ((in each of school age, as may be fixed by law, and no part of the fund shall ever be diverted, even temporarily, from this purpose or used for any other purpose whatever than the maintenance of common schools for the equal benefit of all the people of the state; provided however, that if any portion of the interest or income aforesaid be not expended during any year, said portion shall be added to and become a part of the school fund)) attending each public school within the state.

The interest and income of each institutional trust fund held by the state shall, unless otherwise specified by the donor, be appropriated by the legislative assembly each biennium to the exclusive use of the institution for which the funds were given.

**COMMENT:** The changes in the first paragraph of this section are for clarification and to do away with unnecessary language. The additional paragraph adds part of section 159 to this section in order to make it clear that the legislature should review appropriations to each institution each session. It also makes it clear that the individual institution funds are to be kept separate from, but treated like the common school fund.

**Section 155.** ((After one year from the assembling of the first legislative assembly the lands granted to the state from the United States for the support of the common schools, may be sold upon the following conditions and no other: No more than one-fourth of all such lands shall be sold within the first five years after the same become salable by virtue of this section. No more than one-half of the remainder within ten years after the same become salable as aforesaid. The residue may be sold at any time after the expiration of said ten years.)) The legislative assembly shall provide for the sale or lease of all ((school lands subject to the provisions of this article. In all sales of lands subject to the provisions of this article all minerals therein)) properties held by the state in the school or other institutional trust funds at not less than fair market value; provided that in the sale of any such real estate the minerals, including but not limited to oil, gas, coal, cement materials, sodium sulphate, sand and gravel, road material, building stone, chemical substances, metallic ores, uranium ores, ((or)) and colloidal or other clays, shall be reserved and excepted to the state of North Dakota. ((, except

that leases))) Leases may be executed by the state for the extraction and sale of such materials in ((such)) the manner and upon such ((terms)) conditions as the legislative assembly may provide. The proceeds of all sales and leases shall be credited to the fund from which the property was removed for sale purposes.

COMMENT: The changes in language polish and coordinate this section with the rest of the article and make it clear that all trust funds held by the state for schools or institutions shall be treated the same as the common schools' funds. The additional material is a condensation of section 158 and now allows the legislature to provide terms and conditions of sale and lease of the lands. Code chapters 15-05, 15-06, and 15-07 do provide these terms and conditions.

**Section 156.** The superintendent of public instruction, governor, attorney general, secretary of state and state auditor, shall constitute a board of commissioners, which shall be denominated the "Board of University and School Lands", and, subject to the provisions of this article and any law that may be passed by the legislative assembly, said board shall have control of the appraisal, sale, rental and disposal of all school ((and)), university, and institutional lands held in trust by the state under the authority of this article, and shall direct the investment of the funds ((arising therefrom))) governed by this article in the hands of the state treasurer ((, under the limitations in section 160 of this article)) as provided by law.

COMMENT: The changes made herein make it clear that the board has control of all the state-held funds that are for the construction or maintenance of all public institutions. The board would direct the investment of these funds in the manner prescribed by the legislature. See companion bill at the end of this section of the report for statute change recommendations.

**Section 157. Repeal.)**

COMMENT: This section established the county board of appraisers for school lands within a county. Chapters 15-06 and 15-07 of the North Dakota Century Code provide for the disposal and lease of all original grant and non-grant lands respectively. Consequently, this matter is not worthy of constitutional status and is also adequately covered by section 155 of this Constitution.

**Section 158. Repeal.)**

COMMENT: This section prescribes in great detail the method and procedure of appraising, selling, interest charged, type of contracts, dates, and place to sell, etc., regarding grant lands. Section 155 of this Constitution directs the legislative assembly to provide for the disposition of the school and institutional lands. This has been done in chapters 15-05, 15-06, and 15-07 of the North Dakota Century Code. Since disposition of the lands is provided for by statute, and the legislature has authority to do so in view of section 155, there is no need for this section.

**Section 159. Repeal.)**

COMMENT: This section provides that all land, money, or other property granted, donated, or received from the United States for the various education and charitable institutions shall become and remain a perpetual fund or trust fund and that only the income and interest from such fund may be used by such institutions. The provisions of this section have been incorporated into sections 153 and 154 above.

**Section 160. Repeal.)**

COMMENT: This section provides for the disposition of the lands in section 159 by sale, and the provisions of this section are incorporated into section 155 above.

**Section 161. Repeal.)**

COMMENT: This section provides for the leasing of the lands involved in section 159 and would be provided for in section 155 above in the suggested amendment.

**Section 162. Repeal.)**

COMMENT: This section names the various types of investments which can be made from the permanent trust fund moneys for the educational and charitable institutions. The provisions of this section are incorporated into section 156 above, as amended, and also as set forth in the companion bill to section 156 found at the end of this section of the report.

**Section 164. Repeal.)**

COMMENT: This section authorizes the legislature to sell lands of the state not covered by

the other sections of this article. The legislature has provided for this and has such authority under section 25 without this section. See chapters 15-05, 15-06, and 15-07, as well as section 155 of this Constitution.

### County and Township Organization

#### **Section 166. Repeal.)**

**COMMENT:** This section stated that all the counties lying north of the seventh parallel when we became a state would be the counties of this state. Since they have long been established this section is obsolete.

**Section 168.** All changes in the boundaries of organized counties before taking effect shall be submitted to the electors of the county or counties, to be affected thereby at a general or statewide election and be adopted by a majority of all the legal votes cast in each county at such election; and in case any portion of an organized county is stricken off and added to another, the county to which such portion is added shall assume and be holden for an equitable proportion of the indebtedness of the county so reduced.

**COMMENT:** A general election may mean the general election or it may mean any statewide election for the purpose of filling a statewide office. The courts of the several states are not in accord on the question. The North Dakota court has said that "general election" as used in our registration laws means the election held on the first Tuesday after the first Monday in November in even numbered years. It would be preferable to include the words "or statewide" in this section, since that is apparently what is intended by it.

**Section 170.** The legislative assembly shall provide by law for optional forms of government for counties (((, which forms shall be,))) in addition to ((that form)) the forms provided by sections 172 and 173 of the Constitution, and which (((forms shall specify the number, functions and manner of selection of county officers, but no such optional form of government shall become operative in any county until submitted to the electors thereof at a special election or a general election, and approved by fifty-five percent of those voting thereon. The manner of exercising the powers herein granted shall be by general laws, but such laws shall provide that the initiative for the submission of the question of the adoption of one of the optional forms of county government may be had either by a vote of not less than two-thirds of

the county legislative body or upon petition of electors of the county equal to at least fifteen per centum of the total number of voters of the county who voted for governor at the last general election. Among the optional forms of county government to be provided by the legislative assembly under this provision, at least one form shall provide for a county manager.))) may be adopted by a county when approved by the voters therein by a majority of the votes cast on the question.

**COMMENT:** The deleted portion of this section is found in chapters 11-08 and 11-09 of the North Dakota Century Code, which chapters provide for optional forms of county government. The additional sentence streamlines the provisions of the former provision.

**Section 172.** Until one of the optional forms of county government provided by the legislative assembly (((under section 170 of the Constitution, as amended,))) be adopted by any county, the fiscal affairs of said county shall be transacted by a board of county commissioners. (((Said board shall consist of not less than three and not more than five members whose terms of office shall be prescribed by law. Said board shall hold sessions for the transaction of county business, as shall be provided by law.)))

**COMMENT:** Section 172 has been provided for in the North Dakota Century Code. Section 11-10-02 specifically provides that the county commissioners' board will be the county government until another form is adopted. Therefore, the deleted portions of this section are unnecessary.

**Section 173.** There shall be elected in each county (((,))) organized under the provisions of section 172 of the Constitution (((of the state of North Dakota,))) a register of deeds, county auditor, treasurer, sheriff, state's attorney, county judge and a clerk of the district court, who shall be electors in the county in which they are elected and who shall hold their office for a term of four years and until their successors are elected and qualified, or until such time as an optional form of government is accepted by the electorate and assumes the functions, and whose duties shall be provided by law; provided that in counties having fifteen thousand population or less, the county judge shall also be clerk of the district court; provided further that in counties having population of six thousand or less the register of deeds shall also be clerk of the district court and county judge. (((This amendment shall be construed as applying

to the officers elected at the general election in 1962. This amendment shall be self-executing, but legislation may be enacted to facilitate its operation.))

COMMENT: The first change in this section coordinates it with previous sections. The added words provide for orderly change from one form of government to another, when there could otherwise be some question as to which official is to carry out certain functions. The deleted portion is obsolete in part and the balance is unnecessary wordage.

### Revenue and Taxation

Section 176. Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The ((legislature)) legislative assembly may by law exempt any or all classes of personal property from taxation and ((within the meaning of this section,)) all fixtures, buildings and improvements ((of every character, whatsoever,)) upon land ((shall)) may be deemed personal property for exemption purposes. ((The property of the United States and of the state, county and municipal corporations and property)) Property used exclusively for schools, religious, cemetery, charitable or other public purposes, unless held or used for profit, shall be exempt from ad valorem property taxation. Except as restricted by this article, the ((legislature)) legislative assembly may provide for raising revenue and fixing the situs of all property for the purpose of taxation. ((Provided that all taxes and exemptions in force when this amendment is adopted shall remain in force until otherwise provided by statute.))

COMMENT: The changes herein merely clarify the earlier language. The North Dakota court in *State v. Wetz*, 40 N. D. 299 (1918) held that section 176 compels uniformity within each taxing district and restricts exemptions to those enumerated unless some public policy justifies other uniform exemptions. Other cases have held that exemptions exist only if the legislature provides for them, and the constitutional exemption is not self-executing. See *Engstad v. Grand Forks County*, 10 N. D. 54, (1910). In *Ferch v. Cass County Housing Authority*, 79 N. D. 764, (1953) the court held that it was for the legislature to determine what would be a charitable purpose as used in section 176. From these cases the conclusion follows that section 176 applies only to proper-

ty taxes, that property taxes must be assessed uniformly within the territory of the taxing district, and that exemptions are entirely in the hands of the legislature and must be based upon a legitimate public policy except in the areas enumerated within the section itself.

The United States supreme court has ruled that the states may tax the user of federally-owned property at the same rate as if he owned it, but the failure to pay will not result in a lien on the property. *United States v. Detroit*, 355 U. S. 466, 2 L. Ed. 2d 424 (1958); *United States v. Township of Muskegan*, 355 U. S. 484, 2 L. Ed. 2d 436 (1958). In *City of Detroit v. Murray Corporation*, 355 U. S. 484, 2 L. Ed. 2d 441 (1958) the court sustained a tax on "owners or persons in possession of personal property" when imposed on a government contractor and based on the full value of the United States-owned property in possession of the company. The court reasoned that the beneficial possession was the taxable subject matter and not the actual ownership. A lead article of North Dakota Law Review, Vol. 38, p. 26 discusses this point thoroughly.

In *Phillips Chemical Co. v. Dumas Independent School District*, 361 U. S. 376, 4 L. Ed. 2d 384 (1960), it was held that the state must impose the same tax burden on the users of state property that it imposes on the users of federal property in order to avoid an equal protection challenge. "I (t) does not seem too much to require that the state treat those who deal with the government as well as it treats those with whom it deals itself."

Because of the foregoing cases, the Committee gave careful consideration to the mandatory constitutional exemption of government property, both federal and state, and determined that it would be preferable to leave this matter to the legislature. Now that cemeteries are sometimes businesses quite unlike the 1889 concept of cemeteries, the study group felt that cemeteries and the other enumerated organizations should not be exempt from property tax if they are used or held for profit. The new language follows the Constitution of California.

Section 179. All taxable property except as hereinafter in this section provided, shall be assessed in the ((county, city, township, village or)) taxing district in which it is situated, in the manner prescribed by law. ((The property, including franchises of all railroads operated in

this state, and of all express companies, freight line companies, dining car companies, sleeping car companies, car equipment companies, or private car line companies, telegraph or telephone companies, the property of any person, firm or corporation used for the purpose of furnishing electric light, heat or power, or in distributing the same for public use, and the property of any other corporation, firm or individual now or hereafter operating in this state, and used directly or indirectly in the carrying of persons, property or messages,)) Unless otherwise provided by law, the property of all railroads and public utilities except highway common carriers shall be assessed by the state board of equalization ((in a manner prescribed by such state board or commission as may be)) in the manner provided by law. But should any railroad or public utility allow any portion of its railway or property to be used for any purpose other than the operation of a railroad ((thereon)) or a public utility, such portion of its ((railway)) property, while so used shall be assessed in a manner provided for the assessment of other ((real)) property.

**COMMENT:** All the enumerated utilities and carriers are either railroad or public utilities. Highway motor carriers are specifically excepted from the exception from the general statement in order to allow local taxation of trucking terminals and state license taxation of motor vehicles as is done now. The new terms leave this section open to include new utilities that may come into being. Today, railroad and utility property not used exclusively for that purpose is taxed locally on a prorated basis. Any property used for an independent business (bar, newsstand, or coffee bar, for example) is taxed locally. "Common carriers" are those companies or persons who, as a regular business, transport either commodities or persons, or both, for hire. See: Sea Insurance Co. v. Sinks, 166 F. 2d 623; In Re Rice, 165 F. 2d 617, Mt. Tom Motor Lines v. McKesson & Robbins, 89 N. E. 2d 3; State ex rel State Ry. Commission v. Ramsey, 37 N. W. 2d 502; Ace High Dresses v. J. C. Trucking Co., 191 A. 536. Companies engaged in transmission of energy or messages are public utilities. See: (Electricity) New Jersey Power & Light Co. v. Borough of Butler, 66 A. 2d 876; Wisconsin-Michigan Power Co. v. Federal Power Commission, 197 F. 2d 472; (Gas) Pierce v. City of Hamilton, 178 N.E. 432 (Ohio); Memphis Natural Gas Co. v. McCanless, 194 S.W.

2d 476 (Tenn.); (Messages) Breedem v. Southern Tel. & Tel. Co., 285 S.W. 2d 346 (Tenn.).

### Public Debt and Public Works

**Section 185.** The state ((,)) or any ((county or city)) of its political subdivisions may make internal improvements and may engage in ((any industry, enterprise or business, not prohibited by article XX of the Constitution, but neither)) public purpose enterprises and businesses except the alcoholic beverage business. Neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation; except that the state and any of its political subdivisions may enter into joint enterprises with each other in carrying out their public projects to the extent authorized by law.

**COMMENT:** The changes in wordage clarify the section, and say what the court has held it to say. The additional phrase makes it clear that the various political divisions can engage in joint enterprises if the legislative assembly permits it. Since cities may wish to join with other cities or with the county in some projects such as airports, sewage purification plants, water systems, or recreational areas it would seem that there should be no doubt regarding their ability to do so with the sanction of the legislature.

There is authority that the word "liquor" does not include beer, but the words "alcoholic beverage" include all intoxicating beverages whether distilled or fermented. See Luther v. State, 120 N.W. 125 (Nebr.); Price v. Russel, 296 F. 263 (D.C. Ohio); Leo v. State, 181 S.W. 2d 351 (Tenn.); Blatz v. Rohrbach, 22 N.E. 1049 (N.Y.). Because of the above cited cases, and many more making the same distinction, the words "alcoholic beverage" were thought to better say what was meant by "article XX".

**Section 186.** (( (1) All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the legis-

lature; provided, however, that there is hereby appropriated the necessary funds required in the financial transactions of the bank of North Dakota, and required for the payment of losses, duly approved, payable from the state hail insurance fund, state bonding fund, and state fire and tornado fund, and required for the payment of compensation to injured employees or death claims, duly approved, payable from the workmen's compensation fund, and required for authorized investments made by the board of university and school lands, and required for the financial operations of the state mill and elevator association, and required for the payment of interest and principal of bonds and other fixed obligations of the state, and required for payments required by law to be paid to beneficiaries of the teachers' insurance and retirement fund, and required for refunds made under the provisions of the Retail Sales Tax Act, and the state income tax law, and the state gasoline tax law, and the estate and succession tax law, and the income of any state institution derived from permanent trust funds, and the funds allocated under the law to the state highway department and the various counties for the construction, reconstruction, and maintenance of public roads.

This constitutional amendment shall not be construed to apply to fees and moneys received in connection with the licensing and organization of physicians and surgeons, pharmacists, dentists, osteopaths, optometrists, embalmers, barbers, lawyers, veterinarians, nurses, chiropractors, accountants, architects, hairdressers, chiropodists, and other similarly organized, licensed trades and professions; and this constitutional amendment shall not be construed to amend or repeal existing laws or acts amendatory thereof concerning such fees and moneys.)) (1) All public moneys of this state, except as provided in section 153 of this Constitution, shall be paid over monthly by the person receiving the funds to the state treasurer and deposited by him in the state treasury, and shall be paid out only pursuant to annual or biennial appropriations first made by the legislative assembly; provided that this section shall not apply to moneys for financial transactions of the bank of North Dakota or the state mill and elevator association, and the legislative assembly may further exempt from this section the financial transactions of the commercial undertakings of the various state institutions. An appropriation need not be first made to allow disbursements from the state hail insurance fund, state bonding fund, state fire and tornado fund, workmen's compensation fund, or unemployment compensation fund, board of uni-

versity and school lands investment funds or other funds authorized by law to be invested, retirement of bonds or other fixed obligations, public employees' retirement funds, allocation of state funds to political subdivisions, refunds authorized in any tax law, trust fund and trust fund income which is the result of private gifts if the terms of the gift provide for disbursement of the fund or its interest and income, and interest and income from retirement, insurance or similar trust funds, nor to license fees of any licensed trade or profession. When the provisions of this amendment become effective, all existing balances in funds not exempted from the provisions of this section shall be transferred to the state treasury.

(2) No bills, claims, accounts, or demands against the state or any county or other political subdivision shall be audited, allowed, or paid until a full itemized statement in writing shall be filed with the officer or officers whose duty it may be to audit the same, and then only upon warrant drawn upon the treasurer of such funds by the proper officer or officers.

(( (3) This amendment shall become effective on July 1, 1939.))

COMMENT: This suggested amendment is intended to make all moneys expended by any state department, agency, or institution the subject of a prior appropriation. The only exceptions are those listed which are: state businesses, trust funds, licensed trades and professions, and private gifts that provide otherwise.

#### **Section 187. Repeal.)**

COMMENT: This section provides that no bond or evidence of indebtedness is valid without the signature of the auditor and secretary of state and the same for counties being signed by their auditor or some other authorized person. This provision is strictly statutory in nature and should not be placed in the Constitution.

**New Section.** Notwithstanding sections 174, 175, 176, 178, 179, 182, 183, 184, and 185 or other provisions of this Constitution, the state or any of its political subdivisions may incur indebtedness by the issuance of revenue bonds, for such purposes, amounts, manner, and subject to such limitations as shall be prescribed by law. A reve-

nue bond, as used in this section, is defined as an instrument representing an indebtedness of the state or its political subdivisions, which is to be incurred or that has been incurred, and which is to be retired by moneys received from any designated source whatsoever except that moneys raised by the levying of an ad valorem tax on either real or personal property shall not be pledged for retirement of such revenue bonds. Any moneys which are designated for the retirement of such bonds shall be sufficient to pay the principal and interest of such indebtedness and such moneys shall be irrepealably dedicated for such retirement until the principal and interest of such indebtedness has been paid in full. In the event that any moneys which are dedicated to the payment of interest and principal of such revenue bonds shall become insufficient to meet the payments for such bond or if a default appears to be imminent, then to the extent authorized by law, the state treasurer, if such bond has been issued by the state, or the treasurer of such issuing political subdivision in the case of bonds issued by the political subdivision, shall make such payment as is necessary to prevent such default from occurring, out of any public funds of the state or political subdivision, which payment shall be a first charge upon any and all funds not pledged for the retirement of any other type of bond issue. Any payments made to cover any default or pending default shall be repaid to the fund drawn upon to cover such default from the dedicated moneys or sinking fund whenever the current moneys in such sinking fund shall exceed the amount needed to pay the next principal and interest payment of such revenue bonds.

**COMMENT:** This new proposed bonding law section would allow the state or any of its political subdivisions acting with the approval of the legislature to issue revenue bonds, the definition of which is set forth in the section, for incurred indebtedness or indebtedness to be incurred. The bonds could be retired from moneys from any designated source named by the legislative assembly in the law except that ad valorem taxes on real or personal property could not be dedicated to their retirement. This section would permit a guarantee of the payment of the bonds as they become due. If the revenue source named should become inadequate for some reason, repayment moneys could come from any available funds of the

state or the political subdivision which are not already dedicated to the repayment of some other bond issue. However, the original dedicated revenue source would be required to repay any amounts so advanced to prevent a default to the fund from which the money was taken. This provision would not provide full faith and credit type bonds, but the bonds would be almost as secure. It should allow the state or its political subdivisions to borrow money at a lower interest rate than is obtained on the type of revenue bonds now issued. The general full faith and credit type bonding authority of the state and its political subdivisions would not be changed and will remain as it is today.

**Article 59 of the Amendments. Repeal.)**

**COMMENT:** This section relates to the bonds issued for the payment of a bonus to veterans of the second world war. All bonds have been retired or will be paid when presented. There are some outstanding bonds that have been lost or misplaced by the owners but they can be paid without this section as section 182 of the Constitution provides that the state will pay its obligations. Since this section pertained only to that one specific bond issue, it has served its purpose and is now dead timber.

**Article 65 of the Amendments. Repeal.)**

**COMMENT:** This section relates to the bonds floated to pay bonuses to the veterans of the Korean conflict. These bonds have been issued and are being repaid as they mature. The sinking fund has funds in excess of what will be required to pay them off. The last issue will mature May 15, 1969, and will be paid in full at that time. Since this is a section that pertains only to one particular bond issue it is unnecessary to retain it after the bonds are paid. Therefore, it should be repealed effective July 1, 1969, and this delayed repeal is provided for in the effective date section of this resolution.

**Amending Constitution**

**Section 202.** Any amendment or amendments to the Constitution of the state may be proposed in either house of the legislature, and if the same shall be agreed to upon roll call by a majority of the members elected to each house, it shall be submitted to the electors and if a majority of the votes cast thereon are affirmative, such amendment shall be a part of this Constitution.

Amendments to the Constitution of the state may also be proposed by an initiative petition of the electors; such petition shall be signed by ((twenty thousand electors at large)) electors at large totaling five percent of the population of North Dakota as determined by the latest federal decennial census and shall be filed with the secretary of state at least one hundred twenty days prior to the election at which they are to be voted upon, and any amendment, or amendments so proposed, shall be submitted to the electors and become a part of the Constitution, if a majority of the votes cast thereon are affirmative. All provisions of the Constitution relating to the submission and adoption of measures by initiative petition, and on referendum petition shall apply to the submission and adoption of amendments to the Constitution of the state.

The electorate through an initiated measure or the legislative assembly may at any time provide by law for a constitutional convention to amend or revise the Constitution. Such law shall provide for the submission of the proposed amendments from such convention directly to the electorate for their approval or rejection, and upon approval shall become effective in the same manner as other constitutional amendments or as specified in the amendments or revision.

If conflicting constitutional measures are approved at the same election the one receiving the highest number of affirmative votes shall prevail to the extent of such conflict.

COMMENT: This section has been amended by changing the number of signatures required to initiate a constitutional amendment from a set figure to a percentage figure. This provides for a more realistic number of signers since the population fluctuations will be reflected in the number of signers required. The new paragraphs clarify the legality of a constitutional convention in North Dakota and that the product of such convention bypass the legislature in going before the electorate. The last paragraph clarifies what is now the probable result in case of conflicting measures.

### Recall Provisions

**Article 33 of the Amendments.** The qualified electors of the state or of any county, or of any congressional, judicial, ((or)) legislative, or commissioner district may petition for the recall

of any elective congressional, state, county, judicial or legislative officer by filing a petition with the officer with whom the petition for nomination to such office in the primary election is filed, demanding the recall of such officer. Such petition shall be signed by at least thirty percent of the qualified electors who voted at the preceding election for the office of governor in the state, county or district from which such officer is to be recalled. The officer with whom such petition is filed shall call a special election to be held not less than forty or more than forty-five days from the filing of such petition.

The officer against whom such petition has been filed shall continue to perform the duties of his office until the result of such special election shall have been officially declared. Other candidates for such office may be nominated in the manner as is provided by law in primary elections. The candidate who shall receive the highest number of votes shall be deemed elected for the remainder of the term. The name of the candidate against whom the recall petition is filed shall go on the ticket unless he resigns within ten days after the filing of the petition. After one such petition and special election, no further recall petition shall be filed against the same officer during the term for which he was elected. This article shall be self-executing and all of its provisions shall be treated as mandatory. Laws may be enacted to facilitate its operation, but no law shall be enacted to hamper, restrict or impair the right of recall.

COMMENT: The North Dakota court has held that this section did not provide for the recall of a county commissioner. The new language would permit such recall.

### Miscellaneous Provisions

#### Section 209. Repeal.)

COMMENT: Section 209 states "The labor of children under twelve years of age, shall be prohibited in mines, factories and workshops in this state." This section by inference apparently authorizes thirteen-year-olds to labor in such industries, contrary to today's standards. This subject is certainly better handled by statute.

**Section 212.** The exchange of "black lists" between persons, corporations, or associations shall be prohibited.

COMMENT: This section as amended would apply to everyone in order to insure that it would withstand a challenge as a proper classification under the 14th Amendment to the Federal Constitution. The additional words would accomplish this purpose.

#### **Section 214. Repeal.)**

COMMENT: This section provided for the original apportionment of the federal and state senators and representatives when we became a state. Since the 1889 apportionment long ago took place, this section is now obsolete.

### **Public Institutions**

**Section 215.** The following public institutions of the state are permanently located at the places hereinafter named. ((, each to)) Each institution shall have the lands ((specifically granted to it by the United States in the act of congress approved February 22nd, 1889, to)) heretofore allocated to it by the United States, by the Constitution or laws of this state, or by private donation, and shall be disposed of and used ((in such manner)) as the legislative assembly may prescribe subject to the ((limitations provided in the article on school and public lands contained)) provisions contained in the grants thereof or as provided in this Constitution.

First: The seat of government at the city of Bismarck ((in the county of Burleigh)).

Second: The state university and the school of mines at the city of Grand Forks ((, in the county of Grand Forks)).

Third: The North Dakota state university of agriculture and applied science at the city of Fargo ((, in the county of Cass)).

Fourth: ((A state normal school)) State colleges at the ((city)) cities of Valley City, ((in the county of Barnes, and the legislative assembly, in apportioning the grant of eighty thousand acres of land for normal schools made in the act of congress referred to shall grant to the said normal school at Valley City, as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose)) Mayville, Dickinson, and Minot.

Fifth: ((The)) A school for the deaf ((and

dumb of North Dakota)) at the city of Devils Lake ((, in the county of Ramsey)).

Sixth: A state ((training)) industrial school at the city of Mandan ((, in the county of Morton)).

Seventh: ((A state normal school at the city of Mayville, in the county of Traill, and the legislative assembly in apportioning the grant of lands made by congress in the act aforesaid for state normal schools shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.)) An educational or other institution as the legislature may provide at the cities of Ellendale, Bottineau, and Wahpeton.

Eighth: A state hospital for the ((insane)) mentally ill at the city of Jamestown ((, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the act of congress aforesaid for other educational and charitable institutions to the benefit and for the endowment of said institution, and there shall be located at or near the city of Grafton, in the county of Walsh, an institution for the feeble minded, on the grounds purchased by the secretary of the interior for a penitentiary building)).

Ninth: A state school for the mentally deficient at the city of Grafton.

Tenth: A state soldiers' home or such other institution as the legislative assembly may determine, at the city of Lisbon.

Eleventh: A state school for the blind at Grand Forks.

COMMENT: This section is a combination of sections 215 and 216 as in force today. Since county lines may some day be changed and since all of these institutions are located and in operation there should be no need to include the name of the county. Other changes herein change the name to the one in current use by the institution. The division of grant lands was carried out in 1889 and need no longer be included in the Constitution.

#### **Section 216. Repeal.)**

COMMENT: This section is incorporated in section 215 and the comment for that section

applies to this section regarding county names and institution names.

**Article 19 of the Amendments. Repeal.)**

COMMENT: The cases which interpret section 185 as amended in 1919, clearly show that the state mill and elevator is authorized by that section and therefore article 19 which authorized the state mill and elevator from 1914 until 1919 is no longer necessary and is superfluous.

**Board of Higher Education**

**Article 54 of the Amendments.** (((1. A board of higher education, to be officially known as the state board of higher education, is hereby created for the control and administration of the following state educational institutions, to-wit:

- (1) The State University and School of Mines, at Grand Forks, with their substations.
- (2) The State Agricultural College and Experiment Station, at Fargo, with their substations.
- (3) The School of Science, at Wahpeton.
- (4) The State Normal Schools and Teachers Colleges, at Valley City, Mayville, Minot and Dickinson.
- (5) The Normal and Industrial School, at Ellendale.
- (6) The School of Forestry, at Bottineau.
- (7) And such other State institutions of higher education as may hereafter be established.

2. (a) The State Board of Higher Education shall consist of seven (7) members, all of whom shall be qualified electors and taxpayers of the State, and who shall have resided in this State for not less than five (5) years immediately preceding their appointment, to be appointed by the Governor, by and with the consent of the Senate, from a list of names selected as hereinafter provided.

There shall not be on said board more than one (1) alumnus or former student of any one of the institutions under the jurisdiction of said State Board of Higher Education at any one time. No person employed by any institution under the control of the board shall serve as a member of said board, nor shall any employee of any such institution be eligible for membership on the State Board

of Higher Education for a period of two (2) years following the termination of his employment.

On or before the 1st day of February, 1939, the Governor shall nominate from a list of three names for each position, selected by the unanimous action of the President of the North Dakota Educational Association, the Chief Justice of the Supreme Court, and the Superintendent of Public Instruction, and, with the consent of a majority of the members-elect of the Senate, shall appoint from such list as such State Board of Higher Education seven (7) members, whose terms shall commence on the 1st day of July, 1939, one of which terms shall expire on the 30th day of June, 1940, and one on the 30th day of June in each of the years 1941, 1942, 1943, 1944, 1945, and 1946. The term of office of members appointed to fill vacancies at the expiration of said terms shall be for seven (7) years, and in the case of vacancies otherwise arising, appointments shall be made only for the balance of the term of the members whose places are to be filled.

(b) In the event any nomination made by the Governor is not consented to and confirmed by the Senate as hereinbefore provided, the Governor shall again nominate a candidate for such office, selected from a new list, prepared in the manner hereinbefore provided, which nomination shall be submitted to the Senate for confirmation, and said proceedings shall be continued until such appointments have been confirmed by the Senate, or the session of the legislature shall have adjourned.

(c) When any term expires or a vacancy occurs when the legislature is not in session, the Governor may appoint from a list selected as hereinbefore provided, a member who shall serve until the opening of the next session of the legislature, at which time his appointment shall be certified to the Senate for confirmation, as above provided; and if the appointment be not confirmed by the thirtieth legislative day of such session, his office shall be deemed vacant and the Governor shall nominate from a list selected as hereinbefore provided, another candidate for such office and the same proceedings shall be followed as are above set forth; provided further, that when the legislature shall be in session at any time within six (6) months prior to the date of the expiration of the term of any member, the Governor shall nominate his successor from a list selected as above set forth, within the first thirty (30) days of such session, and upon confirmation by the Senate such successor shall take office at the expiration of the term of the incumbent. No person who has been nominated and whose nomination the Senate has failed to confirm, shall be eligible for an interim appointment.

3. The members of the State Board of Higher Education may only be removed by impeachment for the offenses and in the manner according to the procedure provided for the removal of the Governor by impeachment proceedings.

4. The appointive members of the State Board of Higher Education shall receive seven dollars (\$7.00) per day and their necessary expenses for travel while attending meetings, or in the performances of such special duties as the board may direct; provided, however, no member shall receive a total compensation, exclusive of expenses, to exceed five hundred dollars (\$500.00) in any calendar year; and no member shall receive total expense money in excess of five hundred dollars (\$500.00) in any calendar year.

5. The legislature shall provide adequate funds for the proper carrying out of the functions and duties of the State Board of Higher Education.

6. (a) The State Board of Higher Education shall hold its first meeting at the office of the State Board of Administration at Bismarck, on the 6th day of July, 1939, and shall organize and elect one of its members as president of such board for a term of one year. It shall also at said meeting, or as soon thereafter as may be practicable, elect a competent person as secretary, who shall reside during his term of office in the City of Bismarck, North Dakota. Said secretary shall hold office at the will of the board. As soon as said board is established and organized, it shall assume all the powers and perform all the duties now conferred by law upon the Board of Administration in connection with the several institutions hereinbefore mentioned, and the said Board of Administration shall immediately upon the organization of said State Board of Higher Education, surrender and transfer to said State Board of Higher Education all duties, rights, and powers granted to it under the existing laws of this State concerning the institutions hereinbefore mentioned, together with all property, deeds, records, reports, and appurtenances of every kind belonging or appertaining to said institutions.

(b) The said State Board of Higher Education shall have full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions. In furtherance of its powers, the State Board of Higher Education shall have the power to delegate to its employees details of the administration of the institutions under its control. The said State Board of Higher Education shall have full authority to organize or re-organize within constitutional and statutory limitations, the work of each institution under its

control, and do each and everything necessary and proper for the efficient and economic administration of said State educational institutions.

(c) Said board shall prescribe for all of said institutions standard systems of accounts and records and shall biennially, and within six (6) months immediately preceding the regular session of the legislature, make a report to the Governor, covering in detail the operations of the educational institutions under its control.

(d) It shall be the duty of the heads of the several State institutions hereinbefore mentioned, to submit the budget requests for the biennial appropriations for said institutions to said State Board of Higher Education; and said State Board of Higher Education shall consider said budgets and shall revise the same as in its judgment shall be for the best interests of the educational system of the State; and thereafter the State Board of Higher Education shall prepare and present to the State Budget Board and to the legislature a single unified budget covering the needs of all the institutions under its control. "Said budget shall be prepared and presented by the Board of Administration until the State Board of Higher Education organizes as provided in Section 6 (a)." The appropriations for all of said institutions shall be contained in one legislative measure. The budgets and appropriation measures for the agricultural experiment stations and their substations and the extension division of the North Dakota State University of Agriculture and Applied Science may be separate from those of state educational institutions.

(e) The said State Board of Higher Education shall have the control of the expenditure of the funds belonging to, and allocated to such institutions and also those appropriated by the legislature, for the institutions of higher education in this State; provided, however, that funds appropriated by the legislature and specifically designated for any one or more of such institutions, shall not be used for any other institution.

7. (a) The State Board of Higher Education shall, as soon as practicable, appoint for a term of not to exceed three (3) years, a State Commissioner of Higher Education, whose principal office shall be at the State Capitol, in the City of Bismarck. Said Commissioner of Higher Education shall be responsible to the State Board of Higher Education and shall be removable by said board for cause.

(b) The State Commissioner of Higher Education shall be a graduate of some reputable col-

lege or university, and who by training and experience is familiar with the problems peculiar to higher education.

(c) Such Commissioner of Higher Education shall be the chief executive officer of said State Board of Higher Education, and shall perform such duties as shall be prescribed by the board.

8. This constitutional provision shall be self-executing and shall become effective without the necessity of legislative action.))) There shall be a state board of higher education which shall administer and control state-operated educational institutions of higher learning. The board shall consist of seven members, with staggered seven-year terms, appointed by the governor, and confirmed by the senate in the manner provided by law. The board shall, in accordance with law, administer and formulate policy for all state-operated educational institutions of higher learning and shall appoint a state commissioner of higher education, who shall be the executive officer of the board and perform such duties as may be prescribed by the board.

COMMENT: As one can see, the proposed amendment eliminates most of the procedural matters and the details of the specific powers and duties contained in article 54. Practically all of article 54 as written in the present Constitution has been reiterated verbatim in statutes. Sections 15-10-01, 15-10-02, 15-10-03, 15-10-04, 15-10-05, 15-10-06, 15-10-08, 15-10-09, 15-10-11, 15-10-14, 15-10-15, and 15-10-16 contain these provisions. The proposed amendment would establish the board of higher education, set its membership, their terms, method of appointment, its basic powers and duties, and authority to appoint a commissioner. Any necessary details pertaining to the board's duties and powers are provided by law. The companion bill to this article amends two sections of law correlating these provisions with the proposed amendments which bill can be found at the end of this section of the report.

### Dedicated Gasoline Taxes

**Article 56 of the Amendments.** (((1. Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel

excise and license taxation used by aircraft))) The revenue from excise taxes on gasoline and other motor fuels consumed by motor vehicles using the public highways of this state and revenue from the license taxation, registration and license taxes from such vehicles, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

COMMENT: This section was amended so that only the tax on fuels used by motor vehicles on the highways of this state would be dedicated by this section, as was no doubt its original intent.

### Schedule

#### **Sections 1 through 26 of Schedule. Repeal.)**

GENERAL COMMENT: The schedule provisions provided for the orderly transition from the territorial government to the new state government providing for all matters to be transferred over and guaranteeing all claims existing under the territorial government to be actionable under the new state government. Following is the substance of each of the 26 sections of the schedule:

**Section 1.** This section provided that all writs, actions, prosecutions, claims, and rights of individuals and bodies corporate shall continue as if no change of government had taken place and that all that was issued under the authority of the Territory of Dakota could be processed in the courts of the new state.

**Section 2.** This section provided that all territorial law would stay in force until repealed or which was repugnant to the new Constitution.

**Section 3.** This section provided that all fines, penalties, etc., now accruing to the Territory would accrue to the new state.

**Section 4.** This section provided that all recognizance, bonds, obligations, or other undertakings which were taken or which may be taken before the organization of the judicial department under the Constitution would and could be taken in the name of the state when

the courts were organized and prosecuted to final judgment and the same applied to all criminal prosecutions and penal actions.

**Section 5.** This section provided that all property, credits, claims, and choses in action belonging to the Territory be vested in and become property of the new state.

**Section 6.** This section provided for the transfer of the dockets of the territorial courts to the state, district, and supreme courts when judges had been elected thereto and otherwise transferring jurisdiction from territorial courts to the state courts.

**Section 7.** This section provided that the seals now in use by the supreme and district courts of the Territory would be the seals of the state supreme and district courts.

**Section 8.** This section provided that all of the records and jurisdiction of the territorial probate courts would pass to the county probate courts when the Constitution was adopted.

**Section 9.** This section stated that the terms "probate court" or "probate judge" when they appeared in the territorial statutes would mean the county court or county judge.

**Section 10.** This section held over all territorial, county, and precinct officers appointed or elected under territorial law until their successors had been elected and qualified and provided for the election of district court clerks.

**Section 11.** This section states "This constitution shall take effect and be in full force immediately upon the admission of the territory as a state."

**Section 12.** This section provided for the issuance of a proclamation by the constitutional convention to be published and copies mailed to the county commissioners of each county calling an election of all state and district officers created by the Constitution and for the submission of the Constitution for adoption.

**Section 13.** This section provided the detail for the county commissioners in calling the election requested in section 13 above.

**Section 14.** This section made the territorial

governor, secretary, and chief justice the board of canvassers for the above elections.

**Section 15.** This section stated that all officials elected at the above election must qualify and take on the duties of his office within sixty days after the approval of the Constitution.

**Section 16.** This section set the terms and salaries for the newly elected officials.

**Section 17.** This section provided that the governor-elect shall convene the legislative assembly for the purpose of electing persons to the United States Senate.

**Section 18.** This section provided for the election of the United States representative to the fifty-first congress.

**Section 19.** This section required the first legislative assembly to pay all debts of the constitutional convention.

**Section 20.** This section required a submission at the same election as the approval of the Constitution of the question on prohibition.

**Section 21.** This section ratified the agreement of the two states (North and South Dakota) as to dividing up the records of the Territory as to who was to get originals and copies and the records of the various penal and charitable institutions, etc.

**Section 22.** This section provided for appropriating money to counties for refunds to the land grant railroad for taxes collected, pursuant to the laws of congress.

**Section 23.** This section relates to the signing of the newly adopted Constitution after it had been enrolled.

**Section 24.** This section required all territorial offices who had to make reports to the territorial governor to make such reports to the governor of the new state as to the period of time from this last report to the date of statehood.

**Section 25.** This section authorized the governor and secretary of the Territory to make arrangements for the inauguration of the state government and arrangements for the first meeting of the legislative assembly.

**Section 26.** This section required the legislative assembly to publish in an independent volume the Constitution and all amendments thereto whenever it was altered and also to include in such volume the Declaration of Independence, the Constitution of the United States, and the Enabling Act.

#### Miscellaneous Recommendation

The Committee, upon the request of the Judicial Survey Commission of the State Bar Association, reviewed its recommendation made in 1965 to have the Chief Justice of the State Supreme Court selected by the Judicial Council. Presently, the office of Chief Justice is filled by the Justice having the shortest term to serve who is not elected or appointed to fill a vacancy. The present system was established in 1889 for the Supreme Court. This method was incorporated into statute and has been followed ever since. This method of selecting the Chief Justice usually allows only two years for each Chief Justice to perform the duties of the office. The Chief Justice is the presiding officer of the Court and its chief administrator. When the position revolves every two years, there is a lack of experience and the possibility exists that the duties of such office are not carried out or performed in the most skillful manner. The Committee believes that if the position is made more permanent a more effective administration will occur.

A bill recommended by the Committee provides that the Chief Justice will be appointed by the Judicial Council and the term will be for ten years or the remainder of the term of the Justice selected, whichever shall first occur. The Supreme Court Justices who are members of the Judicial Council will be prohibited from attending any meeting of the Council when it is meeting to select a Chief Justice. The bill also provides that the Judicial Council will make its first appointment at its first regularly scheduled meeting after the effective date of the bill, and that the Justice having the shortest term to serve shall act as Chief Justice until the Council has made its selection.

Statutes suggested for implementing Sections 156 and 162 of the Constitution.

#### House Bill No. 539

#### A BILL

For an Act to amend and reenact sections 15-01-02, 15-03-04, 15-03-15, and 15-03-18 of the North Dakota Century Code, relating to changing the

investment list and procedures for the various permanent funds under the control of the board of university and school lands, and providing an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.)** Section 15-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-01-02. POWERS - CONTROL OF PUBLIC LANDS AND PERMANENT FUNDS.) The board shall have:

1. Full control of the selection, appraisal, rental, sale, disposal, and management of:
  - a. Lands donated or granted by or received from the United States or from any other source for the support and maintenance of the common schools;
  - b. All lands which shall fall to the state by escheat;
  - c. All lands donated or granted by or received from the United States or from any other source for the maintenance of the (((university, the school of mines, the state training school, the agricultural college, the school for the deaf and dumb, any normal school, or other))) educational, penal, or charitable (((institution))) institutions;
  - d. All lands acquired by the state through the investment of the permanent school funds of the state as the result of mortgage foreclosure or otherwise;
2. Full control of the investment of the permanent funds derived from the sale of any of the lands described in subsection 1 of this section;
3. Full control of such percent of the proceeds of any sale of public lands as may be granted to the state by the United States on such sale;
4. Full control of the proceeds of any property that shall fall to the state by escheat and of the proceeds of all gifts and donations to the state for the support or maintenance of the common schools, and of all other property otherwise acquired by the state for the maintenance of the common schools. Any gift to the state not speci-

cally appropriated to any other purpose shall be considered as a gift for the support and maintenance of the common schools.

**SECTION 2. AMENDMENT.)** Section 15-03-04 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-04. INVESTMENT OF FUNDS - PURCHASE OF ((BONDS)) SECURITIES AND MORTGAGES - APPRAISAL.) Subject to the provisions of section 15-03-05, the board of university and school lands shall invest the money belonging to the permanent funds ((of the common schools, the state university and school of mines, the state training school, the agricultural college, the school for the deaf and dumb of North Dakota, the state normal schools, and other permanent funds derived from the sale of original grant lands or from any other source,)) under its control in the following securities:

- (((1. Bonds of school corporations, counties, townships, and municipalities within the state;
2. Bonds issued for construction of drains within the state;
3. Bonds of the United States;
4. Bonds of the state of North Dakota; or
- 5.)) 1. First mortgages on farm lands and improvements thereon in this state to the extent such mortgages are guaranteed or insured by the United States or any instrumentality thereof, or if not so guaranteed or insured, not exceeding in amount one-half of the actual value of ((any subdivision)) the property on which the same may be loaned, such value to be determined by the board of appraisal of school lands ((.)); and
2. All investments that are enumerated under section 21-10-07 of this code as legal investments for the state investment board.

**SECTION 3. AMENDMENT.)** Section 15-03-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-15. MEETING TO CONSIDER ((PURCHASE OF BONDS)) INVESTMENTS AND

APPROVAL OF FARM LOANS - NOTICE - VOTE REQUIRED.) The board of university and school lands shall not purchase nor approve the purchase of any ((bonds)) securities nor approve the application for any farm loan except at a meeting of the board held pursuant to a notice given by the secretary of the board to every member in time to afford each member an opportunity to be present at the meeting. The notice shall specify that the question of the purchase or the action on a proposal for the purchase of certain ((bonds)) securities or the approval of the application for certain farm loans is to be considered at the meeting. A majority vote of all the members of the board shall be required to purchase any ((bonds)) securities or to approve the application for any farm loan, and such vote shall be taken by yeas and nays and shall be duly recorded in the books of the board. The manager of the bank of North Dakota shall serve as counsel and advisor to this board whenever they are considering the investment of funds in securities enumerated in section 21-10-07 of the North Dakota Century Code.

**SECTION 4. AMENDMENT.)** Section 15-03-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-18. COMMISSIONER TO RECEIVE AND PRESENT OFFERS FOR BOND SALES - MAINTAIN RECORDS OF MORTGAGES AND ((BONDS)) SECURITIES.) The commissioner of university and school lands shall receive and present to the board all offers for the sale of bonds. He shall keep such books as may be necessary to register and describe all ((bonds)) securities and mortgages purchased or taken by the board for the benefit of any of the permanent funds under its control. The books kept by the commissioner shall be ruled to permit:

1. The registry of the name and residence of the person offering to sell any bonds, securities, or mortgages;
2. If bonds, the designation of the municipality, corporation, or sovereignty for which the offer is made;
3. A full and detailed description of every governmental bond, whether of the United States, this or any other state, or a municipality, and the date, number, series, amount, and rate of interest of each bond, and when the interest and principal, respectively, are payable;

4. If mortgages, a description of the property mortgaged(((.) ));
5. If any other security, a full and detailed description of the security according to sound accounting principles.

The foregoing record shall be made before the completion of the purchase of any bond, security, or mortgage.

**SECTION 5. EFFECTIVE DATE.)** This Act shall not become effective unless and until the electorate approve the constitutional amendment submitted for approval to the electors of this state at the general election in 1968 as designated in House Concurrent Resolution "A" of the Fortieth Legislative Assembly.

COMMENT: This amendment would simply require the listing of securities that might be purchased under the broader investment list found in section 21-10-07.

Statutes suggested for implementing  
Article 54 of the Amendments  
to the Constitution.

**House Bill No. 540**

A BILL

For an Act to amend and reenact sections 15-10-08 and 15-10-16 of the North Dakota Century Code, relating to compensation and expenses of the state board of higher education and control of funds and appropriations of the institutions of higher learning.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.)** Section 15-10-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-10-08. COMPENSATION AND EXPENSES OF BOARD MEMBERS ((( - EXPENSES - LEGISLATIVE APPROPRIA-

TIONS))) (((The))) All members of the state board of higher education shall receive (((seven))) twenty-five dollars per day (((and their necessary expenses for travel while attending meetings))) for their attendance at regular or special meetings of the board or in the performance of such special duties as the board may direct. In addition to such compensation, they shall receive travel expenses in the same manner and at the same rates as provided by law for other state officials for necessary travel in the performance of their duties. The amounts herein specified shall be the only compensation allowable. (((No member shall receive a total compensation, exclusive of expenses, exceeding five hundred dollars in any calendar year, and no member shall receive total expense money in excess of five hundred dollars in any calendar year. The legislative assembly shall provide adequate funds to carry out the functions and duties of the board.)))

**SECTION 2. AMENDMENT.)** Section 15-10-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-10-16. CONTROL OF FUNDS AND APPROPRIATIONS OF EDUCATIONAL INSTITUTIONS.) (((The state board of higher education shall have the control of the expenditure of the funds belonging and allocated to the institutions under its control and also of those appropriated by the legislative assembly for such institutions; but funds appropriated by the legislative assembly and specifically designated for any one or more of such institutions shall not be used for any other institution.))) The state board of higher education shall have control of the expenditures of all funds allocated by the Constitution or by law to each of the institutions under its jurisdiction; provided, however, no funds shall be used for any institution or purpose other than that for which it was received or as allocated by law.

**SECTION 3. EFFECTIVE DATE.)** This Act shall not become effective unless and until the people approve the constitutional amendment submitted for approval to the electorate of this state at the general election in 1968 as designated in House Concurrent Resolution "A" of the Fortieth Legislative Assembly.

## EDUCATION

House Concurrent Resolution "N-1" directed the Legislative Research Committee and the State Board of Higher Education to jointly study the coordination or consolidation of the programs of extension and correspondence study on the college level, excluding agricultural and related fields, and including such matters as duplication, accreditation, admission and registration procedures, academic credit control and transfer, curricula and course offerings, and flexibility to meet changing conditions. House Bill No. 815 directed the Legislative Research Committee to study the requirements, standards, procedures, and laws governing school districts in North Dakota as they relate to a comprehensive State educational program, comprehensive local educational programs, assessed valuation, problems of low-populated areas, rising educational costs and financial ability of districts to meet requirements, and potential educational needs. Consideration shall be given to terrain, roads, trading centers, population centers, and any and all other factors relating to needs of education in the coming years.

These studies were assigned to the Subcommittee on Education, consisting of Representatives Otto Hauf, Chairman, Howard F. Bier, Sam Bloom, Lawrence Bowman, Larry Erickson, Chester Fossum, Treadwell Haugen, S. F. Hoffner, Ernest N. Johnson, Richard F. Larsen, L. C. Loerch, Mike Olienyk, and Harold Skaar; Senators Philip Berube, Earl H. Redlin, Leland H. Roen, Theron L. Strinden, and Robert Walz. During the interim Representative Otto Hauf resigned his position from the Legislative Assembly and Representative Donald Giffey was appointed to replace him as Chairman of the Subcommittee on Education.

### Extension and Correspondence Study

Extension activities through correspondence and by classroom methods carried on by institutions of higher learning are expanding greatly and will continue to expand in view of the necessity of retraining in so many fields. In order to promote economy, efficiency, and strength of programs, it appears desirable to obtain coordination of these activities.

Extension programs are essentially service programs to people not enrolled on a full-time basis at an educational institution. Such services have been offered by the various institutions of higher learning throughout the State, but without a large degree of uniformity and coordination. It appeared to the Committee very early in its study

that an effort should be made to prevent unjustified duplication in order to receive the most for each dollar spent in the field, while at the same time not curtailing any valuable and needed extension work. Therefore, it was necessary to survey extension activities being conducted by the institutions of higher learning in the State to determine the amount and type of extension work being done by them. Since such a survey was made only two years ago, it was necessary only to update that survey.

The survey of extension activities was conducted by Mr. Bernhard G. Gustafson of the University of North Dakota at the request of the Committee and indicated that the extension activities have increased since the survey of two years ago. Duplication is still present and the need for coordination of activities has not subsided.

Two alternative approaches to coordinating extension activities were considered by the Committee. The first would involve an overall "Institute" with a separate administration, accreditation, appropriation, and overall control of all extension activities. New staff members would be needed and additional costs over and above present costs would be involved. The second alternative would be a system based upon the present structure of extension activities. A central agency using established facilities, personnel, and procedures would be established.

It is the opinion of the Committee that the establishment of a separate agency for the coordination of extension work or the development of a separate institute at one of the institutions of higher learning would not be desirable now and would be difficult to justify. It appears much more feasible that each institution designate a single person to serve as director or coordinator of extension, and such director or coordinator serve upon an extension council consisting of representatives of all institutions of higher education. This council could then work on restrictions or uniformity of listings, standards of qualifications of faculty, transferability of credits, and in preventing geographic duplication. Such a council could then make recommendations for the establishment of policies to the State Board of Higher Education which, in turn, would make the policy decisions that would govern the extension program.

It is to be noted that such a council has been formed as a result of the work of the Committee.

This council, designated as the Council on College Extension Work, and consisting of representatives of each institution of higher learning, has been formed for the avowed purpose of aiding in the coordination of off-campus and other extension work. The Council can provide an exchange of information among the various institutions and to the Commissioner of Higher Education of the extent of such activities, thereby preventing duplication in offerings, and permitting the Board of Higher Education to assign and allocate responsibility for the various fields of extension work to the institution which has or can develop the most strength in each field or can most economically carry on work in each field.

The Committee recommends postponement of further legislative action in the coordination of extension work for a period of two years in order to determine the progress that can be made by the Board of Higher Education and its Commissioner under existing statutory and constitutional authority.

#### **School District Study**

The Committee commenced its study of school districts in North Dakota by conferring with the Superintendent of Public Instruction and personnel of the College of Education at the University of North Dakota in regard to the selection of personnel to carry out such study. The University agreed to participate in the study and assigned Dr. Kent Alm to the project. Application was made to the United States Department of Health, Education, and Welfare for matching Federal funds for use in the study. Based upon an outline prepared by Dr. Alm and approved by the Committee of the study objectives and procedures, the application for Federal matching funds was approved.

The outline provides that ten basic studies are to be undertaken within the overall study. The general areas to be studied are: (1) Demographic and economic aspects of education; (2) Educational programs and services; (3) Educational personnel, the supply and demand; (4) Educational and vocational aspirations and expectations; (5) Student achievement; (6) Educational finance; (7) School transportation; (8) School facilities; (9) Administrative organization; and (10) Legal aspects of education.

The study calendar commences in 1965 and ends in 1968 and calls for the following principal steps: (1) Development of a data base; (2) Analysis and preliminary report writing; (3) Review of preliminary results with appropriate groups; (4) Editing of final descriptive reports; (5) Analysis and assimilation of reports from the several

areas of study; (6) Identification of broad alternative programs of corrective action; (7) Systematic examination of alternatives and delineation of advantages and disadvantages of each; (8) Review of alternatives with appropriate groups; and (9) Editing.

It is hoped that the study of education will produce the following outcomes:

1. A compendium of accurate data that describes the major aspects of education in the State and the essential relationships among those data;
2. An assessment of the strengths and weaknesses in the State education system, and a delineation of the basic problems and issues of education;
3. A series of alternative corrective measures that might be undertaken in the State (by State and local school governments), and a delineation of their advantages and disadvantages;
4. A plan of action to involve appropriate groups, organizations, and citizens in the review of study results, and in the consideration of alternative corrective measures; and
5. A coordinated data system that will permit a continuing review of the status of education, the latter to be developed in and by the Department of Public Instruction, but available to appropriate study groups throughout the State.

The study of elementary and secondary education in North Dakota has thus far progressed quite well. The initial phases of the study have been used for fact collection, and these facts are now being organized into particular reports. More than one million IBM cards have been punched. The information in regard to North Dakota's school system will far exceed that which has been available in the past. Any legislation which will be suggested will be supported by data, and because of this no specific legislative proposals will be ready for consideration by the 1967 Legislative Session. However, much of the information now available will be exceedingly useful in evaluating legislation in the field of education that may come before the Legislature from other sources.

Provisions of the study pertaining to personnel employed by the various school districts is ap-

proximately ninety percent complete. A map of all school districts in the State and the type of such school districts is now complete, this being the first time that a map of this type has ever been made. The financial aspect of the study is progressing quite well, and the physical facilities portion of the study will be completed early in 1967. Approximately three hundred teachers left the State last year, and a followup study determining

the reasons why these teachers left the State should be completed in December 1966.

The Committee is of the opinion that the elementary and secondary education study is progressing quite satisfactorily and when completed should prove to be of great value to the State and the Legislative Assembly in planning the educational needs for the present and the future in North Dakota.

# LEGISLATIVE EMPLOYMENT AND LEGISLATIVE HANDBOOK AND LEGISLATIVE ARRANGEMENTS

House Concurrent Resolution "Z-1" of the Thirty-ninth Legislative Assembly directed the Legislative Research Committee to prepare a legislative employees' handbook describing the duties and responsibilities of legislative employees, for use by employees at succeeding sessions of the Legislative Assembly.

This study was assigned to the Subcommittee on Legislative Employment and Legislative Handbook, consisting of Representatives Richard J. Backes and Howard F. Bier, Co-chairmen; Representative Thomas R. Stallman; Senator Emil E. Kautzmann; and nonlegislative members Gerald L. Stair, Secretary of the Senate; Donnell Haugen, Chief Clerk of the House of Representatives; Monty Burke, Superintendent of Senate personnel; Ruth Smith, Desk Reporter for the House of Representatives; and C. Emerson Murry, Director of the Legislative Research Committee.

Also included in this report is a report of the activities of the Legislative Research Committee's Subcommittee on Legislative Arrangements.

This Subcommittee is composed of Senator George Longmire, Chairman; Senators Donald C. Holand, Majority Floor Leader; Wm. R. Reichert, Minority Floor Leader; Representatives Donald Giffey, Majority Floor Leader; Bryce Streibel, Minority Floor Leader; and Arthur A. Link, Speaker of the House of Representatives. Their recommendations as to some rule changes, pre-session orientation conference agenda, and allocation of the physical facilities of the legislative wing during the session will be discussed.

## Introduction

The Legislative Research Committee reviewed all the legislative employee positions with respect to their duties, qualifications, and necessity. The Committee found that some employee positions could be eliminated and their duties combined with others and that additional employees were needed in other areas. A list of the recommended and required employees for both Houses was prepared. This list sets forth the suggested positions and their number and salary. The Committee achieved its primary goal of preparing an employee handbook which sets forth the duties and qualifications for each of these positions. This handbook has been combined with a handbook for legislators and is Part II of the combined handbook.

The Committee's report on Legislative Ar-

rangements is included here because both of these studies were involved with similar subject matters and, in fact, the Subcommittees met jointly on one occasion for purposes of approving and concurring with each other's work in the areas common to both. The Subcommittee on Legislative Arrangements was established because the Legislative Research Committee is required by law to make all necessary arrangements for each legislative session and also for the pre-session orientation and organizational meeting held during the early part of December prior to the regular session.

## Legislative Handbook

The Committee in preparing the legislative employees' handbook first sent questionnaires to all the employees of the Thirty-ninth Legislative Assembly, which asked each employee to list his specific duties and daily routines. Also requested were comments about how the position could be improved, working conditions, supervision, instructions in their assigned duties, and other related questions. The response overall was quite good, and many helpful suggestions and ideas were gained. The Committee reviewed each employee position and determined the duties and qualifications for each employee position, incorporating the better suggestions from the employee questionnaire. From this outline the handbook was written. Also included in the handbook are general statements affecting all employees regarding their conduct, attitude, attire, and work habits during the legislative session.

The Committee expanded the handbook to include a description of the legislative process, information for legislators, and other material which would be useful to a new legislator. In this part of the handbook extensive portions are written on the operation of the Legislature itself, duties and responsibilities of legislators, and the various services available to them.

The suggestions of the Committee have resulted in a fairly complete reference book for the use of the legislator and legislative employee. The handbook has been divided into two basic parts. Part I relates to the legislative process and information useful to the legislator himself, and Part II relates specifically to the legislative employee. The combining of these two parts should help the legislator and legislative employee to better understand the total legislative process and the duties and problems of each. It is hoped that the handbook will substantially assist new legislators

and legislative employees and specifically increase the overall efficiency of the employees in performing their duties. If this is achieved, then the handbook has fulfilled its purpose. It is not within the scope of this report to present a detailed analysis and description of the handbook as this is better done by studying the handbook itself.

### Legislative Employee Positions

In the Thirty-ninth Legislative Session, the House of Representatives had fifty-nine employees and the Senate had fifty-eight. Through eliminating and combining some of the old positions and establishing needed new positions, the Committee has proposed fifty-five employee positions for the House of Representatives and forty-nine for the Senate.

The position of Assistant Desk Reporter was established because of the heavy workload now imposed upon the Desk Reporter. The Assistant Desk Reporter will assist the Desk Reporter in preparing the material to be printed in the Journal and would be able to take over in the event that the person elected as Desk Reporter should become unable to perform the duties of that position.

The positions of Mail Room Clerks have been cut from six in the Senate and four in the House to two from each. The name of the position has been changed to Journal Room Clerk. It is further proposed that the Journals be mailed to only one-half of the mailing list each day, thus saving on postage and time. Also, the mailing list will be made up on labels prior to the session, which will facilitate speedier mailing of the Journals. The Journal Room will be supervised by the Chief in Charge of Bill Room and Journal Room Clerks.

The position of Chart Room Clerk and the Chart Room have been eliminated because the amount of service it provided to the legislators was negligible when compared to the cost of maintaining it and because essentially the same service is available from the two Bill Clerks, and also from a reporting service provided by the Greater North Dakota Association. It is proposed that each of the Majority and Minority Floor Leaders be provided a personal secretary because of the nature of their duties and the heavy demands upon these officers.

The positions of Messengers have been eliminated and their duties placed upon the Deputy Sergeant-at-Arms or one of the Assistant Sergeants-at-Arms. With this change, the positions of Doorkeepers have been changed in title to Assistant Sergeants-at-Arms who shall aid the Sergeant-at-Arms in carrying out his duties as well as

assist the Bill Book Clerks in keeping up the Bill Books.

The positions of Proofreaders for Journals have been deleted, with the directive that the contract Journal printer hire his own proofreaders and include their services in his contract price. Another position eliminated was the Senate Supply Attendant as was the Senate Cloak Room Attendant. It is proposed that the room used for the Senate Bills now be used as a joint supply room for both Houses and that the various clerks, stenographers, and the desk force can obtain supplies from the room as necessary for their work.

Increasing the number of the stenographers and the addition of the positions of typist was recommended because it was found that there was an insufficient number of secretaries available for the members to answer their correspondence and perform other similar work on a timely basis.

The following list of employee positions and the proposed salary for each is the final recommendation of the Committee after much deliberation:

### Senate and House Legislative Employee Positions During Regular Sessions

Official Title of Position	No. of Positions		
	House	Senate	Salary
<b>Positions to be Filled by Majority Party</b>			
Chief Clerk of House or Secretary of Senate..	1	1	\$25.00
Assistant Chief Clerk or Assistant Secretary ..	1	1	20.00
Desk Reporters .....	1	1	25.00
Assistant Desk Reporters	1	1	19.00
Bill Clerks .....	1	1	17.00
Sergeants-at-Arms .....	1	1	15.00
Chief Stenographers and Payroll Clerks .....	1	1	20.00
Chief Committee Clerks..	1	1	15.00
Calendar Clerks .....	1	1	17.00
Enrolling and Engrossing Clerks .....	1	1	14.00
Superintendents of Personnel .....	1	1	22.00
<b>Positions Which Would Be Filled by Legislator or Official Holding the Following Titles</b>			
Secretaries to Speaker or President .....	1	1	\$16.00
Secretaries to Majority Floor Leaders .....	1	1	16.00
Secretaries to Minority Floor Leaders .....	1	1	16.00

**Positions to be Filled On A  
Majority-Minority Strength Basis\***

Official Title of Position	No. of Positions		Salary
	House	Senate	
Deputy Sergeants-at-Arms .....	1	1	\$13.00
Assistant Sergeants-at-Arms .....	4	4	12.00
Bill Room Clerks .....	2	2	12.00
Stenographers .....	6	5	16.00
Typists .....	3	2	14.00
Appropriations Committee Clerks .....	1	1	16.00
Committee Clerks .....	4	3	14.00
Assistant Enrolling and Engrossing Clerks .....	1	1	14.00
Pages .....	5	4	12.00
Postmasters .....	1	1	12.00
Telephone Attendants .....	2	2	12.00
Bill Book Clerks .....	4	4	12.00
Information Desk Attendants .....	1	1	12.00
Journal Room Clerks .....	2	2	12.00
Parking Lot Attendants .....	1	1	14.00
Chief in Charge of Journal Room and Bill Room Clerks .....	1		
			(alternates between House and Senate each Session)
			14.00
Audio Board Operator .....	1		14.00

\*The employee positions listed in this category would be allocated to the Majority and Minority parties in proportion to their strength in the Senate or House, whichever is applicable. The employee positions which are listed to be filled by the Majority party are not included in this computation and are not charged against the quota of Majority party.

**Legislative Employee Positions to be Incorporated Into Senate and House Rules**

The Committee has recommended that the legislative employee positions and the salary for each be established as a rule in the Rules of the House of Representatives and Senate. The Committee has further suggested that certain employees should be appointed by the party having the majority in each House and that the remaining employees be allocated to and be appointed by each party, based on their relative strength in each House, and that this formula be written into the Rules.

The rule incorporating these proposals would list each legislative employee position by title, the number of employees to be hired for each posi-

tion, and the daily salary for each. The list is further broken down into four groups classified according to their method of selection. The party (majority or minority) that is to have the right to select or appoint within the group is indicated.

Group "A" employees include the Secretary of the Senate or Chief Clerk of the House, the Desk Reporter, and the Sergeant-at-Arms. These employees would be elected by the Body in the same manner as has been done in the previous sessions which, in effect, means they are chosen by the party having a majority in each House.

Group "B" employees would be chosen by the party in majority acting by and through its House's Committee on Employment. This group includes the Assistant Chief Clerk or Assistant Secretary of the Senate, Assistant Desk Reporter, Bill Clerk, Chief Stenographer and Payroll Clerk, Calendar Clerk, Enrolling and Engrossing Clerk, and Superintendent of Employees.

Group "C" employees include the personal secretaries to the President of the Senate, Speaker of the House, and the Majority and Minority Floor Leaders. It is proposed that the Lieutenant Governor and the legislator holding these positions would select the individual for each of the positions, however, again working through the Committee on Employment.

Group "D" would include the remainder of the employees. The proposed rule relating to their appointment and by whom states:

"The employee positions of Group "D" shall be allocated to the majority and minority parties in proportion to each party's percentage of the total number of the members-elect and each party shall appoint the persons to the positions allocated to them acting by and through the committee on employment. The majority party shall have the first right to select those positions of this group until their allocation is filled. The Chief in charge of Journal and Bill Room Clerks shall be appointed alternately by the Senate and House of Representatives."

Further, the proposed rule would include a statement that the powers and duties for each employee position would be as specifically stated in the Rules and as set forth in the Handbook for North Dakota Legislators and Legislative Employees. It can be seen readily that to include the powers and duties of each position in the Rules themselves would alone double the contents of them, and because the Handbook already includes a statement of such powers and duties for each

employee position it has been suggested that the Handbook be referred to for this purpose. In this regard, the powers and duties of the Sergeant-at-Arms have been amended to delete the provision stating he has supervisory powers over all employees because, with the recommended changes and even under present procedures, these powers have been lodged largely in the Superintendent of Employees. This proposed amendment is presented in the proposed amendment to Rule No. 9 of the Senate and House Rules.

It should be stressed that the proposed new rule keeps the actual interviewing and screening of the applicants in the hands of each House's Committee on Employment. It has been also recommended that the Legislative Research Committee automatically accept the Committee on Employment appointed at the Pre-session Orientation Conference as a subcommittee of the Legislative Research Committee, which would then permit the Employment Committees to commence their work prior to the regular session and to be paid their expenses. It would certainly eliminate much confusion in employment matters and further upgrade the quality of the employees recommended for em-

ployment if the additional time was available for screening applicants as to their qualifications.

### House Standing Committee Membership

The Federal Court prescribed a new reapportionment of legislative membership which reduced the House of Representatives from 109 members to 98. This has required that House Rule No. 40, relating to the standing committees and their membership be amended to reflect this reduction of members. The Committee in reviewing this rule also reviewed the normal workload of each standing committee during the last legislative session in order that any changes could reflect the heavier workloads of some committees and allot sufficient meeting time to process the bills and resolutions referred to them. Further, the Committee has recommended that the Minority Floor Leader as well as the Presiding Officer and Majority Floor Leader not be appointed to any standing committee but have the right to attend and participate in any or all of them but without the right to vote. The following list shows the proposed changes:

### House Standing Committees Membership — Meeting Times and Places

Standing Committee	No. of Members	Meeting Days	Meeting Time	Meeting Room
<b>Group A</b>				
Appropriations .....	19	M-T-W-Th	9-12	Atty. Gen. Lic. Ofc.
Education .....	19	M & T	9-12	Blue Room
Finance and Taxation .....	19	M & T	9-12	G-5 and 6
Political Subdivisions .....	19	M & T	9-12	East Balcony
State and Federal Government .....	19	M & T	9-12	West Balcony
<b>Group B</b>				
Agriculture .....	19	W & Th	9-12	Blue Room
Industry and Business .....	19	W & Th	9-12	East Balcony
Judiciary .....	19	W & Th	9-12	West Balcony
Transportation .....	19	W & Th	9-12	G-5 and 6
<b>Group C</b>				
General Affairs .....	19	F	9-12	Blue Room
Labor .....	19	F	9-12	East Balcony
Natural Resources .....	19	F	9-12	West Balcony
Social Welfare .....	19	F	9-12	G-5 and 6
Veterans Affairs .....	19	F	9-12	Room 205

(Similar committee list for Senate not presented because reapportionment did not change the number of Senate members.)

The rule changes implementing these recommendations have been prepared. Senate Rule No. 40 requires the insertion of the words "Minority Floor Leader" into the rule. Also, this rule has been changed from requiring each Senator to serve on three standing committees and that they shall serve on not more than three. This change was proposed in the event the minority was too small to comply with the rule as now written. House Rule No. 40 would be amended to show the new group classification given above and setting the membership for each standing committee at nineteen members. House Rule No. 41, which relates to limitations on committee membership would be amended to limit the members serving on the Appropriations Committee from serving on any Group A or B committee which restriction was provided for in the rule as originally written. The overall limitation of not allowing any member to serve on more than a total of four standing committees is retained. The rule is further amended to reflect the non-appointment of the Speaker and Majority and Minority Floor Leaders to any standing committee except that they have the right to attend and participate in any of them without the right to vote.

The meeting days and times set forth above have been written into House Rule No. 42 in the proposal which relates to meeting of committees. The meeting places or room assignments were not incorporated into the rule change because the meeting places may vary from session to session and if written into the rule would require an amendment to this rule each time. It is also provided in this rule that the committees may meet at other times in addition to the assigned meeting times if necessity should require, thus giving the committees flexibility to meet their workload.

#### **Rearranging the Use of the Physical Facilities of the Legislative Wing**

The Committee has recommended several changes in the use of the various physical facilities in the legislative wing of the Capitol. The Committee has recommended that the Speaker of the House and the Majority and Minority Floor Leaders of both Houses be assigned private offices. This recommendation is made because of the workload and nature of duties of these officers. Private offices are clearly required if they are to efficiently perform their duties. The Speaker of the House has been assigned one of the two offices which are located on the chamber floor behind the rail on the west side of the House chamber. The Speaker occupied one of these offices during the last session. The other office would be assigned to the Majority Floor Leader. The second office was used by the House committee clerks who would be

moved to other quarters discussed later on in this report. The Minority Floor Leader of the House will be assigned the larger of the two rooms located behind the chamber rail on the east side of the chamber. The larger of these two rooms was used by the House stenographers and the smaller room was used as a combined coffee, mailing, and thermofaxing room. The smaller office will be used by the House stenographers. Except for the Majority Floor Leader of the Senate, Floor Leaders have not been assigned offices at previous sessions.

The Senate Majority and Minority Floor Leaders will occupy the two offices located behind the Senate chamber on the east side of the chamber which quarters were occupied during the interim by the Nurses Licensure Board. The rooms used by the Senate Majority Floor Leader and the Enrolling and Engrossing Clerks last session, which are located immediately behind the Senate rail, will be assigned to the Senate committee clerks. The Enrolling and Engrossing Clerks will be moved to Room 204 behind the Senate balcony. The Lieutenant Governor will continue to occupy the office assigned to him at previous sessions.

Located on the ground floor between the large hearing room and the House locker and men's room were two storage rooms. The partitions have been removed and the room has been completely and attractively renovated. This room will be assigned to the House Committee Clerks and any House typists and stenographers who cannot be placed in the room assigned to the House stenographers.

The room on the ground floor used previously as the Journal mailing room will be changed into a joint Senate and House bill and calendar room. The Journals will be moved to the storage room used by the Motor Vehicle Department located immediately across the circular entrance way to the "G" rooms. Again, this room has been renovated and will be of sufficient size to receive and mail the Journals. The joint bill room has three large counter openings through which the bills, daily calendars, and Journals can be distributed.

The old House bill room will be used by the House Bill Book Clerks for working on the members' calendar and bill books. Also installed in this room will be four telephone booths for House members and the Telephone Attendant's desk. The old telephone booths, located behind the rail in the ante-way to the rooms used by the House stenographers, will be disconnected because it was found that they were not soundproof nor could they be made so. The old Senate bill room will now be used as a joint supply room for both Houses and

as a permanent storage room between the sessions for all unused supplies for both Houses. Previously, the Senate used the room immediately to the left when entering the Senate chamber through the east entrance as a supply room. This room will now be used by the Senate Bill Book Clerks for working on the members' calendar and bill books.

Of course, most of the members of the Legislative Assembly know that the Legislative Research Committee offices were moved from the Senate lounge room to rooms G-3 and G-4 by trading quarters with the Senate Appropriations Committee. This was greatly appreciated by the staff — especially by the two staff members who occupied a lightless, airless, low-ceiling remodeled phone booth under the stairwell which leads to Memorial Hall and also by the stenographers who formerly were forced to work in the Senate Locker Room. It is proposed that the Senate lounge be assigned to the Senate Appropriations Committee. The partitions in the old Legislative Research Committee office have been removed and the room painted, giving the Senate Appropriations Committee a room of sufficient size to conduct their meetings. The House Appropriations Committee is to be moved from rooms G-5 and 6 to the Attorney General's Licensing office, which is located just off the east staircase leading to and from Memorial Hall on the Senate side. This will free rooms G-5 and 6 for other standing committees.

#### **Miscellaneous Recommendations**

The Committee approved the purchase of a Carrivoice Public Address System. This public address system and recorder was primarily purchased for use of the standing committees for hearing purposes when it is contemplated that the meeting will attract a large public attendance. Also, it was intended to be used by the Appropriation Committees when they meet in joint hearings. The system can record on tape testimony and comments of the persons testifying before the committee, resulting in a better record to be taken relating to the discussions of appropriation bills. It has been recommended by the Committee that the Appropriations Committees meet in joint session. A more detailed discussion of the merits of this recommendation is set forth in the report on the Budget.

The Committee has also proposed that the Legislative Research Committee seek a sufficient appropriation so as to permit all members of the Legislative Assembly who so desire, to serve on a Subcommittee of the Legislative Research Committee during the biennium. The advantages to individual legislators in knowledge and informa-

tion gained in interim work and the broadened participation in important interim work, makes the small expenditure involved an excellent investment.

The Committee has also recommended that the Fortieth Legislative Assembly consider the possibility of having carpeting installed behind the rails and in the aisles of both chambers. The primary reason for this consideration is that of acoustics. The North Dakota Legislature is probably the only State Legislature in the Union which allows the public to be present on the chamber floor behind the rails. Every member has periodically complained about the noise level brought about by this practice. It is also noted that because this practice has existed for such a long period of time the Legislature may be reluctant to remove this privilege. Therefore, to solve the problem it is suggested that carpeting be installed. Of course, there would be the side benefit of adding even more to the decor and dignity of the two chambers.

In attempting to further alleviate the problem faced by legislators in obtaining a noon lunch in the short period between the adjournment of committee meetings and the time of convening of the daily session, the Committee has made arrangements with the Board of Administration to set off an area in the lunchroom for the exclusive use of the legislators during a one-hour period from 11:45 a.m. to 12:45 p.m. They would then make available sandwiches as well as other meal services in order to assure prompt service.

The Committee approved the purchase of five thousand brochures prepared by the League of Women Voters of North Dakota. This brochure contains an explanation of how a bill becomes a law, a diagram of the three floors of the legislative wing, and other informational facts about the North Dakota Legislature. The Committee believes that these brochures would prove valuable to the visitors during the session. They would be passed out by the information desk attendant.

The Committee has also made the following recommendations:

1. That the daily Journal be mailed to only one-half of the Journal mailing list each day and that the list carry the name of the office rather than the person holding such office. Also, that individual legislators submit the names of individuals to be placed on the list as soon as possible so that mailing tags can be made up prior to the session.

2. That the bulletin boards in each House Chamber used for posting committee meeting notices should be removed from the Chambers and placed in Memorial Hall and at the west entrances to the Chambers to further reduce the amount of commotion and congestion in the Chambers. With this recommendation, it is urged that all Committee Clerks be required to place committee meeting notices and bill hearing schedules on these boards.
3. That the supplementary index to the Journals be more complete so that the temporary Journals could be bound as the permanent Journal, thus saving time and costs in publishing the required number of permanent Journals.
4. That a more complete index to the Rules with more cross-references, which has been prepared by the staff of the Legislative Research Committee, be included in the printing of the Fortieth Legislative Assembly's Rule Book.
5. That there should be a common supply account in the Department of Accounts and Purchases for both Houses. There appears to be no valid reason that each House must keep its supply accounts separate when the appropriation for supplies is given in a lump sum.
6. That the consumption of any food or beverages of any kind by any legislative member or any other person in the Chamber at any time be banned, and that this restriction be established by rule or by request of the Presiding Officer and enforced by the Sergeant-at-Arms. In the past, the rattling of pop bottles, crunching of peanuts, and the noise of candy wrappers has been very distracting, in addition to the unsightliness of allowing the same to be done, and the mess which ensues.
7. That the introduction of visitors be dispensed with completely, or held to an absolute minimum, and that if introductions are made they should be made at one particular time by the Presiding Officer or his designee by reading their names only. This recommendation is made because in the past it has been over-used and consumes too much time of an already overburdened time schedule.

The Committee has suggested several changes

relating to the form of the calendar, Standing Committee minute form, Appropriation Committee report form, message forms from and to each House, and the block on the bills showing the action taken.

The daily calendar has been revamped so that the information on it is more easily understood. The listing has been rearranged to better reflect the action taken on the previous day. The bills, resolutions, and amendments to be considered on the current legislative day are listed under their proper order of business. The Standing Committee minute form was restyled so that there is a minute report form to be filled out by the Committee Clerk for each bill rather than several bills on one minute form. This was strongly urged by the Committee Clerks because there was not adequate space on the older forms for all the information required. The Appropriations Committee standing report form has changed to allow a statement of intent or purpose given for each change made in the appropriation bill. This statement of purpose will then appear in the Journal and be available for use by the Office of the Budget for future reference in auditing, and for use of the Interim Budget Committee and the Legislative Audit and Fiscal Review Committee. The message form for transmitting the action taken on bills and concurrent resolutions by one House to the other House has been changed so that the action taken will be stated first by the messenger rather than the bill or resolution numbers. The Committee has prepared several alternatives to redesign the bill block showing action taken on the bills.

The Committee has recommended that the law relating to the style and form of an enrolled bill be amended to allow the style and form to be prescribed by the Legislative Research Committee as is the case for all other bills. The present law requires that the bills be enrolled on linen record paper which is very heavy and a large size of ten by sixteen inches. These requirements cause many problems. Sometimes this type of paper is hard to find. To make the number of copies required of an enrolled bill is difficult because the fifth and sixth copies are almost unreadable. The Secretary of State's office has trouble reproducing copies from this large size for distribution to any person who orders a certified copy of the actual enrolled bill. It is the purpose of the amendment to allow the Legislative Research Committee to prescribe a different form which would eliminate these problems and to meet the needs as they change.

The Committee has recommended a bill which would provide for the establishment of a commit-

tee composed of citizens and legislators to make a broad study of the North Dakota Legislature. This study is proposed because of the ever-increasing workload of the Legislature and the complex problems it must face if State and local government is to maintain its place in our American State-Federal system. There are many examples of the erosion of State government powers and functions to the Federal government because State government has failed to act upon the demands of its State citizens.

The State Legislature is the basic instrument of self government. It is that branch of State government charged with the responsibility for the management of State and local governmental affairs and responsible for the general laws of the State governing its conduct and activities of its citizens. Because the State Legislature is the basic instrument of self government, it becomes apparent at once that it must fully carry out its responsibilities or all other areas of State or local government cannot adequately function. There has arisen a national concern of a major proportion that State Legislatures are not meeting these responsibilities and must be given the capacity to meet them. Citizen groups have come into being in many states, with legislative blessing and assistance, to study and review the entire Legislative Branch of government. A preliminary review of the findings of these groups has shown that the problems can exist in a state's Constitution, in the Legislature's procedural process, in its number of members, its physical facilities, its compensation of its legislators, limitations of time, inadequate staffing, or a combination of any or all of these. Nationwide improvements in the Legislative Branches of the states are taking place.

To date, in North Dakota we have been fortunate to have had a reasonably responsive State Legislature with accomplishments that in some respects are remarkable in view of obstacles that exist. But, major improvements can be made. This, the Committee believes, can be done by having an analysis made by a committee composed of leading citizens acting with the assistance of some

legislators. It is for this purpose that a bill which would create such a committee, appointed by the Legislative Research Committee and composed of citizens and legislators in the ratio of two to one, is proposed to make this broad study covering all the facets of the North Dakota Legislature.

### **Pre-session Legislative Conference**

The 1965 Legislature passed a law establishing a pre-session legislative conference to be held for three days in the month of December prior to the convening of the regular session. In the past, the Campbell Foundation has sponsored a similar conference at the University of North Dakota during the Thanksgiving Day holidays although of necessity its agenda was primarily limited to informational matters. The legislators attended this conference voluntarily. The Foundation's effort to impress upon the Legislature the value of such a conference was a major factor in the passage of the law giving the conference formal status. In establishing the conference the Legislature declared that the reason for such a conference was the result of the growth of modern government and the increasingly complex problems with which the Legislature must deal in the nearly one thousand measures placed before it each session in a limited and hurried sixty-day session.

The law requires that the Legislative Research Committee make the necessary arrangements for the operation of the conference. The Committee has prepared a detailed agenda which incorporates all the subject matters and areas required by the law to be covered at the orientation conference. These major areas include orientation classes upon legislative rules and procedure, presentation of interim committee reports, party caucuses to determine legislative officers, appointment of employment committees and Senate Committee on Committees, determination of legislators' committee assignment preferences, and other similar matters. The law requires that the Legislature must do all it possibly can during these three days in order that it be fully organized and ready to introduce bills by the second day of the session.

## POLITICAL SUBDIVISIONS

House Concurrent Resolution "S" directed the Legislative Research Committee to study the election laws of North Dakota for the purpose of revising and modernizing such laws. Senate Concurrent Resolution "G-G" directed the Legislative Research Committee to study municipal laws pertaining to bonding, bidding, inspection, and final acceptance on contracts for public improvements, and other municipal laws, in cooperation with the League of Municipalities.

These studies were assigned to the Subcommittee on Political Subdivisions, consisting of Representatives L. C. Mueller, Chairman, Arthur G. Bilden, Archie Borstad, R. Fay Brown, William Erickson, Theodore Hardmeyer, Peter S. Hilleboe, Karnes Johnson, James R. Jungroth, Theodore A. Lang, Thomas R. Stallman, and Paul E. Stenhjem; Senators Gail H. Hernet, Herschel Lashkowitz, and Eugene Tuff.

### Election Laws

The study of election laws as carried out by the Committee required a detailed and large amount of research. The election laws have been amended so many times in recent years, and without consideration for other statutes, that a great deal of procedure has crept into the election process for which there is no law, although it was thought the law did provide for such procedures. The Attorney General's office has been flooded with requests for opinions pertaining to election procedures in recent years, the result being that much of our election procedure is based upon Attorney General's opinions and works only because the Attorneys General of the past have provided sound advice based upon law and equitable principles. The Committee reviewed opinions of the Attorney General for the last ten years in order to pinpoint the problem areas of the election laws. The Committee also reviewed every legislative bill introduced into the Legislative Assembly during the last ten years pertaining to election laws.

In addition to the substantive research carried out by the Committee, much aid and advice was given to the Committee by the Secretary of State's office, members of the County Auditors' Association, the League of Municipalities, and representatives of the two major political parties. Without the aid rendered by these officers, the work of the Committee would have been even more difficult. The Committee believes it has identified the major areas of the election laws which have provided the greatest amount of difficulty in the election

process and recommends a bill designed to remedy these problems.

This report will attempt to summarize only the major amendments proposed and those of a substantive nature. No attempt will be made to mention every amendment contained in the bill, since many are purely incidental to the major amendments. The bill submitted to the Legislative Research Committee by the Subcommittee contains comments after each section amended or created, describing the purpose and reasons for such amendments. If one desires an explanation of each specific amendment, reference to the bill draft is suggested.

The major amendments to the election laws contained in the draft submitted provide that petitions, nomination certificates, and other forms used in the election process shall be filed with the proper officer designated by law before four o'clock p.m. on the day due. Incorporated cities are given the power to establish their own voting precincts, rather than allowing the county commissioners to establish city voting precincts, although the county commissioners will continue to establish such precincts outside the limits of incorporated cities. Candidates for school boards will be required to file their statements of intent to seek such office twenty days before the election, rather than ten days before the election, in order that absent voters' ballots may be prepared and mailed in time to be counted at such election. Publication of notices of election have been combined with the publication of the sample ballots.

Further amendments provide that the Secretary of State is to prescribe the form of the ballots to be used throughout the State so that ballots will be uniform in all voting precincts. Constitutional amendments and initiated and referred measures will be submitted by ballot title only, not by the submission of the full text of each measure, a practice which appears to have been proved more confusing than helpful to the electorate. A short, concise statement explaining the effect of such measures will continue to be provided on the ballot. The form and context of the ballot should prove to be much clearer to the electorate through this procedure, and it will greatly reduce printing costs of the various counties. The ballot for measures submitted to the people also will be arranged in a more logical sequence by grouping proposed constitutional amendments first, initiated statutes second, and referred measures third. The full text of all measures submitted to the people will be

printed in columns in the various official newspapers at the same time as the sample ballot is printed for the purpose of allowing a detailed and complete study by the electorate. The number of publications of notices of election has been reduced from two to one in order to eliminate duplicate and unnecessary publications, and also to reflect the fact that newspaper, radio, and television coverage of elections has improved to the point where most electors are aware of the date of the elections, the candidates seeking office, and the measures being submitted. Thus, the main purpose of the publication of the sample ballot now appears to be to familiarize the electorate with the form of the ballot so that the electorate can then easily find the name of the candidate for whom he desires to vote, or the placement of the measures. Since the publication of the sample ballot is not likely to determine for whom an elector will vote, one publication certainly appears sufficient for an elector to familiarize himself with its form.

Other amendments are being submitted which are designed to clarify the law so that no doubt remains that independent candidates are not each entitled to have a separate column on the ballot but, rather, that all independent candidates are listed in one column. Information required to be contained on petitions, whether they are nomination petitions, referral petitions, or other kinds of petitions, has been standardized. Some provisions of the present law require a post office address, some a street address, and some a mailing address. The information required in the proposed bill is the listing of a mailing address.

In order to recognize the procedure that political parties do endorse candidates for nomination for State and district offices and that in such circumstances the circulation of petitions is meaningless, the Committee recommends that a procedure be established whereby those persons endorsed by district legislative conventions and by State conventions merely have a certificate of endorsement filed with the appropriate officer by the district or State party chairman. Thus, instead of filing a petition to have his name placed upon the primary election ballot, a candidate endorsed for a legislative district office will file a certificate of endorsement signed by the district chairman of a legally recognized political party, and a candidate endorsed for a State office will file a certificate of endorsement signed by the State chairman of a legally recognized political party. The petition process would remain the same for those persons desiring to seek nomination to an office without political party endorsement.

It should be noted that the bill being submitted does provide for the organization of political

parties upon a legislative district basis, rather than a county basis. This was made necessary by the recent reapportionment of the Legislative Assembly. Any reference in the election laws made to a county organization has been amended to incorporate the legislative district concept. Changes have been made throughout the election laws in the case of filings with county auditors, printing of ballots, votes in counties, county lines, etc., to reflect a legislative district concept. More will be said in this report relating to the organization of political parties upon a legislative district basis. The explanation of this bill attempts to follow to a large degree the order in which the provisions being explained are found in the bill.

Many of the provisions of the election laws presently anticipate two-year terms for the major elective offices of the State. These provisions have been changed to reflect the fact that the major officeholders now hold at least four-year terms, except for members of the House of Representatives and congressmen. Amendments have also been made which will allow the signing of more than one petition for persons seeking the same office since multiple signing is a common practice and was felt not to be particularly objectionable. The payment of filing fees was deleted from the law since such fees are not a material source of revenue and have only a nuisance value. It was the consensus of the Committee that there should either be no filing fees, or such fees should be high enough that the person paying them would be showing a genuine interest in seeking office. The Committee chose the former alternative.

One of the goals established by the Committee early in its study was to provide for uniformity in filing and other procedural requirements in the election process. Therefore, many small amendments have been made so that the procedure for the primary election or special elections are the same or similar to those of the general election. Amendments are also included which reflect practices of election officials, which are not strictly provided for by law but which may have arisen because of Attorney General opinions or because it was just not possible to follow the strict letter of the law.

Provision is made for the filling of vacancies occurring when a person seeking nomination for a political office becomes unavailable for such office and when persons nominated at the primary election become unavailable to seek office. It is necessary in such cases to recognize differences between those candidates who have been endorsed for nomination and those who are seeking office through the petition process.

Amendments have been made in several instances which have as their purpose the allowance of sufficient time for the preparation of ballots, certificates of nomination, providing of ballots for absent voters, and similar functions. The time for filing has been lengthened in many instances.

It should be noted that notices of special elections, unlike notices of regularly scheduled elections, will continue to be published twice in order to ensure public awareness. Provisions for posting notices of elections have been deleted wherever found, since such practice appears to be obsolete because of the wide circulation and quick delivery of newspapers.

Provision is made for the forwarding of the abstract of votes by the County Auditor to the Secretary of State within eight days, rather than fifteen days, since the State Canvassing Board is required to meet within fourteen days after elections.

Inspectors of elections in cities will be appointed by the governing body of the city in all instances, rather than attempting to have aldermen who have no interest in the election serve as presently is provided, because frequently the aldermen are running for election. The city governing body must then inform the county auditor of the appointment of the inspectors of election. Chairmen of the legislative district committees will each appoint a judge of election at least two weeks prior to the election for each precinct in the district, and notify the county auditor of the counties in which the precincts are located of such appointments. Inspectors of elections duly appointed will be required to meet with the State's Attorney of each county in order to familiarize themselves with election laws and procedures. Such meeting shall be held not more than twenty nor less than three days before each primary, statewide, or congressional election, except the general election. It was not thought necessary that this meeting be held before the general election since the primary election was held only a short time before the general election, and quite often the same people serve at both elections.

The stamp used on ballots delivered to electors will have a designated place where the inspector or judge may place his initials. Inspectors or judges are required to both stamp and initial ballots delivered to electors, and it is hoped that by placing a line for initials on the stamp it will not be necessary to survey the whole ballot in order to find where an election official placed his initial. Failure to both stamp and initial a ballot some place on a ballot invalidates the ballot.

Provision is made for the county auditor to deliver a minimum of five copies of the newspaper publication or other copy of the complete text of any constitutional amendment or initiated or referred measure to an inspector of election of each precinct. Not less than three of such publications shall be posted in and about the polling place in addition to the ballots required to be posted.

Two poll checkers for each political party may be in attendance at each polling place so long as they do not interfere with the election process. If election returns are delivered to the county auditor by twelve o'clock noon the day following the election, the person delivering such returns shall be entitled to five dollars and mileage at the rate of ten cents per mile of travel. County canvassing boards have been expanded so as to include a representative of each legislative district falling within the county boundaries. Provision is further made for providing alternates to serve on the county canvassing board in case one of the designated officers is disqualified or cannot serve for any other reason. The members of the State Board of Canvassers representing the political parties have been given the authority to appoint alternates to act in their stead.

As was previously noted in this report, amendments have been made to provide for a legislative district organization of political parties rather than a county organization. The organization on a legislative district basis appears to be mandatory because of the reapportionment decision made by the Federal court. Wherever in the law reference is found to "county committees" or "county executive committees" the same has been changed to "district committees" or "district executive committees". Similar amendments have been made elsewhere when appropriate. The proposed law will provide that the precinct committeemen shall constitute the district committee of each party in the same manner as they constituted the county committee. Former members of the Legislative Assembly may still serve as ex officio members of the district committee. District committees will meet on the tenth day following each primary election at a site selected by the district committee chairman for the purpose of organizing in approximately the same manner as they presently do, except it is specifically provided that the chairman, vice chairman, a secretary, and a treasurer shall be chosen from the district committee and the executive committee shall consist of from five to fifteen persons, rather than eleven members. The officers selected shall be members and the officers of the executive committee. It appears quite desirable to expand the size of the executive committee in order that all counties in every district might be represented as equally as possible on such com-

mittee. The State committee of each party would consist of the chairmen of each of the district committees, which would provide equal representation for each legislative district on the State committee. The Committee felt that allowing one person from each legislative district to serve on the State committee was the most equitable course to follow, rather than basing such representation either on population or number of counties within a legislative district. The State committees will meet on the seventeenth day after the primary election for organizational purposes, which would be seven days after the meeting of the district committees. District committees will meet prior to the second Monday in June in each presidential election year for the purpose of electing delegates to a State party convention in the same manner as county committees have met in the past, although provision is made for precinct committeemen to call a precinct caucus prior to the district meeting for the purpose of electing additional delegates to attend the district meeting. The Committee is of the opinion that the law should only provide the framework for the organization of political parties, and that the internal workings of the political parties should be governed by appropriate bylaws adopted by them.

In regard to absent voters' ballots, amendments have been made which will result in mailing to civilians, as well as to military personnel living outside the territorial limits of the United States, absent voters' ballots without application being made for them. The requirement for an affidavit to accompany the submission of an absent voter's ballot has been deleted, and provision for a statement by the absent voter that he is a qualified elector has been inserted in its place. Any person falsifying such statement would be subject to prosecution for perjury or could be found guilty of a misdemeanor. This amendment would not require a person voting by absent voter's ballot to seek out a notary public, which has caused some inconvenience to the absent voter and has caused him to avoid voting on occasions.

The limitation of two hundred dollars or fifteen percent of the salary of the office for which a candidate is seeking, that a candidate may now expend on behalf of himself in campaigning for an office, has been changed to five hundred dollars or fifteen percent, whichever is greater.

Provision has been made for a candidate for any public office in an incorporated city to file his petition at least thirty days prior to the election, rather than twenty days, so as to enable election officials to prepare absent voters' ballots within fourteen days prior to the election as required by law.

The general law pertaining to residency provides that the residence of the husband is presumptively that of the wife. It was felt that for voting purposes this presumption causes more confusion than assistance and that wives should establish their residencies for voting purposes in the same manner as their husbands.

It is also provided in the recommended bill that whenever a bond issue, mill levy, or question of reorganizing a school district has failed to receive the required number of votes for approval, the same question should not again be submitted to a vote for at least six months.

In regard to political parties, it should be noted that provision is made for such parties to organize on a legislative district basis in the year 1967, pursuant to the manner specified in the bill being submitted. Such organization would appear necessary in order for political parties to be properly established for the presidential election to be held in 1968, so that presidential electors can be provided for and delegates to the State and National conventions selected. Organization will again be necessary in 1968, but this will be the only time political parties will be forced to reorganize in two successive years.

It is also provided that any person seeking a no-party office as a write-in candidate who did not file for such office in the primary election or did not file to fill a vacancy in the general election, must have at least the number of votes equal to the number of signatures which would have been required on the petition to run in the primary election had he chosen to do so, before such person shall be deemed elected. It was pointed out to the Committee that if no person should file for a no-party office and the situation arose wherein no candidate's name was placed upon the ballot, a write-in candidate might be elected to an office by receiving only one vote. This type of procedure would allow many a practical joker to elect a person who is completely unfit for office, and definitely who would not have been the choice of the electorate had he actively sought such an office.

Several existing sections are being repealed, the primary reasons being that their provisions are being incorporated into other sections of law, they have been superseded, they duplicate another section, they do not reflect the legislative district concept, or simply because of obsolescence.

### **Municipal Law Study**

The study of municipal laws was a composite effort of the Committee, the Legislative Committee

of the League of Municipalities, and interested municipal officials. The staff of the Legislative Research Committee conducted an exhaustive examination of Attorney General's opinions and North Dakota Supreme Court decisions which had interpreted statutes contained in title 40 of the North Dakota Century Code. Because many of the smaller municipalities cannot afford to retain full-time legal counsel, the Attorney General's office is constantly requested to lend assistance by interpreting municipal laws. Had legal counsel been available on the local level, many of the requests would not have been made. Consequently, a number of the opinions in this area merely substantiated the interpretations of laymen. There were, however, opinions which involved substantive clarifications. The Supreme Court decisions involved statutes which were capable of being interpreted two or more ways. Bills have been drafted to make these statutes read in a manner so as to clearly indicate what the Attorney General's office or the Supreme Court has held them to mean. In addition, the Legislative Committee of the League of Municipalities and interested municipal officials brought to the attention of the Committee statutes in title 40 which either have proved difficult to administer or which were impractical. The Committee has also attempted to correct these situations.

### **Legislative Recommendations**

Brought to the attention of the Committee was the fact that the powers possessed by municipalities vary with the form of government adopted. This, in turn, has a direct relationship to the size of a municipality, and the form of government that a municipality may adopt is determined in accordance with the population of the municipality. It was the opinion of the municipal officials involved in the study that the smaller political subdivisions should have at their disposal the same powers that the larger cities possess. A single set of municipal laws would also do away with confusion that occasionally arises when citizens or municipal officials attempt to work with two sets of laws. To accomplish this goal, the Committee has recommended a bill which will do away with the village form of municipal government. The size of the bill proved to be substantial because it was necessary to delete all of the references to villages contained in the Code. This report will attempt to summarize only those sections of the bill which have a substantive effect and will not concern itself with sections which are concerned only with deletions of such words as village, trustee, and clerk.

In the election law study conducted by the Committee, the deletion of the posting provisions

required in some of the election law statutes has been recommended. In an attempt to coordinate the recommendations of the election law study with the study of municipal laws, the Committee has recommended publication methods for election notices, ordinances, and similar documents, rather than posting. Section 103 of the bill amends section 40-01-11 of the Code to require cities or park districts in which no official newspaper is published to publish, in lieu of posting, in the official county newspaper. In a county in which no newspaper is published, any publication required may be made in a newspaper printed in an adjoining county having a general circulation in the county where the city is located.

Present statutory requirements provide that 100 people must be living in a prescribed area before it can be incorporated as a municipality. The Committee felt that this policy should be continued and that provision should be made for the modern council form of government, which was made available to municipalities by the 1965 Legislature. Section 107 of this bill provides for both of these characteristics.

Subsection 56 of section 40-05-01 of the North Dakota Century Code grants to municipalities the power to convey, sell, dispose of, or lease personal and real property of the municipality, as provided by title 40. There is, however, no procedure set out in the statutes, other than in section 40-11-04, which requires a two-thirds vote of all the members of the governing body of a village or a city operating under the council system of government to effectuate the sale of any property belonging to a municipality, which would control the disposal of this property. As one can see, this section does not pertain or apply to municipalities operating under a commission system of government. Cities operating under a commission system of government have a governing body composed of four commissioners and a commission president. A two-thirds vote of such a body would result in the requirement of four affirmative votes out of five. Apparently the drafters of this statute felt that such a requirement would be too harsh and therefore allowed cities operating under a commission system of government to be controlled by section 40-11-02 of the North Dakota Century Code, which prescribes procedures for passing ordinances and requires only a majority vote of all the members of a governing body. It was the opinion of the Committee that the requirement of a majority of all the members of a governing body is sufficient to safeguard the interests of a city. Section 122 of this bill repeals the present two-thirds requirement for villages and council cities and provides that every municipality shall enact an ordinance

providing a uniform method for the disposal of real and personal property of the municipality.

Brought to the attention of the Committee was the fact that many municipalities experience a great deal of difficulty with contractors when municipal improvements have proved to be defective. Most contracts for municipal improvements contain provisions which make the acceptance by the project or city engineer final. The deficiencies or imperfections do not generally become apparent until sometime after this acceptance. The Supreme Court of North Dakota has held that the final acceptance by the engineer precludes the municipality from collecting for damages when a defect does become apparent. The Supreme Court has also, however, stated that if these contracts were to contain provisions which specifically state that the failure of the engineer to reject work and materials which are not up to specifications and acceptance of the work by the engineer does not release the contractor, the municipality would be able to be compensated for defects which were not apparent until after the project was accepted. Sections 152 and 175 of this bill require this clause to appear in all contracts negotiated for the installation of service connections and contracts for improvements to be installed under the special assessment method of financing.

Section 40-27-05 pertains to special funds established for the payment of bonds issued for the purchase of special assessment warrants. The levy imposed to establish such a fund is not subject to the tax levy limitations imposed on municipalities. The reference to tax levy limitations of villages was deleted from section 167 of this bill because, if this bill is enacted, villages will no longer exist. This is brought to your attention to indicate that those municipalities that had functioned as villages will no longer be required to operate under village tax levy limitations which are more restrictive than those under which cities operate.

Section 40-29-17 of the Code provides village property owners with a means of acquiring municipal improvements, such as ditching, streets, or repairing or constructing sidewalks. These procedures allow this work to be performed on a block-by-block basis. The Committee felt that this procedure should be retained, as smaller municipalities often find it desirable to use this method. Section 183 of the bill amends this section so as to make this procedure available to municipalities without differentiating as to size or form of government.

Section 40-40-06 of the Code pertains to the preliminary budget statements of municipalities.

This section requires notice to be given of the public session to be held by the governing body at which time any person may appear and discuss with the governing body any item for which proposed expenditures are provided. Again, to coordinate the municipal law study with the election law study, this section was amended to provide for publication as opposed to posting of this notice. Section 40-50-22 of the Code concerns applications to vacate or alter townsites. Posting provisions are contained within this section. These provisions were replaced with publication requirements. These two sections appear as sections 200 and 225 of the bill.

Previous legislation has resulted in the creation of municipal judgeships and the office of county justice. There are, however, references throughout the Code to police magistrates and justices of the peace. Whenever any reference to these two positions appeared in sections contained in this bill, the proper amendments were made to indicate that police magistrates and justices of the peace have been replaced by municipal judges and county justices.

The kind and number of offices provided for under the village form of municipal government differs somewhat from the kind and number provided for under the council form of municipal government. Furthermore, the term of office for village officials is not the same as it is for city officials. To iron out these and associated problems and to provide for a smooth transition of government, the Committee provided for procedures in sections 283 and 284 which would control the transition of villages to cities. The village officers are directed to assume the duties of and exercise the powers conferred upon like officers of a city operating under the council form of municipal government, until their successors are elected and qualified pursuant to chapter 40-08, or appointed pursuant to section 40-14-04 of the Code. The provision referring to the appointment of officers is necessary because several of the positions which are of an elective nature in villages are appointive in council cities.

Another problem encountered in this area was the fact that council cities are limited to five aldermen while villages may have as many as seven trustees. To preclude any controversy in this area, the Committee has provided that the provisions of section 40-08-03 of the Code, limiting the number of aldermen in council cities, shall not apply to municipalities which are in the process of effecting a change of municipal government until the next regularly scheduled election for municipalities having a council form of government. At that time, municipalities having excess aldermen

are required to conform to the provisions of section 40-08-03.

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As the statutes now read, there is no provision in chapter 40-18 of the Code for an affidavit of prejudice. Section 40-18-11 does, however, provide that "In all cases not specifically provided for in this chapter, the process and proceedings in the court of a municipal judge shall be governed by the provisions of the laws of this state regulating proceedings in justices' courts in either civil or criminal cases." Section 33-12-12 provides for a change of venue in justice court upon the filing of an affidavit of prejudice prompted by the bias or prejudice of the justice. Therefore, when one is desirous of having his case tried before a different justice or judge, he must also accept a change of venue. This, however, often creates an additional hardship.

According to the Attorney General's office, there is no provision in the law which would provide for a change of venue from a municipal court. The only remedy available in the law to a defendant is that of appeal to the district court from the judgment. In recent years there has been a great deal of conflict over this deficiency, resulting in litigation at the district court level. It would appear that by providing for a change in venue a great deal of confusion would be avoided.

Section 40-18-03 of the Code provides a means of filling a vacancy in the office of municipal judge. In its provisions for alternate municipal judges, in cities within a county having a court of increased jurisdiction, there is no mention of disqualification. Although the Attorney General's office feels that the term "disability," which does appear in that section, could be interpreted to include a disqualification, the absence of this term could also be interpreted as indicating a desire not to have such a matter covered by this section. Furthermore, the term "disqualification" appears in this section only in reference to cities within counties that do not have a court of increased jurisdiction.

Section 40-18-07 of the Code has been interpreted by the Attorney General's office as preventing warrants issued by a municipal judge from being served outside of the city or village limits, as the case may be. This has, on several occasions, severely hampered the law enforcement agencies of our municipalities.

The Committee has recommended a bill which would provide for a change of venue and affidavit of prejudice in municipal courts and which would provide for the replacement of municipal judges

when disqualified. This bill also provides municipal officials with the authority to serve warrants anywhere in the State for alleged violations of municipal ordinances.

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Several miscellaneous sections of the Code pertaining to municipalities were recommended for amendment by the Committee. To facilitate the handling of these several sections, the Committee consolidated them into one bill. Some of the sections appearing in this bill were amended due to Attorney General's opinions and Supreme Court decisions. Other sections were amended because they had proved difficult to administer or were impractical in their demands. To completely inform the Legislature as to the content of this bill, a section-by-section explanation is contained herein.

Presently, municipalities are required to assume the burden of 100 percent of the right-of-way costs of Federal aid highway projects that are considered urban in nature. The statutes, however, allow the municipalities to float bond issues on only 50 percent of these costs. To ensure municipalities the authority to cooperate and complete urban Federal aid highway projects, section 1 of this bill allows municipalities the power to float bonds to cover 100 percent of the right-of-way costs of Federal aid highway projects.

Present statutory restrictions preclude banks and depositories from paying more than four percent interest on deposits of public funds. They do, however, pay higher rates of interest to individual depositors. There is also a question as to whether or not these interest restrictions can be enforced against federally chartered banks. If these restrictions are unenforceable, as concerns federally chartered banks, it is quite possible that State banks could be placed in a very disadvantageous position by being unable to compete with federally chartered banks on the amount of interest they could offer on public funds deposited with their institution. Sections 2 and 3 of this bill would permit banks to pay substantially the same rate of interest on public funds as banks pay on individual deposits.

The Attorney General's office on several occasions has been asked to define the term "then due" which appears in the first sentence of section 40-01-08. The dilemma that city officials have faced is whether or not this phrase includes special assessments which are due in subsequent years, as well as delinquent and current special assessments. In answering this question, the Attorney General's office has referred to section 40-24-02 of

the North Dakota Century Code. In considering this section, the Attorney General's office has come to the conclusion that the phrase "then due" includes subsequent as well as current and delinquent special assessments. The 1965 Legislature amended and reenacted section 40-24-02 so that the language relied upon for this interpretation by the Attorney General's office is no longer contained within that section. Therefore, it was thought advisable that such language should appear within section 40-01-08 so that this problem could be alleviated. Section 4 of this bill would effectuate this change.

Section 40-01-12 of the Code precludes the payment of any claim or account against a municipality unless the claim is made out in full and is both itemized and certified in the form prescribed in section 54-14-04. Prior to being amended by the 1965 Legislature, section 54-14-04 prescribed a form for itemizing claims against the State. In addition, this section also required that the itemized claim be certified by the submitting party. The amendment by the 1965 Legislature deleted both of these provisions from section 54-14-04, although a full itemized statement is still required to be submitted. Because section 40-01-12 requires itemization and certification in a form which no longer appears in the Code, much confusion has resulted among municipal officials. In order to remove this element of confusion, section 5 of this bill amends section 40-01-12 so that the reference to section 54-14-04 no longer appears therein. Itemization of claims against municipalities, however, is still required.

The extent to which municipalities may enter into public works projects is limited by subsection 59 of section 40-05-01. In addition to the basic authority granted to municipalities, cities having a population over thirty thousand, according to the last Federal census, are accorded additional powers. These additional powers are primarily concerned with water control and pollution. The Committee believes that all municipalities, regardless of their size, should have the power and authority to cooperate with Federal and State agencies to combat these problems, and section 6 of this bill would give this power to all municipalities.

Section 40-08-12 of the North Dakota Century Code requires cities with a council form of government to publish a complete record of all of their proceedings in their official newspapers. There is no such requirement for cities with a commission system of government. Whether or not this distinction was an intentional one or merely an oversight is practically impossible to determine. Since the meetings of both city councils and commis-

sions are required to be held at regular times and dates and since the council or commission, as the case may be, is prevented from doing business in secret, there would appear to be adequate safeguards remaining even if the requirement of publication was done away with. It might be pointed out that cities under a commission system of government have been functioning under such a system for quite some time, without any apparent difficulties. To coordinate the publication requirements for cities, regardless of the form of government they are operating under, section 7 of this bill provides for a biennial election to determine if the proceedings of a particular municipality should be published. The requirements of this section were patterned after the recently approved constitutional amendment concerning the publication of school board proceedings.

The North Dakota Supreme Court has held that the term "separate property areas," as it appears in sections 40-22-09 and 40-22-18 of the Code, means geographically separate or noncontiguous areas. Furthermore, the Court has also held that the word "sewer," as used in sections 40-22-09 and 40-22-15 of the Code, refers to both storm sewers and sanitary sewers, and the improvement or construction of such sewers is proper without a resolution of necessity as provided under section 40-22-15. Sections 8, 9, and 10 of the bill alter the language of the above-mentioned sections to clarify the statutes in accordance with the Supreme Court opinion.

Section 40-25-01, as it presently reads, adopts as part of its procedure those provisions of title 57 which govern the sale of real property for delinquent general taxes. Section 57-24-14 of title 57 provides that if there is no bidder the treasurer shall bid for the same in the name of the county. The county then acquires the equitable and legal rights to the property. However, as to the sale of property on which only special assessments are delinquent, section 40-25-03 provides that if there is no private bidder, the county auditor shall declare the property sold to the municipality or taxing district which assessed such special assessments. The Attorney General has ruled that the rules of construction contained in section 1-02-07, providing that special provisions control over general provisions, control this conflict. As applies to this case, the Attorney General's office has held that the special provisions contained in section 40-25-03 control over the general provisions contained in section 57-24-14. This, in effect, means that the municipality will receive the tax certificate. Section 11 of this bill attempts to solve this problem by making it clear that the provisions of title 57 (taxation) apply only when there is no

procedure provided for in chapter 40-25 (collection of special assessments).

Section 40-38-01 of the Code provides the governing bodies of municipalities and counties with the authority to establish and maintain public library services when and if presented with a petition signed by not less than fifty-one percent of the voters as determined by the total number of votes cast at the last general election. There have been several inquiries of the Attorney General's office as to what can be done when the governing body of a municipality refuses to take any action after being presented a petition containing the required number of signatures. The Attorney General's office feels that the present statute does not compel any affirmative action by the governing body of a municipality. The amendment recommended by the Committee would alter the statute so as to require municipalities to establish a library service.

It is extremely difficult to procure, without a large outlay of capital, a bond as required of the successful bidder on a concession under section 48-09-03 of the Code. For practical purposes, many governmental subdivisions have been turning their heads and ignoring this requirement. It was felt that the various governing bodies should be given the authority to determine, in their discretion, what security, if any, was needed. For this reason, section 13 of the bill grants governing bodies this discretionary authority.

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The spreading of assessments based on benefits received is a very difficult task and usually involves the use of some set standard, such as

frontage feet. Officials and employees of smaller municipalities have very little experience in this area due to the fact that special assessments are infrequently levied in these communities. Consequently, the project engineer is often given this job to perform. The statutes require each parcel of land in a special assessment district to be inspected by the special assessment commission in order to determine the actual benefit each parcel has received. This is impractical and is quite often ignored by the commission. In order to provide municipalities with an optional system of allocating special assessments, the Committee has recommended a bill which provides an alternate mathematical method of determining and allocating special assessments. The bill is basically an adaptation of the Washington State method, with alterations to take cognizance of existing State statutes. Although the Washington system places a heavy premium on the number of frontage feet in a lot, it also spreads the assessment on the basis of the size or number of square feet in a lot. A separate and distinct system is provided for the spreading of special assessments for parking lots since the principal benefit conferred upon a lot by the establishment of a parking facility in its vicinity is proportionate to the need that the business conducted on the lot has for a parking lot. The bill authorizing the method of spreading assessments is drafted in permissive terms and can be used by any municipality if it sees fit, or it can follow the system provided by present law. It can also be used on one project and not on another. Its basic purpose is to facilitate the determining and spreading of special assessments when use of the present method would require an inordinate amount of work, time, and effort on the part of municipal officials not familiar with assessing benefits under special assessment procedures.

## SOCIAL WELFARE

Senate Concurrent Resolution "D-D" directed the Legislative Research Committee to study the feasibility of operating a State printing shop at the State Penitentiary to provide an additional resource for the rehabilitation of inmates of such institution. Senate Concurrent Resolution "H" directed the Committee to undertake a study of the need for additional facilities for the education, care, and training of retarded children and adults; to survey the facilities of the Grafton State School taking into consideration the capacity and costs of expansion of the present institution; and to consider the feasibility of the conversion of other institutions or the establishment of a new institution for the care, training, and education of mentally retarded persons. House Concurrent Resolution "D-1" directed the Legislative Research Committee to study the need for the enactment of a new code of laws concerning the mentally retarded, taking into consideration recent studies of the methods and techniques of treatment and rehabilitation of such persons, considering the deletion of outdated terminology defining such persons, and considering the enactment of laws designed to facilitate the education and rehabilitation of such persons as opposed to the segregation and confinement of them.

These studies were assigned to the Subcommittee on Social Welfare, consisting of Senators Dan Kisse, Chairman, L. Richard Jurgensen, Elton W. Ringsak, Frank J. Ruummele, and Kenneth Urdahl, Sr.; Representatives Gordon S. Aamoth, Brynhild Haugland, Clarence Poling, Anna Powers, E. A. Tough, Vernon E. Wagner, Gerhart Wilkie, and Gary M. Williamson.

The Committee received an unusual amount of active participation in its deliberations from State agencies, associations, institutions, and personnel interested in or affected by Committee recommendations. The Committee wishes to particularly thank Mr. James Fine, Mr. Isak Hystad, Mr. Paul Dalager, Mr. Odin Sjaastad, and Mr. Clifford Bender of the Board of Administration; Dr. James R. Amos, Dr. Eunice Davis, and Dr. Myron Burger of the State Health Department; Mr. Leslie Ovre of the State Welfare Department; Dr. Charles C. Rand, Superintendent of the Grafton State School; Dr. G. A. Carbone, Superintendent of the State Hospital; Dr. W. L. Potts, former Superintendent of San Haven; Miss Janet Smaltz, Director of Special Education; Mr. Edward L. Sypnieski, former Director, and Mr. Garfield B. Nordrum, present Director of the North Dakota Tuberculosis and

Respiratory Disease Association; and Mr. Vern Lindsey, Executive Director for the North Dakota Association for Retarded Children and Adults, for the assistance and cooperation they continuously extended to the Committee.

### Establishment of Printing Vocation at State Penitentiary

In arriving at a decision as to whether it would be feasible to establish a type of printing vocational training at the State Penitentiary, the Committee first consulted with personnel at the Wahpeton School of Science in order to determine cost estimates for such a program. Personnel at the Wahpeton School of Science estimated that it would cost approximately \$170,000 for printing equipment plus the cost of a three-man staff. Inquiry was also made to the United States Bureau of Prisons to ascertain if the printing vocation is a trade which it considers desirable as vocational training. Federal authorities reported that the printing vocation is taught in the Federal system and is considered a desirable program. However, such training in the Federal system is similar to on-the-job training rather than a normal vocational course. It also appeared possible that Federal funds might be available in the future for the teaching of such a vocational course, although no such funds are presently available.

Further consultation with Warden Irvin Riedman of the State Penitentiary and members of the Board of Administration revealed that the population at the Penitentiary is the lowest in its history, and it is presently difficult to keep the present prison industries running because of the lack of manpower. A recent survey indicates that the greatest number of aptitudes fall into the machinist, welder, and similar-type vocations. In the last nine and one-half years, the prison population has declined from 387 to 186 persons. It was also pointed out that in the printing industry apprenticeship usually lasts for five years, whereas the average sentence at the State Penitentiary is less than five years. While it may be desirable to establish a vocational training program at the State Penitentiary at some time, it was the consensus of the Committee that because of the low prison population, length of sentences, and relatively high cost of the program in relation to the potential number of participants, it would not be desirable to seriously consider vocational training in the printing field at this time.

### **Revision of the Laws Affecting the Mentally Deficient**

As was noted in House Concurrent Resolution "D-1", which directed the Legislative Research Committee to study the statutes affecting the mentally deficient, such laws use much obsolete and in some respects objectionable terminology. In some areas they indicate a philosophy of care more geared to isolation and confinement than to training and education. North Dakota's laws contain such terms as feeble-minded, idiots, and imbeciles, which reflect the outdated treatment of the mentally deficient of years past. In addition, there are other areas of the law which need attention and revision. Therefore, the bill recommended by the Committee contains provisions designed to provide more adequate administrative procedures applicable to the mentally deficient, protect the person and estate of mentally deficient, provide for more voluntary admissions rather than mandatory commitments, ensure greater family participation and harmony, provide for more adequate evaluations, and protect both society and mentally deficient defendants.

In examining the revisions, the stated philosophy, objectives, and procedures of the American Association on Mental Deficiency should be kept in mind. Briefly stated, they are:

1. Laws and procedures for admission and release should recognize the primary role of the family, its rights and responsibilities for decision making and total life planning for the retarded individual in consultation with qualified agencies and institutions; and should provide that enforced separation of the mentally retarded from their family be effected only when neglect or threat to the community has been established by due legal process;
2. Admission should be limited to individuals whom the institution is designed to serve and for whom it is equipped and staffed to provide a suitable program;
3. Admissions should not exceed in number the determined capacity of the respective departments or units of the institution;
4. Each institution should have definite recorded statements regarding criteria and procedures for admission, for re-admission, and for release, either temporary or final;
5. Admission procedures should be designed so that individuals may be admitted without court order upon application of the parent or guardian or the person, if competent and of legal age, after a clinical determination of eligibility and need for available services;
6. Admission procedures should provide adequate but limited time after application within which an evaluation shall be completed. Admission prior to the completion of the evaluation should be regarded as provisional;
7. The admission to residential or nonresidential services of an institution should not automatically carry with it the presumption of incompetency;
8. Procedures should be established for the reasonably prompt release, on a temporary or permanent basis, of a resident upon application of parent or legal guardian of the person in the absence of a court order to the contrary. It should be the responsibility of the institution to advise parents or guardians requesting release of an individual as to the staff's evaluation of whether or not the interests of the individual are apt to be served through such action. Furthermore, in instances where either the individual or society would be endangered, the institution shall so advise the court and other appropriate authorities;
9. Admission and release procedures should reflect the fact that individuals of varying capacities can be successfully accommodated in the community, depending upon the demands and the compensating factors which will focus upon them;
10. Statutes and regulations should expedite the transfer of individuals where clinical findings and administrative judgment so indicate, between institutions for the mentally retarded; between institutions for the mentally retarded and mental or other hospitals; and from correctional institutions to institutions for the mentally retarded; and
11. Any retarded person who is not under the natural guardianship of his parents and who is unable to make decisions for himself, should have a guardian.

In arriving at its final form of the bill, the Committee revised and polished its original draft

four times. It used as its point of beginning the recommendations of the American Association on Mental Deficiency, recommendations of the North Dakota Association for Mentally Retarded Children and Adults, recommendations of the State Department of Health, and the experience of personnel of the Board of Administration, the Grafton State School, and the State Hospital.

No attempt will be made to provide a section-by-section analysis of the bill draft, but some comment should be made upon some specific sections of the bill draft.

The first three sections and the final fourteen sections of the bill are primarily terminology changes. The term "mentally deficient" has been substituted for such terms as "feebleminded," "idiot," and "imbecile" wherever found. Sections 24 and 25 also provide for the commitment of mentally deficient defendants to the Grafton State School, rather than to the State Hospital, for an examination in cases where it appears such defendant might not be able to understand the court proceedings. Other minor amendments are also made to these sections and more detailed explanations of them can be found in the comments following such sections in the bill draft submitted to the Legislative Research Committee.

Section 4 of the bill provides for methods of admission to the Grafton State School, deletes provisions for admission through the county mental health board, and provides for direct application to the Superintendent at the Grafton State School. Present law simply blankets in all provisions of chapter 25-03, "Custody and Release of the Mentally Ill," and applies it to commitments to the State School. Since the admission standards provided for in chapter 25-03 are specifically designed for the mentally ill, they do not, in many cases, appear to be appropriate for the mentally deficient.

Sections 5 through 10 revise the laws for commitment, custody, care, treatment, training, and release of mentally deficient persons. Most of these procedures were covered by a blanket reference to chapter 25-03, pertaining to the mentally ill. Specific procedures are provided for commitment, custody, care, treatment, training, and release of mentally deficient persons, based upon the modern principle of providing rehabilitative treatment and education, rather than strictly upon confinement. A more detailed explanation of each section may be found in the bill draft submitted to the Legislative Research Committee.

Section 11 provides a new procedure in North Dakota for the establishment of a type of public guardianship for mentally deficient residents.

Many of the residents at the Grafton State School do not have any person other than the personnel at the Grafton State School to look after their welfare. Even in cases where such residents do have parents and relatives receiving veterans' benefits, social security, and other benefits earmarked for the residents, such benefits do not always reach the resident. Some children are placed in the Grafton State School at an early age and then forgotten by the parent or relative responsible for their care. Such parents and relatives frequently leave the State and cannot be located. Also, as the resident grows older, his parents die and other relatives cannot be located. In most cases, such residents have not had either their parents, relatives, or any other person appointed as a guardian before or after being admitted to the Grafton State School, or upon reaching the age of twenty-one. To attempt to now have guardians appointed through court proceedings for the many residents presently at the Grafton State School, who do not have guardians or responsible relatives, would be a very difficult and expensive task. Furthermore, such guardians might not prove satisfactory since the guardianship would be more of a forced-type situation than a voluntary one. Therefore, it was the opinion of the Committee that a public guardianship law should be enacted which would provide a guardian for every resident at the Grafton State School.

Section 11 provides that the Superintendent shall be the guardian of the person of each resident at the Grafton State School, and the Board of Administration shall be the guardian of the estate of each resident, provided that such person does not already have a court-appointed guardian, or the parent does not elect to retain the natural guardianship of a minor resident. Any relative would be free to petition a court of competent jurisdiction for the appointment as guardian of the person or estate of a resident, in lieu of the Superintendent or the Board serving in such capacity. This would require an affirmative act on the part of such relative after the resident reaches the age of twenty-one, which affirmative act would seem to indicate a genuine concern for the resident. In the case of minor residents, the parent need merely reject the offer of guardianship of the Board or Superintendent in writing in order to retain his natural guardianship which, of course, is terminated at the age of twenty-one. In the event a court-appointed guardian should neglect his duties as guardian, the Superintendent or the Board of Administration could apply to a court of competent jurisdiction to have such guardianship terminated and then the Superintendent or the Board would assume the guardianship of the resident.

It can readily be seen that the type of guar-

dianship provided is a limited public guardianship. The parent or any other responsible relative may still choose to retain or obtain the guardianship.

In any event, every resident at the Grafton State School will have a guardian, either natural, court-appointed, or appointed by statute. It is hoped that a high degree of professionalism and concern on the part of the guardian will result from the provisions of this new enactment. It is definitely believed that the benefits to which every resident is entitled by law, whether they be veteran's, social security, or inherited benefits, will be much more available to the residents at the Grafton State School than they are at present.

This is a very limited explanation of the revision of the laws pertaining to the mentally deficient. A great deal of time and study was put forth by the Committee in preparing the bill, and it is believed that a code of law particularly geared to the welfare of mentally deficient persons is the end product. Other areas of the law pertaining to the mentally deficient have also been studied and amended, and will be discussed under other subject headings found in this report.

#### **Improvement of Facilities for the Mentally Deficient**

Senate Concurrent Resolution "H", directing the Legislative Research Committee to study the need for additional facilities for the mentally deficient, resulted from the fact that present facilities do not appear to be adequate to care for the mentally deficient in North Dakota. This fact became more apparent to the Committee members upon completion of a tour of the facilities at the Grafton State School and San Haven, and an analysis of the immediate needs for the mentally deficient persons of this State. It was obvious to members of the Committee that the Grafton State School is overcrowded. The Superintendent and his staff are, however, to be commended for the excellent manner in which the residents were cared for, notwithstanding the lack of adequate facilities. The present population of the Grafton State School is approximately 1,450 residents, which is substantially above nationally recommended standards for the available square footage of space. There is a waiting list for admission to the Grafton State School of approximately one hundred persons who have been determined in need of institutional care. There are probably many more mentally deficient persons who would be placed in the institution if there were available space to accommodate them.

At first glance, the most obvious solution would appear to simply expand the facilities at the

Grafton State School, but there are considerations not so obvious which make this course very questionable. It was pointed out to members of the Committee that it would be possible to add a couple of floors to the hospital, or even build a new dormitory, but if such course were followed, the size of the heating and power plant would have to be increased, kitchens would have to be rebuilt and enlarged, a larger warehouse would have to be provided, and the hospital would have to be enlarged. This would involve a large cash expenditure and, furthermore, there is not sufficient ground space within the building area to permit such new structures or the enlargement of present structures, other than the hospital. Other considerations which make it undesirable to expand the Grafton State School are that expansion would mean a larger staff in a location where it is now difficult to obtain sufficient numbers of lay staff members, professional staff members (teachers, psychologists, social workers, nurses), and office personnel because of the fact that Grafton State School is not in a large city or centrally located. These facts immediately convinced the Committee that facilities other than the Grafton State School should be considered.

Another solution appeared to be converting the total unit at San Haven for the use of the mentally deficient. Since only a small portion of this facility is presently used for the care of tuberculous persons, it seemed worthy of consideration to transfer such patients elsewhere and remodel the San Haven institution for the use of the mentally deficient. The Committee gave this possibility serious study but came to the conclusion that such a course of action is not the desired solution. The buildings at San Haven presently do not lend themselves to the care of the mentally deficient. They were built for one, two, three, and four patients per bedroom. If more than the approximately one hundred forty-five patients presently at San Haven were to be permanently transferred there, a fairly extensive amount of remodeling appeared to be required. Previously, two floors were remodeled at San Haven for the use of non-ambulatory mentally deficient persons at a cost of \$160,000 and the use of institutional labor was quite extensive. These residents do not need the day rooms, recreation facilities, or the professional staff assistance that ambulatory patients would require. The estimated cost of completing the remodeling of San Haven is \$310,180, to accommodate approximately one hundred more patients. More staff would be required at San Haven because many of those who would be transferred are ambulatory, and this presents the most serious problem. It is very difficult to provide lay staff at San Haven, and it appears it would be even more difficult to provide an adequate professional staff.

Furthermore, it does not appear that the hospitals in North Dakota are willing to accept enough tuberculous patients on a contract basis. A survey made at the request of the Committee showed that the hospitals in North Dakota would be willing to accept only thirteen tuberculous patients, whereas the average number of tuberculous patients at San Haven varies between twenty-five and thirty. Therefore, it appears that San Haven must continue to be used for tuberculous patients. Since the complete remodeling of San Haven would result in accommodating only one hundred more mentally deficient persons, and since the staffing problems at San Haven appear to be insurmountable, the Committee is of the opinion that the complete remodeling of San Haven would not be justifiable. The Committee is, however, of the opinion that further use of San Haven should be made for the benefit of the mentally deficient. More will be said of this matter later in this report.

The Committee received two somewhat contradictory viewpoints as to the proper solution in providing adequate facilities for the mentally deficient. One viewpoint was presented by the North Dakota Association for Mentally Retarded Children and Adults and the State Department of Health, and the other viewpoint was presented by the Superintendent of the Grafton State School and members of the Board of Administration. These viewpoints were presented as written proposals and are on file in the offices of the Legislative Research Committee.

The proposal of the North Dakota Association for Mentally Retarded Children and Adults and the State Health Department, hereafter termed the "community or small-type institution proposal," in essence provides for:

1. Four residential units of 50 beds in the four largest cities in North Dakota;
2. The Grafton State School to receive a larger budget; and
3. New facilities to continue to be of the smaller type, rather than a large-type institution.

Estimated costs for each such small unit are \$605,600 for construction, and \$300,000 to \$365,000 for annual operations. Such units would be designed primarily for the use of trainable and educable mentally deficient persons on a short-term basis. The units would provide medical examination and treatment, psychiatric investigation and treatment, educational evaluation and trial, rehabilitation evaluation, and training for indepen-

dent living. In order for a community residential facility to function effectively, it must have cooperative working arrangements with the agencies of the community in which it is located. Working arrangements would have to be made with physicians, hospitals, local schools, and welfare agencies. The objectives of such proposed units are to place the child closer to the family, reduce staffing problems prevalent in large institutions, provide greater integration into community programs, and reduce the total period of time each resident remains in an institution. Insofar as providing greater integration into community programs, it is hoped that such units might eventually provide day care centers, diagnostic and counseling services, temporary place of residence for those being integrated into the community, and a place of temporary residence during periods of family emergency for those residing in the community.

The Superintendent of the Grafton State School and the members of the Board of Administration presented a proposal to the Committee calling for the building of an institution which would eventually be expanded to five hundred beds. Such an institution would be located in the western half of the State, Minot or Bismarck being the most frequently mentioned locations. Initially, such institution would be constructed at the one hundred-bed level, but provision would be made for its eventual expansion to five hundred beds. This would be a facility designed for both short-term evaluation, training and care, and residential care of a longer duration. Unlike the present institution at Grafton, dormitories would be designed to hold not more than twenty-five beds each with a living room, dining room, and kitchen facilities in each building. A great deal of planning should be undertaken before any construction of a large institution is undertaken. The number of buildings and size of each must be considered. Buildings which must be provided for include an administration building, evaluation center, power plant, laundry building, hospital service building, recreation buildings and facilities, a warehouse, and maintenance shops. No estimate of cost was provided with this proposal, although it is contended that economically one large institution is more feasible than many small ones.

Proponents of the large-type institution listed the following factors favoring such an institution:

1. It will still incorporate many of the features of the smaller-type facility but will provide additional services;
2. The most urgent need in North Dakota at the present time is a residential facility,

since the persons on the waiting list are the type who will require long-term care, and no matter how many persons are cared for in the community, many must eventually enter a residential facility as they grow older and there is no one left to care for them;

3. Although the initial cost of a large institution may be great, the ultimate cost will be less than the smaller units;
4. Almost one-half of the residents at the Grafton State School are from the western half of the State and a large institution would be able to care for many of them in the near future. This would be a convenience to their relatives, whereas the smaller units would never care for many of them because they are not designed for the purpose of providing long-term residential care;
5. The smaller units would primarily serve only the large-population areas where they are located, whereas the large-type institution would serve one-half of the State;
6. A larger institution will take care of all the mentally deficient persons in the State in the near future, whereas the smaller-types will be limited in the number of persons they can care for and will be dependent upon the development of other local services;
7. The idea of several fifty-bed units is of recent origin, not well tested in practice, and is designed for areas of heavy-population concentrations;
8. The idea of a small unit having a relatively large turnover and thus being able to treat more persons in a relatively short time will not work in many cases, because it often takes many months to evaluate and prepare a person for limited integration into the community;
9. It is harder to staff four smaller units than it is one larger facility;
10. The smaller units will care for only the educable and trainable mentally deficient, not the profoundly mentally deficient, the old, and young, where the greatest need is presently found. Thus, the waiting list will not be substantially reduced; and

11. There may be a tendency for a number of small institutions to duplicate services intended to be provided by community mental health and retardation facilities.

Proponents of the community-type or smaller-type units listed the following factors favoring such facilities:

1. Most nationwide and international studies recommend the smaller-type facility;
2. Such facilities are designed to encourage community activity, participation, and integration, a facet which is lacking under North Dakota's present system;
3. Communities are now developing programs such as service units, day care programs, vocational training centers, job placement services, and sheltered employment facilities which will complement and provide a base for the smaller units;
4. The smaller-type unit will return the educable to the community sooner than larger units;
5. The smaller unit can be first tried on a demonstration basis by building one such unit at a comparatively smaller cost than proceeding with a larger unit;
6. The smaller unit can make use of part-time professional persons;
7. The smaller unit will reduce the time of confinement;
8. Such units can add to and cooperate with institutions of higher learning in developing qualified persons in the mentally deficient field;
9. The smaller unit will provide badly needed diagnostic facilities on the local level;
10. The smaller unit provides more than one choice of treatment;
11. The smaller unit will provide early training and aid in the preventing eventual institutionalization;
12. A smaller unit can be built in a shorter time than can a larger institution; and

13. The larger unit is still an institution and is very expensive.

The Committee weighed carefully the various arguments for the two types of institutions. Although it appears that both types of facilities have their merits, it was the opinion of the Committee that immediate action is necessary in order to alleviate the crowded conditions at the Grafton State School and reduce the waiting list in the near future. Neither of the proposals would provide immediate relief, so the Committee again reviewed the possibilities of more extensive use of the facilities at San Haven in order to determine if the institution might somehow be used to provide interim relief. The Board of Administration reported that it would be possible to transfer from 48 to 60 mentally deficient persons from the Grafton State School to San Haven with a very minimum amount of structural changes and without any comparatively great expenditure of funds for renovation. More attendants or aids would be employed, more bedding and other supplies purchased, more food needed, but a complete renovation would not be required. Such a program would provide immediate relief at the Grafton State School by the release of approximately sixty residents. It was estimated that this program would cost about \$75,000 during this biennium, and a deficiency appropriation would be needed for immediate implementation of this program. As previously noted, the complete remodeling of San Haven would cost approximately \$310,180 and would provide only one hundred additional beds. The proposed plan would cost substantially less and would provide only forty less beds.

Because of the urgency of reducing the waiting list for admission to the Grafton State School, the Committee recommends a bill draft providing for a deficiency appropriation of \$75,000 for the purpose of providing sufficient funds in order that the Board of Administration might carry out its program of transferring from 48 to 60 mentally deficient persons to San Haven. It is recognized that this bill will only provide interim relief, but it will be immediate relief, which appears necessary since many of the persons on the waiting list for admission to the Grafton State School appear to be emergency cases.

The Committee is of the opinion that the State must provide new facilities for the mentally deficient, but that such facilities must be carefully planned and must be designed to eventually meet the needs of all mentally deficient persons in North Dakota. It is the opinion of the Committee that a long-range program designed to provide less than the care that is needed for the mentally deficient should be avoided. A start must be made in solv-

ing all problems pertaining to the inadequate facilities for the mentally deficient, and the Committee believes this start should commence in 1967.

It is the opinion of the Committee that the small fifty-bed community units will not take care of all the mentally deficient persons in North Dakota. Although there is a great deal of merit in such a program, it is not a program which will provide care for at least one-half of the State. Community units will be most beneficial in populated areas for the care of educable and trainable mentally deficient persons, but this is not the type of care most critically needed in North Dakota. The western half of the State is sparsely populated and does not lend itself to the community-unit approach. The most critical need at this time appears to be for a facility to care for the profoundly mentally deficient, the young mentally deficient, and the older mentally deficient.

It appears to the Committee that the most practical approach to providing adequate and lasting facilities for the mentally deficient is to plan to begin a large-type institution in or near one of the larger cities in the western half of the State, using small dormitories, with an initial one hundred-bed capacity, but providing for possible eventual expansion to five hundred beds. The Committee feels that such an institution should be carefully planned and, therefore, recommends that the next two years be used for surveying other institutions in other states, consulting with architects and engineers, selecting a site for such institution, and acquiring the necessary land upon which the institution will be constructed. Since there is such a wide legislative interest in this project, it is recommended that a legislative committee work with the Board of Administration in an advisory capacity in carrying out the planning of this institution. The Committee is therefore submitting a bill calling for an appropriation of \$100,000 to carry out its recommendation.

The Committee feels that its type of approach is much more feasible at this time than the outright appropriation of construction funds for a new institution. It is recognized that State funds are limited and that a request for several million dollars at this time for the immediate construction of a new institution might not receive favorable consideration by the Legislative Assembly. Therefore, there are three obvious reasons for requesting the \$100,000 appropriation:

1. Such funds may be available;
2. Necessary and careful planning of a new institution is essential; and

3. There must be a priority need established for the eventual construction of a new institution for the mentally deficient, and the proposing and enacting of reasonable legislation is the most practical course to follow in establishing such priority.

#### Other Committee Recommendations

The Committee is recommending a bill providing for the compulsory testing of newborn infants for the disease phenylketonuria and other metabolic diseases. Phenylketonuria, commonly designated as PKU, and similar metabolic diseases result because of certain nutritional deficiencies in the human body. PKU and such similar metabolic diseases cause mental retardation unless discovered early in a person's life and treated through a very strict diet. The test for discovering PKU is very simply administered and is presently being performed in thirty-five of the sixty hospitals in North Dakota on a voluntary basis. Since all of the larger hospitals in North Dakota are now giving PKU tests, approximately ninety percent of all newborn infants are being tested. A very small number of PKU cases have been found. Even though most infants are now being tested for PKU, it is the opinion of the Committee that a mandatory testing law is needed so that every infant born in this State will be tested. If one case of mental retardation can be prevented through the enactment of such a law, the law will be justified in the opinion of the Committee. In addition to compulsory testing, the bill also provides for education programs relative to PKU, followup procedures for positive cases of PKU, and aid in providing the necessary treatment when required.

It was pointed out to the Committee that many parents enroll their children in the Grafton State School and eventually leave the State and become residents of other states. When the children reach majority, it appears that the State is placed in a very difficult position as far as reaching the parents for the costs for care incurred by the State. Thus, the children of nonresidents receive the care that is given to children of residents even though they are not taxpayers and the portion of the actual costs which is charged to them is much more difficult to collect than the charges made to residents. In order to help correct this situation, the Committee recommends that children of nonresidents must be transferred to the place of residence of their parents, unless such person can be accommodated at the Grafton State School without depriving a North Dakota resident of care and treatment, and the costs of care are paid for by the nonresident person or his responsible relatives within a reasonable time. The law presently provides that such patients may be transferred

and allows some discretion for carrying out such transfer. It is felt that by making the law mandatory the State might better be able to enforce the payment by nonresidents for costs of care, and might be able to transfer many nonresident patients to the states of residence, thus providing more beds for residents. There are presently about one hundred eighty nonresidents at the Grafton State School under the age of twenty-one.

An amendment providing that it shall not be necessary to currently bill patients at the Grafton State School or responsible relatives for costs of care for those accounts determined to be inactive, or currently uncollectible, or for which it has been determined that there is no present ability to pay, is recommended by the Committee. Because section 25-09-09 of the North Dakota Century Code provides that no statute of limitations shall bar the right of recovery for expenses incurred for costs of care, it was thought that current billings were not necessary in appropriate cases, but an Attorney General's opinion has held that billings should be made at least once every three months to ensure the validity of claims for costs of care. Furthermore, it appeared that patients and responsible relatives must be billed for the total amount of liability they have incurred, not just for the amount it had been determined, pursuant to law, they have a present ability to pay. The recommendation would provide that such persons be billed for only that amount it has been determined they have an ability to pay, but such manner of billing shall not affect the total amount due. This would allow billings to be consistent with the amount that has been determined under the law, as within the financial ability of the patient or responsible relative. The two preceding recommendations are incorporated in the same bill draft.

The fees chargeable to residents and their responsible relatives for care and treatment provided at the Grafton State School were considered at some length by the Committee. The maximum fee that can be charged a parent of a minor who is a resident at the Grafton State School is approximately 80¢ a day, and the maximum charge that can be collected from an adult patient is \$4.32 a day. The actual charges made to an adult will range between the 80¢-a-day figure and the \$4.32-a-day figure. Realistically, an attempt is made to bill the amount that the patient is able to pay.

There are three sources for collections for the care of patients at the Grafton State School. One is direct collection from the patients, another is collection from benefits such as Social Security and veterans' benefits, and the third is to collect from responsible relatives.

Many people leave North Dakota in their later years and the cost of caring for such people's children is then usually never recovered. The collection law as now written provides for essentially the same amount of collections from high-income people as for low-income people, and even if a high-income person desired to pay the actual costs of care, the law would not allow it. Thus, the law does not differentiate between people in regard to their ability to pay. The law also makes residents, who pay taxes in the State, pay as much as non-residents, who generally do not pay taxes.

The Committee recommends a bill which provides that:

1. In arriving at the amount from which it would be determined that a patient at the Grafton State School or his responsible relative has the ability to pay, the actual costs of care and treatment incurred by the State shall be the starting point, rather than the present 80¢-a-day maximum charge for minors, or the \$4.32-a-day maximum charge for adults;
2. Nonresidents shall not be allowed to deduct average per-pupil costs of education from the actual cost of caring for their minor children;
3. The county welfare Board shall be the determining body in regard to the ability to pay, rather than the county mental health board;
4. Any patient who seeks relief from the payment of costs and care shall do so with the understanding that the supervising department may verify any statement made in such application for relief of payment;
5. Any responsible relative may voluntarily pay the total costs of care for an adult patient;
6. The supervising department, when reviewing the ability of a patient to pay, may make such a determination retroactive; and
7. The amount collected from patients and their responsible relatives shall be deposited in the department operating funds of each institution.

The Committee considered two proposals in arriving at the conclusion that patients and responsible relatives should pay the actual costs of

care if they have the ability to do so without hardship. The first, of course, was that patients or relatives should pay the actual costs of care when able, and the second was that they should pay forty percent of actual costs. Under the actual-cost proposal, the maximum that could be charged for a minor child would be \$1,162 a year, whereas under the forty-percent plan, the maximum would be \$465 a year. Expressed in monthly terms, the actual maximum charge would be about \$100 per month and the forty percent charge would be \$39 a month. In daily costs, the actual charge would amount to \$3.30 per day and the forty percent charge would be \$1.30 per day. It was the Committee's opinion that it really did not make a great deal of difference which maximum charge figure was used as a starting point for those who do not have the ability to pay over forty percent of the costs, because such charges will be reduced below forty percent pursuant to a determination of their ability to pay under either proposal. Under the actual-cost proposal, if one has the ability to pay all costs he will do so; or if the ability is only to pay fifty percent, forty percent, or ten percent of the costs, he will do so. It is the Committee's opinion that if one has the ability to pay actual costs or any part of such costs without hardship, he should do so. The bill submitted will provide for this program.

The 1965 Legislative Assembly repealed North Dakota's law for the sterilization of certain persons confined at the State Penitentiary, State Industrial School, State Hospital, and Grafton State School. This was a law which placed in the hands of a board the right to order the sterilization of certain persons through a hearing process with a right of appeal to the courts. In effect, under such a law, sterilization was a mandatory condition to release of a person from the State School, with no right of a parent to consent or not to consent. This old law did not appear to provide adequate protection to the individual and was probably rightfully repealed.

It does appear that there are a few instances when sterilization will be beneficial to mentally deficient persons. Since North Dakota does not now have any law either allowing sterilization or regulating sterilization, it appears that any parent may have his mentally deficient child sterilized. It is the view of the Committee that sterilization may be helpful in some instances, but that any person under the care of the State should not be sterilized only upon a parent or guardian's request. It is also the view of the Committee that the Superintendent of the Grafton State School should be able to recommend a sterilization operation when he deems such operation necessary for the protection of society or the improvement of the physical and

mental well-being of a resident of the Grafton State School. Proper safeguards should always be provided prior to any sterilization operation, and no person under the care of the State should be sterilized without the consent of a parent or guardian.

The conclusions of the Committee are, in part, based upon the following facts: As of January 19, 1966, thirty-two percent of the patients at the Grafton State School are listed as retarded, with hereditary factors being listed as a possible contributing element. There are forty-seven cases where there are two siblings from the same family, or a total of ninety-four persons from the forty-seven families. There are fourteen families which have more than two siblings at the Grafton State School, for a total of fifty-two persons. There are ten families where both the parents and children are residents of the Grafton State School, for a total of thirty people. There are twenty-eight cases where other relatives such as cousins, uncles, aunts, nieces, or nephews are at the Grafton State School. In one case of cousins, the residents are children of three brothers, and there are others in these three families that are not residents of the Grafton State School, although they are also retarded.

Another factor to be considered is that some parents may have their mentally deficient child sterilized without a concrete determination by professional personnel that such operation is needed. In fact, there have been cases reported where a child has been sterilized when such operation was not required for the protection of the person, or to prevent procreation of another mentally deficient person.

The Committee recommends a bill providing for the voluntary sterilization of certain persons at the Grafton State School under suitable safeguards, and further providing that no parent may have a child sterilized who is a resident at the Grafton State School, except pursuant to the provisions of such Act. A section-by-section analysis of the bill follows:

Section 1. Authorizes the Superintendent of the Grafton State School to recommend to a parent, guardian, or spouse, whichever the case may be, that a resident at the Grafton State School be sterilized. Before making such recommendation, the Superintendent must obtain the unanimous approval of a five-member board composed of three physicians and surgeons, one professional psychiatrist, and one professional social worker. Accompanying the recommendation, which must be in writing, shall be a full explanation of the nature and purpose of a sterilization operation.

Section 2. Provides that the parent, guardian, or spouse must give written consent to the sterilization operation within fourteen days of receiving the recommendation. If no consent is received, it shall be deemed to have been denied, and no further request for consent to sterilize shall be made for at least one year.

Section 3. Provides that the approval of the five-member board shall be based upon an examination of innate traits, mental and physical condition, personal record, family traits and history, and adequate medical and psychiatric evaluation of the person who is subject to being sterilized.

Section 4. Provides that no recommendation for sterilization shall be made for a person who has no parent, spouse, or guardian, unless a guardian is first appointed by a court of competent jurisdiction.

Section 5. Provides for per diem compensation and expense payments for the Approval Board.

Section 6. Provides for proceeding with the operation upon receiving the necessary approval.

Section 7. Exempts from liability the Superintendent, Approval Board, Board of Administration, or any other person who in good faith participates in the carrying out of the provisions of this Act, except in the case of negligence in the performance of the operation.

Section 8. Provides that any parent desiring to have his or her minor child who is a resident at the Grafton State School sterilized, notify the Superintendent, who then must recommend such action to the Approval Board and receive its approval. The parent must appear before the Approval Board and present evidence as to why such child should be sterilized. No child at Grafton shall be sterilized without the approval of the Board.

Since North Dakota does not now have any sterilization law, and it appears that parents can now have their children sterilized on their own volition, whether such children may be residents of the Grafton State School or not, the Committee believes that the proposed sterilization law is necessary for the protection of such children. It would appear that the State should have the authority to voice its opinion as to the treatment of children entrusted to its care. The proposed law is not a law which promotes the sterilization of the residents at the Grafton State School, but

would be a law providing for the regulation of sterilization practices of children being cared for by the State and will prevent any haphazard sterilization practices by a parent, guardian, or the spouse of a mentally deficient person. No person

will ever be sterilized without the consent of a parent, guardian, or spouse, the approval of the five-member Approval Board, and adequate and comprehensive evaluation of the person to be sterilized, under the provisions of the proposed bill.

# STATE, FEDERAL, AND LOCAL GOVERNMENT

Pursuant to three concurrent resolutions, the Legislative Research Committee undertook to study the State laboratories for the purpose of determining the feasibility of consolidation so as to better serve all State departments; State government reorganization for the purpose of establishing a Department of Conservation and Recreation; and to study the feasibility of a North Dakota grain exchange. These studies were assigned to the Subcommittee on State, Federal, and Local Government consisting of Senators Elton W. Ringsak, Chairman, J. W. Ecker, J. H. Mahoney, Kenneth L. Morgan, William R. Reichert, George Saumur, and George A. Sinner; Representatives Russell L. Belquist, Howard F. Bier, Carl H. Boustead, Ole Breum, L. D. Christensen, William N. Gietzen, Donald Giffey, M. E. Glaspey, Brynhild Haugland, L. C. Mueller, J. Milton Myhre, A. W. Wentz, and Ralph M. Winge.

## State Laboratories Study

### Introduction

The State of North Dakota, through its various agencies and boards, maintains a variety of laboratory services, most of which are financed directly or indirectly via appropriations by the Legislature. In some cases, nominal fees are collected, and in the case of public health work, a portion of the cost is covered by Federal grant funds. The increasing costs of maintaining competent laboratory services have indicated that identification of the various laboratory services might suggest changes which could reduce the overall cost or improve administrative procedures. The technical work of the various state laboratories required that competent professional assistance be acquired to assist the Committee in the study of the feasibility of consolidating work performed by the different State laboratories. To assist the Committee in this endeavor, the services of Dr. H. J. Klosterman, Chairman of Agricultural Biochemistry, North Dakota State University of Agriculture and Applied Sciences, were procured. The services of Dr. Klosterman were obtained through the negotiation of a working agreement with the North Dakota Agricultural Experiment Station. Dr. Klosterman thoroughly reviewed the work of the laboratories operated by the various State agencies and submitted a detailed report of his analysis. Copies of this report are available for distribution in the offices of the Legislative Research Committee.

### Basic Problems

The report submitted by Dr. Klosterman indicated that the utilization of laboratory facilities is generally intensive. There is little evidence anywhere in the State of the existence of service laboratories that are not fully utilized. There is little prospect for shifting large segments of workloads from one laboratory to another. One exception is the Dairy Bacteriology Laboratory in the Capitol building. Even though it is small, the use level is very low, due to the absence of a bacteriologist. The work of this laboratory could be absorbed in other facilities. There are some areas where duplication exists, but the extent is limited and not always wasteful. Some examples of duplication are:

#### A. Medical Diagnostic Services

The State Health Department Laboratories provide a number of serological and microbiological tests for diagnostic purposes to aid private physicians. Some of these tests are or could be performed in the private clinical laboratories.

#### B. Veterinary Diagnostic Services

Some of the work done by the Veterinary Diagnostic Laboratory is also performed by practicing veterinarians and veterinary clinics. There is some evidence that specimens are submitted to the Diagnostic Laboratory in order to obtain a free service, in preference to paying a fee to the local veterinarian.

#### C. Water Analysis

Water samples are handled by the State Laboratories Department and the State Health Laboratories. The former performs chemical and biological tests for individuals and on samples obtained in regulatory work. The Health Department handles water samples for municipalities and private samples. The work performed in these two laboratories is similar, although the chemical work at the State Laboratories Department is the more extensive. In addition, the State Laboratories Department cooperates with the State Water Commission in performing chemical tests in survey work.

#### D. Dairy Products

There has been an apparent duplication in the area of dairy products. Recent action which placed the Grade A milk program in the Health Department has improved the situation. However, this leaves a large amount of work concerning manufactured dairy products in the Department of Agriculture and Labor. The State Laboratories Department is also concerned with dairy products because of their concern for enforcement of the Food and Drug Law. All three departments become involved in the regulation of frozen dairy desserts and novelties. Because of the special problems in this area, the joint effort of all three is probably needed. A coordinated effort could result in a more effective regulatory effort.

The Health Department Laboratory in Bismarck occupies a rented converted dwelling. Additional space for health radiological work is rented in a nearby office building. While the laboratories show evidence of good maintenance, they are inadequate in terms of space, ventilation, and physical organization. In addition, the building is rented on a month-to-month basis. Its location in downtown Bismarck makes this type of leasing undesirable, since commercial developments will probably dictate the removal of the building in the near future. The Grand Forks Branch of the Health Department Laboratories is located in the Medical School building on the University campus. The space is provided rent-free. However, certain teaching services and professional functions are performed for the University. The quarters are fully utilized, but are inadequate for present needs, both in terms of space and equipment.

The State Laboratories Department occupies the third and fourth floors of the Bank of North Dakota building in downtown Bismarck. In addition, the Department maintains an engine room for testing motor fuels and a fuel-testing laboratory on South Bell Street. This latter facility was established in 1966 to remove some hazardous operations from the Bank of North Dakota building. The laboratory facilities in the bank building are depressing. Poor lighting, ventilation, and maintenance leave a bad impression. The bank building is of sturdy construction, and the area allotted to the State Laboratories Department is probably nearly adequate, but the physical arrangement and space allocation are poor and show evidence of little imagination. Most of the area is badly in need of extensive renovation. In terms of health and safety, the Motor Fuels Testing Branch Laboratory on South Bell Street leaves much to be desired. It is well lighted and conveniently or-

ganized, but inadequate ventilation poses health and safety hazards for the employees. This defect must be corrected at once!

#### Organization of Laboratories

Various studies in the past quarter century have examined the problem of reorganization of laboratories and laboratory services. There is little evidence to support the contention of waste and gross inefficiency and duplication in laboratory services. There is ample evidence to demonstrate that lack of financial support and political interference have reduced the effectiveness of laboratory services, particularly in the State Laboratories Department. There appear to be good reasons for continuing the separation of the administration of public health work from consumer protection work. It is also possible, however, to separate most types of chemical tests from biological tests on the basis of equipment and personnel involved. If one used this basis for reorganization, sanitation work would be transferred to the Health Department from the State Laboratories Department and the Department of Agriculture and Labor.

#### Legislative Recommendations

The Bacteriology Laboratory maintained by the Dairy Department has, for some time, been inactive due to the absence of a bacteriologist. The work which had been performed by this laboratory is presently being farmed out to other State Laboratories. In addition thereto, there is evidence of duplication of effort as concerns the Dairy Department and local political subdivisions of government. In an attempt to consolidate laboratory services, the Committee has recommended a bill which would transfer the laboratory equipment of the Dairy Department to the State Laboratories Department. This bill also provides that the testing of samples under the authority of the Dairy Department will be done by the State Laboratories Department. To provide a means by which duplication of effort may be reduced, this bill requires the Dairy Department to adopt a set of uniform standards, concerning all matters regarding dairy products, and to certify to the appropriate department, unit, or board, the results of the inspection or inspections and tests of dairy products.

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It was brought to the attention of the Committee that the State Laboratories Department is presently functioning under some regulatory statutes which are of almost ancient vintage. Problems have arisen in the commercial feed and fertilizer fields due to recent developments, such as commercial formula feed blending and mixing and the

custom blending and mixing of fertilizers. When the present statutes were drafted, these problem areas were non-existent.

Various legislators brought to the attention of the Committee another problem area in this field. This involves the distribution of soil conditioners. Soil conditioners are materials which are alleged to have the ability to favorably modify the structural or physical properties of soil. Oftentimes they are distributed with subtle inferences that the product has the qualities of a fertilizer when, in fact, these products have little or no beneficial effect upon the soil. Because of these sales, fraud has been perpetrated upon unsuspecting farmers and hardships have resulted. Due to the technical nature of this problem, the services of Dr. E. B. Norum, of the Soils Division of North Dakota State University of Agriculture and Applied Sciences, were procured. Working with Mr. Lawrence A. Koehler, State Food Commissioner and Chemist and Dr. H. J. Klosterman as the Committee's consultant, Dr. Norum devised a method of regulating these products and submitted his recommendations to the Committee.

To provide the State Laboratories Department with the proper tools to perform its duties, the Committee has recommended two bills in this area. The first regulates the distribution of commercial feeds and customer-formula feeds and repeals chapter 19-13, which is the existing law providing for regulation in this area. This bill basically follows the Uniform State Feed Bill prepared and approved by the Association of American Feed Control Officials and the American Feed Manufacturers Association, with minor alterations to take advantage of existing State statutes. The second of these two bills regulates the sale and distribution of commercial fertilizers and soil conditioners and repeals chapter 19-20 which is the existing law providing for regulation in this area. This bill is basically patterned after the Uniform State Fertilizer Bill prepared and approved by the Association of American Fertilizer Control Officials, with minor alterations to take advantage of existing State statutes. The method adopted to regulate the sale and distribution of soil conditioners was to require the proper labeling of these products so as to clearly show that they were not plant food products. No attempt, however, was made to require the registration of soil conditioners. The Committee felt to do so would lend some degree of respectability to their status. The Association of American Feed Control Officials and the Association of American Fertilizer Control Officials are organizations composed of state officials who are involved, at the state level, in the regulation of these products.

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Another regulatory area in which the present statute is of almost ancient vintage is the regulation of foods, drugs, and cosmetics. Problems have developed due to the new methods of processing and merchandising foods, the development of new drugs, and the saturating of the market with new and sometimes dangerous cosmetics. These are all problems which were not as critical when the present statutes were drafted. In an attempt to provide the State Laboratories Department with the proper tools to regulate these products, the Committee has recommended a bill which would regulate foods, drugs, and cosmetics, and which would repeal the existing statutes regulating these products. The bill basically follows the Uniform State Food, Drug, and Cosmetic Bill as prepared and recommended by the Association of Food and Drug Officials of the United States, with minor alterations to take advantage of existing State statutes. The Association of Food and Drug Officials of the United States is an organization composed of state officials who are involved, at the state level, in the regulation of these products.

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Another problem the State Laboratories Department is faced with is that of requests from private persons to perform laboratory analyses of various and sundry materials. Providing this service to the public, at no cost to the individual who submitted the sample, results in a financial loss to the Department. Although the State Laboratories Commission is authorized to "adopt such rules and regulations as may be necessary for the full and complete enforcement of the regulatory laws of the State under its jurisdiction", there is no provision within our statutes which specifically authorizes the Commission to establish a fee schedule for private samples that are submitted for laboratory analyses. The State Laboratories Department, however, has recently established a fee schedule for private samples. It would seem only desirable that it be made entirely clear that the authority to do so does exist. For this reason, the Committee has recommended a bill which would authorize the Commission to establish, and alter as the need arises, a fee schedule for private samples that are submitted to the Department for laboratory analyses.

Under present statutes, the State Laboratories Department is required to inspect and chemically analyze every beverage before it can be sold in the State. Many of these beverages, such as sealed intoxicating liquors, have been previously tested by the Federal government. The requirement that these containers be sealed seems to provide

assurance that they have not been subsequently adulterated. There are, however, other beverages that appear to necessitate chemical analyses. Rather than require this magnitude of examinations, the Committee felt that it would save the State a substantial amount of time and money if the chemical analyses of beverages were made discretionary with the Department. To accomplish this objective, the Committee has recommended the inclusion of a section in the bill authorizing the establishment of a fee schedule which would authorize the Department, in its discretion, to require the submission of suitable samples to the Department for inspection and chemical analyses.

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Several miscellaneous sections of the consumer protection statutes have produced nuisance regulation and work for the State Laboratories Department. One of these areas is the retail dealer's oleomargarine license. This license costs the retailer two dollars. The cost to the State to issue such a license far exceeds the cost of the license. In addition thereto, oleomargarine stamps are no longer placed on this product at the retail level. The regulation in this area was initially provided to regulate the issuance and placing of these stamps. The Committee felt that since these stamps are now being placed on the product at the manufacturer level, this is the area of the function which should properly be regulated. Another area similar to the retail oleomargarine license is the retail egg dealer's license. This license costs one dollar, while the cost to issue this license, again, substantially exceeds the income received. It proves to be a nuisance to both the State Laboratories Department and the retail egg dealers.

Section 19-07-05 of the North Dakota Century Code provides for the bonding of out-of-state egg buyers. This bond ensures the observance of all the State statutes regulating this function but does not ensure that the out-of-state buyer will faithfully fulfill his contractual obligations. The Committee felt that it was desirable for this bond to extend to the contractual obligations of such buyers and recommends an amendment to this effect.

Under the present beverage statutes no beverage can be sold until a suitable sample is furnished the State Laboratories Department and the sample is inspected and chemically analyzed. In some of the smaller municipalities the water is not fit for consumption or household use. As a result thereof, the water for these purposes is trucked in and delivered to the individual consumer. People involved in such activity contend that they are not selling water, but are engaged in hauling for hire.

As a consequence, they do not feel that they are required to be licensed by the State Laboratories Department. This water can be contaminated by the equipment used to transport the water just as easily as it can become contaminated while in the ground. For this reason, it is believed imperative that these individuals and their equipment should be under the regulation of the beverage laws.

Livestock medicines are required to be registered with the State Laboratories Department. The registration is effective for a period of one year. There is, however, no provision for a uniform beginning or expiration date. This results in some renewal of registrations of livestock medicines each week of the year, which places a burden upon the clerical staff of the State Laboratories Department. The Committee felt that a standard registration period should be provided and that the registration fee should be prorated for those livestock medicines which do not become subject to registration until after a registration period has begun.

Section 19-17-02 of the North Dakota Century Code provides for a certificate of flour use. This, in effect, is a duplication of the enriched flour standards presently being enforced by the State Laboratories Department. The Committee felt that this requirement could be deleted from the Code. Section 19-01-05 of the Code provides that the sheriffs of the various counties shall be inspectors for the State Laboratories Department. These people are not utilized in this function because the department inspectors have the authority of constables and perform the necessary services required in this area. This section, however, does produce some misunderstandings. For this reason, it was felt that this section should be deleted from the Code.

To correct these miscellaneous deficiencies, the Committee has recommended a bill which would remove the retail egg and oleomargarine licenses and which would provide that the bond required of out-of-state egg buyers would cover the performance of contractual obligations, that the haulers of water would be regulated by the beverage statutes, that livestock medicine registrations would have a definite beginning and expiration date, and which would repeal the certificate of flour use requirement and the section of the Code appointing sheriffs as inspectors for the State Laboratories Department. This bill also contains certain technical corrections in the regulatory statutes administered by the State Laboratories Department.

Section 19-06-01 of the Code was amended by the 1963 Session of the Legislature to provide that the Department of Agriculture and Labor should

administer the imitation ice cream statutes. This function properly belongs under the administration of the State Laboratories Department because it involves the regulation of a consumer item and the Department of Agriculture and Labor has not been active in this area. For this reason, this bill also contains a section which provides for this transition.

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The State Department of Health Laboratories provide a number of serological and microbiological tests for diagnostic purposes to aid physicians. Some of these are or could be performed in the private clinical laboratories. In addition, pre-marital blood tests or serological tests are required to be performed by the State Department of Health. These tests could be performed by the private clinical laboratories. Many of these tests do, however, vitally concern public health. If these tests are to be performed by private laboratories, some assurance must be had that the quality of the performance of these tests be continued. The licensing and inspecting of private laboratories is a logical means by which to accomplish this objective. By encouraging physicians to submit these samples to private laboratories and by allowing these same laboratories to perform pre-marital blood tests, the State Department of Health might acquire more time to devote to projects more vitally concerned with public health. For these reasons, the Committee has recommended a bill which would provide for the licensing and regulation of medical laboratories. This bill also prescribes minimum qualifications for directors and supervisors of these laboratories. To assist the State Department of Health in administering the provisions of this statute, an advisory committee was created which would consult with the Department in matters of policy affecting the administration of the statute and in the promulgation and enforcement of rules and regulations adopted thereunder. It is worthy of noting that qualifications of directors and supervisors, as set out in this bill, will work no additional hardship on small laboratories because the Medicare program already provides for these requirements. To allow laboratories time in which to meet the requirements of this bill, an effective date of July 1, 1968, was provided. This bill also allows pre-marital blood tests to be performed by private laboratories.

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There appear to be good reasons for separating the administration of public health work from consumer protection. One reason for such a separation is that chemical tests should be separated from biological tests, on the basis of equipment

and personnel involved. The State Laboratories Department is primarily involved in consumer protection and the State Department of Health primarily involved in public health. The State Laboratories Department, however, is involved in certain sanitation work which logically should be transferred to the State Department of Health. Those areas of sanitation work in which the State Laboratories Department functions are restaurant, hotel, boardinghouse, lodginghouse, motor court, and trailer court inspections. The Committee recommends a bill which would transfer this work to the State Department of Health. Realizing that duplicate inspections of these facilities are made by the local political subdivisions and the State, the bill provides for cooperation between municipal health authorities, district boards of health, and the State health authorities, with such local units of government doing the field inspection work, where municipal health authorities and district boards of health are functioning and approved by the State Department of Health. Licensing, however, remains on the State level. People have become extremely mobile in recent years. As a result thereof, the use of campers and small trailers has increased tremendously. To accommodate these vehicles, camping facilities have sprung up. These facilities, if improperly operated, can be dangerous health hazards. The Committee has included these facilities, when open to the public, under the regulatory authority of the bill in the same manner as motor courts.

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As mentioned earlier in this report, the Health Department Laboratory occupies a rented converted duplex. Additional space for health radiological work is rented in a nearby office building. To complicate matters further, the building is rented on a month-to-month basis. Its location in downtown Bismarck makes this type of leasing arrangement undesirable since commercial developments will probably dictate the removal of the building within the near future. The Grand Forks branch of the Health Department Laboratories is located in the Medical School building. The increasing enrollment at the Medical School has placed a premium on space at that institution. It is only a matter of time before the Health Department will be asked to find different laboratory facilities in Grand Forks. It appears imperative that the State Department of Health be provided new laboratory facilities at an early date.

The location of a new public health laboratory presents another set of problems. From an administrative view, the location of such a laboratory in the capital city is the most desirable. It is necessary that the laboratory and administrative per-

sonnel of this department frequently communicate. This can be accomplished most readily by having the two near at hand. At the other end of the spectrum, staff for such a laboratory can generally be recruited more easily if the facility is located in a university environment. The Committee felt that communications, rather than recruitment, was the overriding factor. In addition, Bismarck is centrally located and would provide more ready access to the remainder of the State.

To provide adequate laboratory facilities for the State Department of Health, the Committee has recommended a bill which provides for an appropriation to construct a public health laboratory, which would consolidate the two present public health laboratories. Realizing that the State Laboratories Department is also in dire need of a new laboratory facility, the Committee included within this appropriation bill a clause requiring the facility to be constructed in such a manner so as to be expandable to provide quarters for the State Laboratories Department.

This appropriation bill also provides that the laboratory facility be constructed on the capitol grounds. The Thirty-ninth Legislative Assembly created a Capitol Grounds Planning Commission. One of the duties of this Commission was to produce a long-range plan for the development of the capitol grounds. To ensure continuity of the style and exterior construction of buildings or facilities erected thereon, it was the opinion of the Committee that the Planning Commission should be given the authority to approve or disapprove these two characteristics of any and all buildings erected on the capitol grounds. In addition, the Committee felt that the Commission should be given the authority to determine the location of such buildings. To accomplish these goals, a bill amending section 1 of chapter 314 of the 1965 Session Laws, to provide for the continuing existence of the Capitol Grounds Planning Commission and to provide this Commission with the authority to approve or disapprove the location and exterior design and construction of any building constructed on the capitol grounds, was recommended by the Committee.

## **Grain Exchange Study**

### **Introduction**

To successfully establish a terminal cash grain market in North Dakota, several requirements must be met. The most important of these requirements are: (1) That there is a desire by grain processors, merchandisers, and exporters to use the market in the procurement of raw grains to meet their raw material requirements; (2) That

country elevators and subterminals feel that there is an economic need for the market and will provide an adequate volume of trade to support the operations of an exchange; (3) That complete and economic inspection of a high proportion of the grain being marketed in the State can be had at or near the points of origin; and (4) That a location be selected to which inspected grain samples can be rapidly and economically transported. The existence of these requirements had to be determined before an intelligent decision could be made as to the feasibility of establishing a grain exchange in North Dakota.

The technical nature of this topic required that competent professional assistance be acquired to assist the Committee in the study of the feasibility of establishing a grain exchange in North Dakota. To aid the Committee in this endeavor, the services of Dr. Donald E. Anderson, Department of Agricultural Economics, North Dakota State University of Agriculture and Applied Sciences, were procured. The services of Dr. Anderson were obtained through the negotiation of a working agreement with the North Dakota Agricultural Experiment Station. Dr. Anderson thoroughly investigated this problem and submitted a detailed report of his findings to the Committee. Copies of this report are available for distribution in the offices of the Legislative Research Committee.

### **Demand for Services**

To obtain information concerning this requirement, Dr. Anderson conducted a mail survey of commission firms and processors and merchandisers in order to evaluate their attitudes regarding a cash grain market in North Dakota. Twenty-three returns were received from processors and merchandisers and four from commission firms.

### **Commission Firms**

Commission firms play an important role in the marketing of grain. The commission firm is the agent or representative of the country elevator in the terminal market. Besides selling consigned grain for the elevator at the terminal market, the commission firm also relays price bids to the country elevator for grain shipments to be delivered on a to-arrive basis. In many cases the commission firm may be the elevator's best source of price information. Commission firms frequently provide operating funds to country elevators at prevailing interest rates. The commission firm will advise the elevator of the most economical method of shipment, and, when truck transportation is used, trucks will be procured for the country elevator by the commission firm.

Futures trading by the country elevator is normally handled by the commission firm. Commission firms also will provide advice regarding management problems encountered by the elevator. Because of the many services performed by the commission firm, a change in current marketing institutions will require acceptance by commission firms if the innovation is to be successful.

The commission firms were generally not in favor of establishing a North Dakota grain market. These firms indicated that the potential participation in such a market was not adequate to justify its existence. Lack of buyers and the necessity of establishing additional offices for buying and selling were given as reasons for lack of participation. Terminal storage facilities in Minneapolis, the presence of a futures market, and the large banks which provide financing were cited as the advantages which would be provided by continuing to operate through the Minneapolis market. In addition, the commission firms surveyed indicated that present market locations provide better access to buyers than a North Dakota facility would.

#### **Processors and Merchandisers**

The reaction of processors and merchandisers to the possible establishment of a market facility in North Dakota was generally unfavorable. Thirteen firms indicated they would not use such a market facility to procure grain needed for their operations, while two firms indicated little if any purchases would be made through such a market. Two firms indicated they would use such a market only if the grade and quality of the grain needed were not available in the Minneapolis market. Five firms indicated they would use a North Dakota market facility. One firm, however, indicated that they would use the market only if the added cost of conducting business would be offset by lower grain prices. The most frequent reason given for nonparticipation in a North Dakota market was that a broader range of supplies would be available through existing market channels.

To obtain further indication of possible support for a North Dakota terminal market facility, merchandising and processing firms were asked to indicate whether or not such a market would enable them to procure grain stocks more economically and/or conveniently than at present. Fifteen firms answered negatively, while two firms believed some cost savings and/or increased convenience in pur-

chasing grain stocks would result. Those answering in the negative pointed out that present market locations are adequate; and, if an additional market were established, the cost of maintaining additional offices would be prohibitive in relation to any possible benefits. They also indicated the presence of ample buyers and sellers in the Minneapolis market and, hence, could see no advantage in creating an additional grain market.

#### **Elevator Operator Attitudes.**

Elevator operators generally expressed a favorable attitude toward the establishment of a terminal grain market in North Dakota. Of the 156 elevator managers who responded to a questionnaire pertaining to their use of a North Dakota market, 82 percent indicated that they would use a North Dakota terminal market facility. The most frequent reason given by operators who indicated they would not use a North Dakota market was the fear that it would detract from established markets. Lack of buyers, absence of a good location, and rail connections were also indicated. Several respondents cited such factors as lack of processing, limited outlet for grains because of the probable absence of a broad group of buyers, and the difficulty of financing the operations of a North Dakota market.

#### **Grain Inspection Services**

Grain can be stopped in transit for inspection and disposition at Minot, Grand Forks, and Jamestown. The graded samples of grain are available to prospective buyers at each inspection service, and some grain processing firms interested in certain grades of grain have small samples of grain mailed to them by the inspection service. If the prospective buyer offers a price satisfactory to the commission firm at the Minneapolis Grain Exchange to whom the grain has been consigned, the car could then be rerouted to a destination named by the buyer or, if not sold, could continue on its original course. The hold points thus provide flexibility by allowing grain to be diverted to points other than the point of original destination.

Grain inspection services on a route-sampling basis are in operation at Grand Forks, Fargo, Minot, and Jamestown. The services performed consist of obtaining, from a loaded car, a sample of grain which accurately represents the grain contained therein and testing the sample for dockage, moisture content, foreign material, mixture with other grains, and test weight. Protein testing facilities are available at all four of the above-mentioned locations and are obtained when desired by the elevator operator. The sample is then analyzed and graded under the supervision of a grain

inspector licensed by the United States Department of Agriculture.

Sampling of grain at the origin allows reloading of the car by the shipper if the sample does not grade as anticipated. Thus, uncertainty as to grade is eliminated. It also furnishes a basis for comparison with the grade received if and when the grain is reinspected in Minnesota. If the shipper feels the Minnesota grade is lower than justified, he will have a basis to petition for reinspection. If a car is not inspected at the origin or a North Dakota hold point, it will be sold by sample on the trading floor of the Minneapolis Grain Exchange only after it has been inspected at a Minnesota hold point. A basic advantage of North Dakota inspection is the more timely sale of the grain at the terminal market. Grain samples typically reach the Minneapolis market within 24 to 48 hours of loading when sampled at North Dakota origins, while considerably longer periods of time may elapse before samples reach the terminal when cars are shipped and held at Minnesota hold points.

Grain inspection service is available to all areas within the State except certain points in the southern portion. In these areas railway routes lead from North Dakota into South Dakota. In conclusion, it may be said that sampling service is available to a very large part of the grain produced in North Dakota.

### Market Location

Elevator operators were asked to give their opinions as to what would be the best location for a North Dakota terminal market. Respondents most frequently listed Fargo as the optimum location. Out of 130 responses 43 cited Fargo as the optimum location, with 33 listing Grand Forks, 11 listing Jamestown, and 19 listing Minot. Enderlin, Williston, Valley City, Ashley, Devils Lake and Wahpeton or Hankinson were also mentioned.

Because provisions must be made for storage and warehousing of grains, storage capacity must be considered when evaluating alternative market locations. Licensed storage capacity at Grand Forks totals 6,662,000 bushels. Additional storage of 655,000 bushels is provided by firms in East Grand Forks, Minnesota. The total storage capacity of 7,317,000 bushels in the Grand Forks and East Grand Forks locations is considerably greater than the amounts available at Fargo, Jamestown, or Minot. A total of 5,079,000 bushels licensed storage capacity is available at Jamestown, with 3,091,000 bushels capacity in existence at Minot. Total licensed storage capacity in the Fargo, West Fargo, and Moorhead area is 4,684,000 bushels.

Transportation difficulties are a potential barrier to the establishment of a grain exchange in North Dakota. The market should be located in such a place so as to be able to receive grain from all four points of the compass. The market facility would have to receive railway cars from all railroads operating in the State, or arrangements would have to be made for switching cars from one line to another. This, in itself, might prove to be a difficult barrier to hurdle.

### Summary

Terminal markets have developed at points where the transportation system provides sufficient flows of grain to satisfy the needs of grain processing and merchandising firms. Terminal markets establish the value of commodities through the forces of supply and demand. The essential requirement needed for a terminal market to survive is a sufficient volume of transactions to accurately value commodities. The terminal market must provide a broad outlet. Any volume offered for sale must be disposed of. Sufficient volumes of specific grades and types of grains must be provided to satisfy the needs of buyers.

In recent years the terminal market has declined in importance. Increased amounts of grain are purchased through methods of procurement which bypass the cash trading floor of the terminal market. These methods of procurement assure even flows of grain of the kind and quality needed. They enable a firm to assure supply of a grain having the grade, quality, and other market factors desired, even when the amount of these grain stocks available on the cash market is insufficient to satisfy needs of terminal buyers. It is unlikely that these advantages will cease to exist in the future; hence, it is unrealistic to expect a decline in the proportion of grains procured by these methods.

Bid sales and purchases will not likely decline as a percentage of total grain sales because of the numerous advantages they provide buyers and sellers. Hence, the proportion of grain sold by these methods would not be consigned for sale over the cash floor of a potential grain market. The increasing amount of grain transported by truck represents a further reduction of grain available at such a market. Therefore, these trends should be carefully considered in making a judgment concerning the desirability of establishing a terminal grain market in North Dakota.

A general comment made by one operator in the country elevator survey was "Why establish a terminal market when the same service is available to me at the Grand Forks hold point?" Put

in perspective, this argument deserves further consideration. Grain held at Jamestown, Grand Forks, Minot, and grain inspected at Fargo is available to prospective buyers. However, purchases by local buyers on the basis of graded samples available at the hold point have accounted for only a small proportion of the volume of grain inspected.

The results of this study indicate that the grain industry would not support the operation of a central cash grain market in the State. It would appear that adequate accessibility could be gained to grain moving out of the State through the existing hold point and inspection services. Changes in patterns of grain flow and changes in other market factors could have a significant impact on the economic aspects of grain storage, processing, and merchandising in the State. If, in the future, changing grain flow patterns place North Dakota locations in a more favorable position, the trade could likely benefit from a market facility located in the State. Increasing westward movement of North Dakota grains through westbound freight rate reductions, continued westward shifts in population, and increased exports through westward ports are factors which, if realized, will change current grain flow patterns. The resulting increase in westward movement of grain would probably make the environment more favorable to the successful operation of a North Dakota market facility.

### **Legislative Recommendation**

Since the establishment of a grain exchange in North Dakota at this time does not seem practicable, it was the opinion of the Committee that refinement of existing services should be attempted. To provide the grain purchaser with information from which to make timely and intelligent decisions, the Committee has recommended a bill which would establish a grain information service. This bill requires the Public Service Commission to survey, each business day, the grain-sampling stations in North Dakota and to make available, to any one who so requests, a report as to the grains available for purchase in North Dakota and the grade and owner or consignee of such grain. This information can be easily gathered by the Public Service Commission through the use of the WATS line.

### **Department of Natural Resources and Conservation**

The Committee completed its study pursuant to House Concurrent Resolution "E-1", directing the Committee to make a study and propose by legislation a Department of Natural Resources and

Conservation composed of the various agencies now separately charged with performing the State governmental functions relating to natural resources, conservation and outdoor recreation. As directed, the Committee reviewed the 1942 Governmental Survey Commission study. This Commission, in publishing its report in 1942, recommended that the then existing separate agencies relating to natural resources and conservation be consolidated into a single department of natural resources and conservation. Since 1942 the State Legislature has added other separate agencies, and some of the agencies existing in 1942 have been repealed. The Committee wrote to the states of Hawaii, Michigan, Missouri, and Wisconsin requesting information from their central conservation departments and overall these states recommended and found that a central department was superior to the separate agency approach used in the past by them. Also, the Committee reviewed the laws of Rhode Island and Indiana, which states had just recently established central departments of natural resources and conservation.

The Committee reviewed the powers and duties of all the existing State agencies to determine which ones could best be combined into a central department. These agencies were determined to be the State Water Conservation Commission, State Game and Fish Department, North Dakota Park Service, State Outdoor Recreation Agency, State Forester, and Soil Conservation Committee. The Committee found that these existing agencies were the most likely to be concerned in a multiple-use project which involved the use of water, land, wildlife, and outdoor recreation facilities. The Committee noted that these departments had cooperated on several multiple-use projects in the past. However, if these agencies were consolidated under the direction of a central department, the State would be more assured that a multiple-use project would be planned to the highest and best uses of all the natural resources involved. It is primarily the Committee's intent in recommending the formation of a central department to have multiple-use projects developed through central coordinating and planning to ensure that every project planned is devoted to its ultimate and best uses. This the Committee believes can best be done by lodging authority in a central department which would have the final decision-making power as to the various uses should any dispute arise between the individual agencies as to which use of any project should prevail over the others, and to ensure that all possibilities of multiple use are fully considered. The head of the central department will have the power to determine whether a project is capable of being used for only one purpose or several purposes. However, each existing agency will

continue to exercise those specific powers and duties or services which are not strictly involved in a multiple-use project, or when economies from joint planning, engineering, operation, or maintenance do not exist.

The bill itself establishes a Department of Natural Resources and Conservation. The Department consists of the Director of the Department, a Deputy Director established and appointed upon the discretion of the Director of the Department who may also double as the head of one of the divisions, and six specific divisions. The divisions consist of existing agencies incorporated into the central department. These divisions are the Water Division which consists of the State Water Conservation Commission; Game and Fish Division which consists of the State Game and Fish Department; Outdoor Recreation Division which consists of the State Outdoor Recreation Agency; Parks Division which consists of the North Dakota State Park Service; Forestry Division which consists of the State Forester; and the Soil Division which consists of the State Soil Conservation Committee. The bill also allows other divisions to be established by the Director of the Department if in his discretion it is deemed necessary to carry out the intent of the bill.

The Committee believes there are several specific areas, functions, and services which each agency now performs individually which, under the new organizational structure, could be combined. Some of these areas involve engineering and planning, maintenance equipment, and personnel. In the planning area there are undoubtedly many planning functions which are similar and basic to such planning and which are now performed separately by each agency or, if not, must still be brought together, especially when there is a multiple-use project being planned. The personnel involved might well be brought together in one central coordinated planning group or planning division, with each person contributing to the overall plan his special knowledge or skill of the particular subject matter. Most of the existing agencies have equipment and other material to carry out or maintain their specific projects which, if centrally coordinated, should allow the separate divisions to perform the particular work of the other division. This could save costs of additional equipment, costs of transportation of equipment from one area to another about the State, and travel time and costs of operating and maintenance personnel. In fact, it might be found that all equipment necessary for construction and maintenance which each agency now possesses could be combined together in one division to jointly serve all divisions. Personnel who perform related functions or have special professional

skills might economically serve more than one division. This might well reduce total future personnel requirements, or permit greater utilization of professional qualifications of personnel, since by serving more than one division a person could be kept more continuously employed in his area of special skill or training.

The Director of the Department would be appointed by the Governor by and with the consent of the Senate. The Director serves at the pleasure of the Governor. The Director's powers and duties consist of the authority to consolidate, integrate, assign and reassign, with the approval of the Governor, all related or like functions or services performed by more than one division to a single division; general supervision over all divisions to ensure that each division is carrying out its responsibilities established by law; to approve any projects which may involve more than one specific use; general powers and duties relating to departmental level problems; and to exercise all the express and implied powers and authority that may be necessary to carry out the intent and purposes of the bill.

The division Directors would be appointed by the Director of the Department, however. Each Director of a division will be the chief administrative officer of each of the existing agencies incorporated in the Department and made a division. In other words the State Engineer will become the Director of the Water Division, and he will be appointed by the Director of the Department and not by the State Water Conservation Commission who presently appoints the State Engineer. This procedure holds true for the rest of the Directors of the divisions, except the Forestry Division. The President of the School of Forestry, who is appointed by the Board of Higher Education, is ex officio State Forester.

Each Director of a division will continue to exercise those powers and duties now set forth in the law for each of the existing agencies as incorporated into the department, except those powers and duties which may specifically or generally be in conflict with any of the powers and duties lodged in the Department of Natural Resources and Conservation, or which may be preempted by any administrative decision made by the Director of the Department necessary to carry out the intent and purposes of the law in regard to the Department as a whole. This limiting provision has been placed in the law of each of the existing agencies. Each of the commissions, agencies, and departments will continue to exercise their separate jurisdictional powers and the powers and duties lodged in them except, again, when to do so would be contrary to the intent

and purposes of the powers and duties of the Department.

### **Miscellaneous Recommendations**

Certain problems brought to the attention of the Committee did not properly fall under any of the categories previously discussed. Among these problems are the constant destruction of prehistoric sites and deposits and the inavailability of funds, under the Bureau of Outdoor Recreation programs, to construct weather-protective recreational facilities.

Representatives of the State Historical Society appeared before the Committee and explained that the State is having a tremendous amount of difficulty with out-of-State amateur explorers coming into North Dakota and excavating historical sites in an indiscriminate manner so as to destroy any possibility of future explorations and the procurement of scientific information. In an attempt to protect prehistoric sites and deposits, the Committee has recommended a bill which would give the State Historical Board some discretion in the issuance of licenses to investigate or excavate prehistorical sites. When the prehistoric or historic sites or deposits are located on land owned by any instrumentality of the State, a permit will not be issued until the applicant has agreed to deliver to the State Historical Society all the materials of a useful nature found and removed from the land. In all cases, however, a permit will not be granted until the applicant has agreed to deliver to the

State Historical Society all maps, notes, and photographs pertinent to the proposed explorations. Such an individual is also required to make a preliminary report not more than six months subsequent to the initiation of operations and a final report not more than sixteen months after completion of the investigation. This bill also provides for a permit to explore private land not owned by the applicant. The landowner may, of course, refuse to allow anyone to conduct such operations on his land, and he may personally excavate and explore sites or deposits on his own land without a permit from the State Historical Society.

The Bureau of Outdoor Recreation provides Federal funds to various political subdivisions for the construction of recreational facilities. This program does not, however, take into consideration the fact that the northern tier of states has a very limited number of months each year in which to take advantage of outdoor recreational facilities. There are many recreational activities which require protection from the winter weather experienced in these states if participation is to continue the year around. For these reasons, the Committee has recommended a resolution urging the Bureau of Outdoor Recreation and the congressional delegation of North Dakota to advocate for the inclusion of provisions within the Land, Water, and Conservation Fund Act which would make possible the construction of weather-protective buildings specifically equipped to provide year around indoor recreation activities free from uncertain weather conditions.

# TAXATION

House Concurrent Resolution "P-1" directed the Legislative Research Committee to study the real estate transaction and related taxes now in effect in other states to determine their suitability for adoption in North Dakota. This resolution also directed the Legislative Research Committee to study and review problems of replacement of personal property tax revenues.

These studies were assigned to the Subcommittee on Taxation, consisting of Senators Edwin C. Becker, Chairman, Gail H. Hernett, Donald C. Holand, Iver Solberg, Carroll Torgerson, Grant Trenbeath, Clark Van Horn, and Francis E. Weber; Representatives Richard J. Backes, Eldred N. Dornacker, Milo Knudsen, Arthur A. Link, Henry O. Lundene, Herbert L. Meschke, A. R. Miller, Marlin T. Obie, Leslie C. Powers, Frank Shablow, and Bryce Streibel.

## Real Property Transfer Tax

The Committee was fortunate in obtaining the services of Mr. Charles J. Libera, Director of the Bureau of Business and Economic Research at the University of North Dakota, for the purpose of carrying out research pertaining to real property transfer taxes as employed by the Federal Government and other states. Mr. Libera prepared a very comprehensive report entitled "An Analysis of the Real Property Transfer Tax and Its Applicability to North Dakota" for the use of the Committee. Copies of this report are available in the office of the Legislative Research Committee.

Probably the principal reason why North Dakota and many states are studying and enacting real property transfer taxes at this time, is that the Federal Government has repealed its real property transfer tax (often termed a documentary stamp tax) effective January 1, 1968. The repeal of this Federal tax to a large degree resulted from the efforts of the Advisory Commission on Intergovernmental Relations. This Commission devoted a great deal of study to the Federal real estate transaction tax and came to the conclusion that the imposition of this tax would be better left to the states and local governments.

Several states have already adopted a real estate transfer tax and others are seriously considering such action. Rate structures for those states which are adopting such a tax and those which have had such a tax for some time vary, although the Federal rate of 11¢ per \$100 consider-

ation or value is the rate most commonly employed in the various states. Some states have enacted the real estate transfer tax effective prior to 1968 (thus running simultaneously with the Federal tax), and others have postponed the effective date of the state tax to January 1, 1968, the date upon which the Federal tax expires.

Mr. Libera's report contains much information pertaining to real estate transfer taxes. This report will now attempt to summarize that report in a very brief manner.

The typical realty transfer tax law taxes transfers under all deeds, instruments, or writings by which any land, tenements, or other realty is granted, assigned, transferred, or otherwise conveyed. The person liable for the tax is usually the grantor or conveyor of the realty. The tax is paid at the time the document of transfer is brought to the Register of Deeds or other recording official. The tax is commonly paid by purchasing tax stamps which are affixed to the documents. Some states allow the use of metering machines as an alternative to the use of stamps. One important feature of several of the laws is the provision that the document cannot be registered until the tax is paid.

The Federal tax rate is currently 11¢ per \$100 of the consideration given in the real property sale. Tax rates as employed by various state and local governments range from a low of 10¢ per \$100 value to \$1.00 per \$100 value. Tax rates of 10¢ and 11¢ per \$100 consideration or value are the rates most commonly employed in the various states.

Most of the realty transfer taxes of state and local governments are state taxes; the revenues from the tax accrue to the state government. Several states allow a small portion of the tax collection (usually 1 percent) to remain with the local collecting government to cover costs of collection and administration. Four states have authorized various local governments to impose a realty transfer tax for their own revenue purposes.

The level of the yield of tax collections by any government is dependent upon the tax rate and the size of the tax base. The taxable base for the realty transfer tax is dependent upon 1) The value of the real property in the state adjusted for any exemptions which may be specified, and 2) The turnover rate of the property. Turnover rates of

property tend to be higher in the large urbanized areas.

The low rates which are almost universally employed in this type of real estate transfer tax would be expected to have a negligible effect on the willingness to transfer property or on attempts to evade the tax.

If a tax rate of 11¢ per \$100 is employed in North Dakota, 50 percent of the taxable transactions would require a tax payment of \$17 or less, and 50 percent would require a tax payment of more than \$17. Under this rate 75 percent of all transactions would have a levy of \$25 or less, and 90 percent would have a levy of \$47 or less. It appears the vast majority of tax payments would be under the level of \$200 to \$300 if a tax rate of \$1.00 per \$100 is employed, and under the level of \$25 to \$35 if the tax rate of 11¢ per \$100 is employed.

Two taxable bases can be used for the imposition of the real estate transfer tax. The first is net consideration, and the second is gross consideration. It appears that the gross consideration is preferable. It is specifically noted that in addition to other reasons favoring the gross consideration as found in Mr. Libera's report, the gross consideration has the value of simplifying the administration of the tax, both as a revenue measure and as a source of information. The administrative officials have a simple measure of taxable base in the transfer, and the tax stamps, if used, can provide an adequate estimate of the total value of the real property.

Prospective tax collections in North Dakota at various tax rates for 1965 were estimated at the following levels:

Estimated 1965 Tax Collections		
Tax Rate	Net Consideration as Taxable Base	Gross Consideration as Taxable Base
\$ .11 per \$100	\$ 178,000	\$ 187,000
\$ .50 per \$100	\$ 807,000	\$ 847,000
\$1.00 per \$100	\$1,614,000	\$1,695,000

It was mentioned earlier that a tax rate of 11¢ per \$100 consideration or value is the rate most commonly employed in the various states. At this rate level, the tax would generate comparatively low yields — an 11¢ per \$100 rate would yield tax collections of about .2 percent of total North Dakota state tax collections in 1965. Higher tax rates, of course, generate higher taxes. A tax of \$1.00 per \$100 consideration would have brought in collections representing about 2.0 percent of 1965 total state tax collections.

A large share of the tax collections would come from the larger counties. The largest five counties out of the total of fifty-three would generate about a third of all revenues. The largest ten would generate approximately half of all collections.

A real property transfer tax has the disadvantage of a relatively high variability in total yield, due primarily to the irregularity of turnover. For the five states where comparisons could be made, the variability in real property transfer tax collections exceeded that of other types of taxes. However, this factor must be considered as of secondary importance because the tax is a relatively minor source of tax revenue in the total tax picture. The evidence also indicates that the overall average annual increase in tax revenues from this source has been somewhat less than the increase in total state taxes for states using the real property transfer tax.

There is considerable variation in the level of tax rates levied by the various states. The rates have been summarized in the following table, which is a tabulation of the frequency with which each tax rate is levied. For ease of comparison, the rates are all expressed in terms of the rate per \$100 of consideration. The rates range from 10¢ to \$2.00 per \$100 value. The heaviest concentration occurs toward the lower rates; seven states tax at 10¢ or 11¢ per \$100.

**Frequency Distribution of State Tax Rates  
on Real Property Transfers Per \$100  
January 1, 1966**

Tax Rate	No. of States
\$ .10	2
\$ .11	5
\$ .15	2
\$ .20	1
\$ .22	1
\$ .30	1
\$ .50	1
\$1.00	2
\$2.00	1

Although it is difficult to make solid statements about a "trend" in the tax rates used by the states, it is true that there is at least a slight tendency for states which have inaugurated their taxes in the more recent years to have the higher tax rates.

The "trend" is based upon the fact that since

1950 three states and the District of Columbia have adopted the tax at a rate higher than the historical average. (Pennsylvania and Delaware have a 1 percent rate, the District of Columbia has a .5 percent rate, and West Virginia has a rate of 22c per \$100.) Recently employed levies by local governments have also been at the higher end of the scale. For example, since the 1951 authorization, Pennsylvania local governments have generally levied a .5 percent or a 1 percent rate. Wilmington, Delaware, was recently authorized to impose a 1 percent rate. The levy in half of the Maryland counties has been increased generally from 55¢ to \$1.10 per \$500, although the rate in a few counties is even higher.

Since North Dakota can profitably use this new source of revenue and since the information provided by the tax is of vital importance to effective assessment administration at both the State and local governmental levels, it is recommended that the State adopt a real property transaction tax to take effect on January 1, 1968, when the Federal documentary tax is eliminated.

The Committee is submitting a bill draft which provides for a tax of 10¢ per \$100 of consideration, including assumed mortgages, when such consideration exceeds \$100. The amount of tax levied was changed from the Federal rate of 11¢ per \$100 of consideration to 10¢ per \$100 of consideration for the purpose of simplification. It is realized that the Act will not generate a great deal of revenue since something less than \$187,000 per year is estimated, but the principal purpose of the bill is the information which will be yielded for assessment purposes.

The tax will be collected at the time the real estate instrument is offered for recordation and will be collected by the county Register of Deeds. The revenue received is designated for deposit in the State General Fund. Specifically exempt are transactions to governmental entities; transactions to provide or release security for a debt or obligation; transactions to correct or supplement a previous transaction; transactions between husband and wife, or parent and child, without actual consideration; transactions for delinquent taxes; transactions for partition; transactions within corporate bodies, and transactions for the purpose of making a gift. It is also provided that all transactions upon which a Federal tax is imposed are exempt. This means that the North Dakota Act would become effective at the same time as the Federal Act expires.

The real estate transfer tax is not designed primarily for the purpose of raising revenue. Both State and local officials in the property assess-

ment field urge the enactment of this type of Act in order that they might make use of the information gained in the assessment of real property. Although representatives of the real estate industry contend that such information is not completely valid, the Committee members feel that such information is very useful when a large number of transactions are examined and consideration is given to the type of transactions involved.

### **Replacement of Personal Property Tax Revenues**

The Committee was directed to study and review problems of replacement of personal property tax revenues. Although the Committee did not find the opportunity to study replacement revenues in detail, it did study in detail a system used in several of the Canadian provinces which can probably best be described as an "in lieu" tax for the replacement of the tax on retail inventories and fixtures. Hereafter, this tax will be referred to as "the Canadian business tax."

Mr. Thomas K. Ostenson, Assistant Professor of Agricultural Economics at North Dakota State University, presented a detailed report to the Committee which outlined the Canadian business tax and how it is applied in the various Canadian provinces in which it has been implemented. Mr. Ostenson had been requested by the Committee to prepare this report and in carrying out this request visited Canada and consulted with many Canadian tax experts. Copies of this report and other preliminary reports are on file in the office of the Legislative Research Committee.

Basically, the Canadian business tax is a municipal tax on business as a supplement to the tax on real property. Assessment and levy of the business tax is computed on one of the following bases:

1. The area of the premises;
2. A fraction of the real property assessment;  
or
3. The annual rental value of the property.

The liability for the tax is on the person (individual or corporate) conducting the business and does not become a lien upon the land or buildings occupied. Adoption of a "municipal business tax" ordinance excludes the municipality from any taxation of personal property used in connection with enterprise subject to the business tax. Tax rates may be uniform or they may be graduated and vary according to type or classification of the busi-

ness as provided in the respective municipal ordinances. The purpose of the business tax is to provide a source of revenue for local city or village government. Business tax assessments are not included in the base for school tax levies and, thus, the business taxes paid and benefits received are closely related. This relationship tends to minimize the effect of inequities that may be present in the business tax.

The Canadian business tax was considered by the Committee as a possible replacement tax for the personal property tax on business inventories. Members of the Greater North Dakota Association's Tax Committee also studied this tax at the request of the Committee and visited with Canadian businessmen and tax officials for the purpose of determining whether such a tax might be recommended for use in North Dakota. The Tax Committee of the Greater North Dakota Association did not recommend such a tax for use in North Dakota. The Committee felt that without the support of the business interests in the State, any affirmative action that it might take in regard to the Canadian business tax would not be fruitful. Therefore, consideration of the Canadian business tax was indefinitely postponed.

In reviewing possible tax replacement plans, the Committee received a report from Mr. Thomas K. Ostenson suggesting a possible course of action if the personal property tax should be repealed. Briefly, this replacement program provides that all replacement revenue be allocated to the school districts through legislative appropriation. The amount received by the schools would be equal to the amount of personal property taxes levied by all local governmental units. This would mean that the amount of replacement revenue allocated to the school districts would exceed what they had previously received from personal property taxes. Consequently, tax levies on real property for school purposes could be reduced in corresponding amounts by reducing statutory mill levies. Counties, townships, municipalities, and other special districts would receive no personal property tax replacement revenue from State sources. Therefore, these governmental units could be allowed to increase their real property tax levies by an amount equal to the reduction in school levies. A more detailed explanation of this plan is on file in the office of the Legislative Research Committee.

The Committee is of the opinion that if a replacement program is going to be enacted in the future it should first be determined upon whom the present burden of taxes falls. It is generally conceded that if a replacement program is enacted, there will be some shifting of taxes and their bur-

dens. Therefore, the present burden of taxes should be determined. While the Committee was limited in time and resources as far as studying upon whom the tax burden falls, it did review past studies made in the property, sales, and income tax fields in an effort to arrive at some general conclusions as to who pays what taxes and who receives what benefits. A memorandum concerning the impact of sales and property taxes was prepared for and reviewed by the Committee. The State Tax Department was very cooperative in providing the Committee with information showing the impact of the income tax upon various occupational and income groups within selected counties in North Dakota. This type of information had not been compiled before by the Tax Department and did require a great amount of work. In the future such information will be developed for all counties in the State and should be available before the next legislative session. The Committee is of the opinion that the compiling of more of this type of information will aid the Legislative Assembly in arriving at more concrete and justifiable tax programs, and it is recommended that this type of information continue to be compiled by the Tax Department so that tax programs can be formulated based upon factual and reliable information.

#### Other Areas of Study

The Committee did consider several other matters within the taxation field. A program in which a high degree of interest has been exhibited in other states is that of providing property tax relief to elderly persons with minimal incomes. A memorandum prepared for the use of the Committee was prepared and is on file in the office of the Legislative Research Committee. This memorandum points out that about one-half of the states have considered tax relief programs for the elderly up to this time. Three principal forms of property tax relief have emerged. They are: tax exemption, tax deferment, and tax credit. Twelve states have enacted property tax concessions for the elderly, the most common form being that of tax exemption. In order to be eligible for property tax relief certain limitations are generally provided, the two most common being income limitations and exemption limitations. It was generally agreed that in many instances constitutional restrictions probably are the first considerations to be studied in developing any property tax relief program for the elderly. In North Dakota it would appear that strict attention should be given to the Constitution before any such plan is undertaken.

Another area of study that the Committee found worthy of serious consideration is the prob-

lem of abandoned property. North Dakota has several statutes concerning abandoned property although some of them appear to be contradictory and constitutionally questionable. Many states are now enacting abandoned property statutes which enable a state to claim funds located within and outside the state. These statutes have been held to be constitutionally valid. It appears that North Dakota could lose a fairly large amount of abandoned property unless it enacts an Abandoned Property Act in the future. There are many different types of abandoned property which would fall within the provisions of an Abandoned Property Act. Property such as ownerless shares of corporations, business funds unclaimed, mineral royalties and rents unclaimed by the owner, heirless property, undeliverable public utility deposits and funds, inactive savings and checking accounts, money orders, unclaimed insurance benefits, and unclaimed refunds might well be claimed by other states with an Abandoned Property Act unless North Dakota acts within the near future.

Since an Abandoned Property Act affects a fairly large number of businesses and the time of the Committee was limited, it was decided that no action should be taken in this field by the Committee during the present biennium. The Committee is of the opinion, however, that attention should be given to an Abandoned Property Act during the next biennium when all businesses that might be affected would have an opportunity to consider the ramifications of such an Act and present their viewpoints. A memorandum on Abandoned Property Acts and a bill draft providing for an Abandoned Property Act are on file in the office of the Legislative Research Committee.

The Committee is of the opinion that improvements in property taxes levied by North Dakota should be considered. For instance, in the property tax field consideration should be given to self-listing of personal property, mandatory county supervisors of assessments, improved use of the sales ratio studies, uniform methods of valuation, and use of the soil classification study. In regard to the soil classification study, the Committee believes that the progress made by personnel at North Dakota State University will make such study very useful in more accurate assessment of

farm lands in the very near future. A report given to the Committee indicated that all 53 counties and the townships found in such counties will be classified within one year. A report available to the public will be forthcoming within a year. The Committee urges that use be made of the soil classification study in the equalization of assessments between assessment districts as soon as possible.

**Source Material Studied by the  
Legislative Research Committee  
Pertaining to Personal Property Taxation**

1. Legislative Research Committee Report of 1949 commencing on page 46 (House Bill No. 3) and terminating on page 47.
2. Legislative Research Committee Report of 1957 commencing on page 40, second column, first paragraph, and terminating on page 44.
3. Legislative Research Committee Report of 1961 commencing on page 73 and terminating on page 74. Also the summary of the Koenker-Fisher Report to the Legislative Research Committee commencing on page 135, second column, continuing through the second column on page 136, and recommendation number 2 on page 139.
4. Legislative Research Committee Report of 1963 commencing with the first paragraph in the first column on page 65 and continuing through the paragraph ending in the second column on page 65. Also the material found in the same report commencing on page 68, second column under the subtitle "The Assessment of Real and Personal Property at a Definite Percentage of Market Value" and ending in the middle of the first column on page 69.
5. Legislative Research Committee Report of 1965 commencing with the last paragraph in the first column on page 142 and terminating on page 144.

# TRANSPORTATION

Senate Concurrent Resolution "Q" of the Thirty-ninth Legislative Assembly directed the Legislative Research Committee, with the cooperation of the State Highway Department, to study the highway safety problems of North Dakota. This study was assigned to the Subcommittee on Transportation, consisting of Senators Bronald Thompson, Chairman, Leonard A. Bopp, Walter Dahlund, Richard E. Forkner, Donald C. Holand, Ludger Kadlec, A. W. Luick, and Emil T. Nelson; Representatives Harry Bergman, Donald Giffey, Olaf Opedahl, Robert L. Schoenwald, Kenneth Tweten, and Ralph M. Winge (Chairman after resignation of Senator Thompson).

The resolution directing the study reads as follows:

## Senate Concurrent Resolution "Q"

### LRC Study of Highway Safety Problems

A concurrent resolution directing the legislative research committee to carry out a comprehensive study of highway safety problems.

WHEREAS, highway accidents have been steadily increasing in the state of North Dakota, and the past two years have brought the highest toll of highway fatalities in the history of the state with property losses totaling millions of dollars and causing immeasurable human suffering; and

WHEREAS, certain states which carry on an active accident prevention program in the fields of highway engineering, enforcement, and public education have consistently maintained low accident rates and have thereby proven that the yearly increase in the death toll upon the highways is not necessary and that accident rates can be lowered; and

WHEREAS, the state highway department and certain traffic safety organizations, such as the Automotive Safety Foundation and the Insurance Institute for Highway Safety, are available to provide information and assistance in studying the prevention of accidents and problems of highway safety;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the legislative research committee, with the cooperation of the state highway department, carry on a comprehensive study of highway safety problems in the state of North Dakota and solicit the assistance of the Automotive Safety Foundation and the Insurance Institute for Highway Safety during such study and such committee shall report its recommendations to the Fortieth Legislative Assembly, together with suitable legislation to carry out such recommendations.

### Structure, Composition and Direction of Study

The problem of highway safety is complex in nature and broad in scope. With this in mind, the study was divided into five parts, each representing a function of State government that is vitally concerned with highway safety. These five functions are:

1. Accident Reporting and Records;
2. Driver Education;
3. Driver Licensing;
4. Highway Patrol Supervision and Services; and
5. Highway Traffic Operations and Services.

Because traffic safety is a major concern of the people of North Dakota, citizen study groups were formed to assist the Subcommittee on Transportation in the examination of these five functions. More than 140 citizens participated as members of the various study groups. The initial functions of the Subcommittee and study groups were to determine the present and future needs of the various departments in the field of highway safety and to project a tableau of recommendations so as to be able to meet these present and future needs. The citizen members represented business and industry, education, law enforcement, agriculture, the professions, and other interested groups throughout the State.

The study was initiated by the gathering of facts. This step was the responsibility of the administrative officials who were particularly concerned with this project — the administrative officials of the Highway Department, Highway Patrol, and the Department of Public Instruction. Pursuant to the directive contained in Senate Concurrent Resolution "Q", the professional services of

the Automotive Safety Foundation were procured. The principal duties of this agency were to assist in analyzing the materials which were produced by the various departments, to provide information concerning highway safety on the national level, to organize the facts and materials gathered, and to make recommendations therefrom concerning highway safety in North Dakota.

The endeavors of the Subcommittee and the five citizen study groups culminated in the production of technical reports for each of the functions involved in the study. These reports contained a number of recommendations which were then considered by the Committee for possible legislative action. There were a number of these recommendations, however, which necessitated only administrative action. Throughout the entire study, emphasis was placed on long-range objectives as well as immediate needs so that North Dakota's traffic safety problems would be met with a systematic plan of attack. In addition to the technical reports, a summary report of all five functions was prepared for the Committee. This report emphasized the recommendations contained in the technical reports which were thought to be of primary importance. Copies of the technical report are available on a loan basis from the offices of the Legislative Research Committee. Copies of the summary report are available in the offices of the Legislative Research Committee for distribution to interested parties.

A matter of primary interest to the Committee was the action taken by Congress. Under the Federal Highway Safety Act of 1966, each state is required to have a traffic safety program approved by the Secretary of Commerce. Among other things, the Act requires the Secretary to promulgate safety standards, and also provides for Federal-aid funds on a matching basis to assist states in upgrading their programs.

A pertinent section of the Act provides that:

“(a) Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Such programs shall be in accordance with uniform standards promulgated by the Secretary. Such uniform standards shall be expressed in terms of performance criteria. Such uniform standards shall be promulgated by the Secretary so as to improve driver performance (including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles, driver examinations (both physical and mental) and driver licensing) and to improve pedestrian perform-

ance. In addition such uniform standards shall include, but not be limited to, provisions for an effective record system of accidents (including injuries and deaths resulting therefrom), accident investigations to determine the probable causes of accidents, injuries, and deaths, vehicle registration, operation, and inspection, highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic for detection and correction of high or potentially high accident locations, and emergency services . . .”

While the technical reports of the study project were completed before the final passage of this Act, the study participants were cognizant of its content and geared the study effort to meeting the requirements of this legislation.

### **Basic Problem**

Motor vehicle accidents result in a tremendous monetary loss to the state of North Dakota. This loss is reflected in the deaths, personal injuries, and property damage that is a direct consequence of these motor vehicle accidents. As a measure of these losses, the following illustration should demonstrate the significance accidents bear to the health and welfare of the people of North Dakota. During the first six months of 1963, in Burleigh County, 1,037 traffic accidents occurred, resulting in property damage totaling \$984,855. This does not include any monetary consideration for the five deaths or 179 personal injuries precipitated by these accidents. As concerns the State, 20,269 accident files were submitted to the Safety Responsibility Division during 1965. These files indicated 4,292 persons injured, 161 persons killed, and a monetary loss of \$35,809,000. This averages out to over \$100 per licensed driver. To express these facts in another manner, these accident files also indicate that one accident occurs every 26 minutes, that one person is injured every two hours, and that one person is killed every two days. These are startling figures which the citizens of North Dakota cannot afford to ignore. To date, 1966 has proved to be a year of even more traffic fatalities. As of November 1, 172 persons had been killed on our highways. This compares with 136 traffic fatalities for the first 10 months of 1965. If this pace continues, North Dakota will experience its worst traffic fatality year on record, with a projected 200 or more deaths.

### **Accident Reporting and Records**

#### **Introduction**

The accumulated knowledge of past accident experience is the factual basis of most traffic safe-

ty programs. Experience is an indicator that a problem exists. When accident problems are defined accurately, corrective measures may be taken to eliminate the trouble, and thereby reduce future accidents. This is the basic concept of an accident prevention program. The recommendations contained herein are intended to assure that North Dakota has such an accident record system tailored to fully meet its needs.

Accident problems are complex and difficult to define. The definition may include a single driver or a group of drivers; a driver's mental attitude or inability; a particular road location or poor design geometrics; a blown-out tire or a mechanical failure; or a combination of many factors. Whatever the specific problem, the indication of its existence must originate from the written record of accident reports. Accidents which have been reported are just as valueless as unreported accidents if the facts are not followed through into a bank of accumulated knowledge of accident experience available for use to correct deficiencies. Therefore, a procedure for the systematic collection, assembly, analysis, and use of road traffic accident events is essential to traffic safety programs. That which is collected must be assembled, analyzed, and above all, used.

The accident records function is not an operational user of traffic data. Rather, it provides a specialized information service to the operating functions of enforcement, engineering, education, and driver licensing. Therefore, the records must meet the needs of the users who expect accurate, complete, understandable, and timely information. When used with recorded road traffic information to shape operational traffic safety programs, the record also measures the effectiveness of executed programs. This "before and after" feature provides a means to predict expected results. Values can be assigned to alternate program proposals which will give the State an effective directed attack on highway safety problems.

### **Evolution of Accident Reporting**

The recording of road traffic accidents is not a new concept although the uses and methods of accumulating data are spasmodically reviewed and modernized. The first recorded traffic accident in the United States appeared on a New York police blotter in 1896 when a Duryea Motor Wagon driven by Mr. Henry Wells collided with Miss Evelyn Thomas, a bicycle rider, on Broadway in midtown New York. From that first accident in 1922, accidents were recorded in various forms on police blotters, death certificates, and newspaper reports. The first accident reporting law in North Dakota was passed in 1927. One person was employed to

administer the law. Substantive changes and amendments in the accident reporting law have been made in 1943, 1947, 1955, 1963, and 1965. Perhaps one of the more significant changes was made in 1947 when the Legislature enacted the major portion of the Uniform Vehicle Code, which is a model law, and provided laws governing financial responsibility and the reporting of accidents. At this time the Highway Commissioner was designated as the administrator of the financial responsibility statutes. The collateral effect of the financial responsibility statutes and the accident reporting laws has had an additional effect in safety programs in that they cause the motorist to carry insurance or other forms of security that would provide relief for the injured party. Failure to have insurance or other security to cover damages results in the suspension of the individual's driving privileges. Logically, it would seem that the loss of the driving privilege or the potential loss of the driving privilege has been and still is a deterrent that will keep some undesirable drivers off the highways, thus benefiting the safety of others. It should not be inferred from these references to the financial responsibility statutes that money compensates for the loss of life or limb. It is the only standard available for the measurement of such losses.

### **Criteria For Accident Records System**

The effectiveness of the traffic accident record system must be measured by its ability to meet the needs of those agencies responsible for traffic safety activities. Each such agency has different needs which fall into the following general categories:

1. **Completeness**
2. **Accuracy**
3. **Comprehension**
4. **Timeliness**
5. **Efficiency**

### **Evaluation and Recommendations**

1. **Completeness**

North Dakota statutes covering the reporting and investigation of accidents are inconsistent with nationally accepted standards as concerns the degree of confidentiality of police reports. Some concern has existed that providing greater accessibility to the police accident report would make administration of

this function more difficult. It is proper, however, to attempt to meet all legitimate needs for information by individual citizens as well as official agencies. It also is reasonable to expect that the added costs to provide this individual service will be borne by the recipient.

To correct this deficiency, the Committee has recommended a bill which would remove the cloud of confidentiality from all but the investigating officer's report, except portions relating to the officer's opinion. In addition, this bill establishes a service charge for accident reports and driver record abstracts commensurate with the cost of providing these services to the public.

Current practice in North Dakota is to enter into the machine processing system only those accidents investigated and reported by police agencies. This results in an estimated 10 percent of all accidents known to the State being omitted from statistical summaries and consequently these statistics are unavailable to uses other than financial responsibility. Many of these non-police reported accidents are minor and possibly fall below the compulsory reporting limit of \$50. That, however, is not assured and, furthermore, even minor accidents can yield clues to needed safety improvements.

The State follows the practice of inserting in the record system all police reported accidents including those below the \$50 legal reporting limit. Although this should be continued, the Committee felt that tabulations intended for use in comparisons between North Dakota and other jurisdictions or for forwarding to a national record center should either segregate out and omit those accidents below \$50 or clearly label such to show that they are included.

Although there is every indication that reporting practices in North Dakota are good by national comparison, not all local jurisdictions comply fully with the requirements of the North Dakota Century Code (section 39-08-10) to forward police reports to the Commissioner. This lack of complete uniformity reduces effectiveness of the record system. The Committee felt that the State should regularly check on the completeness of police reporting from all jurisdictions and encourage local cooperation. Where major deficiencies persist, this matter should be called to the attention of involved officials and the appropriate legislative committee. The State should

establish a minimum goal that every accident involving a death, personal injury, or rendering a vehicle inoperable under its own power be investigated by a police agency and reported by them to the State. If voluntary compliance does not meet this minimum standard, consideration should be given to strengthening statutory requirements.

## 2. Accuracy

North Dakota provides standard forms for driver and police reporting of accidents, and an aggressive training program in use of these forms is carried out for both State and local police officers. One particular problem is the difficulty of accurately describing accident location on rural highways and freeways. Although precise location identification is not essential to all uses of accident information, it is a prime requisite to determining and correcting engineering deficiencies. The Traffic Accident Data Committee of the National Safety Council has recommended that accident location be established to the nearest 1/10 mile in rural areas and to the nearest 100 feet in urban areas and in the vicinity of intersections and interchanges.

The present system of describing the location of rural accidents relies on investigating officers using maps (supplied by the Highway Department Planning and Research Division) which show "control section" boundaries for State highways and public land survey designations for county roads. In the near future, additional aids will be available on interstate freeways in the form of milepost markers. This device has been adopted as a national standard for interstate freeways because of their particular characteristics and the need of location identification for multiple purposes: accident location, maintenance records, motorist orientation, and emergency services to distressed motorists. Since a location identification system serves purposes other than accident location identification, a more comprehensive discussion of this problem is contained in that portion of the report devoted to the function of Highway Traffic Operations and Services.

## 3. Comprehension

The Department currently prepares annual summaries of the State's traffic accident experience following nationally accepted formats. There has, however, been a very limited use of special reports tailored to meet the needs of the Legislature, engineering, police, education, and local units of govern-

ment. This has been due partly to a serious shortage of personnel and equipment time available for this purpose. Partly, however, it must be charged to a breakdown in communications between the records unit and those whom the record system should be serving. This is certainly not an uncommon failing. Quoting the President's Committee for Traffic Safety: "In all too many instances, accident records have been compiled and maintained as records rather than as aids to the prevention of traffic accidents".

More clerks and inanimate machines will not, alone, bring needed improvements in system usefulness. The system should have a manager, trained in traffic accident data uses and in data processing and statistical techniques. This manager should not be confined to constant daily supervision of the personnel and operations. His principal task would be to assure that routine reports are made and special studies undertaken to fully service the needs of all user agencies.

With this in mind, the Committee went on record urging the Highway Department to include in its budget an amount sufficient to provide for a Manager of the Accidents Records System. The System Manager should be trained in traffic accident data uses, data processing, and statistical techniques. He would not be confined only to constant daily supervision of personnel and operations. His principal task would be to assure that routine reports are made and special studies undertaken to fully service the needs of all user agencies. To assist him in this task it is essential that continued good communications exist with all agencies which use accident records and analyses. The System Manager would assist in the preparation and the revision of driver and police reporting forms and would provide instructions and definitions for their use. He would suggest and plan research projects and special studies and evaluate periodic checks of system accuracy including completeness and accuracy of input data. Finally, he would help obtain the cooperation and support of other governmental units in the accident reporting and records system.

#### 4. Timeliness

Traffic accident records should function to alert and trigger official action when a dangerous situation exists. Engineering, as an example, follows up and inspects the site of every fatal accident on the State system to assure that no physical faults remain uncorrected.

This desirable practice should be expanded to include all serious accidents and to other highway systems as well (see Highway Traffic Operations and Services report). This activity is most productive if the knowledge of accidents gets to responsible officials with minimum delays. Modern selective enforcement procedures used by the Highway Patrol assign manpower to fit patterns of time, location, and circumstances which are causing accidents. This cannot reach maximum effectiveness if accident information is months out of date. A time lag of approximately one month from the date of accident occurrence to the availability of group statistics reflecting that accident meets the reported needs of most user groups. Such summaries should be in the form and contain the information required by that user. Serious delays in processing accident records in North Dakota have existed and continue to exist. The backlog has, in recent months, been creeping toward 60 days. This is a particularly critical time period since the Financial Responsibility statutes of the State require that drivers involved in accidents be notified of State actions within this period.

If the accident record function in North Dakota is to meet statutory requirements, be expanded in concept and functions as outlined herein, and accommodate expected growth in population and travel over the next ten years, added resources must be provided.

Since the transition to a more fully computerized system is assured but will not take place immediately, the Committee has gone on record urging the Highway Department to include in its budget an amount sufficient to provide for additional personnel to meet the interim needs until the new computer facilities are available. A detailed breakdown of the positions to be filled appears in the technical report on Accident Records and Reporting.

#### 5. Efficiency

If an accident reporting system does not fully meet the needs of all users, those not served must either make decisions in the absence of full information or establish a duplicating means of obtaining the information. Either course gives rise to inefficiencies. A major element of this is the need of local governments to have factual basis for their accident prevention programs in enforcement, engineering, and education. A single, integrated system meeting all information needs is the only reasonable goal for North Dakota.

In most instances, limited resources of local units will prescribe that the State assume all responsibility for processing data and providing meaningful output reports. This need not automatically be the case for the larger cities in which the city might establish a sub-system (with State assistance) serving its own requirements and, at the same time, feeding needed data to the State in the most usable form. The exact arrangement would be worked out individually with the responsible local officials.

Just as local needs must be considered, so must the proper needs for accident information on a national level. Each State is a subdivision and contributor to this national record system. The current inquiries by Congress and other national groups have demonstrated serious weaknesses in this system as it is now constituted: non-comparable reporting methods, incomplete identification of involved persons, and a general lack of assurance of completeness of total figures. It is reasonable to expect that a completely revised and more centralized national traffic accident data center will emerge within the next few years. North Dakota should be prepared to fully cooperate in this effort. To facilitate complete cooperation with such a center, the Committee has provided in the bill pertaining to accident records and reporting a provision which would remove any legal impediment to the forwarding of accident information to a national traffic accident data center.

## **Driver Education**

### **Introduction**

Graduates of approved driver education courses have fewer traffic accidents and fewer traffic law violations than untrained drivers. That means they are better drivers in terms of their personal safety and the safety and welfare of the public at large. In 1947 North Dakota gave statewide recognition to the potential of high school driver education as a means of preparing young people to operate motor vehicles on the roads and streets of our State. In that year the State Superintendent of Public Instruction included a classroom course for driver education in the high school curriculum by regulation through the authority granted him under State law.

During the intervening two decades progress in the extension of high school driver education has been made in North Dakota. All of the State's 200 high schools offer the minimum required classroom work to all students prior to graduation.

However, this study revealed that during the 1964-65 school year 119 high schools did not have a minimum qualified driver education instructor, and only 90 of the high schools offered a course consisting of 30 hours of classroom and six hours of behind-the-wheel instruction, in keeping with nationally recommended minimum standards. Approximately one-fourth of the State's eligible students received both the 30-hour classroom and six-hour behind-the-wheel instruction. Nearly 150 schools provided classroom instruction of 30 hours or less.

This falls short of meeting one of the objectives of a comprehensive and inclusive statewide program which would put an approved driver education course within reach of every eligible high school student. The program, to reach all of those who could profitably be reached in terms of their own and the public's safety, also should make provision for high school dropouts and for older persons who wish to participate in a driver preparation course as part of an adult education program. Additionally, there is a need to reach errant licensed drivers through properly qualified driver improvement schools. These are the goals of a comprehensive program. Practical considerations doubtless will prevent our realizing it on a 100 percent basis.

### **Financing Driver Education**

The approximate cost to a school for preparing a student in a minimum 30-hour classroom and six-hour behind-the-wheel course is forty dollars. There is a long-established tradition in North Dakota of local management and local financing of public education. In keeping with this practice, high school driver education should be financed out of local school district funds, to the fullest practical extent. At the same time, the people recognize that driver education is the one course in the high school curriculum that has a direct bearing on the safety of each and every one who uses North Dakota's roads and streets, either as a driver, a passenger or as a pedestrian. That is to say, the effectiveness of the driver education program has a profound impact on the public safety and well-being. Accordingly, its importance is statewide and transcends the boundaries of the local school districts. Thus, unless local school district funds are adequate to provide a driver education course meeting approved standards, supplemental financial assistance is essential if the requirements of public safety are to be met. It is in keeping with these considerations that legislation has been prepared which would provide a State-aid program for high schools offering a complete driver education program. This legislation provides that each State-supported high school maintaining a driver education program approved by

the Department of Public Instruction would be paid ten dollars per student per year for each full-time high school student enrolled in the driver education program. This bill draft also gives the Department of Public Instruction the authority to establish rules and regulations concerning the information and materials to be submitted to the Department prior to the approval of a driver education program. If funds are not sufficient to make the payment of ten dollars per student, the bill provides for a scaled-down pro rata payment.

### **School Curriculums and Teacher Preparation**

Since 1947, when driver education was designated for inclusion in the high school curriculum in North Dakota, the program has been supervised by the Director of Secondary Education as one of the many duties of that official. Today, the scope of the driver education program and its importance to the people of North Dakota is such as to warrant full-time supervision at the State level. This study has disclosed that in the course of the next decade the high school driver education program will reach approximately 115,000 students. This position could be established administratively, subject to the availability of funds. The responsibilities of the Supervisor would entail general administration and supervision of the driver education program, including the conducting of workshops and assisting colleges and universities with driver education teacher preparation courses to assure quality. He would also assist offices within the Department of Public Instruction and other state agencies in administering and advancing driver education and driver improvement programs.

Basic to a driver education program that effectively will meet the needs in North Dakota is a course of instruction that keeps pace with changing conditions and incorporates improved methodology, and a sufficient number of properly qualified driver education teachers. A good curriculum and adequately prepared instructors are requirements that must be met simultaneously. Accordingly, the study disclosed that there was a definite need for the progressive upgrading of high school driver education programs and for the comprehensive preparation of quality high school driver education teachers by North Dakota's colleges and universities. The technical report on Driver Education sets forth in detail the driver education teacher preparation and certification requirements and the role of North Dakota institutions of higher learning in preparing high school driver education teachers.

### **Adult Education and Errant Driver Schools**

High school driver education provides oppor-

tunities for all original driver license applicants to acquire the knowledge and skills necessary to become competent vehicle operators. As noted in the foregoing this involves both the safety of the individual drivers and the safety of highway users at large. Furthermore, in light of its broad concern with the safe use of its roads and streets by all citizens, North Dakota could improve the driving skills and knowledge of its drivers through driver refresher courses. Such courses could be made available through the local school district as part of an adult education program. In addition thereto, the skill of errant drivers could be improved by providing schools for these individuals. Such driver improvement schools should be authorized by the Legislative Assembly. This would clarify sponsorship and the position of official and non-official agencies in the administration of such schools within the State.

## **Driver Licensing**

### **Introduction**

The State has inherent power to enact and administer laws which are designed to promote the welfare of its citizens, and to assure their safety. This is the legal theory and basis for enacting laws governing the licensing of all drivers upon the streets and highways of the State. Historically, this fundamental concept has not always motivated enactment of legislation in this field. Licensing of drivers started out in practice as a form of head tax to raise revenue for the State. But licensing today has achieved substantial maturity. It has become a service function of State government which attempts to assure effective driver control to the end that highway transportation will be safer and more efficient.

### **Organization and Administration**

Authority to administer the North Dakota driver licensing law is vested in the Commissioner of Highways. Administrative costs are paid from the Highway Funds, and license revenues are paid into the State General Fund. Within the Highway Department, the Safety Responsibility Division is charged with the administration of the driver license law. The division concerns itself with the administration of the driver license law with the exception of those activities relating to the actual examination of drivers. This examination function is performed by the Highway Patrol, and includes a road test given to every new applicant for a driver's license. The Division issues the permit which allows the applicant to take the driver examination in the Highway Patrol facility, and upon notice of successful completion of such examination from the Patrol, the Division issues the

license to the applicant. The Highway Patrol gives these examinations, pursuant to a schedule of appointments, in eight district Patrol offices geographically located about the State and reasonably convenient for the applicants. Actual tests are given in all 53 counties. Highway Patrol personnel give these examinations as part of their operational activities, and each Patrolman is required to give examinations to applicants at scheduled times and places. The Patrol trains its personnel to conduct these examinations as part of its overall training program. Further details on the operation of this part of the licensing function are found in the Highway Patrol Supervision and Services technical report. These two separate agencies of state government coordinate their functional activities in the administration of the driver license law, although the giving of examinations is a relatively small part of the overall Highway Patrol function.

### Legislative Recommendations

In 1965, over 350,000 citizens of North Dakota were lawfully licensed to operate more than 406,000 registered motor vehicles of every size, weight, and description. By statute, each of these drivers must possess a valid operator's license, which requires that he meet certain physical requirements, pass a written test which helps the administrator determine that he possesses a certain minimum knowledge of the rules of the road, signs, signals and markings, and such other matters of information which may be germane to the driving task. In addition, each driver must prove his ability to drive a private passenger vehicle by undergoing a road test. Once possessed of an operator's license, the driver can operate any type of vehicle within the State. No special recognition is given to the fact that many of the vehicles operating on the streets and highways of North Dakota are such that their safe operation requires substantially more knowledge, skill, experience, and competence than is required to operate a private passenger vehicle. North Dakota does require that school bus drivers pass an annual physical examination and a special written examination prepared by the Department of Public Instruction. This reflects the special concern of the State in one area. There is no comparable requirement for licensing drivers of other types of vehicles which generally are considered as commercial, such as trucks, truck-tractors and combinations of trucks and tractors, buses and taxicabs.

The official summary of motor vehicle traffic accidents in North Dakota during 1965, which tabulates all legally reportable accidents (involving death, personal injury, or property damage of \$50 or more) indicates that there were a total of 20,269 accidents, which resulted in 161 deaths, 4,292 in-

juries, and 17,302 accidents which resulted in property damage only. These figures do not include accidents either not legally reportable, or not reported for some other reason. Over 12½ percent of these accidents involved the operation of commercial-type vehicles.

The State assumes a two-fold responsibility when it issues a license to drive: it assures the applicant that in fact he is qualified and competent to drive according to the requirements of the State; and it assures the general public that it is acting on their behalf and in their best interest in matters of safety and welfare by reason of licensing only those with proven competence and qualifications for driving. Without official recognition being given to the licensing of drivers who will operate these commercial-type vehicles upon the highways, there is some question as to whether the State is fully meeting its responsibility to the individual and the public.

Therefore, it is incumbent upon North Dakota to develop a program for upgrading its licensing function to reflect the best thinking and available knowledge in its methodology for testing all drivers, whether they will operate passenger cars, buses, trucks of all descriptions, and other passenger-for-hire vehicles. Only in providing the best possible service, within this context, to both the public and the individual citizen, can the State more fully meet its important responsibility. The State must aim toward the licensing of drivers who are better prepared to face the ever-increasing complexity of the driving task. The State must strive towards more adequate standards and criteria in determining the qualifications of applicants for license. The State must provide a better means by which to preclude from the highways of the State those drivers who by their unwillingness, inability or incapacity, cannot meet the State standards which are designed to safeguard both the individual driver and the general public.

There is no need to issue several kinds of certificates to satisfy the needs of operators, school bus drivers, commercial vehicle operators, restricted drivers, or others. One type of certificate can serve all of these needs. In addition to the normal information contained on it regarding the licensed driver, it could contain a statement regarding the type of motor vehicle operation authorized and any restrictions on the operation. This would save on duplication of license certificates for special purposes. Emphasis should be placed on the type of vehicle operation authorized rather than on the category of the driver.

The American Association of Motor Vehicle

Administrators recommends that only one certificate be used, and that it be classified or restricted to the types of vehicles that the holder has demonstrated that he can operate successfully. This classified license system is presently operative in three states: California, Illinois, and New York. Although the American Association of Motor Vehicle Administrators recommends the single classified certificate, and three states presently follow this practice with varying degrees of success, it must be recognized that classification is still in an evolutionary state, and standards for the various classifications have not been developed to the exclusion of continuing research in this area.

After considering all of these factors, the Committee has recommended a bill draft which would provide for a classified driver license for four principal classes of vehicles. To facilitate the smooth implementation of this recommendation, the bill draft also contains a provision providing for the issuance of classified licenses to those individuals who were licensed prior to July 1, 1967, if the applicant provides the driver licensing authorities with a certificate of driving experience issued by an employer of the applicant. North Dakota is primarily an agricultural state. Modern farm machinery has made it possible for one man to farm a large tract of land with only seasonal assistance. Because of the sparse population of North Dakota, teenagers are often used to assist in these seasonal operations. Their duties frequently necessitate the operation of tractors pulling trailers with heavy loads. The bill providing for a classified driver's license precludes individuals under the age of 18 from procuring a class 1 or 2 license. This would preclude them from operating such vehicles. To bypass this obstacle, the operation of these types of vehicles was placed in class three. Implementation of this proposal will also require time. To allow the authorities time in which to organize the machinery necessary to operate such a program, an effective date of January 1, 1968, was provided. A detailed description of the four classes of licenses provided can be found in this draft.

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At least 20 states and the District of Columbia have adopted the Driver License Compact which establishes uniform interstate procedures to cope with problem drivers violating the traffic laws of different states. The Compact is an outgrowth of authorization given by the U. S. Congress to the several states a few years ago, to engage in joint efforts in the interest of highway safety. Under the Compact the states have established procedures for limiting or withdrawing driving privileges of

persons whose records indicate that they are a menace to themselves and others.

Basically, the Compact provides that a driver's entire record, including out-of-state convictions, will be known to his home state, for the four specific offenses of manslaughter or negligent homicide, driving while under the influence of liquor or drugs, a felony in which a motor vehicle was used, and leaving the scene of an accident which results in death or injury to another party.

The Compact provides that the conduct leading to an out-of-state conviction for these offenses will be treated as if the conduct had occurred in the driver's home state. On all other out-of-state convictions, the home state may give effect or not, as its law provides. The Compact does not require the home state to follow another state's law. There is no relinquishment of authority by one party state to another. The conduct on which an out-of-state conviction is based is treated as if it had occurred in the home state. Under the home state's law, the conduct may constitute a less serious offense, a more serious offense, or no offense at all. In any event, only the laws of the home state apply for purposes of suspension, revocation or the limitation of the driver's privilege to operate a motor vehicle. Under the Compact, all licensed drivers of the state are accorded equal treatment under the state's laws regardless of where the violations may occur. To facilitate cooperation with other states, the Committee has recommended a bill which would provide for the adoption of the Driver License Compact in North Dakota.

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Financial responsibility laws have as their objective the compensation of innocent victims of traffic accidents. Thus, they are more concerned with the solution of economic problems created by traffic accidents than with the prevention of traffic accidents. However, under North Dakota law the administration of the financial responsibility laws is centered within the Highway Department and is tied in closely with the driver licensing function.

In the development of its body of law in the field of financial responsibility, North Dakota has borrowed from the Uniform Vehicle Code, which is the nationally recommended standard for all states, for some of its provisions. But it has departed from UVC recommendations in other provisions. It also appears that in the course of the years, North Dakota has attempted to update various provisions of its financial responsibility laws on a piecemeal basis. This has contributed

to what has been described as the present "hybridization" of the State's law in this important area. To clarify this situation, the Committee has recommended a bill which divides chapter 39-16 of the North Dakota Century Code in two so that the laws relating to the requirements for establishing proof of financial responsibility for the future, and for establishing security following an accident are no longer commingled.

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Several of the recommendations made in the technical report on Driver Licensing concerned the amendment of some of the statutes pertaining to operators' licenses. The regulation of this function appears in chapter 39-06 of the North Dakota Century Code. For reasons of consolidation, the sections amended in this chapter were consolidated into one bill. Also contained within this bill are miscellaneous sections which, if enacted, will probably be assigned section numbers in Chapter 39-06. A section by section description of the amendments appearing in the bill follows:

As an adjunct to the technical study a proposed statement of legislative intent, relative to all laws governing motor vehicle ownership, and use and highway safety, has been recommended by the Committee. A declaration of legislative intent contained in the Highway Department statutes has been extremely helpful in court proceedings when it has been necessary to interpret statutes. The courts often resort to this statement of legislative intent to assist them in their interpretation and such a statement could be of similar importance when interpreting the motor vehicle laws. Section 1 of this bill provides for a declaration of legislative intent for title 39 of the Code.

The Commissioner can deny a license to any person convicted of three misdemeanors within any two-year period, for violation of the laws relating to highways. If, however, that person is already a licensed driver, the Commissioner lacks specific authority to suspend his license on the same basis. The law would be more consistent if it covered license suspension in such cases as well as denial of a license in the first place. It was the opinion of the Committee, however, that since misdemeanor violations can be of a relatively minor nature, legislation in this area should be drafted to affect individuals convicted of four traffic law misdemeanors. Section 2 of this bill amends the present statutes to deny a license for four misdemeanor convictions within the preceding two-year period. Section 11 of this bill gives

the Commissioner the authority to suspend licenses for the same reason.

The Committee has also recommended an amendment to subsection 2 of section 39-06-03 so that the phrase "in this state or any other state" would appear immediately following the phrase "to any person whose license has been suspended." This wording would specifically prohibit the issuance of a license in North Dakota to an individual who is under suspension in another state and who has transferred his residence or has applied for a license in North Dakota in an effort to circumvent the suspension of his license in his home licensing state. Such a change would make the State law more uniform with comparable laws of other states, as well as reflect the principles of the Driver License Compact. A recommendation for adoption of the Compact is included elsewhere in this report. This amendment also appears in section 2 of the bill.

Presently, instruction permits are valid for only ninety days. Many applicants cannot learn to drive safely and successfully within that time limit and, therefore, have to renew their permit for an additional ninety days. This renewal procedure places an undue burden upon the Department, since an estimated ninety percent of applicants do renew their instruction permits. In the interest of providing an adequate period of time to learn how to drive safely, and eliminating needless duplication of effort by the Department, section 3 of this bill would increase the validity of an instructional permit from ninety days to six months.

At present, the driver license fee is three dollars. This entitles the holder of a license to operate a motor vehicle for a two-year period. Upon examining the fee schedules adopted by other states, it was found that North Dakota charged a fee below that of many other states. In addition, it was felt that the fee schedule in North Dakota was not commensurate with the cost of administering the program of issuing driver licenses. For these reasons, the Committee has recommended a bill which would increase the driver license fee from three to five dollars. The Committee has also recommended that the fee for junior licenses be deleted from the Code. This would have the effect of producing additional revenue, in that approximately 44,000 licensees a biennium would be required to pay the higher adult fee. These two pieces of legislation should result in approximately \$786,000 of additional income during the next biennium.

A provisional license for persons under twenty-one years of age is recommended in the Uni-

form Vehicle Code and is required in a growing number of states. Such a provisional license would provide better control over drivers in this age group, whose records indicate they are having a higher percentage of violations and accidents than the average driver. If the actual number of miles traveled by persons of each age on a year-by-year basis were known, there is reason to believe that the percentages would indicate a much greater involvement in accidents by drivers under twenty-one years of age. To correspond with a national trend to closely regulate drivers eighteen years of age and under, the Committee has recommended a bill which would provide for the issuance of provisional driver licenses to persons under the age of nineteen. These provisional licenses would be subject to suspension by the Commissioner without preliminary hearing upon a showing by the records or other sufficient evidence that the licensee has violated the provisions of State or municipal motor vehicle laws or ordinances. The two driver license fee recommendations and the recommendation concerning the provisional license for persons under the age of 19 appear in section 4 of the bill.

Serving on the various citizen study groups were doctors of optometry who were interested in upgrading the visual requirements for motor vehicle operators. Through their professional contact with patients, these men had been confronted with licensed operators whose vision had deteriorated to the point that they were hazards to the motoring public. It was reported to the Committee that individuals in the age group between 12 and 20 can undergo tremendous changes in vision in a very short period of time. Eyesight of people between the ages of 20 and 40, however, is relatively static, while persons over 40 are more subject to medical problems which can result in very rapid vision deterioration. Taking these factors into consideration, the Committee has recommended an amendment which would require periodic eye examinations for those individuals under twenty and over forty-four by either a driver license examiner, or at their option, a private physician or optometrist. This amendment appears in section 5 of the bill.

Section 6 of the bill is merely concerned with a technical correction to section 39-06-23 of the Code. The amendment to this section concerns the replacing of the word chapter with the word title. Sections 8, 14, and 16 of the bill are concerned with making the very same amendment to other sections appearing in Chapter 39-06 of the Code.

Specific authority is needed in the law to cancel a license when the required fee has been

paid by check and returned by the bank as having insufficient funds, or no account. Section 7 of the bill amends section 39-06-24 of the Code so as to provide the Commissioner with the authority to cancel licenses in such situations.

Although a driver can be convicted for violations of motor vehicle laws in all State, county, municipal and Federal courts in North Dakota, only those convictions obtained in a State court and county justice court can be considered by the Commissioner in determining whether a driver's license should be revoked. The Commissioner must be fully aware of all convictions recorded against a driver for traffic law violations if there is to be a fair and just evaluation of that driver's record for purposes of revocation. It is equally important to the public welfare and safety that a person not escape the consequences of his driving failures merely because he is found guilty in a court other than a State court. For these reasons the Committee has recommended an amendment to section 39-06-30 which would make it quite clear that the term "conviction" pertains to convictions in every court in the State other than tribal courts and courts of Indian offenses. This appears as section 9 of the bill.

Use of intoxicating liquors can seriously affect the operation of a motor vehicle. During 1965, forty percent of the fatal accidents investigated in North Dakota involved one or more drivers who had used intoxicating liquors just prior to the accident. These findings point to the need for strengthening the State law governing drinking drivers. To bring the North Dakota law into conformance with the Uniform Vehicle Code and to make it consistent with the laws of many other states, the Committee has recommended an amendment which would provide for the mandatory revocation of the license of a driver convicted of such an offense. This amendment appears as section 10 of the bill.

In many cases a North Dakota driver's license cannot be suspended even though one has been convicted of a violation of traffic law and this violation contributed to causing an accident which resulted in a death, injury, or serious property damage. To correct this situation, the Committee has recommended an amendment which grants the Commissioner authority to suspend the license of a driver who has been convicted of a traffic violation if the violation for which he was convicted contributed in causing an accident resulting in the death or personal injury requiring professional medical care of another, or serious property damage. Prior to suspending the license, however, the Commissioner must give the licensee an opportunity to show cause why his license should

not be suspended. This amendment appears in section 12 of the bill.

If a driver's license is suspended for good cause, and the driver refuses or fails to surrender his license as required by law, it is entirely possible that the period of suspension will expire without his ever having been subject to this important driver control device. This defeats the purpose of suspension as a means of correcting errant drivers, and helps generate a "scoff-law" attitude. In an attempt to correct this situation, the Committee has recommended an amendment which would provide that if any person fails to return to the Commissioner any license or permit which has been canceled, suspended, or revoked, the Commissioner may determine that the period of suspension, revocation, or cancellation did not commence until the license or permit was surrendered and was in his possession. This amendment appears in section 13 of the bill.

Any person denied a license or whose license has been canceled, suspended, or revoked by the Commissioner under provisions of Chapter 39-06, NDCC, the Operators' License Law, except where such cancellation or revocation is mandatory, may, within 30 days after such determination by the Commissioner, file a petition for a hearing of the matter in the district court of the county of his residence, or where the administrative hearing, if any, was held. The effect of an appeal by a driver is to suspend the Commissioner's order until such time as the appeal is heard and a determination is made. At this stage the real problem arises. Normally, administrative determinations are reviewed only for reasonableness. The North Dakota Supreme Court, however, has ruled that such an appeal has the effect of removing from the Commissioner the right to exercise discretion and has placed this discretion in the court. The court reviews the entire case and determines its decision on the merits rather than examining the record to determine whether or not the decision by the Commissioner was reasonable. The consequence is that the Commissioner is forced into a position of a choice of having his discretionary orders set aside by the courts, or electing not to use this discretionary power in a traffic safety program. If the Legislative Assembly expects that the Commissioner will use this discretionary power in traffic safety promotion, an amendment of section 39-06-39 is required. To limit the review of such administrative decisions, the Committee has recommended an amendment which would limit the review by the courts to the reasonableness of the administration determination. This amendment also requires that notice be given the Commissioner in those cases where an appeal is being perfected and the Commissioner's order is

being held in abeyance by the court. This amendment appears as section 15 of the bill.

If an adult North Dakotan is convicted of a major offense against the laws of the State, such as manslaughter, negligent homicide, felony in the commission of which a motor vehicle is used, failure to stop and render aid when involved in an accident resulting in injury or death to another, or similar serious violations, his license is revoked. This revocation is mandatory, and the Commissioner has the clear legal duty to act. If a minor commits such an offense, however, and is brought before the Juvenile Court because of his age, the action taken by that court is not a conviction within the meaning of the statute. Therefore, the minor is not subject to mandatory revocation of license, even though he is guilty of the same offense that would revoke an adult's license. These serious offenses, committed by juveniles, affect the public safety to the same degree as those committed by adults, and recognition should be given to this fact. To correct this irregularity, the Committee has recommended an amendment which would give the Commissioner the authority to suspend the license of a juvenile without preliminary hearing when the report of the action of a juvenile court is forwarded to the Commissioner under the provisions of section 39-06-29, and the report indicates that there has been a commission of those offenses listed under section 39-06-31. Section 39-06-31 lists those traffic offenses for which mandatory revocation is provided. This amendment appears as section 17 of the bill.

The problem of the inability of law enforcement officials to properly charge nonresident motor vehicle operators who were operating vehicles in North Dakota while their nonresident driver licenses were under suspension or revocation was brought to the attention of the Committee. The only charge that may be made against such persons is that of operating a motor vehicle while possessing an invalid license or operating a motor vehicle while not possessing a valid license. The penalty for these offenses is less severe than the penalty given one who is found guilty of operating a motor vehicle while his license is under suspension or after such has been revoked. While the Driver License Compact, which the Committee is recommending in another portion of this report, would solve this problem, as concerns operators licensed in Compact states, Minnesota is not presently a Compact state and cities bordering the Red River have encountered a difficult problem in this area. For this reason, the Committee has recommended an amendment which would allow the courts in North Dakota to treat the revocation or suspension of a driver license in another state as

a suspension or revocation in North Dakota. This amendment appears as section 18 of the bill.

There is reason to believe that a large number of the accidental deaths involving motor vehicles are attributable to factors such as alcohol, carbon monoxide, barbiturates, and pep pills. For this reason, a two-year study of blood specimens of those individuals fatally injured in such accidents has been proposed by the State Toxicologist so that concrete evidence can, once and for all, be established. The statistical information so accumulated can then be used by the Legislature in making a determination as to whether or not further legislation in this area should be enacted, or greater stress placed in this area in highway safety activities. In order to provide the State Toxicologist with the authority to properly conduct such a two-year study, the Committee has recommended an amendment which would require blood samples of all traffic fatalities to be sent to the State Toxicologist for analysis. Realizing that the taking of blood samples and the running of tests thereon could result in some legal objections, the bill provides that the results of the examinations shall not be admissible in evidence in any action of any kind in any court or before any tribunal, board, agency, or person. Section 19 of this bill provides for this amendment and section 20 provides for an appropriation to facilitate this recommendation.

Various members of the Committee felt that implements of husbandry are, at times, dangerous traffic hazards. This occurs when the implement either extends beyond its lane of travel or is not visible for the distance needed to bring a vehicle, which is approaching from either direction, to a complete stop. In an attempt to correct this situation, the Committee has recommended a procedure which would require such implements to be preceded and followed by escort vehicles. These escort vehicles would be required to display signs **indicating that a wide load or vehicle is moving down the highway.** This bill would also require the reporting within twenty-four hours, of any damage done to signs.

Under the present law the Commissioner is required to appoint local agents in each county and in all municipalities or subdivisions thereof for the purpose of issuing operator licenses; a fee is charged for each license issued. As a result of a change in the expiration date of an operator license to the last day of his birth month, all licenses are now being issued through the Safety Responsibility Division. Applications are being mailed directly to the license holder at his home address to be completed and returned. Inasmuch as licenses are no longer issued on a local basis, present law providing for local issuance (section

39-06-15) should be repealed. Section 22 of the bill provides for the repeal of this section and subsection 7 of section 39-06-32 which is necessary to facilitate another recommendation contained in the technical report on Driver Licensing.

### **Administrative Recommendations**

In addition to the legislative recommendations, various recommendations were made which could be facilitated by administrative action. These recommendations are discussed at length in the technical report. They are:

1. Evaluate present practices of identifying driver license applicants to determine if North Dakota is taking necessary precautions to ensure accuracy of information contained on applications, and take such further action as may be required to achieve this objective.
2. Create in North Dakota an advisory group to the driver licensing administrator, composed of responsible state officials and representatives from the various professions and disciplines which have direct relationship to the driver licensing function, such as law, medicine, education, engineering and law enforcement. The title or organization of such an advisory group is a matter for judgment within the State, the critical consideration being whether the intended objective can be obtained.

### **Highway Patrol Supervision and Services**

#### **Introduction**

Police traffic supervision is one of the primary elements of the highway safety program in North Dakota. It contributes importantly to the efficient and convenient use of the roads and streets by motorists. The public interest dictates that both the quantity and quality of traffic police work keep pace with the needs produced by growing highway use.

Since the establishment of the State Highway Patrol in 1935, responsibilities for traffic police work have been shared by this organization and by local law enforcement agencies. In the current study of enforcement functions relating to traffic safety in North Dakota, however, only the needs of the State Highway Patrol have been included.

In the assignment of duties and responsibilities to the State Highway Patrol, North Dakota gener-

ally follows nationally accepted patterns. Its four basic functions are police aspects of traffic law enforcement, traffic accident investigation, traffic direction and control, and emergency services to motorists. In addition, the Patrol has a number of secondary duties, such as school bus inspection, civil defense activities, and the enforcement of liquor laws.

The authorized strength of the State Highway Patrol has increased from 12 officers in 1935 to 80 officers in 1966. At first glance it might appear that there has been a planned strengthening of the Patrol to deal with the growing traffic problem. A closer examination, however, shows that in large measure the increases in manpower for the Patrol has been offset by increased duties, responsibilities, and traffic volume increases. For more than a decade the Patrol has not had sufficient manpower to meet North Dakota's needs. This condition continues to exist. Meanwhile, traffic in the State has been steadily growing at the rate of about four percent a year since 1959. In light of these factors it is evident that the people of North Dakota have the choice of either strengthening the Patrol in keeping with growing needs, or accepting a lower level of service in the traffic safety functions assigned to the Patrol. Considerations of the public safety and welfare make the second alternative unthinkable.

### **Manpower, Salaries, and Facilities**

When the Patrol was originally created in 1935, there was an authorization for a \$5,000 budget plus those moneys anticipated from the sale of driver licenses. The manpower limitation was set at 12 men. The Patrol was equipped with uniforms and vehicles but no facilities were provided. The next increase in manpower occurred in 1941 when the Patrol was authorized to increase to 20 men. Equipment was still on the same basis, with no physical facilities such as office space provided. In 1947 the Patrol was doubled in size to 42 men and the State embarked upon a driver license program. Again, no provision was made for office space or space in which to conduct the driver license examinations.

As a result of the 1953-54 Legislative Research Committee Traffic Safety Study, which recommended that an additional 46 officers be employed with 23 of these in 1955-56 and 23 in 1956-57, the Patrol was authorized 9 additional patrolmen. The 1957 session of the Legislature increased the Patrol by 17 men for a total strength of 68 and at the same time assigned the department the responsibility for Public Service Commission Motor Carrier Law Enforcement. An increase of 10 men was authorized by the 1959 session of the Legisla-

tive Assembly for a total authorized strength of 78. In 1963, the Division of Public Safety was transferred from the State Highway Department to the Highway Patrol, which carried with it the authorization for two additional persons. Today the department has a total authorized strength of 80 officers with a budget of \$1,790,000.

While on the surface it might appear that there has been a planned growth of the department to deal with the problem of traffic and traffic accidents, a closer examination seems to indicate that this has not been the case. The usual pattern for increases in manpower has been one of additions to handle increased duties and responsibilities, never quite sufficient to meet the needs of the department. In effect, the department has not had an increase in manpower since 1959, and with that increase the department was some 8 men short of the level recommended for the year 1957. Since 1959, the traffic problem has shown a steady increase of about 4 percent per year. Increases in vehicles registered, drivers licensed, vehicle miles of travel, accidents, property damage, and fatalities have all added to the workload of the Highway Patrol. Charts indicating the increases in these categories are contained in the various technical reports.

How to retain qualified and trained officers in the department is another perplexing problem faced by the Patrol. The salary schedule of the North Dakota Highway Patrol remains below the level of other like organizations in the United States. An officer with five years' service in the Patrol, with a wife and two children, will draw a salary from \$480 to \$495 per month. After taxes, retirement, hospitalization, and group life insurance, the officer's take-home pay would be between \$363.81 to \$404.85 per month.

An officer is trained and equipped at a considerable cost to the State. To lose this officer to private industry after three or four years of service presents an additional financial burden to the State.

A survey conducted by the Fraternal Order of Police for 1966, of salaries and working conditions, indicates North Dakota is tied for the eleventh position, salarywise, of 12 midwestern states. In comparison, the starting pay in Montana is \$6180 per year, in Minnesota \$5460 per year, and in North Dakota \$4800 per year. The Recruit Border Patrolman starts at \$6269 per year with a 15 percent differential pay for night work, holidays, and weekends. The National Safety Council in the Annual Inventory for 1964, while noting a slight increase, states that North Dakota remains below the comparable salary scales.

In an attempt to relieve this situation, the Committee has gone on record favoring an increase in manpower for the Highway Patrol of 20 patrolmen each year of the coming biennium and urging the inclusion in the Patrol budget of salary increases sufficient to provide a living wage that can continue to attract qualified applicants and retain our trained Patrol members.

The North Dakota Highway Patrol does not have any State-owned or controlled office space in the eight major cities in which district headquarters are located. This lack of space adversely affects the operation of the Patrol in its normal day-to-day operations and in the conduct of driver license examinations.

Present office space, which is for the most part totally inadequate, is donated by county government. This office space is usually in the center of town and is not large enough to meet even minimum storage requirements for tires and other centrally purchased items for vehicle maintenance. It does not provide adequate storage space for those items which should be maintained under lock and key, such as traffic citation books. This adversely affects morale and the operational efficiency of the department. This problem could be solved by the construction of district headquarters facilities. The plans for such buildings should be prepared immediately and the necessary real estate purchased before the cost becomes prohibitive. The district headquarters should be located as close to the interstate and major highway systems as is possible in order to provide the most service to the motoring public. As an initial step towards alleviating this problem, the Committee has gone on record urging the Highway Patrol to include in their budget a request for funds to be used for acquiring property for district offices.

### **Legislation Recommended**

The North Dakota Highway Patrol is now hampered, in some areas of enforcement, by North Dakota statute. The Patrol does not have legal jurisdiction, under present law, in most felony cases, other than as a private citizen. The State Patrol, with the responsibility for patrolling highways, will continue to be confronted with violations of general laws. A State Highway Patrol Officer who lacks authority to enforce the law on the highways he patrols is naked to the criticism of the public. Most law-abiding citizens do not know when an officer can enforce the law and when he cannot. Other police agencies utilize the State radio network to put out all-points bulletins, identifying vehicles and wanted persons. If a patrolman sights such a vehicle upon the highways of the State and he doesn't observe a traffic

violation, he is powerless to act as an enforcement officer. Any action taken must be that of a private citizen. An officer must uphold the law on one hand and ignore it on the other.

With this in mind, the Committee has recommended an amendment to section 39-03-09 which would grant authority to highway patrolmen to exercise police powers over all violations of law committed in their presence upon any highway and within the highway right-of-way or when in pursuit of any actual or suspected law violator.

Due to a North Dakota Supreme Court decision, North Dakota arrest statutes do not give peace officers clear-cut authority to act. The Supreme Court of North Dakota, by a four-to-one decision, struck a severe blow to law enforcement in this State in the *Colling v. Hjelle* decision. In effect, the majority opinion said: "The arrest is invalid if the person arrested was not in fact guilty of the offense, and this is determined by the subsequent trial." Departing from the widely accepted general rule, the high court followed the minority decisions in this area. The general rule is well stated by the Supreme Court of Minnesota in the case of *Smith v. Hubbard*, 253 Minn. 215, 91 N.W. 2d 756, 763 (1958): "Nothing more is required than that the acts be observed and that the officers infer from them that they are sufficient to constitute a misdemeanor. The rule applies even when the alleged violator is subsequently acquitted in traffic court, for that is of no consequence insofar as the validity of the arrest is concerned."

Quoting the dissenting opinion in *Colling v. Hjelle*: "The court has not merely prevented the law from being an effective aid in reducing traffic injuries and deaths, but it has also invited all motorists to sue honest, conscientious law enforcement officials for false arrests, where the officials have made a reasonable mistake in the course of doing their duties."

In an attempt to correct this situation, the Committee has recommended an amendment to the present arrest statutes concerning arrests without warrants so as to provide peace officers with clear-cut authority to act.

Activities required to be performed by officers of the Highway Patrol continually demand extra effort in physical and mental stamina. At present, it is possible for a patrolman to still engage in high-speed pursuit at the age of 65. While this can be justified in some administrative positions, this man does not have the driving capabilities and mental reflexes needed to engage in every

day patrol activities. At the request of the Highway Patrol, the Committee is recommending a bill which would reduce the mandatory retirement age for patrolmen from 65 to 60. Police service is essentially a young man's profession. Because of this, it is desirable to have a relatively low retirement age and a living retirement benefit. By adopting a mandatory retirement age of 60 or lower, which will not adversely affect any present members of the department, greater assurances will be had that young vigorous men will fill the ranks of patrolmen. The national trend among patrol agencies is a retirement age of 55. It is imperative, however, that an actuarial study be conducted for at least two years, at the retirement age of 60, to determine whether or not the present retirement fund could handle a program based on a lower retirement age.

Recruitment of qualified applicants for the Patrol is becoming increasingly difficult. The problem is composed of many elements such as hours, days of work, and promotional opportunities. Other elements which contribute to the problem are the statutory entrance requirements. Present statutes require that an applicant be a minimum age of 23 and that he be a resident of the State for at least two years. The pay, benefits, and work conditions could improve through administrative action if the Legislature would provide the funds. The minimum age requirement of 23 requires legislative action to remedy. A recent survey conducted by the Patrol, of 36 States and two Provinces, reveals that 29 of the agencies have a minimum age requirement of 21 years, three have a minimum age requirement of 22 years, five have a minimum age requirement of 23 years, and one has set 25 as the minimum age. The other element, a requirement for two years' residency, does not seem realistic in view of the limited number of people who can meet departmental standards. In order to facilitate the recruitment of qualified and competent patrolmen, the Committee has recommended an amendment which would reduce the minimum and maximum age requirements for patrolmen from 23 and 40 to 21 and 33 and which would remove the North Dakota citizenship requirement. The United States citizenship requirement is retained. Although the North Dakota citizenship requirement was deleted from the statutes, the Committee felt that it was desirable to require that preference be given to citizens of North Dakota. This amendment also contains a provision which provides for this.

Present North Dakota statutes (sections 39-03-01 and 39-03-02, NDCC) provide that both the Superintendent and Assistant Superintendent of the department be appointed by the Governor.

Under this statute, it is conceivable that with each change of administration both of the top administrators of the department could be replaced. The problems in the field of police traffic supervision are of such a magnitude that there is a strong requirement for well trained administrators in all positions. In the interest of continuity and efficiency in operation, it would seem desirable to retain as much experience as is possible when a change in State government occurs. By granting tenure to the position of the Assistant Superintendent there will be a guarantee that when a change in the office of Superintendent is made, it will be made with as little disruption and adverse effect as possible. This would also create another opportunity in the promotional ladder which will tend to create greater interest in the Patrol as a career. To ensure compatibility between the Superintendent and Assistant Superintendent, the Committee thought it advisable to provide for the appointment of the Assistant Superintendent by the Superintendent. While this provides security for the Assistant Superintendent, it also ensures harmony in the higher echelons of the Patrol.

To facilitate the handling of the recommendations concerning the Highway Patrol, the various amendments recommended by the Committee were consolidated into one bill. Basically, these amendments concern various sections contained in Chapter 39-03 of the North Dakota Century Code.

### **Administrative Recommendations**

In addition to the legislative recommendations, there were several other recommendations made to the Committee. Many of these can be implemented by administrative action, subject to the availability of funds. These recommendations concern public information, recruit training, training for supervisory and command officers, a forty-hour work week, and police communications. These recommendations are discussed in detail in the technical report on the function of Highway Patrol Supervision and Services. A descriptive explanation of the scope of each of these problem areas can be found in that report. These recommendations are:

1. Assign one officer as a public information and education specialist in each Patrol district.
2. Expand the basic, or recruit, training program to a minimum of 700 hours of instruction.
3. Make special courses available and mandatory for all supervisory and command

officers, such courses to be offered at least once every two years.

4. Reduce the work week for all Patrol officers to 40 hours.
5. Conduct a complete study of police communications at State level during the 1967-1969 biennium.

## Highway Traffic Operations and Services

### Introduction

The fundamental purpose of a street and highway system is to provide for the safe, convenient, economic, and comfortable movement of persons and goods. Such movement can be achieved only when proper attention is given to highway traffic operations and services, as well as to construction and maintenance of the road and street system. Highway users in North Dakota have become completely familiar with some of the physical results of our traffic operations program. For example, we take for granted such things as traffic signs and signals, channelization, pedestrian crossings, and such traffic improvement measures as parking and turn restrictions, one-way streets, and railroad crossing protection.

Less well-known to the people are the engineering functions and procedures which are basic to a sound and effective program of highway traffic operations and services. Unless such things as speed zones, the installation of traffic signals, or parking and loading restrictions are based on careful study of traffic volumes, flow characteristics, speed and delay, the control may aggravate rather than improve the situation it was designed to correct. Under the administrative organization in North Dakota most traffic operations and service functions are centered within the State Highway Department. These include traffic studies such as origin and destination, volume, flow characteristics, speed and delay; traffic improvement measures such as one-way roadways and no-passing zones; traffic control devices such as signs, signals and markings; selective physical improvements such as channelization and pedestrian crossings; and transportation engineering research.

As population grows and the number of vehicles in use and miles of travel increase, traffic operations and services grow in importance. In fact, it is in this area that the State faces its greatest future challenge if the highway users of North Dakota, and visitors to the State, are to receive the safety, economy, efficiency, and driving comfort that they demand, and have a right to expect.

Automotive transportation began its period of rapid development in North Dakota at the end of World War I. The Highway Department was established in 1917 and since then has grown in keeping with the increase of highway use through the years. It has its headquarters in Bismarck, and seven district offices geographically located about the State who administer highway affairs in their assigned territories.

### Legislative Recommendations

Some of the areas to which the function of Highway Operations pertain are the establishing of speed limit zones, accident investigation, uniform signing and marking, and safety rest areas on the North Dakota State Highway System. These services permit the traveling public to use the highways in North Dakota in the most orderly, efficient, and safe manner, thereby reducing traffic conflict to a minimum. The Traffic Services Section of the Maintenance Division has the responsibility of implementing the necessary action for the Commissioner. The seven maintenance districts perform the necessary work.

State statutes establish the maximum speed limits on all highways. However, the statutes (North Dakota Century Code, 39-09-07) also permit the Highway Commissioner and the Superintendent of the State Highway Patrol, after engineering and traffic investigation, to declare a reasonable and safe speed limit on any part of the State Highway system, but not in excess of the maximum prescribed by law. State law should provide authority for establishment of minimum speed limits where such will promote greater highway safety. Minimum speed limits can present difficulties in an agricultural state where implements of husbandry frequently use the highways. The major safety beneficiaries of reasonable minimum speed regulations are, however, the operators of slow-moving vehicles. Information was provided the Committee which indicated that the slow-moving vehicle has a higher accident probability than a vehicle traveling in excess of the average speed of the vehicles on a particular roadway. A vehicle traveling 10 miles per hour less than the average speed of the vehicles using a particular roadway has an accident probability twice that of a vehicle traveling at the average speed of vehicles using the roadway. A vehicle that is traveling 20 miles per hour less than the average speed has an accident probability eight times greater than the vehicle traveling the average speed, and a vehicle traveling 30 miles per hour less than the average speed has an accident probability of 500 times that of the vehicle traveling the average speed.

In an attempt to protect the users of North Dakota highways, the Committee has recommended a bill which would authorize the State Highway Commissioner and the Superintendent of the Highway Patrol, acting jointly, or local authorities within their respective jurisdictions, after determining on the basis of an engineering and traffic investigation that slow speeds on any part of a highway are consistently impeding the normal and reasonable movement of traffic, and where safe, alternate routes are available for slow-moving vehicles, to determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for its safe operation or in compliance with law. The Commissioner and Superintendent or local authorities, when acting within their respective jurisdictions, are required to provide in their declarations for a means of moving slow-moving vehicles within these limited speed areas.

To establish a speed limit zone on any section of the State Highway system requires study of the design geometrics and surface type, accident analysis, speed studies, law enforcement, and driver behavior reaction. By this careful analysis, the Department is able to determine a safe and reasonable speed limit which will reduce traffic conflict and move vehicular traffic in an orderly manner. It is sometimes necessary by reason of construction, maintenance or special events to determine and establish temporary special speed limit zones on certain parts of the highway system to aid traffic control movements, and protect the traveling public from conflict with construction, maintenance equipment and personnel, or excessive vehicle traffic. This poses special problems of signing and marking to adequately inform and guide the traveling public regarding the conditions they approach and how they are required to proceed. Speed limit zones, when determined and established, are declared by an official order, signed by the Highway Commissioner and the Superintendent of the State Highway Patrol. Copies of the official order are distributed to the district to ensure the erection of the appropriate signs, to each county State's Attorney, and to the State Highway Patrol. The official order gives the exact location of the appropriate signs in place showing the speed limits as they change. Thus, there is no danger of motorists not being aware of a minimum speed zone.

The Department has set forth standards in a Manual on Uniform Traffic Control Devices for the streets and highways in North Dakota. This manual conforms as closely as possible to the standards contained in the Manual on Traffic Control Devices for Streets and Highways, issued by the National Joint Committee on Uniform Traffic

Control Devices, and concurred in by the Federal Highway Administrator, and the Manual for Signing and Pavement Marking of the National System of Interstate and Defense Highways. The Department continues to adopt any revisions or modifications of these two manuals and incorporate them into the State Manual. Engineering judgment and imaginative applications of signing and marking standards are often employed.

The Department has encouraged and continues to encourage cities and counties to adopt the standards for uniform signing and marking of their streets and highways. Technical assistance in complying with the standards is given the cities or counties requesting such assistance. To date, this encouragement and assistance has been only partially effective. Many local jurisdictions faced with alternate pressing needs and limited road functions have retained obsolete and non-uniform traffic control devices long past their proper retirement date. As one example, an inventory of traffic signals maintained by cities on State highway extensions indicated that about one-half were substandard by modern criteria. Studies made of traffic signing on rural roads other than State highways indicate that the situation is at least as bad as the case with traffic signals. The people of North Dakota deserve and expect uniform and uniformly good traffic control devices on all public streets and roads of the State. A drastic difference in the kind and use of traffic control devices between systems is both poor service and a real hazard in their travel. In this regard it should be noted that about 40 percent of all traffic accidents in the State occur on streets under local government jurisdiction and an added 23½ percent on local rural roads. Over half of all traffic casualties (persons killed or injured) in North Dakota occur on local streets and roads. This is true even though these systems serve only 42 percent of all travel.

Adequate, uniform traffic control devices can make a significant safety contribution which, in terms of benefit per dollar expended, may well be higher than any alternate use of available funds. In an attempt to reduce traffic fatalities and injuries the Committee has included within the bill providing authority for the establishment of minimum speed limits a requirement that all traffic control devices in the State must conform to the sign manual as adopted by the State Highway Commissioner. Realizing that the physical process of standardizing the traffic control devices and signs throughout the State would require a substantial amount of time and effort, the Committee has provided that local political subdivisions will have until July 1, 1971, to bring existing signs into

conformance. The Highway Safety Act of 1966 provides for the distribution of a substantial portion of the funds available under this Act to the local political subdivisions. It is anticipated that these moneys will be used to assist local governments in implementing their signing programs.

### **Administrative Recommendations**

In addition to the legislative recommendations, the technical report on Highway Traffic Operations and Services contains several recommendations which can be implemented by administrative action. These recommendations are discussed at length in the technical report and are detailed as to implementation. These recommendations are:

1. Provide for a review team to study accident and operational records and inspect all highway improvement projects after six months' traffic use to discover any need for revised design standards.
2. Create the position of District Traffic Engineer to carry out highway operations responsibilities in each of seven highway districts. Recruit and fill positions through a planned 3-5 year program.
3. Study need for reorganization of central office to meet increased highway operations responsibilities.
4. Study problem of school pedestrian protection and recommend needed legislation.
5. Extend use of traffic accident data in system surveillance, planning and programming of improvements, and before and after studies.
6. Install milepost system on at least all State highways.
7. Study need to increase information services available at rest areas.
8. Direct greater efforts toward a coordinated improved Public Information Program.

### **Fiscal Impact**

In a broad sense, the function of the Committee on Transportation was to study highway safety and to make recommendations which would effectuate this principal in North Dakota. In doing so, however, it was only reasonable to expect that certain recommendations would require the expenditure of additional funds. Although appropriations to meet these needs do not fall within the scope of the study, the Committee felt that it had at least a degree of responsibility to attempt to provide sources from which the necessary appropriations could be made. This factor was of primary importance in the Committee's decision to recommend the abolition of the junior driver license fee and in the Committee's decision to recommend raising the driver license fee and the abstract fee.

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### **Resolution**

Periodic safety inspection of motor vehicles is not required by law in North Dakota, and was not included as a function in this study. A good motor vehicle inspection program, however, directed toward assuring that vehicles on the road are in safe operating condition, is endorsed by safety authorities as an important part of a state's traffic safety program. In addition thereto, the Highway Safety Act of 1966, will undoubtedly require legislation in this area. North Dakota should give serious consideration to the adoption of such a program through a study during the next biennium, or the possibility exists that the State could lose part or all of its Federal highway funds.

It will also be desirable to restudy the Highway Department's administrative organization about the time the Interstate program is brought to completion. In this light, also recommended for further study are North Dakota's problems of school pedestrian protection and the types of legislation needed to effectively cope with them; a study of the type of information services needed at highway rest areas; and a continuing review of highway improvement projects after they are in service, as an indication of the need for revised design standards. A resolution directing these studies has been recommended by the Committee.

# Explanation of Legislative Research

## Committee Bills

### Senate Bills

**Senate Bill No. 33 - Department of Natural Resources and Conservation.** This bill would establish a department of natural resources and conservation, which department would consist of the existing agencies of the state water conservation commission, state game and fish department, state outdoor recreation agency, North Dakota park service, state forester, and soil conservation committee. The department would have an overall director and be responsible for the coordination and planning of multiple use projects. See the Committee report on State, Federal, and Local Government.

**Senate Bill No. 34 - Capitol Grounds Planning Commission.** This bill makes the capitol grounds planning commission a permanent commission and outlines its duties and powers. This bill also provides an appropriation for the capitol grounds planning commission for the biennium of 1967-69. See the Committee report on State, Federal, and Local Government.

**Senate Bill No. 35 - Appropriation for Public Health Laboratory.** This bill provides for an appropriation for the construction of a public health laboratory on the capitol grounds. The bill also gives the governor the authority to determine whether both state and federal funds are available before construction can begin. See the Committee report on State, Federal, and Local Government.

**Senate Bill No. 36 - Licensing and Regulation of Restaurants, Hotels, Boardinghouses, Lodginghouses, Motor Courts, and Trailer Courts.** This bill transfers the regulation and licensing of certain sanitary functions from the state laboratories department to the state department of health. It also provides for inspections on the local level when a municipal or district health unit is functioning and approved by the state department of health, in an attempt to decrease duplicate inspections. See the Committee report on State, Federal, and Local Government.

**Senate Bill No. 37 - Regulation of Oleomargarine and Egg Dealers and Imitation Ice Cream, Labeling of Beverages, Registration of Livestock Medicines, and Flour Standards.** This bill repeals the provisions providing for the licensing of retail oleomargarine and egg dealers and attempts to alleviate some of the administrative problems encountered by the state laboratories department in the areas of beverage labeling and licensing, livestock medicines, imitation ice cream, and flour standards. See the Committee report on State, Federal, and Local Government.

**Senate Bill No. 38 - Regulation of the Distribution of Commercial Feeds and Customer-Formula Feeds.** This bill updates the present regulation in this area by providing for the adoption of the basic provisions of the Uniform State Feed Bill as prepared and approved by the Association of American Feed Control Officials and the American Feed Manufacturers Association, with minor alterations to take advantage of existing state statutes. See the Committee report on State, Federal, and Local Government.

**Senate Bill No. 39 - Regulation of the Sale and Distribution of Commercial Fertilizers and Soil Conditioners.** This bill modernizes the regulation of commercial fertilizers and provides for the regulation of soil conditioners which previously have not been regulated in North Dakota. A large portion of this bill was borrowed from the Uniform State Fertilizer Bill prepared and approved by the Association of American Fertilizer Control Officials, with minor alterations to take advantage of existing state statutes. See the Committee report on State, Federal, and Local Government.

**Senate Bill No. 40 - Regulation of Foods, Drugs, and Cosmetics.** This bill modernizes the regulation of foods, drugs, and cosmetics in North Dakota by updating the present statutes regulating this area. This bill is primarily a reproduction of the Uniform State Food, Drug, and Cosmetic Bill as

prepared and recommended by the Association of Food and Drug Officials of the United States, with minor alterations to take advantage of existing state statutes. See the Committee report on State, Federal, and Local Government.

**Senate Bill No. 41 - Transfer of Laboratory Equipment of Dairy Department of the Department of Agriculture and Labor to State Laboratory.** This bill would require the dairy department of the department of agriculture and labor to transfer all of its laboratory equipment to the state laboratory. It also provides for the certification of the results of these tests to the local governmental agencies involved in the work. The state laboratories department would perform the tests previously performed by the dairy department of the department of agriculture and labor. See the Committee report on State, Federal, and Local Government.

**Senate Bill No. 42 - Minimum Speed Limits and Signing.** This bill provides for the establishment of minimum speed limits where safe, alternate routes are available and when engineering and traffic investigations show that slow speeds are consistently impeding the normal and reasonable movement of traffic. This bill also requires signing to be made uniform throughout the state. See the Committee report on Transportation.

**Senate Bill No. 43 - Highway Patrol.** This bill modernizes the arrest statutes and broadens the powers of the highway patrol. This bill also places the position of assistant superintendent of the patrol under the tenure portions of the highway patrol statutes. Provision is made for altering the qualifications that patrolmen must meet for entrance into the patrol and reducing the mandatory retirement age of patrolmen. See the Committee report on Transportation.

**Senate Bill No. 44 - Driver Licensing.** This bill provides a declaration of legislative intent for title 39 of the Code, the commissioner with the authority to suspend the licenses of juveniles, the courts with the authority to recognize out-of-state revocations and cancellations, and the state toxicologist with the authority to perform blood tests on traffic fatalities. This bill also amends several sections of chapter 39-06 of the Code to facilitate the administration of the driver licensing laws. See the Committee report on Transportation.

**Senate Bill No. 45 - Classified Driver License.** This bill classifies an operator's license so as to reflect the type of vehicle the operator has proved himself competent to operate. This bill provides

a separate class for motorcycle operators. It also allows for certification, by an employer, of an individual's driving ability for those individuals licensed to operate motor vehicles prior to July 1, 1967. See the Committee report on Transportation.

**Senate Bill No. 46 - Abolition of Villages as a Form of Municipal Government.** This bill provides for the abolition of villages as a form of municipal government and supplies the procedures for the municipalities presently operating as villages to use in converting to the city form of municipal government. See the Committee report on Political Subdivisions.

**Senate Bill No. 47 - Municipal Courts.** This bill provides for an affidavit of prejudice and a change of venue in municipal courts and also provides procedures for replacing a municipal judge when he is either disqualified or absent. See the Committee report on Political Subdivisions.

**Senate Bill No. 48 - Restrictions on and Powers of Municipalities.** This bill amends several sections of the Code so as to reflect the opinions and decisions of the Attorney General's office and the Supreme Court of North Dakota. This bill also contains other miscellaneous sections of the Code which were amended to facilitate the administration of municipal government. See the Committee report on Political Subdivisions.

**Senate Bill No. 49 - Special Assessments.** This bill provides an alternate method of determining and allocating special assessments. It is permissive legislation and municipalities may use this method as they deem desirable. See the Committee report on Political Subdivisions.

**Senate Bill No. 50 - Real Estate Transfer Tax.** This bill provides for a real estate transfer tax upon the privilege of transferring the title to real property and is not in effect until January 1, 1968. See the Committee report on Taxation.

**Senate Bill No. 51 - Billing of Patients at State Institutions and Disposition of Nonresident Patients.** This bill provides that it shall not be necessary to currently bill patients for whom it has been determined there is no present ability to pay, and that billings shall be only for that amount it is determined there is an ability to pay. Provision is also made that nonresident patients at the Grafton State School shall be transferred to their home states unless such patients can be accommodated at the Grafton State School without depriving a

resident of occupancy and the costs of care for the nonresident patient are paid. See the Committee report on Social Welfare.

**Senate Bill No. 52 - Compulsory Testing for Phenylketonuria.** This bill provides for the compulsory testing for phenylketonuria (PKU) and other metabolic diseases which cause mental retardation and the subsequent aid in following up positive tests so as to prevent cases of mental deficiency resulting from this condition. See the Committee report on Social Welfare.

**Senate Concurrent Resolution "A" - Resolution Directing Study of Vehicle Inspection.** This resolution directs the Legislative Research Committee, with the cooperation of the state highway department and state highway patrol, to carry on a comprehensive study of vehicle inspection and other highway safety problems in the state of North Dakota and to report its recommendations to the Forty-first Legislative Assembly, together with suitable legislation to carry out such recommendations. See the Committee report on Transportation.

# House Bills

## **House Bill No. 533 - Revision of Election Laws.**

This bill substantially amends the election laws and, among other things, provides for a certificate of endorsement by political parties, provides for political party organization on a legislative district basis, and relates to voting and elections, election petitions, polling places, election officials, election publications, ballots, campaign expenses, residency for voting purposes, election procedures, and other provisions pertaining to the election process. See Committee report on Political Subdivisions.

**House Bill No. 534 - Revision of Laws Pertaining to Mentally Deficient Persons.** This bill amends the bulk of the laws pertaining to mentally deficient persons and the care and treatment provided for them and, among other things, relates to terminology changes; transfer, release, placement, and guardianship of mentally deficient persons; cost agreements for the care of mentally deficient persons; custody of minors who are mentally deficient; and mentally deficient defendants. See Committee report on Social Welfare.

## **House Bill No. 535 - Appropriation for Immediate Transfer of Certain Mentally Deficient Persons From the Grafton State School to San Haven.**

This bill provides for a deficiency appropriation of \$75,000 to the Board of Administration for the purpose of immediately transferring from 42 to 60 mentally deficient persons from the Grafton state school to San Haven, in order that the emergency cases presently on the waiting list for admission to Grafton can be accommodated at such institution. Such funds will be used for the hiring of additional attendants at San Haven, the purchasing of additional equipment, and minor remodeling changes. See Committee report on Social Welfare.

## **House Bill No. 536 - Appropriation for the Planning and Land Acquisition of a New Institution for the Mentally Deficient.**

This bill provides for an appropriation of \$100,000 for the purpose of initiating and planning the construction of a facility for the mentally deficient, including the surveying of institutions in other states as to newly developed patterns of construction, consulting with experts in the field of mental deficiency, paying engineering and architectural planning costs, selecting a site and purchasing the necessary land for such institution, and further provides for the appointment of a legislative committee to aid in car-

rying out the provisions of this bill in an advisory capacity. See Committee report on Social Welfare.

## **House Bill No. 537 - Liability for Costs of Care and Treatment at the Grafton State School.**

This bill provides that the costs for care and treatment at the Grafton state school shall be the actual amount it costs the state to care for the resident patient subject to a determination that the patient or his responsible relative does not have the ability to pay actual costs; provides that responsible relatives may voluntarily pay the costs of care for adult patients in cases where they have no legal obligation to do so; provides that in all cases non-resident patients shall be liable for actual costs of care and treatment; provides that the county welfare board shall be the determining agency as to a person's financial ability to pay for costs of care, rather than the county mental health board; and provides that any person making application to have his liability reduced for costs of care and treatment shall do so with the understanding that his state income tax return may be reviewed. See Committee report on Social Welfare.

## **House Bill No. 538 - Voluntary Sterilization of Certain Mentally Deficient Persons.**

This bill provides that the superintendent at the Grafton state school, upon the approval of a five-member professional board, may recommend to a parent, spouse, or guardian of a mentally deficient person being cared for by the state, that such person be sterilized if such operation would be for the protection of society or improve the physical and mental well-being of the person being sterilized, but that no person shall be sterilized without the consent of the parent, spouse, or guardian. Further provision is made for a parent, spouse, or guardian to initiate such sterilization proceeding for any person for whom such parent, spouse, or guardian is responsible when such person is a resident of the Grafton state school, and provides that no resident of the Grafton state school may be sterilized except pursuant to the provisions of this Act. See Committee report on Social Welfare.

## **House Bill No. 539 - Board of University and School Lands Investment List for Trust Funds.**

This bill allows the board of university and school lands to invest the corpus of their trust funds in a broader field of investments than now allowed. It would give to the board the same latitude in their investments as now given to the state in-

vestment board. The bill reflects the changes made in the proposed amendments to sections 156 and 162 of the Constitution. See the Committee report on Constitutional Revision.

**House Bill No. 540 - Per Diem Payments for Board of Higher Education and Control of Expenditure of School Funds.** This bill increases the per diem payment of the members of the state board of higher education and relates to the control of all funds allocated to the board by the Constitution or by law. It also reflects the changes contained in the proposed amendments to Article 54 of the Amendments to the Constitution. See the Committee report on Constitutional Revision.

**House Bill No. 541 - Selection of Chief Justice by Judicial Council.** This bill provides that the judicial council shall select the chief justice of the state supreme court, who shall serve in that capacity for ten years or for the remainder of his elected term, whichever shall first occur. See the Committee report on Constitutional Revision.

**House Bill No. 542 - Committee to Make Broad Study of Legislature.** This bill would establish a committee composed primarily of citizens, with some legislators, to make a broad study of the overall legislative process covering such areas as legislative procedure, compensation, staff and employee requirements, physical facilities, and make a recommendation regarding the same. See Committee report on Legislative Arrangements.

**House Bill No. 543 - Style and Form of Enrolled Bills.** This bill relates to the form and style of enrolled bills. See the Committee report on Legislative Arrangements.

**House Bill No. 544 - Accident Reporting.** This bill would require every law enforcement officer who investigates an accident to forward a copy of his report, within five days after his investigation, to the accident records section of the state highway department. The bill also removes the confidential requirement from all material appearing on the report, other than the officer's opinion, and permits the forwarding of this information to a national traffic accident data center. It also provides for increasing the fee for abstracts issued by the safety responsibility division. See the Committee report on Transportation.

**House Bill No. 545 - Driver Education.** This bill provides for a state aid program to schools offering a complete, approved driver education program. This bill also grants the authority for

approval of such programs to the department of public instruction. The state aid program provided for in this bill requires proration if sufficient funds are not available. See the Committee report on Transportation.

**House Bill No. 546 - Driver License Compact.** This bill provides for the enactment of the driver license compact. The compact contains safeguards against the issuance of a license to an applicant whose driving privileges have been withdrawn from another party state, until the period of suspension or revocation is terminated or until one year after the date of revocation. See the Committee report on Transportation.

**House Bill No. 547 - Financial Responsibility.** Chapter 39-16 of the Code contains provisions governing financial responsibility following an accident and proof of financial responsibility for the future. This bill splits chapter 39-16 in two so as to remove confusion resulting from the commingling of these two areas. See the Committee report on Transportation.

**House Bill No. 548 - Establishing a Fee Schedule for Private Samples and Inspection and Chemical Analysis of Beverages.** This bill grants the state laboratories commission the authority to establish a fee schedule for private samples submitted to the department for laboratory analysis. It also makes the testing and chemical analysis of beverages discretionary with the department. See the Committee report on State, Federal, and Local Government.

**House Bill No. 549 - Licensing and Regulation of Medical Laboratories.** This bill provides for the licensing and regulation of medical laboratories and prescribes standards that the directors and supervisors of these facilities must meet. This bill also allows premarital blood tests to be performed by any federal laboratory or any public health laboratory approved by the state health officer or licensed under the North Dakota Medical Laboratories Act. See the Committee report on State, Federal, and Local Government.

**House Bill No. 550 - Grain Information Service.** This bill provides for the establishment of a grain information service by the public service commission. This service would provide grade quotations and information concerning the consignee of all grains being held in North Dakota to any person requesting such information. See the Committee report on State, Federal, and Local Government.

**House Bill No. 551 - Permit Required to Explore Prehistoric or Historic Sites.** This bill requires the acquisition of a permit prior to exploring prehistoric or historic sites and deposits and requires the reporting of the findings of the exploration once it has been completed. See the Committee report on State, Federal, and Local Government.

**House Bill No. 552 - Discontinue Veterans' Aid Loan Fund.** This bill would discontinue the authority of the veterans' aid commission to make loans to veterans. See the Committee report on Budget.

**House Concurrent Resolution "A" - Constitutional Revision.** This resolution includes all the amendments and repeals to the state Constitution as proposed by the Committee. See the Committee report on Constitutional Revision.

**House Concurrent Resolution "B" - Resolution to the Bureau of Outdoor Recreation.** This resolution urges the bureau of outdoor recreation to make funds available to the political subdivisions to construct and erect weather-protective buildings specifically equipped to provide year-around indoor recreation activities free from uncertain weather conditions. See the Committee report on State, Federal, and Local Government.