TABLE OF CONTENTS

PAGE

Summary of Committee Report ..... A-J

History and Functions of Legislative Council

History of the Council 10
Major Past Projects of the Council 10
Current Recommendations 10
Functions of the Council 11
Methods of Research and Investigation 11
Regional Environmental Assessment Program (REAP) 11

Report and Recommendations

AGRICULTURE
Weather Modification Study 12
Statutory Authority for Weather Modification 12
1977 Legislative Action 12
Interim Study 13
National Weather Modification Advisory Board 14
Second Symposium on Weather Modification 14
Recommendation 14
Deferred Payment Grain Contract Study 14
Statutory Provisions 15
Previous Action 15
PSC Proposal 15
IRS Opinion Letter 16
Testimony 16
Recommendation 17
Grain Marketing in North Dakota 17
Interim Study 17
Proposals Considered 18
Recommendations 18
Other Committee Business 18

BUDGET SECTION
Social Service Board 21
Requests for Funds from Preliminary Planning Revolving Fund 23
Status of State General Fund 24
Program Budgeting 24
Zero-Base Budgeting 24
Irregularities Reported Pursuant to Section 54-14-03.1 24
Introduction of Appropriation Bills 25
Allocation Formulas for Distributing State Mental Health and Retardation Funds 25
Central North Dakota Beef Cattle Experiment Station 26
State Auditor's Office 26
Program for Medically Needy Children 26

PAGE
Consolidation of the Fees and Services and Supplies and Materials Line Items 27
State's General Fund Cash Flow Requirements 27
Comprehensive Employment and Training Act (CETA) 27
Tour Groups 27
Tour Group No. 1 28
Tour Group No. 2 28
Tour Group No. 3 28
Tour Group No. 4 29
Miscellaneous Budget Section Action 29

BUDGET "A"
Study of General Fund Revenues and Expenditures 30
Background 30
General Fund Cash Flow 30
Estimates of Personal Income and Sales and Income Tax Revenues for the 1979-81 Biennium 30
Monitored Status of Appropriations 32
State Hospital 33
Central Personnel Salary Ranges 33
Chase Econometrics — Economic Forecast 34
Other Committee Activities 34
Study of Costs Related to Energy Development 34
Performance Reviews 35
Background 35
State Water Commission 36
Geological Survey 37
Environmental Control Section 38

BUDGET "B"
Department of Administration 39
Background 39
Department of Accounts and Purchases 39
Other Agencies Administrative Services 40
Arthur Andersen and Company Comments 41
Other States' Central Budget and Management Agencies 41
Committee Action 41
State Purchasing Practices 42
Overview 42
Current Practice 42
Council of State Governments' Review 42
Agency and Institutions Response 44
Recommendations 44

CONSTITUTIONAL REVISION
Recommendations 45
Renumbering Constitutional Sections and Articles 45
Ballot Order 45
Grain Elevators Out of State 46
Hail Insurance 46
Bank of North Dakota Secured Mortgages 46
Education 46
Legislative Branch 47

PAGE
Legislative Salary 47
Executive Branch 47
Other Matters Considered 47
County Judges 48
Summary of Recommendations 48

CORRECTIONS AND PENOLOGY
Corrections Study Background 49
North Dakota Jails Study 49
Women's Prison Study 51
Male-Female Inmate Communication 53
Department of Corrections 53
State Farm, Penitentiary, and SIS Sections 53
Fire and Health Inspections 54
Recommended Study Resolution 55

CRIMINAL JUSTICE SYSTEM
Drug Law Study 56
Background 56
Drug Enforcement Unit 57
Marijuana and Hashish Possession Penalties 57
Conveyance Forfeiture 58
Marijuana for Medical Treatment 58
Drug and Alcohol-Related Deaths 59
Other Drug Related Bills Considered 59
Criminal Justice System Study 59
Appellate Review of Criminal Sentences 59
State's Attorney Inquiry 60
Murder Penalty 60
Simple Assault Penalty 60
Violation of Custody Decree 61
Uniform Juvenile Court Act 61
Transfer of Juveniles to "Adult" Court 61
Sealing and Disposal of Juvenile Records 62
Other Criminal Justice System Bills Considered 62

EDUCATION
Financing of Elementary and Secondary Education 64
Background 64
HEW Grant to Study Educational Finance 64
Direct Payments to School Districts 64
Federal Impact Program 65
The Effect of Various Tax Sources on the Foundation Program 65
Textbook Fees 65
Consolidation of Mill Levies 66
Recommendations 66
Special Education 66
Federal Special Education Legislation 66
Delivery of Special Education Services 67
Conflicts with Federal Law 67
Age Limitations 67
Advisory Council on Special Education 68
Recommendations 68

PAGE

FINANCE AND TAXATION
Income Tax Study 69
Background 69
Recommendations of the State Tax Department 69
Committee Proposals 70
Interest, Penalties, and Refunds 73
Property Tax Study 73
Background 73
Recommendations of the Tax Department 73
Assessment at True and Full Value 74
Classification of Property 75
Assessment of Agricultural Land 76
Miscellaneous Proposals 76
Recommendations 77

GARRISON DIVERSION OVERVIEW 79

HEALTH SERVICES
Committee Activities 82
Study of the Human Service and Mental Health and Retardation Centers 83
Staff and Budgets of the Centers 83
Human Service Center Study 84
Mental Health and Retardation Center Study 85
Collocation of Area Social Service and Mental Health and Retardation Centers 86
Study to Establish an Interagency Council 87
Study to Establish a State Department of Human Services 88
Study of the Environmental Control Section of the State Health Department 88
Study of the District Health Units 89
Study of the State Hospital 89
Central Personnel Division Study 89

HIGHER EDUCATION
Adult and Vocational Education 91
Adult Education 91
Recommendations 92
Vocational Education 93
Recommendations of the Citizens Study Committee on Vocational and Adult Vocational Education 94
Recommendation 95
Midwestern Education Compact 95
Recommendation 96
Regional Veterinary Educational System 97

INDUSTRY, BUSINESS & LABOR
Municipal Industrial Development Act Study 99
Original 1955 Act 99
Subsequent Amendments to the 1955 Act 100
Recommendations Made to Committee 100

PAGE
Committee Recommendations 101
Bank Transfer Study 102
State Regulation of Corporate Takeovers 103
Testimony Presented to Committee 103
Committee Recommendation 104

JUDICIAL SYSTEM
Main Revision Bill 106
Chapter 27-01.1 - General Provisions 106
Chapter 27-02.1 - Supreme Court 107
Chapter 27-03.1 - Supreme Court Officials 107
Chapter 27-04.1 - District Courts 107
Chapter 27-06.1 - District Court Clerks, Reporters, and Bailiffs 108
Chapter 27-07.1 - Probate Jurisdiction of District Court, County Probate Officer, Magistrate 109
Chapter 27-24 - Municipal Courts 109
Judicial Nominating Committee 110
Temporary Judges 110
Temporary Assignment 111
Judicial Retirement 111
Secondary Revision Bill 112
Constitutional Amendment 112

LEGISLATIVE AUDIT AND FISCAL REVIEW
State Accounting System 113
Audit of the Department of Accounts and Purchases 113
Charitable and Penal Institutions Accounting and Budgeting Systems 113
State Board of Higher Education Uniform Accounting System . 114
Consolidated Financial Statements 114
Recommendations and Conclusions Regarding the State Accounting System 115
Department of Accounts and Purchases 117
State Auditor's Office 117
Audit of the State Auditor's Office 117
Performance Reviews 118
Discussion of Audit Reports with Boards and Commissions 118
Request Agencies to Comply with Auditor's Recommendations 118
Request State Auditor to Follow Up on Recommendations 118
Internal Auditors 118
Purchasing Study — North Dakota State University 119
Administration of Title XX Funds 119
Unsatisfied Judgment Fund 119
Writeoff of Accounts Receivable 120
Other Action and Discussion 120

LEGISLATIVE PROCEDURE AND ARRANGEMENTS
Legislative Rules and Procedures 121
Use of Legislative Time 121
Hour a Legislative Day Begins 122
Day of Convening of Legislative Sessions 122
Calling the Organizational Session to Order 123
Limitations on the Introduction of Bills 123
Joint Sponsorship of Bills 123

PAGE

Strike-Through Method of Drafting Bills Which Delete Existing Statutory Language 124
Distribution of Bills 124
Conference Committees 124
Committee Meeting Times 125
Deadline on Rereferrals to Appropriations Committees 125
Jurisdiction of Appropriations Committees 125
Procedure for Selection of Interim Studies 125
Resolutions of Commendation 126
Legislative Retirement Program 126
Legislative Internship Program 127
Miscellaneous Matters 127
Joint Meeting with the Legislative Membership of the Minnesota Interstate Cooperation Commission 127
Project TRAIN of the National Conference of State Legislatures 127
Voting and Sound System in Legislative Chambers 127
Legislative Film 128
Recording of Standing Committee Meetings 128
Training Session for Committee Clerks and Interns 128
Girl Scout Legislative Aide Bar Program 128
Legislative Employee Screening 128
Legislative Tour Guide Program 128
Opening of the Bill Room 128
Committee Rooms Used by Executive Agencies 128
Doctor-of-the-Day Program 128
Statutory Revision 128
Legislative Space and Renovation of the Legislative Wing 129
Legislative Wing Renovation 129
Miscellaneous Considerations Related to Renovation Project 131
Renovation Budget Request 132

NATURAL RESOURCES
Building Code Study 133
Water Resource Development Study 134
Federal Mineral Revenue Receipts Study 135
Surface Mining Reclamation Study 136

PRODUCTS LIABILITY
Background 137
Testimony 138
Recommendations 139
North Dakota Products Liability Act 139
Products Liability Insurance Information 140

RESOURCES RESEARCH COMMITTEE (RRC)
North Dakota Regional Environmental Assessment Program (REAP) 141
Continued Development 141
User Services 142
User Fees 143
Federal Funding 143
Reevaluation of Goals, Objectives, and Policies 143

PAGE
1979-81 Projects 144
Proposed Organization 145
Proposed 1979-81 Budget 145
Status of 1977-79 Budget 145
Conclusion 145

RETIREMENT 153

SOCIAL SERVICES
Study of Care Facilities for the Aged 158
North Dakota Law 158
Minnesota and South Dakota Law 158
Interim Study 159
Testimony on Care Facilities 160
Committee Tour 161
Ombudsman 161
Homemaker/Home Health Aide Service 162
Equalization of Costs 162
Licensing Proposals 162
Recommendations 163
Human Rights Study 163
State Constitutional and Statutory Provisions 164
Human Rights Statutes of Adjacent States 164
Federal Statutes 164
Testimony 165
Proposed Bill Draft 165
Recommendation 165

STATE AND FEDERAL GOVERNMENT 166
Unaccepted Committee Recommendations 169

TRANSPORTATION
Airport Financing Study 170
North Dakota Law 170
Federal Law 170
Funding Airport Improvements in Other States 171
Airport Improvement Costs 171
Testimony 171
Recommendations 171
Highway Use Restrictions Study 172
State and Local Restrictions 172
Federal Restrictions 172
Comparison of Surrounding States' Restrictions 173
Studies on Pavement Performance 173
Testimony 173
Recommendations 173
Driver Licensing Study 174
Statutory Background 174
Relevant Statutes in Surrounding States 174
Consolidation of Licensing Functions 174
Eye Examinations 175
Recommendations 175
Related Committee Business 175

PAGE

EXPLANATION OF LEGISLATIVE COUNCIL BILLS AND RESOLUTIONS

Senate Bills 177
Senate Concurrent Resolutions 180
House Bills 181
House Concurrent Resolutions 184

SUPPLEMENTARY RULES OF OPERATION AND PROCEDURE OF THE NORTH DAKOTA LEGISLATIVE COUNCIL 185

SUMMARY
BRIEFLY — THIS REPORT SAYS

AGRICULTURE

The Council carried out a comprehensive review and evaluation of weather modification and related activities in North Dakota, concentrating on the future of weather modification in the state and the nation. The Council recommends a bill to establish a program of weather modification research and development under the Weather Modification Board. The program would be supported by both state and federal funding and would report biennially to the Governor.

The Council studied the concept of deferred payment grain contracts and bonding protection for those entering into such contracts. A Council committee dismissed a proposal to require elevators to segregate, in custodial accounts, moneys from deferred payment grain contracts, because of income tax ramifications.

Council studied grain marketing in North Dakota, concentrating on local grain sampling, grading, and inspection. A Council committee considered and rejected several proposals dealing with grain sampling, grading, or inspection.

BUDGET SECTION

The Council approved Social Service Board requests for 17 social service projects totaling $2,371,900 of which approximately 70 percent is federal funds (Title XX) to be matched by private and governmental agencies. It also approved the disbursement of $101,759 from the preliminary planning revolving fund for planning for major construction and remodeling projects in the state.

The Council reviewed the Federal Comprehensive Employment and Training Act (CETA). It recommends a bill providing that any state agency, board, commission, department, institution, or other unit of state government which receives funds appropriated by the Legislative Assembly may employ personnel under CETA only upon Budget Section approval.

The Council reviewed program budgeting, zero-base budgeting, and the status of the state general fund. The Council recommends three bills making it possible for the state to maintain a lower general fund balance. It recommends a bill to increase the loan limit of the state from the Bank of North Dakota from $5 million to $15 million; a bill which changes the payment date of the first personal property tax replacement payment from March 1 to June 1 of each year; and a bill to defer one-half of the March 1 foundation payment of each year to May 1.

BUDGET "A"

The Council during the 1977-79 interim analyzed state general fund revenues and expenditures which included a review of general fund cash flow, the status of major state agency and institution appropriations, and related budgetary problems. The Council recommends a bill providing that revisions to Central Personnel Division classification and compensation plans shall only be made on July 1 after a

biennial legislative session. Another bill recommended by the Council clarifies current law regarding the time during which appropriations are available during the biennium.

The Council contracted with the NDSU Department of Agricultural Economics for forecasts of state income and sales tax revenues for the 1979-81 biennium.

The Council studied costs incurred and expected to be incurred by state agencies because of energy development and conducted performance reviews of the Water Commission, Geological Survey, and the Health Department's Environmental Control Section.

BUDGET "B"

The Council studied the possibility of consolidating the administrative, management, and budgetary responsibilities of state government into a Department of Administration. The Council does not recommend creating a Department of Administration nor transferring additional administrative services to the Department of Accounts and Purchases; however, as a result of this study the Council recommends a resolution directing a Legislative Council study during the 1979-81 interim of reorganization of the executive branch of state government.

The Council studied state government purchasing practices and recommends a bill to clarify and improve many current purchasing procedures of state agencies.

CONSTITUTIONAL REVISION

The Council is proposing measures it believes will eliminate confusion in reading and voting on the Constitution, will eliminate some unnecessary constitutional provisions, and will streamline some governmental operations.

Two of the committee's 10 proposals amend state law and not the Constitution. One would allow the Legislative Council, when it republishes Century Code Volume 13 containing the Constitution, to renumber and reorder the provisions in logical and sequential order. The other change would allow the Legislative Assembly or the Legislative Council to determine the ballot order of constitutional amendments proposed by the Legislative Assembly.

Two other proposals would provide new Legislative Branch and Executive Branch Articles in the Constitution, considerably streamlining the constitutional provisions for both. A third measure in this category would allow legislative salaries to be set by state law rather than the Constitution.

There are two proposals dealing with higher education. One would delete references to the specific locations of the state's colleges and universities from the Constitution, while the other would do this as well as streamline the operations of the Board of Higher Education and create a Board of Public Education to deal with elementary and secondary education.

Constitutional provisions authorizing the state to build and operate grain elevators in Minnesota and Wisconsin, and levy taxes to fund a hail insurance program, are recommended for repeal.

Finally, the Council recommends a constitutional amendment allowing the Bank of North Dakota greater flexibility in issuing or guaranteeing bonds.

CORRECTIONS AND PENOLOGY

The Council studied all levels of the state's corrections system and recommends a bill establishing a new chapter relating to jails. The chapter gives each county and city the option of (1) establishing a jail; (2) contracting for jail services; or (3) establishing a regional corrections center in conjunction with other counties and cities. Jails would be classified as to length of allowable inmate confinement based upon construction, size, and usage. Standards for jails would be established, and provision would be made for jail inspections, correction of jail deficiencies, jail variances, and jail closure.

The Council recommends acceptance of the Director of Institutions' proposal that a dual-purpose facility for women and juveniles be constructed at the State Industrial School.

The Council recommends a bill which would allow male-female inmate communcation at the Penitentiary, and a bill which would amend several present sections of law relating to the State Penitentiary, State Farm, and State Industrial School. Bills which would require annual fire and health inspection of all state institutions and buildings are also recommended by the Council.

The Council finally recommends an interim Legislative Council study of community corrections and the State Penitentiary.

CRIMINAL JUSTICE SYSTEM

The Council studied the state's drug laws, the potential penalties which may be imposed for violation of the drug laws, and the actual sentencing procedures and practices followed in North Dakota. The Council recommends a bill which establishes a state-level drug enforcement unit under the Attorney General to enforce all drug laws. The Council also recommends a bill which establishes a penalty for possession of hashish and penalties for marijuana possession based upon the amount possessed. A bill to allow a state, county, or city law enforcement agency to seize a conveyance used for transporting drugs and sell the conveyance is recommended by the Council, as well as a bill to establish a research program using marijuana to treat persons suffering from cancer chemotherapy effects and glaucoma. A final bill resulting from the Council's drug law study requires the reporting of alcohol and drug-related deaths for statistical and public information purposes.

The Council studied many aspects of the state's criminal justice system and existing problems. The Council recommends a bill which allows a person to appeal the length of a felony or misdemeanor sentence to the Supreme Court. Another bill would expand the state's attorney inquiry authority to include investigation of any felony. The Council also recommends bills which increase the maximum penalty for murder to life imprisonment and for simple assault to a Class A misdemeanor. A bill which would establish a Class C felony for the removal of a child from the state in violation of a custody decree is also recommended.

The Council also studied the Uniform Juvenile Court Act and recommends a bill which changes the definition of "child," lowers the waiver age for transfer to adult court from 16 to 14 in certain instances, and provides for the disposition of alcoholic and drug-addicted children. A final recommended bill amends the procedure for sealing and disposal of juvenile records.

EDUCATION

The Council studied the financing of elementary and secondary education and recommends a bill to provide for the direct payment of state foundation aid to the school districts rather than through the county equalization fund. The Council also recommends a bill which prohibits local school districts from charging for necessary textbooks.

The Council also studied special education and the problems involved in complying with Public Law 94-142, the "Education for all Handicapped Children Act of 1975." The first bill recommended by the Council allows school districts to establish multidistrict special education programs and repeals the present chapter dealing with county special education programs. The Council also recommends two bills which would provide for six round trips home per year for patients under the age of 21 at the San Haven State Hospital, the Grafton State School, the School for the Blind, and the School for the Deaf. The institutions could provide either the transportation or reimbursement for mileage at the state rate. The Council also recommends a bill to resolve conflicts between state and federal law by directing the heads of state institutions to prepare a method of appointing surrogate parents and prohibiting the Jamestown State Hospital from charging for education or related services provided to handicapped persons under the age of 21. The final bill recommended by the Council repeals the Advisory Council on Special Education.

FINANCE AND TAXATION

The Council created a special committee to study the tax structure and tax rates and the committee concentrated on income and property taxes. The Council makes no recommendations on income tax rates but does recommend a bill to provide for the payment of interest on overpayments of income and sales and use taxes.

The Council also recommends a bill which requires that all property be assessed at its true and full value and that all mill levies and statutory bonding limitations be reduced to one-tenth of their former amounts. The bill also contains provisions for the State Medical Center levy, property tax exemption tied to assessed valuations, and limitations on property tax increases by political subdivisions. A companion bill recommended by the committee would provide for the assessment of property at 10 percent of its true and full value for two years before the effective date of the first bill.

A third bill related to the property tax provides a formula for the assessment of agricultural land based upon cash rent. The formula used would use average cash rents in a township or assessing district, from which property taxes would be subtracted and the difference would be divided by the sum of the Federal Land Bank loan rate plus three percent. The resulting figure would be used for the highest value land in the township or assessing district and the value of less productive land would be determined using soil capability information.

GARRISON DIVERSION OVERVIEW

The Council received the report of the Garrison Diversion Overview Committee, which held a series of informational meetings, and is making several recommendations.

The Council is recommending a concurrent resolution which would immediately re-create the Garrison Diversion Overview Committee to exist through April 30, 1981. Under the 1977 resolution which created the committee, the committee's mandate will expire on November 30, 1978.

The Council is also recommending that a meeting be arranged between representatives of North Dakota and Manitoba to discuss the existing differences between North Dakota and Manitoba.

Additionally, the Council is recommending that its staff work with the Attorney General's office to develop legislation allowing the recovery of expenses in frivolous actions, and is recommending that such legislation be introduced by the Attorney General's office.

The Council is also recommending a bill which would require Garrison Diversion irrigation waters to be allocated in accordance with best management practices to be established by the director of the agricultural experiment station.

HEALTH SERVICES

The Council studied the State Health Department, the State Hospital, and the comprehensive mental health and retardation, area social service and human service centers in the state.

The Council is recommending bills providing for joint certification of human services provided by a human service center by the Health Department and the Social Service Board on or after July 1, 1981, and establishment of human service centers by majority vote of county commissioners within a multicounty area; supervision of comprehensive mental health and retardation centers by the Mental Health and Retardation Division of the State Health Department and collocation of the service unit in each region with the area social service center by July 1, 1981; and collocation of all comprehensive mental health and retardation and area social service centers in each region of the state by July 1, 1981, and providing a fiscal incentive to the county where the collocated center will be located to join in the collocation effort.

HIGHER EDUCATION

The Council studied the needs of adult and vocational education throughout the state and recommends a bill to appropriate $80,000 for adult basic and secondary education for the next biennium. The Council also recommends bills to place adult basic and secondary education under the control of the State Superintendent of Public Instruction and to revise Chapter 15-46, dealing with evening schools, to make it relevant and applicable to adult education programs. The Council also recommends a bill relating to the assessment of participating districts for expenses of multidistrict vocational education centers using mobile units solely.

The Council investigated the concept of a Midwestern Educational Compact and recommends a bill to adopt this compact. The Council also consulted with the Old West Regional Commission in developing plans for a regional veterinary educational system but makes no recommendation concerning this study.

INDUSTRY, BUSINESS & LABOR

The Council reviewed the operation and effect of the Municipal Industrial Development Act and is recommending five bills. The bills require project lessees to notify the state securities commissioner of the issuance of industrial development revenue bonds; require the governing body of the municipality to give notice and hold a public hearing before approving the issuance of industrial development revenue bonds; restrict the use of industrial development revenue bonds by enterprises that would compete with any existing enterprise; restrict the use of industrial development revenue bonds by

enterprises that would compete with existing retail businesses; and restrict the use of industrial development revenue bonds so that vocational education facilities could not be constructed unless the electorate approved the construction.

The Council reviewed the lack of regulation over the sale of financial institutions and is recommending a bill to require persons who purchase a bank to meet the same qualifications as those who first organize a bank.

JUDICIAL SYSTEM

The Council studied the state's entire judicial system to determine what, if any, structural changes might be made necessary by the passage of the new Judicial Article. As a result of its study, the Council is recommending a bill which would create a new unified judical system in North Dakota, and is also recommending several other bills concerning the judicial system.

The bill which would revise the entire judicial system would create a unified judicial system consisting of a Supreme Court, the district courts, and the municipal courts, to be administered by the Chief Justice of the Supreme Court, pursuant to rules and regulations promulgated by the Supreme Court. The bill contains two alternatives for district courts, one of which would create a number of associate district judgeships, while the other would create some additional district judgeships. The bill also provides for state funding of the unified judicial system and creates probate officers and magistrates.

The Council is also recommending a bill to create a judicial nominating committee to assist in the filling of judicial vacancies, as required by Section 97 of the State Constitution.

The Council is also recommending a bill which would give the Supreme Court the authority to appoint any qualified person to serve as a temporary judge in any court other than the Supreme Court.

Another recommendation would provide that a Supreme Court justice, upon his request, shall be assigned by the other justices to temporary duty in the district courts.

The committee is also recommending two alternative bills concerning judicial retirement. Both of these bills would provide increased retirement benefits to qualified judges, but one would require the judges to make substantially greater contributions during their service.

Another recommended bill would amend all sections of the North Dakota Century Code that are affected by the main revision bill. This bill would remove references to county courts, county justices, county judges, and police magistrates in the North Dakota Century Code.

The Council is also recommending a concurrent resolution which calls for the amendment of Section 173 of the Constitution of the State of North Dakota and for the repeal of subsection 6 of Section 69 of the State Constitution. Section 173 would be amended to remove the requirement that a county judge be elected in each county, and the subsection of Section 69 which forbids the passage of any special laws to regulate the jurisdiction of justices of the peace, police magistrates, or constables would be repealed.

LEGISLATIVE AUDIT AND FISCAL REVIEW

The Council reviewed 68 audit reports presented by the State Auditor's office. The action taken on these reports pursuant to various audit recommen-

dations are included in the report of the Council's Legislative Audit and Fiscal Review Committee.

The Council recommends the Department of Accounts and Purchases request an appropriation to study the feasibility of changing the state's accounting and budgeting systems. The Council also recommends that the study include consideration of the feasibility of preparing consolidated financial statements for the State of North Dakota.

The Council encourages the State Auditor to continue with the current program of conducting performance reviews, to discuss audit reports with boards and commissions when applicable, and to follow up on audit recommendations to ensure agencies and institutions comply with the recommendations.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

The Council studied legislative rules and procedures and recommends amendments defining a legislative day to eliminate the 2:00 p.m. adjournment, limiting introduction of bills after the 10th legislative day, providing joint sponsorship of bills and resolutions, describing the method of designating statutory material to be deleted in bills; and dealing with conference committees, committee meeting times, jurisdiction of the Appropriations Committees and deadlines for rereferring bills to those committees, procedures for selecting interim studies, and limitations on the introduction of laudatory resolutions.

Statutory changes recommended include a bill providing that if the first Tuesday after the first Monday in January of an odd-numbered year falls on January 2, the Legislative Council would establish a date for the convening of the Legislative Assembly between January 2 and January 11. Another bill provides that the senior member of the majority party of the House call that chamber to order at the Organizational Session, rather than the former Speaker who may no longer be a member of the House. A third bill authorizes the Legislative Council to screen and prioritize study resolutions. The Council also recommends a resolution calling for a study of legislative retirement. Another bill recommended by the Council eliminates obsolete name references throughout the entire North Dakota Century Code and eliminates obsolete statutory references in certain volumes.

The Council employed an architectural firm to study legislative space needs. The Council recommends the renovation of the legislative wing as well as space to be vacated on the ground floor and second floor levels of the Capitol tower. The recommendations are intended to increase the amount of space available for the Legislative Assembly, improve the utilization of the space available, and make the working areas more accessible.

NATURAL RESOURCES

The Council studied the adoption of a state building code and recommends a bill adopting the Uniform Building Code as the state code with provision for local enforcement and exemption of specified types of buildings.

The Council studied the revenue bonding capacity of the Water Commission and recommends an increase in the commission's bonding capacity from $3 million to $20 million with a possibility of bonding in excess of $20 million if specifically authorized by the Legislative Assembly.

The Council studied the allocation of federal mineral revenue receipts provided by the Mineral Leasing Act (30 U.S.C. 191) and discovered that such allocation could adversely affect the amount of other federal moneys presently being allocated to North Dakota counties. The Council does not recommend a bill providing for an allocation for federal mineral revenue receipts.

The Council studied the requirements of the Surface Mining Control and Reclamation Act of 1977 to formulate a legislative response to that Act. Because of the lack of time necessary for thorough consideration of the federal act and the state's response to it, the Council does not recommend a bill but recommends that the Public Service Commission continue to formulate a state response and introduce the necessary legislation during the 1979 Legislative Session.

PRODUCTS LIABILITY

The Council studied the availability and affordability of products liability insurance and related insurance problems, and recommends a bill that would regulate certain products liability actions in North Dakota. The bill would provide a new statute of limitations to begin running on the date of sale or manufacture of a product, would limit the contents of the ad damnum clause of complaints, and would create certain defenses for manufacturers and sellers of products.

The Council recommends approval of the proposed legislation and an ap-
companies that sell products liability insurance in North Dakota to report information regarding products liability claims and premiums to the Commissioner of Insurance.

RESOURCES RESEARCH COMMITTEE (RRC)
(North Dakota Regional Environmental Assessment Program (REAP)

The Resources Research Committee is a statutory interim committee of the Legislative Council composed of 19 members. These members represent the legislature (5 House and 4 Senate), the executive branch (6), the two universities (2), and citizens at large (2). The committee administers the North Dakota Regional Environmental Assessment Program (originally established by House Bill No. 1004 — 1975 and continued in Senate Bill No. 2004 — 1977).

Senate Bill No. 2004 provided for the "continued development and operation of the North Dakota regional environmental assessment program." The purpose of that effort was to be "for the purpose of assisting in the development of new laws, policies, and governmental actions and providing facts and information to the citizens of the state." Priority was to be given to "studies in regard to North Dakota's resources and the development of necessary information and analytic systems." The goal was "to assure that there shall not be material detrimental deterioration of the environment or quality of life in North Dakota, but that any such use shall enhance the quality of life of the citizens of this state."

The present biennium has been devoted to three major types of activities. First, the design activities initiated during the previous biennium have been pursued to their logical conclusion (the computer system is being developed, baseline data contracts completed, and the two initial capabilities enhanced). Second, an increasing number of services are being provided to users. Third, the experience gained during the first three years of REAP's existence provided a framework within which the RRC reevaluated the basic goals, objectives, and policies of REAP. That effort resulted in a definitive statement of what REAP should be and how it should operate.

The Council recommends approval of the proposed legislation and an appropriation of $2,651,000 for the operation and continued development of an environmental assessment program administered by a committee of the Legislative Council. This will permit the continued operation of capabilities developed to date and the continued research and development needed to respond to the information needs of decision makers.

RETIREMENT

The Council solicited and reviewed proposals affecting many aspects of various state and local public employee retirement programs. Proposals were received from local public retirement programs, state-level retirement programs, state and local public officials, legislators, Legislative Council committees, educational organizations, state and local public employees, retirees, and employment organizations. The Council obtained actuarial and fiscal information on the proposals and reported to each proponent on the actuarial and fiscal effects of each proposal, the number of people affected, and the form the proposal was submitted in.

The Council recommends a bill deleting sections of the North Dakota Century Code providing for two options previously available to individual and political subdivision members of the Public Employees Retirement System.

The Council also recommends a resolution calling for a study of automatic cost-of-living adjustments for retirees under state retirement programs.

SOCIAL SERVICES

The Council studied the licensing requirements and procedures, and the care and treatment provided patients and residents of health care and other care facilities for the aged. The Council recommends a bill to more specifically define the term "boarding home for the aged and infirm," to provide the Social Service Board with injunctive powers in certain circumstances, and to provide for the Social Service Board and State Laboratories Department to have joint responsibility for licensing facilities which may be offering unauthorized care.

The Council studied the feasibility of enacting comprehensive human rights legislation in North Dakota, concentrating specifically on the adequacy and enforcement of federal and state laws. A Council committee considered but rejected a comprehensive bill draft which would have established an independent human rights commission in the state.

STATE AND FEDERAL GOVERNMENT

The Council studied the membership, duties, and responsibilities of all boards, councils, committees, and commissions, other than occupational and professional licensing boards.

The Council recommends bills which would terminate nine boards and commissions; change the name of the Council on the Arts and Humanities, and the State Library Commission; revise the membership districts of the Business and Industrial Development Commission, State Board for Public School Education, and Game and Fish Advisory Board; and revise the membership, terms of office, and appointment procedure of the Educational Broadcasting Council.

Other recommended bills provide for coordination of "heritage" boards; provide for advertisement of employment opportunities with boards and commissions; provide a standard per diem for members of boards and commissions; require a two-thirds vote of each house to create new boards and commissions; provide for "sunset" review and automatic termination of selected boards and commissions; and provide for review of administrative rules by appropriate legislative interim committees.

TRANSPORTATION

The Council studied alternate methods of providing an equitable means of financing airline services in North Dakota. The Council recommends a bill to provide $2 million in state assistance for airports served by commercial air carriers or formerly served by commercial air carriers. A recommenda-

tion was also made, by interim resolution, that Congress restore the 90 percent federal matching fund level for airport improvements.

The Council studied vehicle restrictions on state highways, seeking a balance between unrestricted use of the highways and tight restrictions on highway use. The Council recommends a bill to increase vehicle length limitations to 75 feet on designated highways, to allow trucks to draw two trailers, to raise gross weight limitations to 80,000 and 105,500 pounds, and to provide an expanded fee schedule. The bill allows for continuance of the discretionary single-trip permit system.

The Council studied consolidation of driver licensing functions in one state agency and considered testing requirements for acquisition and renewal of driver licenses, but makes no recommendation.

REPORT
of the
NORTH DAKOTA LEGISLATIVE COUNCIL

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

FORTY-SIXTH LEGISLATIVE ASSEMBLY

1979

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North Dakota Legislative Council

STATE CAPITOL — BISMARCK 58505 TELEPHONE (701) 224-2916

January 3, 1979

The Honorable Arthur A. Link
Governor of North Dakota

Members, Forty-sixth Legislative Assembly
of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations to the Forty-sixth Legislative Assembly.

Major recommendations include: revision of state laws relating to jails; an appropriation of federal and state funds for weather modification research by the Weather Modification Board; revision in the dates of payment of major intergovernmental fund transfers to aid in stabilizing general fund cash flow; strengthening the responsibility of the Department of Accounts and Purchases for the purchasing functions; revision of the Executive Branch Article and revision of the Legislative Branch Article of the Constitution; creation of a drug enforcement unit under the Attorney General's office; authorization of the use of marijuana for medical purposes; prohibition on local school districts charging for school textbooks; provision for creation of multidistrict special education programs; provision that all real property subject to property tax assessments is to be assessed at full and true value; provision for collocation of regional area social service centers and mental health and retardation centers; enactment of the Midwestern Education Compact; restrictions on the use of municipal industrial revenue bonds for financing competing retail enterprises; regulating the transfer of control of state banks; revision of the structure of the state's judicial system; promulgation of a statewide Uniform Building Code; changing the statute of limitations within which products liability actions must be commenced; assistance for the financing of airports served by commercial airlines; and continuance of the Regional Environmental Assessment Program under the name Environmental Assessment Program.

The report also discusses numerous other pieces of recommended legislation and contains brief summaries of each committee report and of each recommended bill and resolution.

Respectfully submitted,

Representative LeRoy Hausauer
Chairman
North Dakota Legislative Council

LH/gaw

Enc.

HISTORY AND FUNCTIONS OF THE LEGISLATIVE COUNCIL

HISTORY OF THE COUNCIL

The Legislative Council was created in 1945 as the Legislative Research Committee. Its name was changed by the 1969 Legislative Assembly to more accurately reflect the scope of its duties. The legislative council movement began in Kansas in 1933. At present, 45 states have such a council or its equivalent. Five states use varying numbers of special committees.

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

Compared with the problems facing present legislators, those of but one or two decades ago seem much less difficult. The sums they appropriated 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 was forced to approach its deliberations without its own records, studies, or investigations. Some of its information was inadequate, and occasionally it was slanted because of special interest. To solve these problems, and to expedite its work, the legislature established the Legislative Council.

MAJOR PAST PROJECTS OF THE COUNCIL

The work and stature of the North Dakota Legislative Council has grown yearly. Among its major projects since 1945 have been revision of the House and Senate Rules; soldiers' bonus financing; highway engineering and finance problems; oil and gas regulation and taxation; tax assessment; drainage laws; highway safety; business and cooperative corporations; licensing and inspections; mental health and mental retardation laws; 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;

Civil defense; tax structure; school district reorganization; school bus transportation; corporate farming; Indian affairs; legislative postaudit and fiscal review; water laws; constitutional revision; county government reorganization; a complete updating of the state's school district laws; an industrial building mortgage program to encourage new industry in the state; creating a central state microfilm unit in the Secretary of State's office; a uniform insurance group for state employees; a new method of financing elementary and secondary education;

A modified version of no-fault auto insurance; adoption of the Uniform Probate Code; obscenity control; requiring environmental impact statements on certain state projects; major revision of the state's criminal laws; the point system for drivers licenses; a nonsubstantive revision of the state's game and fish laws; formation of countywide water management districts; establishment of a statewide weather modification board; regulation of energy conservation and transmission facility sites; establishment of the Regional Environmental Assessment Program (REAP); and major revision of the mental health commitment laws.

CURRENT RECOMMENDATIONS

Major Council recommendations of the current biennium include: revision of state laws relating to jails; an appropriation of federal and state funds for weather modification research by the Weather Modification Board; revision in the dates of payment of major intergovernmental fund transfers to aid in stabilizing general fund cash flow; strengthening the responsibility of the Department of Accounts and Purchases for the purchasing functions; revision of the Executive Branch Article and revision of the Legislative Branch Artcle of the Constitution; creation of a drug enforcement unit under the Attorney General's office; authorization of the use of marijuana for medical purposes; prohibition on local school districts charging for school textbooks; provision for creation of multidistrict special education programs; provision that all real property subject to property tax assessments is to be assessed at full and true value; provision for collocation of regional area social service centers and mental health and retardation centers; enactment of the Midwestern Education Compact; restrictions on the use of municipal industrial revenue bonds for financing competing retail enterprises; regulating the transfer of control of state banks; revision of the structure of the state's judicial system; promulgation of a statewide Uniform Building Code; changing the statute of limitations within which pro-

ducts liability actions must be commenced; assistance for the financing of airports served by commercial airlines; and continuance of the Regional Environmental Assessment Program under the name Environmental Assessment Program.

FUNCTIONS OF THE COUNCIL

In addition to making detailed studies requested by legislative resolution, the Council considers problems of statewide importance that arise between sessions or upon which study is requested by individual members of the legislature. If feasible, it develops legislation for the next session to meet these problems. The Council provides a continuing research service to individual legislators. The services of the Council staff are open to any senator or representative who needs information about problems that might arise or ideas that come to mind between sessions. The Council staff drafts bills for legislators. In addition, the Council is continually revising the North Dakota Century Code and compiles all the laws after each session for the Session Laws and the Code supplements.

The Council also has on its staff the Legislative Budget Analyst and Auditor and his assistants who provide technical assistance to Council committees and legislators, and who review audit reports for the Legislative Audit and Fiscal Review Committee.

In addition, during the interim the Council staff provides stenographic and bookkeeping services to the Capitol Grounds Planning Commission and the Legislative Compensation Commission.

METHODS OF RESEARCH AND INVESTIGATION

The manner in which the Council carries on its research and investigations varies with the subject matter. In all studies of major importance, the Council appoints committees of legislators to conduct the studies. These studies are in most instances carried on by the committees with the assistance of the Council staff. On some projects the entire Council has participated in the studies and findings. These committees make their reports to the full Legislative Council which may reject, amend, or accept a committee's report. After the adoption of a committee report, the Council makes recommendations to the Legislative Assembly and prepares the legislation to carry out the recommendations.

During the 1977-79 interim, the Council contracted or worked with several consultants, consulting firms, and accounting firms including Eide, Helmeke, Boelz and Pasch; the Council of State Governments; Deloitte Haskins and Sells; Booz, Allen and Hamilton, Inc.; Martin E. Segal Company; Chase Econometrics and Company; the UND Bureau of Business and Economic Research; and the NDSU Agricultural Economics Department. In all other instances, the Council's interim studies were handled by the committee and Council staff. On certain occasions, the advice and counsel of local, state, and federal government personnel, as well as that of various individuals and professional associations, was sought and obtained.

REGIONAL ENVIRONMENTAL ASSESSMENT PROGRAM (REAP)

The 1975 Legislative Assembly established, and the 1977 Legislative Assembly continued, the Regional Environmental Assessment Program (REAP). REAP is an innovative resource and information program designed to provide environmental, socioeconomic, and sociological data acquisition and monitoring. It will also conduct integrated assessment of impacts arising from potential development activities. REAP will integrate the results from myriad studies underway, will initiate its own studies where appropriate, and will make the results available in a usable format to decision makers.

REPORT AND RECOMMENDATIONS LEGISLATIVE COUNCIL

AGRICULTURE

The Committee on Agriculture was assigned two studies. Section 3 of Senate Bill No. 2006 directed the Legislative Council to carry out a comprehensive review and evaluation of weather modification and related activities in North Dakota. House Concurrent Resolution No. 3102 directed a study of deferred payment grain contracts and bonding protection for those entering into deferred payment grain contracts with a public warehouseman, and grain marketing in North Dakota.

Committee members were Senators Francis Barth, Chairman, Robert Albers, Kent Jones, Adam Krauter, Kenneth Morgan, Arnold Pietron, Kent Vosper; and Representatives Larry Herslip, Bruce Laughlin, Clarence Martin, Reuben Metz, Walter Meyer, Doug Nordby, Duane Rau, Charles Russell, and Francis Weber.

The report of the Committee on Agriculture was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

WEATHER MODIFICATION STUDY

Statutory Authority for Weather Modification

North Dakota Century Code Chapter 2-07 provides the legal authority for weather modification activities. Section 2-07-02.1 creates the Weather Modification Board as a division of the Aeronautics Commission. The board is composed of 10 members, seven appointed by the Governor from the seven weather modification districts in the state, and three ex officio members — the director of the Aeronautics Commission, a representative from the Environmental Control Section of the Department of Health, and the State Engineer of the State Water Conservation Commission. The board is under the direction and supervision of the Aeronautics Commission but has various powers and duties, including: appointing an executive director and staff; making rules and regulations concerning all phases of weather modification operations; contracting with any person, corporation, government, or any county or group of counties to carry out weather modification operations; ordering any person to halt any weather modification operation that violates Chapter 2-07; cooperating and contracting with any private person or any local, state, or national commission, organization, or agency engaged in activities similar to the work of the board, to carry out programs consistent with Chapter 2-07; and requesting, accepting, and expending any funds or services, received from any commission, organization, person, or agency, to carry out the provision of Chapter 2-07.

Any person who wants to engage in weather modification activities must procure a license from the Weather Modification Board and a permit to operate in a particular area. Along with the application for a permit, the operator must submit a plan of operation and a map of the geographical area to be affected by the operation. The board publishes notice of its consideration of a permit application and may hold public hearings if it receives objections to the permit within 20 days of the notice.

County weather modification authorities may be created by petition, resolution of the board of county commissioners, or election. A weather modification authority may be abolished by similar procedures. Each weather modification authority is authorized to certify a tax levy of not more than two mills upon the net taxable valuation of property in the county to establish a weather modification fund for the county. Any weather modification authority may suspend weather modification operations in its county regardless of whether the operations are being conducted by the county or by the state.

Weather modification authorities may contract with the Weather Modification Board for weather modification activities. The board may assign participating counties to operating districts created by the board. Each operating district has a district operations advisory committee composed of one commissioner from each county weather modification authority in the district and one member of the board of county commissioners of each county in the district. The purpose of the committee is to advise the board on its evaluation of weather modification in the operating district.

During the 1976 season, there were three operating districts in North Dakota, containing 17 participating counties. In 1977 the three operating districts contained 11 participating counties. In 1978 the three operating districts contained 10 participating counties.

1977 Legislative Action

The 1977 Legislative Assembly passed House

Bill No. 1599. The bill amended North Dakota Century Code Section 2-07-11.1 to provide that the contracting county must appropriate to the state weather modification fund "such amount as is determined" by the Weather Modification Board to be necessary to provide the county with weather modification operations. Prior to the amendment the county was required to appropriate to the state weather modification fund "one-half of the total amount" determined by the Weather Modification Board as necessary to provide the county with weather modification operations. For the 1977-79 biennium, the state general fund appropriation to the Weather Modification Board, after deducting estimated income, was $745,963 for weather modification activities from April 20, 1977, through June 30, 1979.

Interim Study

The committee held three meetings around the state (at Fargo, Dickinson, and Minot) designed specifically to hear testimony from persons for and against weather modification. The committee heard testimony from many people including experts in the field of weather modification, university professors, farmers, ranchers, and other interested people.

Weather modification involves cloud seeding with silver iodide, either to increase rainfall, suppress hail, or both. The object is to increase the "precipitation efficiency" of the cloud by placing silver iodide crystals or some other nucleating agent in the cloud. The crystals provide the focal point for the collection of water vapor which becomes rain or reduces the rate of growth of hailstones.

Weather modification is a many-faceted technology that means different things to different people, including fog dispersal, snow pack, hurricane suppression, summertime cumulus precipitation enhancement, hail suppression, and downwind effects.

A wealth of written material and film was presented to the committee for consideration. Films showing weather modification research, operations, and a theoretical study of the economic effects of additional rainfall in North Dakota were shown. Numerous written reports and materials were submitted for committee consideration, including an "Evaluation of Recent Operational Weather Modification Projects in the Dakotas," a North Dakota Weather Modification Board and South Dakota Weather Modification Commission project; "Project Skywater," High Plains Cooperative Program (HIPLEX), a Bureau of Reclamation project in Montana involving the University of North Dakota; "Weather Modification Research," by Dr. A.F. Butchbaker, evaluating hail suppression and alternative radar systems; "The Effects of Added Rainfall During the Growing Season in North Dakota," a final report by the Agricultural Experiment Station, NDSU; "Weather Modification: Some Facts About Cloud Seeding," a publication of the Weather Modification Association; "The North Dakota Cloud Modification Project: A Summary of 1976 Cloud Seeding Procedures and Operations," a North Dakota Weather Modification Board publication; the interim report of the Weather Modification Advisory Board to the Secretary of Commerce, "A U.S. Policy to Enhance the Atmospheric Environment"; and "Can We Do Something About the Weather?", a publication of the Kansas State University Agricultural Experiment Station.

Studies by North Dakota State University, looking at crop, wildlife, livestock, and ecological systems and determining response, pointed out that if cloud seeding can increase rainfall by 10 to 15 percent, one to two inches of added rainfall could occur during the growing season, with substantial response in grain crop and forage yields.

Committee members and others expressed concern about the downwind effects of weather modification. The HIPLEX research program is the first weather modification research project directly addressing downwind effects which transcend state boundaries. Previous studies dealt purely with statistical after-the-fact accumulated data. It is known that positive downwind effects occur but it is not known when and why.

The question of whether or not weather modification was responsible for the summer floods of 1975 was addressed. A representative of the National Weather Service, Fargo, told the committee that cloud seeding played only a minor part in the heavy rainfall in North Dakota in 1975. The cause was most probably a stalled front and wind patterns with a buildup of convective clouds.

Although various specific claims about the capabilities of weather modification were made, testimony supported the proposition that weather modification programs should be part of well-planned scientific experiments. It was noted that the potential for weather modification is great in North Dakota where there are severe hailstorms and not enough water. Testimony pointed out that the technology of weather modification in the Northern Plains has not been adequately tested on either a theoretical or statistical basis. Testimony also pointed to the need for education of the public concerning weather modification. Although

research experiments have conclusively shown that cumulus clouds can be modified, there is still debate and uncertainty about the effects of weather modification and some people say between 30 and 100 years of research is still needed. Testimony also supported more federal involvement in atmospheric research.

Operational weather modification programs have been carried out in North Dakota for the past 17 years, mostly on a local basis. Although it was pointed out that the federal government is not encouraging local weather modification efforts, it was thought federal involvement in operational programs is likely when positive results become more apparent.

National Weather Modification Advisory Board

The committee received a written report of a meeting of the National Weather Modification Advisory Board (appointed by Commerce Secretary Juanita Kreps) held at the University of North Dakota on August 27, 1977. The board was charged with formulating a national policy to enhance the atmospheric environment. The board heard testimony on the North Dakota Weather Modification Program, the UND Weather Modification Pilot Training Program, hail insurance, HIPLEX, and other general testimony from persons favoring and opposing weather modification.

A member of the National Weather Modification Advisory Board, Mr. Bryce Streibel, Fessenden, testified before the committee concerning the board's final report.

Mr. Streibel reported that the National Oceanic and Atmospheric Administration was designated the lead agency for weather modification on a national level. He noted that the board has recommended an initial expenditure of $40 million for research and development which could eventually escalate to a $100 million a year expenditure. He pointed out that North Dakota is regarded as a leading state in weather modification and that with an organized research program it would be in a position to receive some of the federal moneys that may be spent. Mr. Streibel suggested that the lead agency for all weather modification programs in North Dakota should be the North Dakota Weather Modification Board. He thought it possible that up to $1 million a year could be available to North Dakota for research through a national program to complement North Dakota's fine operational program.

Following the committee's last meeting, the board's report was released. The report is entitled "The Management of Weather Resources: Proposals for a National Policy and Program." In addition, a bill for a comprehensive and coordinated national weather resources management policy has been introduced in the 95th Congress.

Second Symposium on Weather Modification

The North Dakota Weather Modification Board and the University of North Dakota's Department of Aviation and Division of Continuing Education cosponsored a seminar to provide a forum for the interchange of information about cloud seeding in Bismarck on March 3, 1978.

Some committee members attended the seminar and reported to the committee. Speakers at the seminar included many national and international experts in the field of weather modification. Presentations included an analysis of international research, a look at a hail suppression program in Alberta, the legal aspects of weather modification, and the national policy of weather modification.

Recommendation

The committee recommends a bill to establish a program of weather modification research and development under the coordination and supervision of the Weather Modification Board. The bill requires the preparation and transmittal of biennial reports to the Governor describing research and development activities. The bill also appropriates $100,000 from the general fund and $2 million from federal funds to the Weather Modification Board for carrying out research and development. The committee recommends that the program of weather modification research and development established by the bill be an ongoing program of at least six years' duration.

DEFERRED PAYMENT GRAIN CONTRACT STUDY

Statutory Provisions

North Dakota Century Code Chapter 60-02 regulates grain and seed warehouses. Section 60-02-03 prescribes the duties of the Public Service Commission (PSC). In addition to other prescribed duties, the PSC exercises general supervision of public warehouses, including the handling, weighing, and storing of grain, and the management of public warehouses.

Section 60-02-09 requires public warehousemen to file a bond prior to receiving a public warehouse license. The bond must be for not less than $5,000 for any one warehouse; cover the period of the license; run to the state for the benefit of all persons storing or selling grain in the warehouse; be conditioned on the faithful performance of the duties of a public warehouseman and in com-

pliance with all provisions of law and rules of the PSC relating to the storage and purchase of grain by the warehouseman; specify the location of each public warehouse intended to be covered by the bond; be, at all times, in a sufficient sum to protect the holders of outstanding storage receipts and cash tickets or checks; and not accrue to the benefit of any person entering into deferred payment grain contracts or other credit arrangements with a public warehouseman. The PSC is also authorized to increase the amount of any bond when the PSC deems it necessary to protect the holders of storage receipts and cash tickets or checks. The surety must be an incorporated surety company approved by the PSC and authorized to do business in the state. The PSC may, however, accept a bond executed by personal sureties when, in its judgment, the personal surety bond will protect the holders of storage receipts and cash tickets or checks. Only one bond is required for any line of elevators, mills, or warehouses owned, controlled, or operated by one individual, firm, or corporation, covering these facilities as a whole and not requiring a specific amount for each.

The 1971 Legislative Assembly added the requirement that the bond not accrue to the benefit of any person entering into deferred payment grain contracts. The change clarified whether or not public warehousemen's bonds covered deferred payment grain contracts by specifically excluding those contracts from bond coverage. Prior to the change, the PSC had construed the law to provide protection to deferred payment grain contracts.

Previous Action

The practice of the farmer selling grain in one year and receiving payment in the following year is commonly referred to as a deferred payment grain contract. The Internal Revenue Service (IRS) recognizes the legitimacy of deferring income by using this type of a contract. In a custodial account arrangement the funds from deferred payment grain contracts would be placed in a trust account and accumulate interest until due. However, country elevators would like to use this money for operating capital, interest free, rather than borrowing at interest. Generally, if an elevator is not associated with a commission firm, proceeds from the sale of deferred payment grain contracts are available to the local elevator. The elevator companies with no commission company supervision are on their own. In North Dakota there are approximately 612 licensed public elevators. Since the exclusion of deferred payment grain contracts from bond coverage, there has been a lack of protection for farmers not protected under any commission company-sponsored or other bond arrangements.

After the 1971 change in the law, nothing of any consequence occurred until the highly volatile market conditions of 1973-74 were reached. At that time, the price of wheat climbed rapidly creating a great deal of speculation in the historical marketing concepts which had previously existed.

In the fall of 1974, the PSC held a hearing in the State Capitol and invited producers, elevator operators, bankers, and grain exchange and bonding companies serving North Dakota. Although problems were discussed and various solutions offered, the PSC was unable to arrive at a consensus or formulate legislation which would be in the best interests of the parties.

The area of deferred payment grain contracts was briefly reviewed by the 1975-77 Legislative Council Committee on Industry, Business and Labor "A" during its study of PSC jurisdiction. That committee received information to the effect that between July 1, 1975, and January 1, 1976, the Public Service Commission estimated that there was over $300 million outstanding in deferred payment grain contracts; recent financial difficulty of some elevators may have been attributable to the sale of grain under a deferred payment grain contract; and proceeds from these contracts were being used as operating capital by the elevator. After receiving this information, that committee took no action regarding deferred payment grain contracts.

In the 1977 Legislative Assembly, House Bill No. 1424, as introduced, would have required a public warehouseman's bond to equal the amount of deferred payment grain contracts. House Bill No. 1424 was amended to require warehousemen to obtain PSC approval before entering into deferred payment grain contracts and to require warehousemen to maintain separate interest bearing accounts for the deposit of proceeds from deferred contract grain sales, with all interest earned retained by the warehouseman as compensation for expenses. The bill failed to pass.

1977 House Concurrent Resolution No. 3102 resulted because of the specific exclusion from bond protection provided for persons entering into deferred payment contracts with public warehousemen, the past events which failed to remedy the situation, and the amount of money involved in deferred payment grain contract transactions in North Dakota.

PSC Proposal

At the first committee meeting, the PSC proposed legislation to establish a custodial account whereby elevators must place the deferred payment grain contract moneys in a separate segregated account and maintain books, records, contracts, and other documents to verify the ade-

quacy of the account. The interest earned from the account funds was to be used for the benefit of the public warehouseman as compensation for expenses incurred in maintaining the account records. The proposal provided for giving the PSC authority to approve other arrangements for custodial protection of the proceeds of deferred payment grain contracts, such as the bonding coverage provided by commissioned firms. The committee adopted the PSC proposal for consideration and for the purpose of seeking an Internal Revenue Service (IRS) opinion with respect to the proposal.

IRS Opinion Letter

An opinion letter was requested of the IRS on the acceptability of the legislation proposed by the PSC. Opinion letters address the acceptability, from a taxation viewpoint, of certain arrangements, such as custodial accounts. A letter from the committee set forth circumstances existing concerning deferred payment grain contracts in North Dakota, the statute and case law on the subject, and the issue of concern — whether or not the treatment of proceeds from deferred payment grain contracts under the proposal would jeopardize the current deferral of the tax burden until the following year.

The IRS has discretionary authority to issue rulings, opinion letters, or information letters. However, it may issue information letters, which call attention to well-established legal principles or interpretations without applying them to specific facts, on prospective or future transactions when the law or regulations require a determination of the effect of a proposed transaction for tax purposes.

The IRS replied that it is unable to issue private letter rulings with regard to proposed legislation. It noted there is no authority for issuing rulings to anyone except those directly affected by the federal income tax consequences of a particular transaction, and that it will not issue rulings concerning alternative plans, proposed transactions, or hypothetical situations. To get a private letter ruling, the IRS said the ruling request must be submitted by a taxpayer who is actually selling the grain and reporting the proceeds in his taxable income.

The IRS declined to issue an opinion letter. The IRS also declined to issue an information letter, which it may issue when the facts of the request are appropriate, because the area of deferred payment grain contracts is not considered settled or well established. It was revealed that the IRS, if it had ruled, probably would not have favored the proposed legislation. The IRS most likely would have relied on the "economic benefit" theory rather than the "constructive receipt of income" theory in holding a taxpayer liable for the tax on proceeds from a deferred payment grain contract, held for him under a trust agreement, in the year the agreement was set up.

Testimony

At the third committee meeting, the PSC took the position that because of the uncertainty of the situation under the custodial account proposal it would no longer be responsible as a sponsor of that proposal. The PSC testified it did not want to be a part of legislation that may do away with the preferred status now enjoyed by farmers entering into deferred payment grain contracts.

The committee heard testimony from Mr. Garry Pearson, Attorney, Grand Forks, on the tax aspects of deferred payment grain contracts relating to the proposed custodial account legislation. Mr. Pearson pointed out that the IRS has been studying the area of deferred payment grain contracts for five years. He noted that the present law on deferred payment grain contracts consists mostly of IRS rulings which say the farmer on the cash basis method of accounting is entitled to defer income to the year moneys actually are received. He testified that the case law clearly allows deferral in a typical situation where the agreement for deferral is part of the original contract or bargain. He noted that this differs from a mere agreement to pay in the year of the transaction with a delay in payments, which is not allowed.

Mr. Pearson testified that the proposed legislation brings in the aspect of bonding or segregated custodial accounts which are like escrow. He pointed out that the cases in this area are a mixed bag. The tax court holds that if a seller requests an escrow arrangement, the income is recognized in the year of the actual sale. Mr. Pearson noted, however, that if someone other than the seller demands an escrow arrangement, traditional rules would apply and income would be recognized in the year of receipt. He said the proposed segregated custodial account arrangement, whereby separate escrow arrangements may be required, would be compatible with relatively settled case law. Mr. Pearson testified that if the state imposes such a plan, the taxpayer can hardly be blamed for the creation of a security account and therefore the tax court would likely uphold the plan.

Mr. Pearson pointed out that under the proposed custodial account escrow arrangement, an amount of money equal to the total balance of deferred payment grain contracts outstanding would have to be deposited in a bank account where it would not be available for operating funds. A typical escrow arrangement is a trust fund where the bank

has some responsibility for paying out moneys, but other security arrangements have segregated bank accounts subject to audit or bookkeeping entries. Mr. Pearson noted, contrary to other testimony, that the question of who receives interest on these moneys in the escrow account probably would not be a factor in IRS determinations of when the moneys are income.

It was pointed out that some elevators in North Dakota use escrow agreements where the elevator deposits funds in a bank for the protection of the holders of deferred payment grain contracts.

The PSC reported that as of December 31, 1977, only $89 million was tied up in deferred payment grain contracts, compared to a high of about $275 million in 1975. The PSC cautioned that the cost of any increase in bonding requirements may put some elevators out of business.

Other testimony pointed out that the present benefits of deferred payment grain contracts now outweigh the risks taken by farmers. It was suggested that the only real solution to the deferred payment grain contracts problem lies with federal legislation.

Recommendation

The committee makes no recommendation concerning the deferred payment grain contract study.

GRAIN MARKETING IN NORTH DAKOTA

The grain marketing portion of House Concurrent Resolution No. 3102 resulted from feelings that freight rates and other market conditions prevent North Dakota farmers from receiving a maximum return at the market place. A grain marketing study was proposed to determine whether methods can be found through which farmers can receive a more equitable return for their products. The State Department of Agriculture revealed that a regional grain price study found extensive price variation in North Dakota after deducting freight costs. The study noted a difference of seven cents per bushel for wheat from one elevator to another.

Interim Study

The committee invited Mr. Frank Jirik, a grain inspector with the United States Department of Agriculture (USDA), Federal Grain Inspection Service (FGIS), to address grain sampling problems. Mr. Jirik testified that market control cannot be obtained without an effective quality control program similar to the ones in operation at terminal elevators. He maintained that the United States Grain Standards Act affords good protection but the farmer is prevented from reaching this protection by the marketing system which does not ensure quality control at the farm level. Mr. Jirik outlined the system he advocates. At the farm level a diverter-type sampler would be used to take many samples, some of which the farmer would keep for himself. The state would have a quality control department using a file sample system where some samples would be sent. The USDA and a licensed grain inspection agency each would receive a sample. The farmer then could sell to the country elevator on the basis of these samples. The grain could be sampled again at the country elevator with a diverter-type sampler. Comparisons would then be made, if necessary, with results being obtained from the quality control department of the USDA and the licensed agency. Either party could then call for additional inspection or go to the USDA's Board of Appeals and Review. At the terminal, official inspection could again be made with a diverter-type sampler.

Mr. Jirik pointed out that the importance of this system is the maintenance of official samples. He noted that a greater number of samples generally means more accurate sampling. He said to change the grain standards would be a difficult task, but to use existing standards in a good system of quality control would be a benefit.

A private grain inspector with a federally licensed grain inspection company testified that the human element in sampling is always a factor. It was pointed out that local inspection agencies do mostly submitted samples but very few official samples. Generally, the grade from a submitted sample is seldom the grade settled upon and the last inspection, which is usually accomplished at the terminal elevator governs.

Other testimony pointed out that buyers, not farmers, would be in a better position if there were stricter standards for sampling and grading. It was pointed out that a good percentage of U.S. grain would not have been salable if the grain had not been cleaned and blended within the official USDA grain standards. It was noted that if official standards and procedures were required every time grain is brought into a local elevator, farmers would experience greater quality discounts, price variations, and sampling differences, as well as increased delays and costs from sampling every load.

Further testimony revealed the need for uniformity of sampling methods at the country level. Although an automatic diverter-type sampler is the most accurate means of taking a sample, a pelican sampler, which is nothing more than a manual diverter-type sampler, is the most feasible for sampling at the country level. It was pointed out that if there is no uniform sampling method, there will always be problems and variations in

testing the grain according to the USDA standards. In addition, an accurate sample is necessary to make the protections available under the USDA standards and the federal appeals process available to the farmer.

The committee heard testimony from the USDA, FGIS, regional director in Kansas City, Missouri, who supported the idea that the key to grain inspection lies in proper sampling. The differences in the three types of control programs for registering grain samples and grading them were explained. These three programs are commonly referred to as white sheet (certificate), yellow sheet, and pink sheet. It was pointed out that there has been considerable grade shopping practiced in the past with a tendency to pick and choose certificates from three or four different elevators.

It was pointed out that the FGIS exercises no control over the calibration of instruments. In addition, it was suggested that a Boerner reduction divider should be employed with a pelican sampler to get a sample down to a workable size.

The committee also heard testimony from representatives of North Dakota State University, Agricultural Experiment Station, about grain standards, grading, and sampling at country elevators. A study was proposed to consider the adequacy of sampling methods at the country level. An outline on grain sampling at country elevators presented reasons to know or estimate grain quality or grain characteristics, factors involved in obtaining accurate information on grain quality, a suggested procedure for grain sampling at country elevators, suggested equipment necessary for regulation of grain sampling and quality evaluation at country elevators, and consequences of legislation mandating regulation of grain sampling and quality at country elevators. It was suggested that education and training about grain sampling and grading be a first approach. It was noted that to obtain uniformity and accuracy in grain sampling and quality evaluation under a regulated system would probably not be economically prohibitive. Others testifying on grain marketing included the North Dakota Grain Dealers Association, numerous elevator managers and operators, farmers and other interested persons.

Proposals Considered

The committee considered three bill drafts concerning grain inspection and sampling. One bill draft (grain inspection and sampling investigator, Alternative 1) provided for the employment of a federal licensed inspector by the Commissioner of Agriculture for grain inspection and sampling complaints, disputes, or disagreements. Complaints regarding proper grade or dockage were to be referred by the investigator, after taking a true and representative sample, to a federal licensed grain inspection service in the state. The sample was to be judged by the federal licensed grain inspection service and returned to the investigator. The investigator was required to notify the complainant, or both parties to a dispute, of the results of the inspection tests and keep a record of the results. The bill draft also provided for random inspection of public warehouses in the state, allowing the investigator to forward samples from random inspections to a federally licensed grain inspection service and to release results of the tests. The bill draft provided for the repeal of North Dakota Century Code Section 60-02-05.

A second bill draft (grain inspection and sampling investigator, Alternative 2) was essentially the same as Alternative 1 except it provided for the investigator for grain inspection and grain sampling complaints to be under the supervision of the PSC. Neither of the alternative bill drafts provided for the taking of an official grade, an appeal process, or a penalty.

A third bill draft, relating strictly to sampling at the local level, required that all public warehouses in North Dakota use a pelican sampler and a Boerner divider for sampling incoming grain. The bill draft also required that all public warehouses post, or otherwise make available, the official United States grain standards and the USDA grain inspection manual. The bill draft defined both the Boerner divider and pelican sampler and prescribed the proper use of a pelican sampler.

Recommendations

The committee recommends no bill relating to the grain marketing study.

The State Department of Agriculture in cooperation with North Dakota State University developed a proposal for a survey of grain sampling techniques and evaluations of grain samples at the entry level of the marketing system to be presented to the Old West Regional Commission. The results of the survey would show whether or not there are wide variations in grain sampling procedures in North Dakota and whether or not such procedures are detrimental to an adequate and fair sampling of incoming grain at North Dakota elevators. The proposal includes a request for a grant of $100,000 from the Old West Regional Commission to finance the project. The committee recommends support of the proposal for submission to the Old West Regional Commission.

Other Committee Business

The committee heard testimony on the shortage of railroad boxcars for the marketing of grain in North Dakota. Those testifying included the PSC,

officials of the Burlington Northern Railroad, elevator operators, farmers, and other interested persons. Burlington Northern officials explained the problem as being caused by a number of circumstances, including the inability to use foreign-line cars in the 1978 grain harvest, the overlapping of harvest seasons from south to north, some lag in turnaround time at port terminals, a shortage of closed hopper cars, federal regulations, and inability to get cars on loan from other railroads. Testimony revealed that boxcar problems occur not only during the harvest season and that the situation is not likely to improve immediately.

The committee heard a status report from the State Dairy Commissioner, on the implementation of 1977 House Bill No. 1548 (Sections 4-29-04 and 4-29-04.1) and the future of dairy industry regulation and inspection. The intent of the legislation was to eliminate duplicity and to get accountability in dairy inspection. The Dairy Commissioner said the cost of the program for 1978-79 would be approximately $239,339, representing a savings in the total inspection picture.

The committee also heard an informational report on North Dakota's weed control laws from the State Department of Agriculture. Problems with the present laws were pointed out, including the inability of county authorities to go onto private land and eliminate a continuous patch of weeds extending over both county and private lands, lack of an incentive program for the elimination of weeds on private land, lack of a state-supported program of funding for the control of serious weed problems, the inability of a county to declare noxious weeds, and lack of noxious weed control on a township level. It was pointed out that more money, a stronger statute, and a long-range program are required to control noxious weeds.

The committee showed its support for other important agricultural matters by resolutions urging support for the original plan of the Garrison Diversion Unit providing irrigation for 250,000 acres in North Dakota, urging substantial increase in the budgetary amounts for federal loans and grant moneys for construction of rural water distribution system programs in North Dakota and other predominantly rural agricultural states, urging reconsideration of alternatives for the proposed Burlington Dam on the Mouse River, urging support of 100 percent of parity for agriculture; and letters urging a commodity price support program to provide target price supports equal to at least the cost of production with a minimum wheat price support of $3.50 per bushel for the 1977 crop, urging support of the National Gasohol Commission's efforts for the production of gasohol, and urging support for Garrison Diversion; and a motion of support for Legislative Council involvement in meetings at which a draft interstate compact on grain marketing is to be considered (pursuant to action initiated by the Kansas Legislature).

BUDGET SECTION

North Dakota Century Code Section 54-44.1-07 directs the Legislative Council to create a special Budget Section to which the budget director is to present the Governor's budget and revenue proposals. In addition, the Budget Section has been assigned other duties by law which are set forth in this report.

Budget Section members were Senators Robert Melland, Chairman, Francis Barth, Walter Erdman, Donald Hanson, S. F. Hoffner, Lester Larson, Evan Lips, John Maher, L. L. Naaden, David Nething, James Smykowski, Theron Strinden, Russell Thane, Jerome Walsh, and Frank Wenstrom; and Representatives Richard Backes, Ralph Christensen, Aloha Eagles, Charles Fleming, Ronald Gunsch, Dean Horgan, Howard Johnson, Tish Kelly, Tom Kuchera, William Lardy, Lawrence Marsden, Gene Martin, Charles Mertens, Bert Miller, Corliss Mushik, Olaf Opedahl, Jim Peterson, Oscar Solberg, Earl Strinden, Enoch Thorsgard, Malcolm Tweten, Michael Unhjem, and Vernon Wagner.

The report of the Budget Section was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

At its organizational meeting, Budget Section members were advised of the Budget Section's responsibilities directed either by statute or legislative resolution, which are as follows:

1. Section 5 of Senate Bill No. 2012 appropriates $1,667,413 in Title XX funds and $714,606 to be contributed by individuals, organizations, governmental units, or other sources for purposes determined to be eligible for funding as provided by state and federal law. Before any funds appropriated in this section can be expended, the Social Service Board must seek approval from the Legislative Council's Committee on Budget.

2. Section 54-27-22 provides that the director of the Department of Accounts and Purchases file requests for advances from the preliminary planning revolving fund with, and present his recommendations on proposed capital improvement projects and necessary planning funds for such projects to, the Budget Section. Budget Section approval is required prior to release of such planning funds.

3. Funds appropriated in Section 2 of Senate Bill No. 2010 for human service centers and mental health and retardation centers for mental health and retardation services, may be spent only upon approval of the allocation formulas for the distribution of such funds by the Budget Section. At the end of the first year of the 1977-79 biennium, any funds allocated for that year but not spent by each center shall be reallocated by the Division of Mental Health and Retardation of the State Health Department for the second year of the biennium according to distribution formulas developed for the allocation of such funds. Any human service center funds not spent during the first year of the biennium must first be made available to other human service centers. The reallocation for the second year shall be made only upon approval of such allocation by the Budget Section.

4. House Bill No. 1528 appropriated $515,000 for the establishment of a Central North Dakota Beef Cattle Experiment Station. Prior to purchasing land, the director of the North Dakota Main Experiment Station was to obtain the approval of the Budget Section.

5. Senate Bill No. 2001 provides that any proposed departure from the priorities established by the Legislative Assembly for development of the Medical School residency program be approved by the Budget Section prior to implementation.

6. Senate Bill No. 2338 appropriated $1,613,959 in special funds and $1,190,000 in general funds to the North Dakota Social Service Board for defraying the expenses of a program for medically needy children. Senate Bill No. 2338 directs that a report on the implementation and operation of this program was to be prepared by the Social Service Board and presented to the Budget Section not later than October 1, 1978.

7. Reports from the State Auditor's office, prepared pursuant to Section 54-06-04.1, on the cost of services provided by agencies which license, inspect, or regulate private business activities or products are to be received by the Budget Section.

8. Senate Concurrent Resolution No. 4020 as passed by the 1973 Legislative Assembly provides that the Office of the Executive Budget

develop a plan in consultation with the Budget Committee of the Legislative Council to have all state agency, department, and institution budget requests on a program basis before the 1979 Legislative Assembly.

9. The executive budget for the 1979-81 biennium prepared by the Office of the Executive Budget is to be reviewed prior to the 1979 Legislative Assembly.

10. The Legislative Assembly intends that the Department of Accounts and Purchases review alternate methods of acquiring data processing equipment. In the event such alternate methods prove cost effective, House Bill No. 1002 authorizes the Department of Accounts and Purchases to borrow moneys not to exceed $3 million from the Bank of North Dakota. Before the Department of Accounts and Purchases enters into any such agreements with the Bank of North Dakota, the Budget Section must give prior approval for any loan or alternate method of acquiring data processing equipment.

11. The 1973 Legislative Assembly assigned the duties of the Auditing Board to the Office of the Executive Budget. Section 54-14-03.1 of the North Dakota Century Code provides that if the Office of the Executive Budget discovers irregularities during the preaudit of claims pointing to the need for improved fiscal practices, it is to make a written report documenting the irregularities to the Budget Committee of the Legislative Council (the Budget Section).

12. Section 15-10-18 provides that institutions of higher education shall charge nonresident students tuition in such amounts as determined by the State Board of Higher Education subject to the approval of the Committee on Budget of the Legislative Council (the Budget Section).

13. Section 15-10-12.1 directs the Budget Section to review and act upon requests by the State Board of Higher Education for authority to use land under the control of the board to construct buildings and campus improvements thereon which are financed by donations, gifts, grants, and bequests, and to act upon requests from the State Board of Higher Education for authority to sell any property or buildings which an institution of higher learning has received by gift or bequest.

14. House Bill No. 1230 (1977) appropriates $76,821.97 to the Division of Disaster Emergency Services to close out the three individual and family grant programs that the division administered following the three major presidential disaster declarations of 1975 and 1976. The Division of Disaster Emergency Services was to prepare a complete financial report of the individual and family grant programs to be presented to the Legislative Council's Budget Section.

15. House Bill No. 1443 (1977) empowers the State of North Dakota to accept the transfer of the antiballistic missile site at Nekoma from the federal government, subject to the approval of the Legislative Assembly if it is in session. If the Legislative Assembly is not in session approval must be obtained from the Budget Section.

16. Senate Bill No. 2002 gives the Budget Section authority to act upon requests from North Dakota State University officials to spend North Dakota State University Branch Experiment Station local moneys in excess of that specifically appropriated by the Legislative Assembly.

As of its last meeting, the Budget Section had not received reports from the Division of Disaster Emergency Services on the individual and family grant programs or from the Board of Higher Education regarding charges for nonresident student tuition. The Budget Section also had not received requests from North Dakota State University to expend local moneys in excess of that appropriated by the Legislative Assembly or from the Board of Higher Education to sell property or buildings received by gift or bequest. Also there was no action requested of the Budget Section regarding the antiballistic missile site at Nekoma. The Budget Section may receive reports or requests on the above responsibilities at its December meeting.

SOCIAL SERVICE BOARD

Under Section 5 of Senate Bill No. 2012 the 1977 Legislature appropriated $1,667,413 of Title XX funds to the Social Service Board for the 1977-79 biennium. In addition, that same section appropriated $714,606 to be contributed by individuals, organizations, governmental units, or other sources. Before such funds can be spent, the Social Service Board must receive Budget Section approval.

The Social Service Board presented 35 projects to the Budget Section for funding under Section 5. The Budget Section approved 17 of the 35 projects

totaling $2,371,900. Most Section 5 projects are on a 70-30 matching basis, with 70 percent of the funds available from the federal government and 30 percent from the agency requesting the project.

The following schedule lists all the Section 5 projects approved by the Budget Section for the biennium ending June 30, 1979. This schedule is followed by a brief description of each project.

NORTH DAKOTA SOCIAL SERVICE BOARD COMMUNITY SERVICES
Section 5 — 1977-79 Biennium

Project Name and Location	Funds Authorized	Federal Share	Donor's Share
Adult Day Care, Fargo	$ 113,000	$ 79,100	$ 33,900
Adult Day Care, Minot	135,000	94,500	40,500
Agassiz Enterprises, Grand Forks	218,000	152,600	65,400
Burleigh County Group Home, Bismarck	57,000	39,900	17,100
Developmental Work Activity, Fargo	84,750	59,325	25,425
Dickinson Hostel, Dickinson	41,000	28,700	12,300
F-M Activity Center, Fargo	62,150	43,505	18,645
Fraser Hall, Fargo	113,000	79,100	33,900
Minot Vocational Adjustment Workshop, Minot	280,000	196,000	84,000
Oppen Family Guidance Institute, Minot	299,200	209,440	89,760
Social Group Services, Minot	54,500	38,150	16,350
Social Service Speech and Hearing, Fargo	160,000	112,000	48,000
South Central Speech and Hearing, Jamestown	32,400	22,680	9,720
Special Needs Adoption, Fargo	119,800	83,860	35,940
Special Needs Adoption-Training, Statewide	10,000	7,000	3,000
Therapeutic Evaluation and Treatment, Fargo	107,350	75,145	32,205
Treatment Services in Child Abuse and Neglect, Fargo	84,750	59,325	25,425
Vocational Rehabilitation, Statewide	400,000	300,000	100,000
TOTAL	$2,371,900	$1,680,330	$691,570

The Oppen Family Guidance Institute, Minot, is a center which provides comprehensive evaluation, counseling, and training for unmarried parents and their families. The Second Story Social Club, Minot, is a community facility for social experiences for handicapped adults. The F-M Activity Center, Fargo, is a Lutheran Social Services activity serving developmentally disabled adults. The Dickinson Hostel Project provides housing and supervision for mentally retarded adult males with a goal of enabling them to find employment in the community.

Agassiz Enterprises, Grand Forks, provides services to the mentally and physically handicapped. The Vocational Adjustment Workshop, Minot, provides treatment and training for mentally retarded adults with the goal of providing these adults with the necessary skills to enter the work force. The NDSU Speech and Hearing Clinic, Fargo, provides for comprehensive social and remedial services to children and adults with handicapping speech, hearing, and language disabilities.

The Vocational Training Center, Fargo, provides vocational education, vocational training, and sheltered employment and work activity for developmentally disabled persons. Fraser Hall, Fargo, is a residence hall for mentally retarded female adults. The Developmental Work Activity Center, Fargo, helps the developmentally disabled to gain a concept of self-worth, the worth of others, and provides them with the skills necessary for independent functioning at whatever level they are capable. Special Needs Adoption, Fargo, reimburses the Children's Village adoption agency for staffing and operating a program emphasizing the placement of children with special needs in adoptive homes. The Therapeutic Evaluation and Treatment Center provides specific assessment, evaluation, and treatment services to preschool handicapped children and their families in the Fargo area. The Adult Day Care Services Project, Minot, provides a "work place" for mentally retarded adults who otherwise would require institutionalization. The Vocational Rehabilitation funds are used by the Division of Vocational Rehabilitation for sheltered workshops.

The Treatment Service Program in Child Abuse and Neglect, Fargo, provides services to families where neglect/abuse has taken place or where there is a strong possibility of it taking place. The Burleigh County Group Home provides long-term living experience for adult retarded and physically handicapped men and women. The South Central Speech and Hearing Clinic provides speech pathology and audiology services to individuals.

REQUESTS FOR FUNDS FROM PRELIMINARY PLANNING REVOLVING FUND

In accordance with Section 54-27-22, the director of the Department of Accounts and Purchases filed requests with the Budget Section received by his office for funds from the preliminary planning revolving fund. Section 54-27-22 requires the director to file planning fund requests and his recommendations on these requests with the Budget Section. Funds can be advanced only with Budget Section authorization. The balance of the fund at the beginning of the 1977-79 biennium was $146,497. Planning fund requests approved by the committee totaled $101,759 leaving a balance of $44,738.

The committee approved the following requests recommended for approval by the director of the Department of Accounts and Purchases:

Department	Amount	Project
Adjutant General	$2,500	To contract with an architectural engineering firm to conduct an investigation and provide a recommendation regarding the deteriorating roof of the emergency operations center
	3,509	For site exploration costs for construction of new building at Camp Grafton, Devils Lake
	3,000	For engineering studies relating to the foundation of one wing of the Bismarck armory
Land Department	4,000	To plan for the use of a solar heating system in the construction of the State Office Building
North Dakota State University	30,000	To plan for a music education center
Director of Institutions Office	16,000	Planning for conversion to heating with coal at the Grafton State School, School for the Deaf, State Penitentiary, State Industrial School, and the State Capitol
	5,000	Planning for renovation of the State Office Building
	2,500	Planning for renovation of the nurses building at San Haven State Hospital
	5,000	Planning for a new boiler plant at the State Penitentiary.
	20,000	Preliminary drawing designs and cost estimates for a female corrections facility in North Dakota. These designs and estimates should include but not be limited to evaluations of the State Industrial School and the Sacred Heart Academy in Minot as possible sites. The Department of Accounts and Purchases recommended $15,000 for this project
	2,750	For a traffic flow and parking analysis of the Capitol grounds
	7,500	To plan for the conversion of the Liberty Memorial Building for use by the State Library Commission

Requests from the University of North Dakota for $35,000 for an addition to the Chester Fritz Library and $35,000 for an addition to the physical education facility were denied. The committee also denied funds to the Director of Institutions' office for the following projects:

Amount	Project
$3,000	Planning of a library/classroom building at the School for the Blind
10,000	Planning for a new food service center at San Haven State Hospital
4,000	Planning for a resident cottage living unit at Grafton State School
1,250	Planning for an additional dormitory at the State Farm
2,500	Planning for a minimum security building for work and education release at the State Penitentiary
2,500	Planning for a vocational maintenance shop complex at the State Industrial School

Planning fund requests not approved by the committee totaled $93,250.

The Budget Section passed a motion that approval of planning funds by the Budget Section for capital construction and improvement projects does not represent a Budget Section recommendation to the 1979 Legislative Assembly to fund such projects.

STATUS OF STATE GENERAL FUND

At each of the Budget Section meetings, a representative of the Department of Accounts and Purchases reviewed the status of the state's general fund and presented information comparing revenue collections to date with collections for the same periods of time during the previous biennium. This information is on file in the Legislative Council office.

PROGRAM BUDGETING

Senate Concurrent Resolution No. 4064 of the 1971 Legislative Assembly stated that the Executive Budget Office, for experimental purposes, is to select and design a new system of budgeting based on programs and to apply this system in presenting the budgets of state agencies to the Legislative Assembly. The Department of Accounts and Purchases reported that all state agencies and institutions budgets will be presented on a program basis to the 1979 Legislative Assembly. The Budget Section approved the program budget request forms designed by the Executive Budget Office for the 1979 Legislative Assembly.

ZERO-BASE BUDGETING

Zero-base budgeting encompasses four basic steps in the development of an organization's budget:

1. Identifying decision units.
2. Analyzing decision units in "decision packages."
3. Ranking decision packages in priority order.
4. Preparing total budget requests encompassing approved decision packages.

The committee directed that the Legislative Council staff, together with the Executive Budget Office, determine the feasibility of implementing a zero-base budgeting pilot project whereby certain state agencies would be selected to prepare their 1979-81 budget requests using zero-base budgeting.

It was determined feasible and the State Industrial School, Attorney General's office, Income Tax Division of the State Tax Department, Hydrology Division of the State Water Commission, and Travel and License Divisions of the State Highway Department were chosen to implement zero-base budgeting as a pilot project for the 1979-81 budget submittal to the Legislative Assembly.

IRREGULARITIES REPORTED PURSUANT TO SECTION 54-14-03.1

Section 54-14-03.1 directs the Department of Accounts and Purchases to report to the Budget Section any irregularities in fiscal practices by state departments. The Department of Accounts and Purchases reported irregularities by two state departments.

It reported that contrary to statute, the chairman of the Council of Arts and Humanities was receiving a salary. The salary for the chairman had been included in the council's budget approved by the 1977 Legislative Assembly. The Department of Accounts and Purchases recommends that the chairman no longer receive a salary.

The department also reported an irregularity at the State Hospital where 72 employees were paid less than the minimum rate in their salary range under the Central Personnel Classification System. The employees which were paid at less

than the minimum level were provisional employees on six-month probation terms.

The Department of Accounts and Purchases is administratively waiving compliance with Central Personnel Act provisions until such time as a deficiency appropriation is provided by the Legislative Assembly to fund the increased salary levels.

INTRODUCTION OF APPROPRIATION BILLS

The committee studied alternate ways of including agency budgets in appropriation bills. The Department of Accounts and Purchases said in the past it included departments with related functions in one appropriation bill with each department's appropriation being a separate section of the bill. The Executive Budget Office presented a proposal which was developed in consultation with the Legislative Council staff which suggested the following criteria be used to determine the number of agencies to be included in appropriation bills during the 1979 Legislative Assembly:

That agencies or institutions be included in the same appropriation bill only if they meet at least two of the following:

1. There is a statutory relationship between them.
2. There is a strong programmatic relationship.
3. There is a strong operational relationship.

For example, the appropriation bill for the Department of Accounts and Purchases' office during the 1977 Legislative Assembly included the Department of Accounts and Purchases, Central Data Processing, Central Personnel, and the State Planning Division. Under the proposed criteria the Department of Accounts and Purchases, Central Data Processing, and Central Personnel would remain in the same appropriation bill because of a strong statutory and operational relationship. However, the State Planning Division would be a separate appropriation bill since its relationship with the other departments is only statutory and not significant in terms of its operational and programmatic relationship. The committee approved the criteria as developed by the Department of Accounts and Purchases and the Legislative Council staff.

ALLOCATION FORMULAS FOR DISTRIBUTING STATE MENTAL HEALTH AND RETARDATION FUNDS

Senate Bill No. 2010 of the 1977 Legislative Assembly appropriated $1,675,925 for mental health and retardation centers and $704,980 for human service centers for mental health and retardation services. These funds could be distributed to the centers only after the Budget Section approved an allocation formula, for the distribution of such funds, developed jointly by the State Health Department and Social Service Board.

The allocation formula developed for the distribution of funds to mental health centers used the concept that there are several factors influencing the allocation of funds. These factors are the population and land area of each region, the state plan priority rank, and the quality of service rank. A percentage based upon the above factors was used to compute funds needed by a region relative to the other regions. The funds were allocated as follows:

Center	Total Allocated
North Central Mental Health and Retardation Center, Minot	$ 341,098
Center for Human Development, Grand Forks	299,410
Southeast Mental Health and Retardation Center, Fargo	368,722
South Central Mental Health and Retardation Center, Jamestown	301,030
Memorial Mental Health and Retardation Center, Mandan	365,665
Total	$1,675,925

The formula proposed for the distribution of funds to human service centers was the appropriation approved by the 1977 Legislative Assembly for the centers. The funds would be distributed to the human service centers as follows:

Badlands Human Services Center, Dickinson	$300,960
Northwest Human Resources Center, Williston	253,440
Lake Region Human Service Center, Devils Lake	150,580
Total	$704,980

The committee approved the formulas as presented by the Health Department and the Social Service Board for both years of the 1977-79 biennium.

CENTRAL NORTH DAKOTA BEEF CATTLE EXPERIMENT STATION

House Bill No. 1528 of the 1977 Legislative Assembly appropriated $515,000 for the establishment of a Central North Dakota Beef Cattle Experiment Station. The bill provided that prior to purchasing the land, the director of the North Dakota Main Experiment Station shall obtain the approval of the Budget Section.

A site selection committee for the Central North Dakota Beef Cattle Experiment Station recommended that property located in Stutsman and Kidder Counties which, in aggregate, consists of 5,335 acres be purchased for a total price of $1,437,033. The recommendation provided that property consisting of 1,360 acres be purchased for the price of $342,318 and that property consisting of 3,975 acres be optioned; the ultimate price of the optioned portion would be $1,094,715. Considerations included as part of the option were:

a. **Option time:** To permit deliberation and action by the 1979 Legislative Assembly and subsequent arrangements for closing of the sale, options shall remain in effect until September 30, 1979.

b. **Possession:** The owners are to remain in possession until at least January 1, 1980. They may retain possession until March 1, 1980.

c. **Mineral rights:** The owners retain the mineral rights in accordance with the same practice now followed by the State of North Dakota. This reservation would be subject to the provision that surface mining operations would not be undertaken without the consent of the surface owner.

d. **Option payment:** Because of the time delay prior to closing of the sale, inflation and changing land prices, a substantial option be allocated. Upon closing of the sale, the option payment shall be applied as first payment toward the purchase.

e. **Condemnation:** The owner requests that a friendly condemnation action be initiated to afford them an opportunity for tax considerations during the period of relocation.

The committee approved the site selection committee's recommendation, and therefore, expenditure of the $515,000 appropriation provided in House Bill No. 1528. It also recommended that the Board of Higher Education include in the Main Experiment Station's 1979-81 budget request the additional funds of $937,033 for the purchase of the land and other properties for the Central North Dakota Beef Cattle Experiment Station.

STATE AUDITOR'S OFFICE

Pursuant to Section 54-06-04.1, the State Auditor's office submitted reports to the Budget Section on the cost of services provided by agencies, institutions, and departments, which license, inspect, or regulate private business activity or products. The reports indicate the collection for each type of service and the estimated costs of providing the service for fiscal years 1977 and 1978. The reports are on file in the Legislative Council office.

PROGRAM FOR MEDICALLY NEEDY CHILDREN

Senate Bill No. 2338 appropriated $1,613,959 in special funds and $1,190,000 in general funds to the State Social Service Board for defraying the expenses of a program for medically needy children. Pursuant to Senate Bill No. 2338 the State Social Service Board reported on the implementation and operation of this program. The board said the program provides necessary medical assistance to those medically needy persons under 18 who would qualify for medical assistance on the basis of insufficient family income and resources but who do not qualify as dependent children under the state's plan for Aid to Families with Dependent Children. As of June 1978 the board had paid approximately $36,000 for medically needy children from the $2.7 million appropriation. It was reported that there are 131 families enrolled in the program which was officially begun on January 1, 1978.

CONSOLIDATION OF THE FEES AND SERVICES AND SUPPLIES AND MATERIALS LINE ITEMS

The committee approved the request for a change by the Executive Budget Office in budget forms for the institutions of higher education to consolidate the fees and services and supplies and materials line items into one line item called operating expense. The committee also authorized the Executive Budget Office to consolidate the fees and services and supplies and materials line items into one line called operating expenses in the appropriation bills for all charitable and penal institutions.

STATE'S GENERAL FUND CASH FLOW REQUIREMENTS

Legislative Council staff presented analyses of the state general fund cash flow. The memorandums presented include schedules showing estimated and actual general fund cash balances, estimated and actual total revenues and expenditures cumulatively and by month, and comparisons of actual and estimated sales and use tax and income tax for the 1977-79 biennium. In response to these memorandums, the Budget Section asked the Department of Accounts and Purchases to include in its budget documentation for the 1979 Legislative Assembly information presenting the state's general fund cash flow requirements for the next biennium.

Legislative Council staff reported that the state could maintain a smaller general fund cash balance by making several large payments from the general fund at different times during the biennium. The committee recommends three bills making it possible to maintain a smaller general fund cash balance:

1. Change the payment date of the first personal property tax replacement payment from March 1 to June 1 of each year. The 1979 June 1 payment is estimated to be $6.5 million.

2. Defer one-half of the March 1 foundation payment to May 1. One-half of the March 1, 1979, payment amounts to $11 million.

3. Increase the loan limit of the state from the Bank of North Dakota from $5 million to $15 million.

COMPREHENSIVE EMPLOYMENT AND TRAINING ACT (CETA)

As of October 1978 there were over 200 CETA employees working for the state. Committee members expressed concern that the legislature is losing control over the employment of state employees and that the Comprehensive Employment and Training Act has allowed state agencies to hire employees without legislative approval. The Budget Section recommends a bill to require state agencies, departments, and institutions to obtain the approval of the Legislative Council's Budget Section prior to employing persons through programs provided under CETA.

TOUR GROUPS

During late September and early October 1978, Budget Section members visited major state institutions and agencies to determine and evaluate fund requests for major improvements and structures, and to hear any problems the institutions might be encountering during the interim. An indexed copy of the tour groups, minutes, with their comments, observations, and recommendations, will be submitted to the Appropriations Committees during the 1979 Legislature. The members of each tour group, and the institutions they visited, were as follows:

TOUR GROUP No. 1 — Representative Jim Peterson, Chairman

Membership

Representative Jim Peterson
Representative Olaf Opedahl
Representative Howard Johnson
Representative Earl Strinden
Representative Gene Martin
Senator Frank Wenstrom
Senator S.F. Hoffner
Senator Donald Hanson
Senator Lester Larson

Institutions Assigned

School for the Deaf
Lake Region Junior College
Camp Grafton
Fort Totten Historic Site
Lake Region Human Service Center
Heart of America Human Service Center
San Haven State Hospital
International Peace Garden
Lake Metigoshe State Park
NDSU-Bottineau Branch
Bismarck Junior College
State Penitentiary
State Farm
State Industrial School
Liberty Memorial Building
State Office Building

TOUR GROUP No. 2 — Senator Robert Melland, Chairman

Membership

Senator Robert Melland
Senator John Maher
Senator David Nething
Representative Oscar Solberg
Representative Lawrence Marsden
Representative LeRoy Hausauer
Representative Vernon Wagner
Representative Aloha Eagles
Representative Michael Unhjem
Representative William Lardy
Representative Tish Kelly

Institutions Assigned

North Dakota State University
Cooperative Extension Service
Main Experiment Station
Mayville State College
University of North Dakota
  Medical Center Rehabilitation Hospital
  Medical School
School for the Blind
North Dakota Mill and Elevator
Grafton State School

TOUR GROUP No. 3 — Representative Charles Fleming, Chairman

Membership

Representative Charles Fleming
Representative Enoch Thorsgard
Representative Richard Backes
Representative Ronald Gunsch
Representative Dean Horgan
Senator Russell Thane
Senator Walter Erdman
Senator Lawrence Naaden
Senator Theron Strinden

Institutions Assigned

Dickinson State College
Badlands Human Service Center
Experiment Station — Dickinson Branch
Northwest Human Resource Center
UND-Williston Branch
Experiment Station — Williston Branch
North Central Experiment Station
State Fair Association
Minot State College

TOUR GROUP No. 4 — Senator Evan Lips, Chairman

Membership

Senator Evan Lips
Senator Jerome Walsh
Senator Francis Barth
Senator James Smykowski
Representative Charles Mertens
Representative Malcolm Tweten
Representative Corliss Mushik
Representative Ralph Christensen
Representative Tom Kuchera
Representative Bert Miller

Institutions Assigned

Jamestown State Hospital
South Central Mental Health and Retardation Center
Valley City State College
State School of Science
Soldiers' Home

MISCELLANEOUS BUDGET SECTION ACTION

The Budget Section passed a resolution suggesting the Supreme Court apply for a grant from the North Dakota Combined Law Enforcement Council to fund the juvenile services coordinator position established by House Bill No. 1056, subject to the availability of matching funds contained within the appropriation to the judicial branch in House Bill No. 1003.

A State Health Department official reported that the railroad line no longer services the State Hospital and that coal is now transported to the hospital by truck. The hospital requested Budget Section approval to install ash and coal handling equipment at the State Hospital costing approximately $450,000 rather than spending such funds for pollution equipment and boiler repair as was originally appropriated. The Budget Section approved the request by the State Hospital to spend funds appropriated by the 1977 Legislative Assembly to install coal and ash handling equipment rather than for pollution equipment and repair of the coal boilers.

The Board of Higher Education proposed that in its 1979-81 biennial budget a contingent fund in the form of cash reserves be allowed in the operating accounts of its institutions. The Budget Section recommends that any contingent fund be specifically appropriated whether it be in a college or university operating budget or in the Board of Higher Education budget and that such funds be expended only when needed and upon Emergency Commission approval.

UND Medical School representatives presented information on the UND Medical School's 1979-81 budget request. Included in this request are planning funds to bring the third year program at the Medical School back to North Dakota and to provide a psychiatric residency program. The Budget Section recommended that the UND Medical School present an all-inclusive budget request, including all sources of funds, to the appropriation committees during the 1979 Legislative Assembly and that the appropriation bill include a budget for the total activity of the Medical School.

Pursuant to House Bill No. 1002 which authorized the director of the Department of Accounts and Purchases to borrow funds from the Bank of North Dakota, the department reported that it did not need to borrow moneys from the Bank of North Dakota for data processing equipment purchases since it was able to lease the equipment from the vendor at more favorable rates.

Pursuant to Budget Section Tour Group No. 1's visit to the Fort Totten State Historic Site, the Budget Section passed a motion urging the Governor and the Historical Society to take an active part in getting the federal government to name Fort Totten an historic site and to fund the restoration and maintenance of the site.

The Attorney General's office made a presentation on budget problems related to legislation passed by the 1975 Legislative Assembly regarding governmental immunity for political subdivisions. It was explained that the $500,000 appropriation established by the 1975 Legislative Assembly to be used by political subdivisions for claims against them expired on June 30, 1977. The 1977 Legislative Assembly did not reappropriate the $500,000 but there were legitimate claims filed prior to July 1, 1977, under the initial appropriation which are still pending. The Budget Section urged the Attorney General's office to draft and introduce legislation for an appropriation to pay claims against political subdivisions which were filed prior to July 1, 1977, under the legislation passed in House Bill No. 1541 by the 1975 Legislative Assembly.

This report presents the activities of the Budget Section during the interim. Since one of the major responsibilities of the Budget Section is to review the Executive Budget, which by law is not presented to the committee until after December 1, a supplement to this report on the final phases of its activities will be submitted for distribution at a later date.

BUDGET "A"

The Committee on Budget "A" was assigned two study resolutions and the responsibility to conduct performance reviews. Senate Concurrent Resolution No. 4061 directed a study of state general fund revenues and expenditures. Senate Concurrent Resolution No. 4072 directed a study of costs being incurred by state agencies and institutions because of energy development activities in the state. The committee selected the State Water Commission, State Geological Survey, and Environmental Control Section of the State Health Department for performance reviews.

Committee members were Representatives Vernon Wagner, Chairman, Richard Backes, Rosie Black, Charles Fleming, Alvin Hausauer, Kenneth Knudson, Tom Kuchera, Bert Miller, Olaf Opedahl, Robert O'Shea, Jim Peterson and Earl Strinden; and Senators Walter Erdman, S.F. Hoffner, Shirley Lee, David Nething, and Jerome Walsh.

The report of the Committee on Budget "A" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

STUDY OF GENERAL FUND REVENUES AND EXPENDITURES

Background

The committee's study of general fund revenues and expenditures is to assist the next Legislative Assembly in forecasting revenues, taking action on budget problems arising during the current biennium and setting spending levels for the 1979-81 biennium. As directed by the resolution, the committee's study emphasized (1) an analysis of general fund cash flow to assist in establishing appropriate levels of general fund balances for future bienniums; (2) a review of inflation rates experienced during the biennium as a basis for determining budget needs for the 1979-81 biennium; and (3) a review of state agency and institution expenditures subject to high inflationary rates, particularly fuel and electricity costs.

The committee reviewed regular reports analyzing the state's general fund cash flow and the status of the 1977-79 appropriations of major state agencies and institutions. The committee studied forecasts, prepared by the North Dakota State University's Agricultural Economics Department, of state personal income and general fund revenues from the sales and income taxes for the 1979-81 biennium. In addition, the committee reviewed reports by Chase Econometrics (a national economics forecasting firm) relating to trends in the United States economy with a special emphasis on the agricultural sector.

General Fund Cash Flow

The committee analyzed reports on monthly actual general fund revenues, expenditures, and cash balances compared to estimates for the 1977-79 biennium. The estimates were derived from Department of Accounts and Purchases' estimates based upon the budget proposed by the Governor for the 1977-79 biennium and from information available on the effect of legislative changes to the Governor's budget.

The committee found the general fund balance to be higher than estimated. The September 30, 1978, report indicates an actual general fund cash balance of $178.4 million or $81.8 million more than the $96.6 million estimate for that date. The reason the actual general fund cash balance was higher on that date is because (1) actual revenues through September 30, 1978, were $298.5 million or $31.9 million more than estimated; (2) actual expenditures were $328.4 million or $29.6 million less than estimated; and (3) the June 30, 1977, general fund cash balance was $20.3 million more than estimated. The general fund revenue is $31.9 million greater than estimated through September 30, 1978, because sales tax collections were $123.3 million or $12.6 million more than estimated; income tax collections were $93.5 million or $16.2 million more than estimated; and other general fund collections were $3.1 million more than estimated.

The committee believes that when lower end of biennium general fund cash balances are considered, monthly general fund cash flow projections should be available. Consideration of such projections will alert the legislature to cash flow problems which could arise because of the lower operating cash balance. A relatively high general fund operating cash balance has been necessary because the high expenditure months have not been the high revenue months. Please refer to the Legislative Council's Budget Section report for a further discussion and recommendation regarding general fund cash flow.

Estimates of Personal Income and Sales and Income Tax Revenues for the 1979-81 Biennium

At its organizational meeting, the committee asked NDSU's Agricultural Economics Depart-

ment to prepare forecasts of personal income levels in North Dakota and state sales and income tax collections for the 1979-81 biennium. The committee contracted for this information to assist itself, the Budget Section, the Executive Budget Office, and the legislature in analyzing and developing income estimates for the next biennium. The Department of Accounts and Purchases is a party to this contract. The forecasts project receipts from sales of livestock and crops; from mining, manufacturing, and tourism; and from federal outlays in the state, for 1978, 1979, and 1980. Estimates of past years' personal income using the Agricultural Economics Department's model have generally been close to actual personal income estimates reported by the United States Department of Commerce.

Estimates of personal income and sales and income tax revenues are made based on the following assumptions regarding crop prices and production: (a) high price and high production; (b) expected price and high production; (c) low price and high production; (d) expected price and expected production; (e) low price and expected production; and (f) low price and low production. Prices assumed for 1979 and 1980 are as follows:

	1979			1980		
	High	Expected	Low	High	Expected	Low
Wheat (per bu.)	$ 4.00	$ 3.00	$ 2.35	$ 4.40	$ 3.30	$ 2.59
Durum (per bu.)	$ 4.20	$ 3.20	$ 2.35	$ 4.62	$ 3.52	$ 2.59
Barley (per bu.)	$ 2.85	$ 1.85	$ 1.60	$ 3.14	$ 2.04	$ 1.76
Sunflowers (per cwt.)	$12.00	$10.00	$ 8.00	$13.20	$11.00	$ 8.80

Expected yields for 1979 are the average yields per acre for the years 1972-1976. High and low production levels are assumed to be 20 percent above or below the average. Crop acreages are estimated to be 6.3 million for wheat, 3.3 million for durum, 2.5 million for barley, and 2 million for sunflowers. Crop incomes for 1980 for each combination of price and production are assumed to be 10 percent higher than for 1979. Revenues from other sectors of the economy were based on trend analysis. State personal income estimates for 1978, 1979 and 1980 assuming expected crop prices and expected production are:

1978 — Expected $4,578,000,000
1979 — Expected $4,621,000,000
1980 — Expected $4,896,000,000

Estimates of sales and income tax revenues for the 1979-81 biennium are presented in the following schedule. These estimates include the impact of passage of Initiated Measure No. 2 on November 7, 1978, which decreased the state income tax rates.

Assuming expected production and expected prices for farm crops, the Agricultural Economics Department estimates the impact of passage of Initiated Measure No. 2 will reduce net personal and corporate income tax collections by $29.52 million in fiscal year 1978 and by $64.25 million for the 1979-81 biennium.

Farm Income Assumptions		Total of Personal Income Tax, Sales and Use Tax, and Corporate Income Tax Collections for the 1979-81 Biennium
Price	Production	Millions of Dollars
a. High	High	$ 445.34
b. Expected	High	$ 380.63
c. Low	High	$ 338.70
d. Expected	Expected	$ 346.57
e. Low	Expected	$ 312.44
f. Low	Low	$ 286.76

The committee also requested the NDSU Agricultural Economics Department to forecast state revenues associated with energy development in the state. It was reported that estimates of these revenues were obtained from Version I of the REAP economic-demographic model. Estimates of state tax revenues from fiscal years 1976-1980 associated with energy development are presented as follows:

	1976	1977	1978	1979	1980
	(millions of dollars)				
Sales and use tax	12.8	19.2	22.3	25.3	28.3
Personal income tax	4.0	5.9	3.6	4.1	4.4
Corporate income tax	.7	1.0	1.6	1.7	2.0
Corporate privilege tax	.5	.7	.8	.9	1.0
Highway [a/]	2.0	3.0	3.8	4.4	5.1
Cigarette/tobacco/liquor [a/]	.4	.7	.8	1.0	1.2
Equalization	.1	.3	.5	.6	.7

[a/] In principal impact counties only

The report states that oil and gas exploration and development injects income flows into the state that exceed income attributable to the livestock sector of the state's economy.

Monitored Status of Appropriations

The Legislative Council staff prepared quarterly reports on the status of 1977-79 appropriations to charitable and penal institutions, the colleges and universities, Department of Public Instruction, and State Social Service Board. Each agency forecast its expenditures on a quarterly basis for the biennium. After the end of each quarter, the Council staff prepared reports for committee review comparing actual expenditures to estimates. Special reports were made in key budget areas including energy and food costs.

Throughout the interim the committee closely reviewed the status of the Social Service Board appropriation for medical assistance payments. At the final committee meeting the Social Service Board reported that it may request the Emergency Commission to transfer approximately $500,000 from various budget line items into the medical assistance line item primarily because of increased caseloads and hospital costs. The committee also monitored the monthly caseloads and cost per case for AFDC, skilled nursing care, and intermediate care. The caseloads for AFDC have been less than estimated; whereas, skilled nursing care and intermediate care caseloads have been greater than estimated. Costs per case for all three programs are close to estimates. The Social Service Board also reported that 1977-79 expenditures to reimburse counties for general assistance payments will be approximately $70,000 more than appropriated.

Although it was reported that the 1977-79 appropriation for the medically needy children's program is adequate, the committee encouraged the Social Service Board to continue to request the state's Congressional Delegation to seek legislation changing the federal eligibility requirements for this program from persons under age 21 to persons under age 18. The Social Service Board agreed to do this.

The committee also reviewed rates the Social Service Board pays for care in skilled nursing care and intermediate care facilities to rates paid by private persons in the same facilities. As of December 31, 1977, in most instances, the rates paid by the board were less than rates paid by private individuals. However, the board said its rates reflect actual cost of care which does not require private pay patients to subsidize the care of those whose care is paid for by the Social Service Board.

It was reported that the State Penitentiary, State Hospital, Grafton State School, and Soldiers' Home may incur deficiency appropriations for the 1977-79 biennium.

The State Penitentiary estimated deficiency appropriation is $275,533 because the Penitentiary is employing five female officers; salary ranges for correctional officers were increased more than expected; and expenditures are greater than estimated for several supply and fees and services items.

Grafton State School estimates a deficiency appropriation of $265,120 primarily because expenditures are greater than budgeted for natural gas, special assessments, building and hardware supplies, kitchen and cleaning supplies, and heating fuel oil.

The Soldiers' Home estimated deficiency appropriation is $12,000 because of large expenditures for sick leave and accumulated annual leave of certain employees who retired or were ill.

The committee reviewed 1977-79 estimated expenditures for heating fuel and electricity in the institutions of higher education and charitable and penal institutions budget requests approved by the Legislative Assembly compared to later estimates filed with the Legislative Council staff.

This comparison for the institutions of higher

education indicates that at NDSU and the State School of Science, estimates for heating fuel expenditures during the 1977 Legislative Session were $259,858 less than estimates immediately after the session; and at the other institutions of higher education the estimates for heating fuel during the session were $85,535 more than estimated after the session. Estimates of electricity expenditures during the session were $59,678 more than estimated after the session at all institutions of higher education, except at Dickinson State College where estimates during the session were $11,338 less than estimates after the session. At charitable and penal institutions, estimates of heating fuel and electricity expenditures during the session were generally the same as estimates after the session except at San Haven State Hospital where the hospital estimates it will spend $23,500 less for heating fuel than estimated during the session.

The committee was informed that, primarily because of higher than expected assessed valuations, the Department of Public Instruction estimates $5 million of the 1977-79 foundation program appropriation will not be spent.

The Department of Public Instruction reported that because less property has been available and because of reduced activity during winter months, the Surplus Property Division will need a general fund appropriation to continue operations. The Emergency Commission approved a $35,000 transfer from the state contingency fund to support the division until January 1, 1979, at which time the next Legislative Assembly will need to approve an emergency appropriation to continue operations of the division.

The committee was informed that it is difficult for certain agencies to comply with the provisions of North Dakota Century Code Sections 54-27-10 and 54-27-11. These sections provide that 75 percent of appropriations for the "maintenance" of any state agency or institution is available for expenditure during the first 18 months of a biennium. It is unclear if the word "maintenance" in the current law includes line items in addition to salaries and wages, fees and services, and supplies and materials. The state accounting system monitors only the salaries and wages, fees and services, and supplies and materials appropriations to determine if an agency complies with Sections 54-27-10 and 54-27-11. To clarify Sections 54-27-10 and 54-27-11, the committee recommends a bill providing that 75 percent of the appropriations for the line items of salaries and wages, fees and services, and supplies and materials shall be available for expenditure during the first 18 months of a biennium.

State Hospital

At its May 1978 meeting, the committee asked its staff to determine the adequacy of the State Hospital budget for the biennium ending June 30, 1979. This analysis was requested because the State Hospital expressed concern about the adequacy of its 1977-79 appropriation. The staff analysis indicates that an additional $613,540 is necessary for State Hospital operations for the 1977-79 biennium. Of this total it is estimated that a general fund appropriation of $337,256 will be required and that $276,284 will be available from additional hospital income. The major items where expenditures will exceed estimates are natural gas, telephone and telegraph, legal fees, outside medical fees, food and food supplies, and heating fuel oil. The committee recommends that the next Legislative Assembly approve a deficiency appropriation for the State Hospital in the amounts estimated by the Legislative Council staff. The State Hospital agrees with the Legislative Council staff estimates.

Central Personnel Salary Ranges

At its May 1978 meeting, the Executive Budget Office said state agencies and institutions may experience budget problems during the 1977-79 biennium to pay salaries according to Central Personnel Division salary ranges. The Central Personnel Board increased the minimum level of all salary ranges at least 6.5 percent on July 1, 1978; whereas, the 1977 Legislative Assembly appropriated funds based on an average five percent increase in the salary ranges. The Executive Budget Office said the minimum level of certain salary ranges was increased more than expected and that appropriations may not be sufficient to pay salaries at these higher minimum levels and to also give other employees, who are above the minimum level, adequate salary increases.

The Attorney General said an agency administrator must pay classified employees at the minimum of the Central Personnel salary ranges subject to the availability of funds to pay these amounts. However, the Attorney General said if appropriations are available within the total budget, even though it may result in some employees not receiving the normal increase, he cannot state that the Central Personnel Board and director have no authority to order such a compensation plan. The opinion suggests that the timing of changes to the Central Personnel pay index be coordinated with appropriations made by the Legislative Assembly.

The Executive Budget Office and American Federation of State, County, and Municipal Employees suggest that the Legislative Assembly appropriate an amount to a separate fund which

could be used to pay increased salaries because of higher than expected cost-of-living increases or other changes to salary ranges which were not anticipated at the time appropriations were made by the Legislative Assembly.

Based on its review, the committee recommends a bill which provides that revisions to Central Personnel Division classification and compensation plans shall only be made on July 1, after a biennial legislative session. The bill states that revisions shall only be made to the extent the Legislative Assembly appropriates funds to implement such plans. The Executive Budget Office expresses support for this bill.

Chase Econometrics — Economic Forecast

During the 1977-79 biennium, the Council continued its contract with Chase Econometrics for an economic forecasting service relating to the United States economy and the economy of North Dakota and surrounding states. Excerpts from these forecasts were distributed regularly to Budget "A" Committee and Budget Section members. During the interim, these committees also heard reports from representatives of Chase Econometrics. A report will also be presented at the December 1978 Budget Section meeting.

The Chase Economic forecasts contain numerous items, including agricultural prices, consumer price index projections, and future expected costs of energy products. The forecasts will be of use to the legislature in estimating revenue for the next biennium. It will also aid the appropriations committees in determining the impact of inflation on the budgets of the various state agencies and institutions for the next biennium.

Other Committee Activities

The committee reviewed reports analyzing appropriations made by the 1977 Legislative Assembly. These reports show that for the 1977-79 biennium, $347,496,426 or 60.5 percent of total general fund appropriations are for expenses related to education. The second largest category of general fund expenditures is for health and welfare which totals $98,764,603 or 17.2 percent of the total general fund appropriation. In regard to total general fund and special fund appropriations, the largest categories of expenditures are for education, ($437.3 million or 38.4 percent), health and welfare ($228.5 million or 20.1 percent), and the Highway Department ($222.6 million or 19.6 percent).

The committee also analyzed state general fund appropriations that provide assistance to political subdivisions. The total general fund appropriations for assistance to political subdivisions during the 1955-57 biennium were $17.2 million or 28 percent of total general fund appropriations. This amount increased to $248.7 million or 43.3 percent of total general fund appropriations for the 1977-79 biennium. The largest increases in general fund assistance to political subdivisions are for the foundation program, special education, vocational education, state aid to junior colleges, and personal property tax replacement.

Other committee activities included a review of allocations approved by the Emergency Commission from the state contingent fund since 1967.

STUDY OF COSTS RELATED TO ENERGY DEVELOPMENT

As directed by Senate Concurrent Resolution No. 4072, the committee reviewed estimates of costs incurred and expected to be incurred by state agencies and institutions because of energy development. The committee began its study by reviewing the findings of a special Legislative Council committee formed during the 1973-75 biennium to review the cost impact on state government of energy development activities. Energy development impact costs included in the 1975-77 budget requests of state agencies and institutions totaled $14.4 million of which $8.6 million was requested from the general fund and $5.8 million was requested from federal and other special funds.

The committee reviewed a report prepared by Legislative Council staff during the 1977 Legislative Assembly which states that state agencies and institutions estimate they will spend $17.6 million from the general fund and special funds during the 1977-79 biennium on activities related to coal development.

The committee was informed that the program budgeting system used by state agencies and institutions to prepare budget requests for the 1979-81 biennium will help identify the amounts requested for activities related to energy development. The committee approved the use of special forms which were included in the 1979-81 budget request forms sent by the Executive Budget Office to all state agencies and institutions asking them to identify amounts requested for the 1979-81 biennium because of increased energy development activity since July 1, 1973. The Executive Budget Office assisted state agencies and institutions in completing the forms. For purposes of completing the form, the committee defined an activity arising because of energy development as "an activity of a state agency, department, or institution, which arises either directly or indirectly because of gas, coal, oil, or uranium exploration, drilling, mining, or manufacturing and thermoelectric generation in North Dakota. The activities may be for services directly provided to construction workers, etc.,

and their families, or they may be for businesses employed in service institutions or businesses established or expanded because of energy development."

At its final meeting, the committee reviewed a Legislative Council staff report analyzing the amounts included in budget requests of state agencies and institutions for the 1979-81 biennium because of energy development activities. A summary of this analysis is presented in the following schedule:

AMOUNTS INCLUDED IN 1979-81 STATE AGENCY BUDGET REQUESTS BECAUSE OF ENERGY DEVELOPMENT ACTIVITIES

Agency or Program	Total	General Fund	Special Funds
Tax Department	$ 12,170	$ 12,170	
Coal Development Impact Office	8,118,336		$8,118,336
Legislative Council	62,128	62,128	
REAP	2,561,000	2,561,000	
Foundation Program	1,473,632	1,473,632	
Other Elementary and Secondary Grants	453,981	216,941	237,040
Land Department	138,478		138,478
Division of Vocational Education	243,033	143,033	100,000
Health Department	2,612,329	1,524,272	1,088,057
Memorial Mental Health and Retardation Center	64,800	46,004	18,796
Social Service Board	636,369	213,896	422,473
Public Service Commission	2,798,977	2,050,490	748,487
Weather Modification Board	22,585	22,585	
Workmen's Compensation Bureau	246,640		246,640
Highway Patrol	524,238	524,238	
Radio Communications Division	60,245	60,245	
State Penitentiary	155,928	155,928	
Energy Management and Conservation Administration	113,926	113,926	
State Planning Division	273,670	24,984	248,686
Historical Society	234,056	234,056	
Soil Conservation Committee	46,934	46,934	
Geological Survey	2,447,123	2,392,461	54,662
Game and Fish Department	104,636		104,636
Parks and Recreation Department	1,895,203	626,964	1,268,239
Water Commission	93,000	93,000	
Highway Department	14,881,000		14,881,000
Total	$40,274,417	$12,598,887	$27,675,530

The Executive Budget Office said it will identify the amounts related to energy development activities approved by the Governor in the 1979-81 executive budget.

The committee believes its study will assist the next Legislative Assembly in reviewing the costs state government will incur during the next biennium as a result of energy development activities in the state.

PERFORMANCE REVIEWS

Background

The committee was assigned responsibility for conducting performance reviews of state agencies and institutions. The committee selected the State Water Commission, State Geological Survey, and Environmental Control Section of the State Health Department because of the demands placed upon these agencies related to increased energy development.

Performance reviews conducted by the Legislative Council generally include reviewing elements of (1) compliance; (2) economy and efficiency; and (3) program results. The compliance portion of the review determines if an agency is complying with applicable laws and regulations and with the intent of appropriations passed by the Legislative Assembly. The economy and efficiency phase of the review determines whether an agency manages its resources in an economical and efficient manner. The program review determines if the agency's desired program results or benefits are being achieved. The program review also gives direction to future programs and services provided by an agency.

The Legislative Council staff conducted the compliance portion of the reviews of the Water Commission and Geological Survey. No compliance review was conducted of the Environmental Control Section because of the Legislative Council's Health Services Committee's study of the Health Department.

Since the agencies selected have programs involving specialized techniques and knowledge, the committee contracted with a management consulting firm for the review of economy and efficiency and effectiveness of the agencies' programs. A subcommittee of Representatives Wagner, Backes, and Strinden; and Senators Erdman and Lee reviewed proposals from various firms and selected the firm of Booz, Allen and Hamilton, Applied Research Division (BAH). The reviews began in November 1977, and progress reports to the committee were made periodically. Copies of the Legislative Council staff reports and BAH reports are available in the Legislative Council office.

State Water Commission

The Legislative Council staff report states that 1975-77 Water Commission expenditures for professional fees, motor vehicles, and water projects varied from amounts included in the budget submitted to the Executive Budget Office and Legislative Assembly. The committee recommends that the commission implement the report's recommendations which state that future commission budget requests should include funds for all its planned activities and also include all estimated federal funds. It is also recommended that future commission budget requests include resources necessary to take timely action on water permit applications and that the commission more accurately prepare and review its financial reports and improve certain contracting procedures.

The Water Commission said it agrees with the Legislative Council staff report recommendations; however, it requires budget flexibility to perform its duties.

The BAH report states that the Water Commission has served the state effectively but will confront new problems for which it is not fully prepared. The report states that in recent years the era of water resources development is giving way to an era of water resources management. To continue providing services most required by the state and to allocate its financial and personnel resources most effectively, the report states the commission needs to improve its planning capability so it can base its decisions on changes to political, demographic, and economic trends. The BAH report states there will be an intensifying demand for superior technical research and analysis underlying the commission's permitting and policy decisions.

The review of the efficiency of the commission's operations indicates that it is operating under some organizational stress and is presently not well structured to deal effectively with new problems it will face in the era of water resources management. However, the report states, because of the technical strength and dedication of the commission staff, the stresses within the organization are not serious at the present time.

The report recommends several positions to improve the composition and structure of the commission staff organization and its management systems. These are an assistant state engineer, an economist/planner, an additional attorney, two hydrologists, one investigations staff member, one engineer, one technician, one clerk, one secretary, and necessary support staff.

The report states that usable space in the Water Commission's present location is fully utilized. To alleviate the commission's space problems, the report recommends (1) moving to a new building; (2) renovating existing quarters to permit more efficient use of its space; or (3) relocating the Motor Vehicle Department making more space available in the building the commission now occupies.

The report recommends several improvements to the commission's management information systems which enable the State Engineer to more closely review the accomplishments of the commission staff.

Finally, the report recommends that the commission study the feasibility of establishing regional offices in the state.

The commission said the BAH report is a good presentation of its present circumstances and of future impacts on the commission. The commission agrees with the recommendations for additional staff; however, it plans to request funds for new positions in addition to those recommended in the report. The commission said it would prefer additional space in its present location or moving into the proposed new State office building. The commission said it will consider implementing some of the recommendations for improved management information systems. The commission expressed concern that it must be able to pay competitive salaries to its professional staff.

At the committee's request, the commission discussed the feasibility and desirability of establishing regional Water Commission offices. The commission believes it can provide better ser-

vices through regional offices since it participates in many projects throughout the state. The commission believes regional offices would make it possible to provide more assistance to local water management districts since presently these districts do not have the financial capability or technical expertise to adequately manage water resources. Commission plans call for the establishment of four regional offices, with the first office to be established in the Red River drainage basin.

The committee reviewed a Legislative Council staff analysis of estimated costs of implementing the Water Commission performance review recommendations. It was reported that the commission's budget request for the 1979-81 biennium includes $404,404 for 10 of the 12 recommended positions. Also, the commission's budget request includes funds for new positions in addition to those recommended in the performance review report. The total amount requested for all new positions is $815,072. It was reported that the Director of Institutions' 1979-81 budget request includes funds to renovate the State office building where the commission is presently located and that the estimated amount allocated to space presently occupied by the commission is $540,854.

The committee discussed alternatives to finance the Water Commission performance review recommendations. It was reported that the commission is presently considering enacting water user charges for industrial type water users. The proposal being considered by the commission is an annual charge of $100 per acre-foot for the first 1,000 acre-feet used and an increase of $10 per acre-foot for each additional thousand acre-feet used. According to Water Commission estimates, if these water user charges were presently effective, total collections would be $3,270,000 annually. If all permits for use of water which are now conditional permits were perfected and water was used in the amounts approved in the conditional permits, total collections would be approximately $17 million annually.

The committee recognizes the need for improved State Water Commission operations and recommends that the next Legislative Assembly place a high priority on funding the recommendations included in the performance review reports.

Geological Survey

The Legislative Council staff report on the Geological Survey states that the survey receives significant amounts of federal funds which are not included in its budget requests. For example, during the 1975-77 biennium, the survey received Emergency Commission approval to receive and spend $459,513 of federal and other funds. The committee recommends that the survey implement the report's recommendations which state that future survey budget requests include estimates of all federal funds and that the requests should be more accurately prepared and contain more explanatory information. It is also recommended that the survey improve its contracting procedures for professional services, and review the adequacy of bonding levels for its employees. The Geological Survey said its budget requests have not included federal funds because it is difficult to predict future grants from the federal government. The survey said it may have to amend its budget during the legislative session to reflect changing federal fund estimates.

The BAH report states that the survey's programs and priorities are generally sound, and that its professional staff is well qualified for the work it does. The report states that in only one area (oil and gas inspection) is there reason to question the adequacy of the survey's technical resources and results. The report states that the survey's oil and gas inspection and engineering staff is too small to provide adequate surveillance of drilling, production, and plugging operations. This is an undesirable situation, the report states, since the survey is to perform objective, independent, and technically qualified tests to determine if exploration and drilling operations are properly conducted. BAH representatives do not believe there are any inadequacies in current plugging operations.

The report states that certain vacant positions and the Bismarck/Grand Forks split of survey operations complicates management of the organization. In addition, the report states there are no systems at the survey which make the productivity of resources readily visible to the State Geologist on a regular basis.

The report makes several recommendations for additional staff and improved management information systems. The recommendations for additional staff are a carbonate geologist, a computer technology position, a core and sample assistant, a reservoir engineer, a field gas engineer, four field inspectors, and three support positions. The report also recommends that additional space be provided for storage of cores and samples. It also recommends that the survey install management information systems which enable the State Geologist to monitor more closely the accomplishments of the survey.

In response to committee questions, BAH said they believe the survey should continue its affiliation with the University of North Dakota since the survey can use student labor and share facilities and equipment.

The Geological Survey said it agrees with most of the report's recommendations including recommendations for additional personnel and storage space. The survey said it will implement recommendations for improved management systems when it believes such systems are necessary.

The North Dakota Petroleum Council expressed support for additional oil and gas well inspectors. It was reported that the Emergency Commission approved an allocation from the state contingency fund for the survey to employ two additional inspectors during the current biennium.

The committee review of the estimated costs of implementing the Geological Survey performance review recommendations indicates that the survey's budget request for the 1979-81 biennium includes approximately $1.2 million to implement the recommendations, including additional staff and storage for cores and samples. The committee also reviewed alternatives to finance the Geological Survey performance review recommendations including estimates of amounts derived from various levels of the oil and gas production tax. Based on survey estimates that oil and gas production will increase by 19 percent during the 1979-81 biennium and if there is no change to the oil and gas production tax, the state would receive approximately $18 million from the oil and gas production tax or $2.9 million more than estimated for the 1977-79 biennium.

The committee recognizes the need for improved Geological Survey operations and recommends that the next Legislative Assembly place a high priority on funding the recommendations included in the performance review report of the Geological Survey.

Environmental Control Section

The BAH report states that the Environmental Control Section's programs are well conceived and its program priorities are appropriate to the environmental problems facing North Dakota. The report states that the section has aggressively pursued management of federal environmental programs and that approximately 70 percent of the section's budget comes from federal funds. The report states that the section has achieved environmental compliance in the major areas of air pollution, water pollution, and solid waste disposal with virtually no appeals or litigation.

The review of the efficiency of the section's operations indicates that management systems within the section are very informal, but performance is effective. However, the report states, with the expected retirement of the section chief and the increasing complexity of the section's operations, the informal management systems will be less effective. The report states that the organizational structure of the section is sound except that the role of the Division of Environmental Sanitation and Food Protection should be reevaluated to determine if it would be better placed within another division of the Health Department.

Specific recommendations for the Environmental Control Section included in the BAH report are (1) no organizational changes are necessary at the present time; (2) steps should be taken to position a placement for the section chief when he retires; (3) the internal management control system should be modified to better analyze results obtained from air and water monitoring programs; and (4) a monthly reporting procedure should be established for a better review of all section projects.

The Environmental Control Section agrees with most of the findings and recommendations included in the report; however, the section chief said he believes the Environmental Sanitation and Food Protection Division should remain within the Environmental Control Section. The section also said adequate salary levels and continuing educational experiences are necessary to retain its staff.

The committee encourages the Environmental Control Section to implement the recommendations contained in the BAH report and recommends that the next Legislative Assembly review the report recommendations when it considers the section's appropriation for the 1979-81 biennium.

BUDGET "B"

The Committee on Budget "B" was assigned two study resolutions. Senate Concurrent Resolution No. 4074 directed a study of reorganizing and consolidating the administrative, management, and budgetary responsibilities of state government into a Department of Administration; and Senate Concurrent Resolution No. 4065 directed a study of state government purchasing practices.

Committee members were Senators Evan Lips, Chairman, Steve Farrington, Lester Larson, John Maher, Robert Melland, and James Smykowski; and Representatives Aloha Eagles, Ronald Gunsch, Dean Horgan, Howard Johnson, Theodore Lang, Lawrence Marsden, Gene Martin, Ruth Meiers, Emil Riehl, Dan Rylance, and Janet Wentz.

The report of the Committee on Budget "B" was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

DEPARTMENT OF ADMINISTRATION

Background

As directed by Senate Concurrent Resolution No. 4074, the committee reviewed the functions of several agencies which provide administrative, management, planning, and personnel services including the Department of Accounts and Purchases and its various divisions, State Radio Communications Division, Statewide Communication Systems, State Records Administration, Central Microfilming Unit, State Construction Superintendent, and Public Employees Retirement System. The committee also reviewed the relationship to the Department of Accounts and Purchases of services provided by the Bank of North Dakota, State Treasurer's office, Board of Higher Education, and Business and Industrial Development Department.

The committee asked state agencies to evaluate the services of the Department of Accounts and Purchases. Also, the committee reviewed the services of other states' central management and budget agencies. In addition, the committee reviewed comments by Arthur Andersen and Company regarding a Department of Administration.

Department of Accounts and Purchases

The committee's study of a Department of Administration included a review of the Department of Accounts and Purchases services since this department is presently the state agency in the executive branch having central responsibility for administrative, management, and budgetary functions. The director of the Department of Accounts and Purchases expressed support for the committee's study of a Department of Administration.

The committee reviewed the statutory history of the Department of Accounts and Purchases and its various divisions. The 1957 Legislative Assembly directed the Legislative Research Committee to study the 1942 recommendations of the North Dakota Governmental Survey Commission for organization of North Dakota state government. Based on this study, the 1959 Legislative Assembly created the Department of Accounts and Purchases to streamline and consolidate the fiscal administration and purchasing practices of state government. In 1965 the Legislative Assembly created the Executive Budget Office within the Department of Accounts and Purchases. The Executive Budget Office is responsible for developing the executive budget, and it oversees the execution of state agency and institution budgets. As a result of a Legislative Research Committee study, the 1969 Legislative Assembly created the Central Data Processing Division within the Department of Accounts and Purchases to design, program, and implement data processing systems for state agencies. The 1969 Legislative Assembly also passed legislation transferring State Planning to the Department of Accounts and Purchases for the purpose of coordinating and assisting planning activities in the state. Based on a Legislative Council study, the 1975 Legislative Assembly created the Central Personnel Division as a division of the Department of Accounts and Purchases. The Central Personnel Division's primary responsibility is to maintain a classification and pay system for state employees and to administer the duties of the Merit System Council.

Currently, the Department of Accounts and Purchases has seven divisions — Executive Budget Office, Accounting and Payroll Division, Central Data Processing, Central Personnel Division, Central Duplicating, Central Purchasing, and State Planning Division.

The committee asked state agencies and institutions to evaluate the service-related divisions of the Department of Accounts and Purchases and to suggest areas where improved or additional services can be provided. The services of the Accounting and Payroll Division, Central Purchasing Division, Central Duplicating Division, Central Data Processing, and Central Personnel Division were evaluated by 80 agencies and institutions. The agencies ranked the various divisions on a

scale of one to 10 with the lower number rankings indicating unsatisfactory services and the higher numbers indicating satisfactory services. The average evaluation of each division is as follows:

Accounting and Payroll Division	8.36
Central Duplicating	8.03
Central Personnel Division	7.91
Central Data Processing	7.84
Central Purchasing Division	7.62

Several agencies said the Accounting Division should process department payrolls on the last day of the month, rather than the first day of the following month; and conduct periodic training seminars on the mechanics and uses of the state's accounting system.

The committee was concerned that 76 percent of the agencies and institutions indicated that manual financial or other records are maintained in addition to those generated by the state's accounting system. The Department of Accounts and Purchases said many of the manual records can be generated by the state's accounting system. It was reported that, based on the committee's survey, the Department of Accounts and Purchases has eliminated manual records in approximately 20 agencies.

The State Auditor's office said it cannot utilize the accounting system for determining expenditures by fiscal year. The State Auditor's office reported that it uses the state's accounting system whenever possible but with modifications it could be used substantially more in the preparation of financial statements. The Department of Accounts and Purchases questioned whether a balance sheet reporting and accrual accounting system suggested by the State Auditor's office are cost effective.

The committee encouraged the Legislative Council's Audit and Fiscal Review Committee to evaluate the need for and consider implementing an accrual accounting system, and a system to generate consolidated financial statements including a balance sheet for state government. (Please refer to the report of the Legislative Council's Audit and Fiscal Review Committee for further discussion and recommendations regarding the state's accounting system.)

The most numerous suggestions for improved Central Purchasing Division services are to allow agencies to purchase automobiles from local dealers and to expand the hours of the central supply room in the State Capitol. It was reported that the division has operated with the same number of employees since 1967. The Department of Accounts and Purchases said additional staff and resources are necessary to comply with many of the suggestions. The division reported it has implemented some of the suggestions made in the survey including better distribution of the purchasing manual, compilation of a list of departmental personnel involved in purchasing, and meeting with higher education purchasing personnel.

Suggestions for improved central duplicating services include delivery of completed products to agencies not located on the Capitol grounds; review of materials before processing to avoid smudged or damaged copies; printing of letterheads, envelopes, and small books; and increasing the central duplicating staff during the legislative session to meet the continuing needs of other state agencies.

The main concern regarding the services of the Central Data Processing Division is that Central Data Processing Division personnel be available to assist agencies. Other suggestions for improved central data processing services include improved keypunch control; faster turnaround time; more efficiency in implementing program changes; more scientific data processing capabilities; and more accurate cost projections of data processing services.

Suggestions for improved Central Personnel Division services are to expand the central personnel system into a state civil service system; develop a roster of vacant positions and persons eligible for promotion or transfer to various areas of the state; use consultants to classify specialized fields of work; develop salary ranges to correspond to local salaries; and conduct more training programs outside of Bismarck.

Other Agencies Administrative Services

The committee reviewed the administrative services of several other agencies and the desirability of transferring these services to a Department of Administration.

The Director of Institutions commented on the State Radio Communications Department, statewide communications system, central mailing bureau, and Capitol grounds maintenance. He said that should a Department of Administration be established he cannot transfer any of his administrative staff to such a department without adverse effects on other areas of his department's responsibility. The Director of Institutions opposes transferring the State Radio Division to a Department of Administration. He does not oppose transferring the functions of statewide communications, central mailing, and Capitol grounds maintenance to a Department of Administration. However, he suggests if these functions are transferred to a Department of Administration,

the responsibility for allocating space to state agencies should also be transferred.

The Secretary of State and the State Records Administrator said unless the Records Administrator's office and central microfilming unit are adequately funded there would be no benefit to transfer these functions to a Department of Administration.

The State Construction Superintendent said his workload has multiplied since the position was created in the early 1960's; however, the department continues to function with only one person. He recommends that the Construction Superintendent's office could best be reorganized within a Department of Administration.

The executive director of the Public Employees Retirement System said it will not be beneficial to place his agency within a Department of Administration since his office's work is highly specialized and technical.

It was reported that the accounting functions of the Bank of North Dakota and of the Department of Accounts and Purchases are separate functions. The Bank said it should be involved in the management function of state government since enabling legislation creating the Bank of North Dakota provides that the Bank shall be established for the purpose of encouraging and promoting agriculture, commerce, and industry.

The State Treasurer said the Department of Accounts and Purchases, along with the State Treasurer, provides a system of checks and balances between an elected official and an appointed official which is necessary for the proper protection and administration of the state's finances. Because the State Treasurer is custodian of the state's money, he recommends that the State Treasurer be a member of the Emergency Commission and Industrial Commission, and also should be an integral part of the budgetmaking process along with the Department of Accounts and Purchases.

The committee also reviewed the institutions of higher education relationship with the Department of Accounts and Purchases regarding fiscal practices and personnel administration. The Board of Higher Education said it is satisfied with the central personnel system. It was reported that the institutions are converting to their own program accounting system since the state's accounting system does not provide the necessary information especially in the auxiliary and enterprise fund areas.

The Business and Industrial Development Department discussed its functions and relationship with the State Planning Division. It emphasized that the Business and Industrial Development Department promotes industrial development but does not plan it.

Arthur Andersen and Company Comments

Since Arthur Andersen and Company (a national certified public accounting firm) has conducted extensive studies in the past on various administrative practices of North Dakota state government, the committee invited the company to discuss areas the committee should consider in its study of a Department of Administration. The company said the present responsibilities of the Department of Accounts and Purchases encompass many of the major functions that are in most departments of administration. They said it is questionable if any major economies will be gained by transferring other administrative services into the Department of Accounts and Purchases. They recommended that the study of a Department of Administration be expanded into a total review of the organization of the executive branch of state government. If the state is considering planning the structure of the executive branch of government for the future, they said, it may be desirable to conduct a study similar to the 1942 Governmental Survey Commission study of the organization and administration of state government in North Dakota.

Other States' Central Budget and Management Agencies

The committee reviewed the basic functions of administrative agencies in South Dakota, Wisconsin, Colorado, and Montana vested with central management and budget functions. Various functions of these state agencies include purchasing, printing, Capitol grounds and building maintenance, microfilming, mailing, central data processing, supervision of state building construction, state laboratories, state personnel, executive budget preparation, expenditure control, state planning, state archives, statewide communications, administration of public employees retirement and health insurance plans, and investment of state funds.

Committee Action

The committee does not recommend the creation of a Department of Administration since the primary services of such a department are presently being performed by the Department of Accounts and Purchases. Also, the committee does not recommend transferring any additional administrative services to the Department of Accounts and Purchases since it believes the effect of such transfers should be considered in an overall study of the organization of the executive branch of state government.

As a result of its study of a Department of Administration and to encourage economical and efficient methods of providing services, the committee recommends a resolution directing a Legislative Council study during the 1979-81 interim of the feasibility and benefits of reorganizing the executive branch of state government. The committee believes this study is necessary since there has not been an overall study of executive branch organization since the 1942 Governmental Survey Commission study. The committee believes there have been changes in the state's economic and social conditions which have affected the size and types of services provided by state agencies and institutions. Another reason the committee believes the study is necessary is because the state is receiving significantly increasing amounts of federal funds which affect the organization structure of agencies and the services provided. In addition, the committee believes there may be similar programs offered by state agencies where services could be better coordinated.

The study resolution recommends that the Legislative Council evaluate the effectiveness of the present structure of the executive branch and review existing or potential deficiencies or excesses in state government services related to the present organizational structure. The resolution directs the Council to review governmental structures in other states of similar size and with economic and social characteristics similar to North Dakota's. The resolution states that the Council may procure the services of a management services firm to compare modern governmental management models to the present structure of state government. The resolution directs the Council to ask the Governor, other elected and appointed officials, and citizens to comment and make recommendations about desired organizational changes.

STATE PURCHASING PRACTICES

Overview

Senate Concurrent Resolution No. 4065 directed a study of all laws, policies, and practices of state government related to purchasing. The study focused primarily on the operations of the Central Purchasing Division of the Department of Accounts and Purchases and the purchasing practices of the institutions of higher education. The study was designed to identify and solve current purchasing problems within the state, strengthen the state's purchasing laws where necessary, and improve the efficiency and effectiveness of state purchasing practices.

Current Practice

Current law provides that the Department of Accounts and Purchases shall operate a centralized purchasing service. A 1963 Attorney General's opinion has been the basis for current state purchasing practices. This opinion states that while current law imposes a duty upon the Department of Accounts and Purchases to operate a centralized purchasing service, it does not require state agencies and institutions to channel their purchases through the Department of Accounts and Purchases.

The Central Purchasing Division within the Department of Accounts and Purchases seeks competitive bids on many of the purchases for most state agencies and institutions, except the institutions of higher education. Estimates of the amount of purchases arranged for by the Central Purchasing Division range from $8.5 million to $12 million annually. Major items purchased by the Central Purchasing Division include office furniture and supplies, motor vehicles, coal, petroleum products, food, insurance coverage, soaps and chemicals, scientific equipment, automotive supplies, dry goods and clothing, and household equipment and supplies. Items that agencies generally purchase directly include cement, sand, gravel, road oil, medical supplies, fresh meats, fresh fruits and vegetables, bread and pastries, and books and periodicals. The Central Purchasing Division makes purchases from approximately 2,500 vendors. To the extent possible, all purchases are subject to competitive bidding procedures.

At the institutions of higher education approximately 90 percent, or $16.7 million, of the institutions' supplies and materials and equipment purchases for the fiscal year ended June 30, 1977, were purchased directly by the institutions. Approximately 11 percent, or $2 million, of supplies and materials and equipment purchased during this same period were purchased using Central Purchasing Division contracts. Even though the institutions of higher education may not make certain purchases using the central purchasing division contracts, the institutions normally make competitively bid purchases through each institution's purchasing office or business office.

Council of State Governments' Review

During the interim, the committee contracted with the Interstate Consulting Clearinghouse of the Council of State Governments (CSG) to review North Dakota's purchasing system. CSG selected a three-member study team for this review. Study team members were Mr. Richard Brubacher, Minnesota's Commissioner of Administration; Mr. Jimmy North, Illinois State Purchasing Agent; and Dr. James Miller, Professor of Higher Education at the University of Michigan.

The study team reviewed the (1) scope and type of purchasing; (2) internal operations and

organization; (3) coordination of purchasing activities between the Purchasing Division and institutions of higher education; (4) purchasing policies and procedures of the Central Purchasing Division and institutions of higher education; and (5) purchasing by the state for political subdivisions.

The CSG report states that North Dakota operates a semicentral purchasing system because of an overly general and permissive statute which is weakened by the 1963 Attorney General's opinion. Not including higher education, the report states that the Central Purchasing Division arranges for the purchase of approximately $10,250,000 and agencies make direct purchases of approximately $5.8 million. The report estimates a 10-15 percent cost savings if all purchases by state agencies and institutions, including the institutions of higher education, were pooled. Based on these findings, the report recommends that the state adopt a more centralized purchasing system.

The report recommends that the state's purchasing statute be amended to define all areas of purchasing; establish uniform policies and rules and regulations for acquiring goods and services; place all purchasing authority with the Department of Accounts and Purchases, except where exempted by law; require publication of notices of bids for state contracts; and require purchases to be made according to written specifications.

The report states that a shortage of staff is another reason the Department of Accounts and Purchases is not able to operate a central purchasing system even though the division is doing a creditable job with the numbers of staff it is authorized. The report recommends that the Central Purchasing Division add a professional standards and specifications engineer, two field inspectors, a buyer-trainee, and at least one additional clerk. It is also recommended that merit system coverage be extended to Central Purchasing Division staff. Also, training programs should be implemented for purchasing personnel, the report states.

The report states that there is minimal communication and coordination between the Central Purchasing Division and the institutions of higher education. The report sets forth several recommendations to improve communication and coordination of purchasing activities including attendance by Central Purchasing Division staff at quarterly meetings of higher education business officers, identification of items of high common usage, and joint preparation of bid specifications.

The report states that purchasing procedures at the institutions of higher education and the Central Purchasing Division lack uniformity and are compounded by laxity and informality in implementation. It is reported that there are inadequate controls on bidding procedures, scheduling of bids, security of bids, quality control, and compliance with complaint procedures. Recommendations for improved policies and procedures include promulgating purchasing rules and regulations; improving the bidding process for securing, opening, and publicly reading and recording bids; strengthening the complaint process; and instituting quality control programs to ensure compliance with contracts.

The report recommends procedures to improve the recordkeeping system of the Central Purchasing Division since it was found that the division lacks a good recordkeeping system which provides accurate and timely information.

The report recommends establishing an advisory committee to review policies, quality of products, standards and specifications, and complaints. Also an interagency task force is recommended to define items of high common usage among agencies.

Additional findings and recommendations to improve purchasing practices at the institutions of higher education are to continue decentralized purchasing at the institutions; require institutions to use statewide contracts when advantageous; and continue purchasing of specific items by various departments at the institutions.

During the interim, the Legislative Council's Audit and Fiscal Review Committee asked the Budget "B" Committee to take action on that portion of the North Dakota State University audit report related to improved purchasing procedures. The CSG study team conducted a specific review of NDSU purchasing practices and recommends that (1) individual departments be allowed to make independent purchases; (2) a requisition system be implemented at NDSU similar to that employed by the University of North Dakota; and (3) a central warehousing and receiving system be established.

Regarding purchasing for political subdivisions, the report states that improved purchasing practices for state agencies and institutions must assume a higher priority than purchasing by the state for political subdivisions. The report recommends that the Central Purchasing Division encourage local governments to purchase under state contracts when advantageous.

In response to committee questions it was reported that the study team does not recommend a more decentralized purchasing system since strong controls and a good recordkeeping system,

which are necessary to monitor such a system, are not in place at the present time.

Agency and Insitutions Response

Throughout the interim, the committee requested representatives of the Department of Accounts and Purchases and institutions of higher education to respond to the findings and recommendations of the CSG study team.

The Department of Accounts and Purchases generally agrees with the report. The department said most of the report's recommendations will be implemented if (1) a buyer staff position, vacant for much of the past biennium and not renewed in the current appropriation, is restored; (2) an apprentice buyer position and a clerk/typist are added; and (3) adequate travel expenses are approved. It was reported that since the study began there has been increased cooperation between the Central Purchasing Division and the institutions of higher education. The department does not endorse creation of an interagency task force or an advisory committee since it will be responsible for these functions. The department supports legislation to encourage political subdivisions to maximize their use of Central Purchasing Division contracts. Other areas discussed included improvements to the Central Purchasing Division's record system and reassignment of Purchasing Division staff responsibilities.

The Board of Higher Education concurs with many of the report's recommendations. The board believes its purchasing practices should be coordinated with the Department of Accounts and Purchases. However, the board believes there are several reasons for maintaining purchasing autonomy by each institution of higher education. The board believes the institutions are distinct entities where the presidents are responsible for efficient and economical operations. Since the materials and supplies are directly related to the efficiency and economy of operations, the board believes the presidents of the institutions should maintain control over purchases. According to the board, state centralized purchasing means the institutions' purchasing agents will not be responsible for product service and planning and interpreting institutional and staff purchasing needs. The board estimates that an inventory of $300,000-$500,000 would be necessary at the larger institutions because of the extra time involved in purchasing through a state central purchasing department. Another reason institutions should make their own purchases, according to the board, is to improve public relations with local communities.

It was reported that, although North Dakota State University does not agree with the report's recommendation to construct a central receiving station, it will request funds from the next Legislative Assembly to construct such a facility.

Recommendations

The committee recommends a bill which provides that the Department of Accounts and Purchases shall purchase or lease for all state agencies and institutions in the executive branch of government all materials, furniture, fixtures, printing, insurance, and other commodities. The bill exempts certain items from being purchased by the Department of Accounts and Purchases including land, buildings, utility services, books and periodicals, professional services, manufacturer maintenance services, and emergency purchases. The bill provides for written delegation of purchasing authority by the Department of Accounts and Purchases to state agencies. The bill further provides that purchases are to be made in accordance with specifications and rules and regulations promulgated by the Department of Accounts and Purchases. The bill states that the institutions of higher education shall make joint purchases with the Central Purchasing Division of items of high common usage. To improve competitive bidding procedures, the bill states that the Department of Accounts and Purchases shall publish, at least once per year in each official county newspaper in the state, procedures to be followed to sell goods and materials to state agencies. The bill extends merit system coverage to purchasing personnel employed by the Department of Accounts and Purchases. Finally, the bill provides that Central Purchasing Division shall be available for use by political subdivisions.

The director of the Department of Accounts and Purchases and representatives of the Board of Higher Education and Director of Institutions' office support this bill. The Department of Accounts and Purchases said the bill clarifies current purchasing procedures within the state. It was reported that the amount of purchases arranged for by the Department of Accounts and Purchases would increase only if additional personnel were added to the Central Purchasing Division staff.

The committee also considered the CSG report recommendations which do not require legislative action to implement. The committee recommends that the Department of Accounts and Purchases and institutions of higher education implement these recommendations which include attendance by purchasing division staff at quarterly meetings of higher education business officers; identification of items of high common usage and joint preparation of bid specifications; improved recordkeeping systems; establishment of an advisory committee and interagency task force; improved bid processing procedures; and better quality control programs.

CONSTITUTIONAL REVISION

Senate Concurrent Resolution No. 4003, passed by the 1977 Legislative Assembly, directed the Legislative Council to create a permanent Constitutional Revision Committee to conduct a continuing and comprehensive study of constitutional revision. The committee was composed of both legislators and citizen members.

Legislative members of the 1977-79 Constitutional Revision Committee were Representatives William Kretschmar, Chairman, Pat Conmy, Peter Lipsiea, Rick Maixner, Tom Matchie, and Dan Rylance; and Senators I. E. Solberg and Frank Wenstrom.

Citizen members of the committee were Mrs. Agnes Geelan and Messrs. Dick Dobson, Gail Hernett, R. E. Meidinger, and John D. Paulson. Mr. Joe Byrne was originally appointed to the committee, but he died prior to the committee's first meeting. Mr. Meidinger was named as his replacement.

The committee held four meetings, and is recommending 10 bills and resolutions.

The report of the Committee on Constitutional Revision was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

RECOMMENDATIONS

Renumbering Constitutional Sections and Articles

North Dakota's Constitution has been amended 107 times since it was adopted in 1889. This has been on a piecemeal basis and has created problems and confusion regarding the Constitution's numbering. It has also led to provisions being out of logical order.

For example, voters in November 1978 approved an open records provision for the Constitution. This will be Article 100 of the Amendments to the Constitution. However, its companion measure on open meetings, passed in 1974, is Article 92. But, only part of the 1974 provision is carried as Article 92. The other half of the provision is carried as Section 50 of the Constitution.

Another example: Voters in 1976 approved a new Judicial Article consisting of Sections 85 through 97. However, the old Article consisted of Sections 85 through 120. So now, officially, the Constitution skips from Section 97 to Section 121. A similar numbering gap was created in November 1978 when voters approved a new Elective Franchise Article.

Still other examples: Article 1 of the Constitution is the state's Bill of Rights, but there is also another Article 1 in the Constitution. This is Article 1 of the Amendments, and deals with gambling. The separate provisions of the main body of the Constitution are designated as numbered sections. Thus, Section 1 deals with all men being created free and equal. However, some of the amendments have also contained sections, such as Section 1 of Article 76 dealing with the issuance of bonds for power facilities. And some articles, such as Article 54 on the State Board of Higher Education, have several important subsections that are sometimes referred to as sections.

To remedy these problems, a bill is being proposed to allow the Legislative Council staff, when it supervises the republication of North Dakota Century Code Volume 13, containing the Constitution, to renumber the Constitution so that all numbers and sections are in sequence. A numbering system would also be developed to allow future amendments to fit into the Constitution without duplication of numbers or being placed out of logical order.

Finally, the bill would also allow the Council to rearrange existing constitutional provisions into logical and subject matter order so that, for example, all matters dealing with the Board of Higher Education, or with taxation, are placed together in the Constitution.

Ballot Order

Committee members expressed concern that sometimes proposed constitutional amendments appear confusing to the voters because they are placed on the ballot in a confusing order. At present they are placed on the ballot in the order they pass the Legislative Assembly. Under this system, for example, there could be a proposal dealing with the Board of Higher Education listed as number one on the ballot, and then another Board of Higher Education item carried as number five.

The committee is recommending an amendment to North Dakota Century Code Section 16-11-07 to allow the Legislative Assembly or the Legislative Council, by resolution, to establish the ballot

order for the constitutional amendments proposed by the Legislative Assembly.

Grain Elevators Out of State

Article 14 of the Amendments to the Constitution, approved by the voters in 1912, authorizes the Legislative Assembly to provide by law for the erection, purchasing, leasing, and operation of one or more terminal grain elevators in Minnesota or Wisconsin.

The committee believes this provision is unnecessary in light of Section 185 of the Constitution. Section 185 allows the state or any of its political subdivisions to engage in all businesses except the liquor business. There is no limitation in this section that the business must be in state. Thus, the operations authorized by Article 14 could also be accomplished under the authority of Section 185.

The committee recommends repeal of Article 14 of the Amendments.

Hail Insurance

The 1967 Legislative Assembly repealed all hail insurance laws after deciding the state should not be in the hail insurance business. However, Section 177 of the Constitution and Article 24 of the Amendments, both passed in 1918, provide for the creation of a fund to ensure against hail losses and the levying of an acreage tax to indemnify the fund for its losses.

The committee believes that if the Legislative Assembly should decide in the future there is a need for a state hail insurance program, it can either fund it through the general fund or seek voter approval for a new levy through a constitutional amendment.

The committee recommends the repeal of Section 177 and Article 24 of the Amendments.

Bank of North Dakota Secured Mortgages

The Bank of North Dakota asked the committee to consider an amendment to Section 182 of the Constitution concerning public debts. That section now allows the state to issue or guarantee the payment of bonds provided that all bonds in excess of $2 million are secured by first mortgages upon real estate in amounts not exceeding one-half, or 50 percent, of its value. The Bank seeks a change from 50 percent of the value to 65 percent.

Bank President Herb Thorndal said the increase would give the Bank greater flexibility in its bond program and allow it to make more real estate loans, particularly to beginning farmers.

The committee recognizes there could be some danger in extending the state's financial obligations in this fashion, but believes this change is necessary to allow the Bank to enter the bond market on the same footing as private financial institutions. The committee also noted that the 1977 Legislative Assembly approved a similar change in state law for the investments of the Board of University and School Lands. This change, however, did not require a constitutional amendment, and the change was made from 50 percent to 80 percent.

The committee recommends this proposed amendment.

Education

The committee reviewed House Concurrent Resolution No. 3071 from the 1977 Legislative Assembly. This measure, which passed the House but was defeated in the Senate, basically deletes from the Constitution references to the specific locations of the state's colleges and universities.

There was considerable committee discussion concerning such a change. The majority of the committee believes such a change would give the Legislative Assembly more flexibility in dealing with the problems of higher education. There was some concern about how this proposed change would affect the 1975 North Dakota Supreme Court ruling that the Legislative Assembly must adequately fund the Board of Higher Education to allow it to carry out its duties. This problem to some extent appears to have been mooted with the November 1978 passage of new initiative and referendum provisions that prohibit the suspension of appropriations by referral. State law also provides at present for the specific location of all the institutions of higher education.

Some committee members believed that if changes in the Constitution's education provisions are going to be made, changes for secondary and elementary education should be made as well. Thus, the committee considered a proposal that combines the basic provisions of House Concurrent Resolution No. 3071 from the 1977 Legislative Assembly and Senate Concurrent Resolution No. 4002 from the 1975 Legislative Assembly.

Senate Concurrent Resolution No. 4002, which was defeated by the voters, would have established two state boards, one to handle higher education and one to handle secondary and elementary education. Both would have executive secretaries. The constitutional directives for both boards were streamlined, with most of the duties to be provided by law.

As it went to the voters, Senate Concurrent Resolution No. 4002 would have eliminated the of-

fice of Superintendent of Public Instruction as an elected public official.

The committee amended House Concurrent Resolution No. 3071 to make it clear junior colleges do not come under the jurisdiction of the Board of Higher Education. As amended, it recommends it.

To provide an alternative for legislative consideration, the committee also recommends the combination of House Concurrent Resolution No. 3071 and Senate Concurrent Resolution No. 4002 as amended to retain the Superintendent of Public Instruction as an elected office.

Legislative Branch

The committee reviewed the provisions of House Concurrent Resolution No. 3095 from the 1977 Legislative Assembly. This would have created a new Legislative Branch Article. It was defeated in the House. It is very similar to the Constitutional Convention's legislative proposals.

The committee amended the proposal to have the provisions concerning the Lieutenant Governor conform to the changes approved by the voters in September 1978; i.e., that the Lieutenant Governor may vote in cases of ties in the Senate on both substantive and procedural matters.

The committee also deleted from this proposal provisions regarding legislative salaries and will submit that as a separate issue.

Representatives of Common Cause asked the committee to consider a nonlegislative Reapportionment Commission to handle reapportionment. Governor Arthur Link wrote the committee urging it to propose some sort of method to handle reapportionment to the 1979 Legislative Assembly.

The committee believes the Legislative Assembly is the proper place to handle reapportionment, and so adopted the reapportionment provisions of House Concurrent Resolution No. 3095 that has the Legislative Assembly handling reapportionment.

The proposal generally streamlines legislative procedures, and would leave most procedural matters to be handled by state law and legislative rules.

One change from present procedures would be the creation of the office of Auditor General. This position would be filled by the Legislative Assembly and would provide the assembly with audit capabilities.

The committee recommends this proposed amendment.

Legislative Salary

So as not to burden the proposed new Legislative Branch Article with the controversy that always surrounds legislative salary proposals, the committee is offering a separate amendment concerning salary.

The proposed new Legislative Branch Article does not repeal or replace the current $5 per day salary provision of the present Constitution. This alternative does and in its place provides that legislative salary be determined by state law.

The committee believes the salary provisions should be changed to avoid the "back door" approach of using unvouchered expense accounts.

Executive Branch

The committee reviewed House Concurrent Resolution No. 3090 from the 1977 Legislative Assembly creating a new Executive Branch Article based primarily on that proposed by the Constitutional Convention. House Concurrent Resolution No. 3090 passed the House in 1977, but was defeated in the Senate.

The committee made a major change in the proposal by deleting provisions which pared down the number of elected state officials. All officials presently elected would continue to be elected under this proposal.

The proposal does call for fewer state departments and agencies, and does give the Governor more authority in organizing and reorganizing the executive functions of government.

The committee recommends this proposed amendment.

OTHER MATTERS CONSIDERED

The committee considered numerous other proposed constitutional amendments, but for various reasons decided not to submit any of them at this time. Among matters considered but rejected were:

- an additional Public Service Commissioner
- a student member of the Board of Higher Education
- removing restrictions on the leasing of school lands
- removing the office of county superintendent of schools as a required elected position
- repeal of provisions regarding corporate elections and registration
- repeal of provisions regarding emergency operations of state government and state

assistance in financing power generating plants

- miscellaneous changes in tax provisions

- repeal of the article dealing with the State Mill and Elevator

- changing statewide elections to have most of them held in off-presidential election years

County Judges

The committee heard testimony from the Council's Judicial System Committee on a constitutional amendment being proposed by that committee to delete references to county judges in the Constitution.

The Constitutional Revision Committee saw no conflicts between its proposals and those being considered by the Judicial System Committee.

SUMMARY OF RECOMMENDATIONS

The Constitutional Revision Committee is recommending:

- two changes in state law to allow the Legislative Assembly or the Legislative Council to determine the ballot order of proposed constitutional amendments and to allow the Legislative Council to renumber the Constitution in a logical order;

- two proposals for repeal, one to repeal Article 14 dealing with out of state grain elevators and the other to repeal Section 177 and Article 24 dealing with hail insurance;

- two proposed constitutional amendments dealing with education, one to delete references to the specific locations of the state's colleges and universities, and the other to accomplish the former plus creating a State Board of Elementary and Secondary Education similar to the State Board of Higher Education;

- one proposed constitutional amendment to create a new Legislative Branch Article;

- one proposed constitutional amendment to change provisions concerning legislative salaries;

- one proposed constitutional amendment to create a new Executive Branch Article; and

- one proposed constitutional amendment to amend Section 182 concerning secured mortgages by the Bank of North Dakota.

CORRECTIONS AND PENOLOGY

The Committee on Corrections and Penology was directed by House Concurrent Resolution No. 3027 "to conduct a comprehensive study of the functions, responsibilities, funding, facilities, structure, operation, and administration of all levels of the state's corrections system, including not only the system itself, but also its role in the overall criminal justice system. In conducting this study, the Council shall include on its committee persons representing sheriffs, chiefs of police, county commissioners, city commissioners or councilmen, district court judges, and at least one expert on, but not an employee of, the criminal justice system in North Dakota, as well as any other individuals the Council believes would assist in the study. Provisions shall be made to hear testimony of present and former prisoners, probationers, and others involved in the criminal justice system...."

Legislative committee members were Representatives Corliss Mushik, Chairman, Sister Mary Beauclair, Aloha Eagles, Oben Gunderson, Gordon Hill, Bruce Larson, Robert Martinson, Tom Matchie, and J. Mikel Walsh; and Senators Harry Iszler, Kenneth Morgan, and Ernest Sands. Citizen members were Dr. Kenneth Dawes, Judge Benny Graff, Mayor Harry Klundt, Sheriff Gordon Taylor, Police Chief Jerry Barnhart, and County Commissioner Kaye Braaten.

The report of the Committee on Corrections and Penology was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

CORRECTIONS STUDY BACKGROUND

As background for the committee's study of the state's corrections system, the committee toured the State Penitentiary and interviewed randomly selected inmates and Penitentiary staff members. The committee also toured the State Farm, Burleigh County jail, and Lake Region Law Enforcement Center at Devils Lake. The committee then divided into smaller tour groups which visited the Minot city jail and Ward County jail at Minot; Garrison city jail; Cass County jail at Fargo; Traill County jail at Hillsboro; Grand Forks County jail; Grand Forks Juvenile Detention Center; Larimore city jail; Walsh County Law Enforcement Center at Grafton; Foster County jail at Carrington; New Rockford city jail; Stutsman County jail at Jamestown; Dunn County jail at Manning; Dickinson city jail; Stark County jail at Dickinson; Morton County jail at Mandan; Glen Ullin city jail; Kidder County jail at Steele; Richland County/Wahpeton Law Enforcement Center; Ransom County jail at Lisbon; and Sargent County jail at Forman.

As further background for its study of community corrections, the committee heard from Mr. Will Najjar, Bemidji Supervisor of the Minnesota Community Corrections Program; Mr. Richard R. Jensen, Director of the Northwest Regional Corrections Center at Crookston, Minnesota; and Ms. Carolyn P. Zimmet, Chief of the Community Corrections Bureau, Corrections Division, Montana Department of Institutions, Helena.

Committee representatives also visited the Montana Women's Life Skills Center at Billings as part of its study of a women's prison facility for North Dakota.

NORTH DAKOTA JAILS STUDY

The committee found that present Chapter 12-44 dealing with county jails and workhouses was originally passed as territorial law in 1877, with few changes made in the law since that time. The committee determined that most of the provisions of Chapter 12-44 are in need of updating to coincide with present practice, court decisions, and the present jail situation in North Dakota. Four major problems with Chapter 12-44 found by the committee are as follows:

1. Section 12-44-01 mandates that each county is to establish and maintain a jail. In practice, nine county jails in North Dakota have been closed since 1967, and the nine counties contract with other political subdivisions for the confinement of their prisoners.

2. Section 12-44-14 provides that the district court in each judicial district is to prescribe jail rules for the jails within the district. This results in several sets of jail rules and a lack of uniformity in rules from district to district. Additionally, Section 12-61-05 allows the Law Enforcement Council to prescribe a set of recommended jail rules which have no legal effect.

3. Section 12-44-08 provides that each board of county commissioners is to inspect its county jail each year. In practice, this is seldom done. Rather, jail inspections are conducted by the Law Enforcement Council under Section 12-61-05. However, the Law Enforcement Council lacks authority to require the governing body of a jail to correct deficiencies.

4. Chapter 12-44 principally relates to county jails and workhouses (the latter which no longer exist), with little mention of city jails and no mention of regional corrections centers.

To correct these problems and update the law relating to jails, the committee recommends a bill which would repeal present Chapter 12-44 and establish a new chapter relating to jails.

Rather than mandating the establishment and maintenance of county jails as under present Section 12-44-01, Section 1 of the bill would give each county and city the option of (1) establishing a jail; (2) contracting for jail services; or (3) establishing a regional corrections center in conjunction with other counties and cities.

The Law Enforcement Council would be given the duty of classifying jails as to length of allowable inmate confinement based upon construction, size, and usage. Grade 1 jails could confine inmates for not more than one year; grade 2 jails could confine inmates for not more than 30 days; and grade 3 jails could confine inmates for not more than 48 hours, exclusive of weekends and holidays.

More definite standards than presently provided under Chapter 12-44 would be set forth concerning healthful surroundings, jail physical plant, safety and sanitation, jail administration, supervision of inmates, inmate rights, mail, telephone calls, visitors, inmate clothing and hygiene, medical care, exercise of religious beliefs, inmate work programs, and inmate educational and counseling programs.

Based on these standards, the Law Enforcement Council would prescribe rules and regulations pursuant to the Administrative Agencies Practice Act establishing minimum standards for the construction, operation, and maintenance of public or private juvenile detention centers, county and city jails, and regional corrections centers. The Law Enforcement Council would also prescribe rules for the care and treatment of inmates.

A jail inspector qualified by special experience, education, or training would be appointed by the Law Enforcement Council to inspect each jail, juvenile detention center, and regional corrections center at least once each year to determine if the rules and regulations were complied with.

A written report of each jail inspection would be made to the governing body responsible for the jail facility and would be submitted to the Law Enforcement Council for review. The inspection report would specify the respects in which a facility does or does not comply with the required minimum standards and rules. Time limits would be set within which rules and standards would be required to be met, with consideration given to the magnitude of the deficiencies, their potential effects on the health and safety of inmates, and the cost of correction. Where the nature and extent of the deficiencies would be such that an immediate order of full or partial closure was deemed necessary by the Law Enforcement Council to preserve the health and safety of inmates, the period of time for correction could be dispensed with and an order of immediate full or partial closure could be issued by the Law Enforcement Council. A governing body of a jail facility would then be allowed to request a review of the determination by the Law Enforcement Council.

A jail facility would also be allowed to request, in writing, a variance from the Law Enforcement Council rules by stating the reasons for requesting the variance, the period of time for the variance, and by providing an explanation of how the policy of the rule would be served without strict compliance with the rule.

The Law Enforcement Council would then be allowed to grant a variance if it determined that compliance with the rule would cause extreme hardship as a result of circumstances unique to the jail facility, and that the jail facility can and will substantially comply with the policy of the rules during the time of the variance from the rule.

In previously existing jail facilities where specific rules could not be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules would be made if the intent of the rule is met and security, supervision of prisoners, established programs, or the safe, healthful, or efficient operation of the jail facility is not seriously affected.

If a variance is not requested and granted, the governing body of a jail facility would be required to initiate appropriate corrective action within 90 days following receipt of the inspection report of noncompliance or could voluntarily close the jail facility or objectionable portion of the jail facility. If corrective action were not undertaken or the jail closed, the Law Enforcement Council would then be authorized to petition the district court to order the initiation of corrective action or the closure of the jail facility. A hearing would then be held before the district court and an order made by the court which would dismiss the Law Enforcement Council petition, direct that corrective action be initiated by the governing body of the jail facility, or direct the closure of the jail.

WOMEN'S PRISON STUDY

The study of a women's prison facility for North Dakota originated from the North Dakota Supreme Court decision of **State ex rel. Olson v. Maxwell**, 259 N.W.2d 621, decided in November 1977. The decision involved a woman sentenced by District Court Judge Ralph Maxwell to "be imprisoned in the North Dakota State Penitentiary at Bismarck, ... **and at no other place**, for the term of eighteen (18) months ...."

For several years, all female prisoners sentenced to the State Penitentiary had been sent out of state by the Director of Institutions. A question raised in the decision was the authority of the Director of Institutions to transfer prisoners, especially female prisoners, out of state.

The Supreme Court said Section 54-21-25 upon which the Director of Institutions relied in asserting authority to transfer women and some other prisoners outside the state, lacks the proper due-process standards. The court said the section gives unlimited and unrestricted authority to contract with other states and the United States for unspecified facilities and services, all without any opportunity for notice, hearing, or opportunity for the prisoner to object.

The court continued that if there were no adverse effects to the prisoner from a transfer to another state amounting to "grievous loss" or affecting the "liberty interests" of the prisoner, there would be no constitutional deprivation and no violation of constitutional rights. However, the court said some deprivations are inherent in such transfers. The court stated that inability of women prisoners to appear in person before the Parole Board, as is allowed male prisoners, and the greater distance from home, resulting in a lessened chance of visits and meetings with family, friends, and attorneys, are a "grievous loss."

The Supreme Court said the assertion by the Attorney General that the state does not have funds available to provide for women prisoners within North Dakota, does not constitute a compelling state interest necessary to justify discriminatory treatment based upon a suspect classification. The court stated, "When we eliminate the justification based upon lack of funds, as we must, according to the case law applicable to constitutional deprivations based upon suspect criteria including sex, we find no remaining justification for the transfer of women prisoners to other States."

The court continued, "We now are faced with this situation:

1. Women may not be transferred from the penitentiary for reasons relating only to their sex and administrative convenience or lack of facilities and personnel without at least a due-process hearing at which they may participate;

2. The prison authorities insist that they have no adequate facilities and personnel to take care of women prisoners, due to lack of funds; and

3. The alternative course they suggest is to send women outside the State for reasons based only on their sex and administrative convenience or lack of facilities and personnel."

The Supreme Court stated, "We hold that Cora Kroeplin must be initially confined in the State Penitentiary. If the administration of that institution confesses that it cannot, with means at its disposal (which may include application to the Emergency Commission for funds), provide for her and other women prisoners facilities equal, though not necessarily identical, to those provided for male prisoners, it may then hold a hearing, of which she shall have notice, with opportunity to prepare, and at which she may appear with counsel and present evidence, and after which hearing findings shall be made. If such findings justify an emergency transfer to an out-of-State facility upon a balancing of her interests and those of the State, a temporary transfer may be made. However, such temporary arrangements may extend only to such time as the next Legislative Assembly has met, and, if construction of a penal facility in North Dakota for women prisoners has been authorized and funds appropriated, such additional time as is reasonably required for construction and for obtaining of competent personnel."

A Governor's Task Force on Women Prisoners and the Director of Institutions' office studied a number of possible alternatives for housing women prisoners within North Dakota. Nine possibilities were examined and two alternatives were finally recommended by the Director of Institutions as a result of the study. The alternatives examined were presented to the committee and the pros and cons as seen by the Director of Institutions' office were discussed.

The possibilities examined are as follows:

1. A special and separate new facility at a location outside Bismarck — possibly in eastern North Dakota.

2. A separate facility or wing at the State Hospital in Jamestown where women prisoners would perform work release projects at the State Hospital, similar to a program in South Dakota.

3. Utilizing an existing available building on the current prison site, such as the Crime Bureau Building or the warden's residence.

4. Utilizing existing available state-owned buildings outside of Bismarck, such as at Dickinson State College or in eastern North Dakota.

5. Locating women prisoners in a separate wing of the existing prison, with women prisoners sharing some recreational, educational, and food facilities with male prisoners.

6. Placing women prisoners in a regional security facility.

7. Utilizing the State Farm as a separate area for women prisoners.

8. Acquiring an existing facility which would conceivably meet the needs of women prisoners, such as the former Sacred Heart Academy at Minot.

9. Building a new dual purpose facility on the grounds of the State Industrial School.

Representatives of the committee additionally visited the Women's Life Skills Center at Billings, Montana, to view its operation. The Montana facility for women prisoners consists of a large brick home located in the Billings suburbs. The facility is a minimum security unit staffed by seven personnel on a 24-hour basis. The seven staff personnel consist of a social worker, the director, and five paraprofessional counselors. Ten women are presently sentenced to the facility who have committed crimes ranging from murder to bad check writing. The women either hold jobs in Billings or attend school during the day. Counseling sessions are held in the evenings, and the women are responsible for maintaining the facility and doing their own cooking. The type of facility also allows for short-term visits to the facility by the women's children. Arrangements have been made so that women prisoners who cannot adjust to the Billings facility will be sent to the Nevada prison or the Missoula County jail.

A survey-questionnaire was mailed by the Director of Institutions to 34 North Dakota judges who could sentence female offenders to imprisonment. In response to a question concerning the number of inmates a new women's facility should serve, the average response from the judges was 23.34 inmates. The committee received testimony that the maximum number of women who have been confined to the North Dakota Penitentiary at any one time since the **Maxwell** decision has been six. Prior to the **Maxwell** decision, no more than three women prisoners had been sentenced to confinement at any one time.

The committee also received testimony that about 98 percent of the women placed on probation in North Dakota have no further problems. It was stated that few North Dakota women have been involved in violent crime and probation has been very successful.

The Director of Institutions narrowed his recommendations to renovation of the former Minot Sacred Heart Academy or the building of a dual purpose juvenile and women's facility at the State Industrial School. Preliminary architectural plans were prepared for both options.

The Minot facility is a former Catholic Convent built in the early 1940's and consists of a total of 45,000 square feet located on 10 acres in south Minot. The architectural plans would provide accommodations for 30 women and 10,000 square feet of net rental space for other governmental agencies or functions. Total estimated purchase and construction costs for the Minot Sacred Heart Academy would be $1,477,040.

The second option, which is the one the Director of Institutions will recommend through the executive budget, is for a proposed dual purpose facility on the grounds of the State Industrial School. The building would be located on the west edge of the State Industrial School campus. The detention facility would consist of four wings, three of which would constitute the women's detention center and the fourth to be used for juvenile offenders. The juvenile section would consist of 14 rooms designed for maximum security and would include a dayroom and shower room. Each room would have its own toilet facility. The central wing of the women's section would contain six maximum security rooms with a dayroom and shower room. The other two wings would each contain 12 minimum security rooms for women with a central toilet and shower room and a dayroom. Included in the central core area of the facility would be the classrooms, offices, utility and service rooms, chapel and dining areas, and visitors' area.

Under the proposal, a central control center at the hub of the four wings would enable a single security officer to observe and control the entire facility during nighttime hours. The facility would be entirely fenced with a six- to eight-foot high chainlink fence. The juveniles in the facility would be completely separated from the women. Projected cost of the State Industrial School facility is $1,255,000.

Prison officials estimate that a minimal staff of 23.5 employees would be needed at the Minot

facility with the one-half employee being a half-time doctor. For the State Industrial School proposal, an estimated 11 additional positions would be required for the women's portion of the facility with five or six additional positions needed for the juvenile wing of the facility.

The committee voted on three separate proposals. The first proposal was for an expenditure of not to exceed $200,000 for the acquisition or renovation of a home suitable for housing up to 10 women, and to recommend that the prison warden's home be used. The motion was defeated by a roll call vote of four "yes" to seven "no," with seven "absent."

The second motion, defeated on a voice vote, was to recommend the renovation of the Crime Bureau Building, located on the Penitentiary grounds and which formerly served as a women's prison, as a minimum, medium, and maximum security facility for women.

The final motion was to accept the Director of Institutions' recommendation for building a new dual purpose facility for women and juveniles at the State Industrial School. On a roll call vote, the motion carried by a vote of seven "yes" to five "no," with six "absent."

The committee therefore recommends the acceptance of the Director of Institutions' recommendation that a dual purpose facility for women and juveniles be constructed at the State Industrial School.

MALE — FEMALE INMATE COMMUNICATION

The committee recommends a bill which amends Section 12-47-22 relating to Penitentiary inmates which would remove the provision that, "All communication between male and female inmates shall be prevented...."

The Director of Institutions' office obtained an Attorney General's opinion that the law must be followed closely with no communication allowed between male and female inmates. It was testified that the prohibition against communication between male and female inmates causes problems in escorting women inmates through the Penitentiary and prohibits joint participation in alcoholism counseling and other group therapy, as well as the possibility of join use of dining and library facilities. Testimony was also given that it prohibits male inmate librarians from communicating with women inmates in the prison library.

The committee recommends an emergency clause be included in the bill to eliminate the total prohibition against communication between male and female inmates in the Penitentiary as soon as possible.

DEPARTMENT OF CORRECTIONS

The committee investigated the feasibility and desirability of creating a Department of Corrections as a means of centralizing all state level correctional services into a single department.

The committee also investigated the possibility of a Department of Corrections as a vehicle for planning the future of corrections in North Dakota, as a means of assisting county and local governments with correctional problems, and as a coordinating unit for any future community corrections programs which may be instituted.

The committee received testimony on and considered three drafts of a bill establishing a Department of Corrections. The department would have been headed by a Director of Corrections appointed by the Governor with the advice and consent of the Senate. The department would include control and supervision of the Penitentiary, Industrial School, State Farm, State Youth Authority, and administrative staff of the Pardon and Parole Boards.

The department would additionally be responsible for assisting cities and counties in securing adequate correctional facilities and programs, and for establishing programs of research, statistics, and planning.

Provision would be made for sentencing to the custody of the Department of Corrections for further assignment to a correctional facility rather than the court initially making that decision as at present.

The Director of Corrections, in consultation with the Law Enforcement Council, would prescribe rules establishing minimum standards for the construction, operation, and maintenance of jail facilities and rules for the care and treatment of inmates. The jail inspector would also be appointed by the Director of Corrections and would be under his supervision.

The motion that the committee adopt the Department of Corrections' bill draft was defeated by a vote of three "yes" to eight "no," with seven "absent."

STATE FARM, PENITENTIARY, AND SIS SECTIONS

The committee recommends a bill amending several present sections of law relating to the State Penitentiary, State Farm, and State Industrial School (SIS). During its study and consideration of a bill relating to a Department of Corrections,

the committee determined that several sections of present law need revision.

Section 1 amends Section 12-46-04 relating to appointment and removal of the State Industrial School superintendent. The committee recommends that the superintendent's term of office be reduced from four years to two years to coincide with the term of the Penitentiary warden. The present board which would consider the removal of an SIS superintendent consists of the Governor, Attorney General, and Director of Institutions. The committee recommends that the State Treasurer be included as a member of the board and that the Director of Institutions be removed as the Director of Institutions would be the one to prefer written charges against the SIS superintendent in most cases.

Section 2 amends Section 12-47-05 relating to Penitentiary officers, to remove obsolete terms such as chief turnkey, guards, and overseers. The section also refers to one bookkeeper and the Penitentiary has long had more than one. The amendment deletes the provision requiring the warden and deputy warden to reside at the Penitentiary. This section was passed prior to modern means of transportation, and the committee believes such a provision is no longer needed.

Section 3 amends Section 12-47-06 relating to appointment and removal of the Penitentiary warden. The committee recommends the board which would consider the removal of a Penitentiary warden be changed from the Governor, Attorney General, and Director of Institutions by inserting the State Treasurer in lieu of the Director of Institutions. The change is recommended because the Director of Institutions would be the person normally preferring written charges against the warden and should not also judge his removal.

Section 4 amends Section 12-47-15 which provides that the warden and deputy wardens shall not be absent from the Penitentiary at the same time except by permission of the Director of Institutions. The committee believes it is not practical to restrict the warden and deputy wardens to the Penitentiary, and recommends that the language be changed to provide that the warden and deputy wardens shall not be absent from the Mandan-Bismarck area at the same time except by permission of the Director of Institutions.

Section 5 amends Section 12-47-34 which provides that the warden, with the approval of the Director of Institutions, may adopt any measures he may deem proper to aid in the detection and capture of persons escaping from the Penitentiary. The committee recommends that the word "penitentiary" be deleted and the words "custody of the warden" be inserted to allow also for escapes from the State Farm. The committee recommends the deletion of the language providing that if an escape were made possible by the negligence of the warden or any officer under him, the reward offered shall be paid by the warden with the Director of Institutions being empowered to make final determination as to the liability of the warden for the reward. The committee believes there would be no due process as no hearing is provided for the liability determination.

Section 6 amends Section 12-48-03 relating to the employment of prison inmates in state level work projects. The committee recommends that a sentence be included to provide that inmates may also be employed in work projects for county and local governmental agencies and subdivisions. The committee believes it would be helpful to allow inmates to work on projects other than those exclusively at the state level.

Section 7 amends Section 12-48-14 relating to the compensation of prison inmates for carrying on the work of the Penitentiary and its industries and providing that compensation for labor, except in the prison industries, shall not exceed $1 per day. The committee recommends that compensation not be limited to $1 per day but rather that compensation be allowed within the limits of legislative appropriations for that purpose. This would make the language uniform with Section 12-46-18 which provides for employment and compensation of persons committed to the State Industrial School. It also allows for merit pay to inmates and for inflationary increases.

Section 8 amends Section 12-51-09 which gives the Director of Institutions the power to transfer inmates between the State Farm and the Penitentiary for the purposes of safety of other inmates or the general public, or for the purpose of discipline. The committee recommends that the Director of Institutions also be allowed to make such transfers for medical care. Testimony before the committee was that the usual reason for a transfer between the State Farm and Penitentiary is for medical care in about two-thirds or three-quarters of the transfers.

Section 9 repeals Chapter 12-49 relating to the Penitentiary twine and cordage plant which burned down several years ago.

FIRE AND HEALTH INSPECTIONS

During the study of correctional facilities, the committee discovered there is no annual inspection of state level correctional facilities or other state level institutions and buildings regarding fire prevention, sanitary conditions, or food and medical services, where provided. Since city and county jails are subject to such inspections, the committee believes state level correctional

facilities and state level institutions and buildings in general should be subject to annual inspection.

The committee, therefore, recommends two bill drafts. The first bill provides that the State Fire Marshal or his deputy shall annually inspect all state institutions and buildings for compliance with fire prevention rules. Violations would be reported to the Attorney General, and the board, agency, commission, or officer responsible for the institutions or buildings would be required to remedy any rules violations within six months unless good cause could be shown why the violations could not be corrected in that time.

The second bill draft provides that the State Department of Health annually inspect the sanitary conditions of all state institutions and buildings, and the food and medical services, where provided. A written report of any rules violations would be made, and the board, agency, commission, or officer responsible for the institutions or buildings would be required to promptly remedy any rules violations.

RECOMMENDED STUDY RESOLUTION

The committee considered the idea of community corrections at several meetings as a means of keeping lesser criminal offenders within the community for detention and rehabilitation, and thus to partially alleviate the pressure on the State Penitentiary which is presently operating at near inmate capacity. Penitentiary officials estimate that as many as 30 percent of the Penitentiary inmates do not require the maximum security confinement provided by the Penitentiary.

Correctional representatives from Minnesota and Montana made presentations to the committee concerning their community correction programs.

Mr. Will Najjar, Bemidji Supervisor of the Minnesota Community Corrections Program, and Mr. Richard R. Jensen, Director of the Northwest Regional Corrections Center at Crookston, Minnesota, described the Minnesota program to the committee. The Minnesota program is basically a subsidy act which provides financial incentives to county governments to handle their own correctional problems with technical assistance from the state. This allows the state to relieve itself of some of the direct service pressure on state institutions with the exception of providing custody for any persons committing serious crimes and for persons who are professional criminals. Subsidies to the counties are based on (1) per capita income; (2) taxable value of the land; (3) per capita expenditure for correctional purposes; and (4) percentage of the county population between ages six and 30. Counties are required to pay the state a per diem rate for each convicted person committed to the prison with a sentence of less than five years. Cost of commitment to the Penitentiary is projected and deducted before a subsidy is given to the county. This provides an incentive for the county to cut the number of prison commitments and to develop its own programs.

The committee also heard from Ms. Carolyn P. Zimmet, Chief of the Community Corrections Bureau, Corrections Division, Montana Department of Institutions, Helena, concerning Montana's efforts in the field of community correction. Montana has enacted a prison furlough program conducted by community volunteers with no facilities designated for the program. Both male and female inmates can apply for a furlough from the Penitentiary to work or go to school under the daily supervision of community volunteers. The volunteers are not required to have any special background in counseling, and are usually members of church or civic groups.

The committee recommends that a more detailed study be conducted of community corrections than was possible during the interim.

The committee believes that a study of community corrections should also include a study of the Penitentiary to determine whether changes need to be made concerning that facility. Initial construction of the Penitentiary began in 1885 and deteriorations are occurring due to its age. The city of Bismarck additionally is expanding outward around the Penitentiary area thus raising questions concerning the suitability of the Penitentiary's location. Since these conditions exist at the Penitentiary, and community corrections programs would be interrelated with state level corrections, the committee recommends a dual interim study of community corrections programs and the State Penitentiary.

CRIMINAL JUSTICE SYSTEM

The Committee on Criminal Justice System was assigned two study resolutions during the 1977-79 interim. Senate Concurrent Resolution No. 4088 directed the committee "to conduct a study of the Uniform Controlled Substances Act (North Dakota Century Code Chapter 19-03.1) and drug laws in general, the potential penalties which may be imposed for violation of the drug laws, and the actual sentencing procedures and practices followed in North Dakota to determine whether the state's drug laws and sentencing procedures require revision in order to combat the increasing drug problem...."

Senate Concurrent Resolution No. 4060 directed "an interim study of the entire criminal justice system, to include the adversary relationship of many of its elements, its existing problems, its administration, and how it relates to those expressed concerns...."

Committee members were Representatives Oscar Solberg, Chairman, Paul DuBord, Joann McCaffrey, Jack Murphy, Allen Richard, Wayne Stenehjem, and Dean Winkjer; and Senators Raymon Holmberg and Harry Iszler.

The report of the Committee on Criminal Justice System was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

DRUG LAW STUDY

Background

As background for a study of North Dakota's drug laws, the Committee on Criminal Justice System received a report early in the interim on "Drug Investigation and Enforcement Needs" in North Dakota prepared for the Attorney General's office. The report resulted from a survey conducted by Mr. Douglas Sande of the North Dakota Combined Law Enforcement Council following a request for assistance from Attorney General Allen I. Olson. Information for the report was gathered by Mr. Sande through personal interviews with criminal justice personnel such as judges, law enforcement officials, and state's attorneys, as well as with others who work closely with drug problems such as defense attorneys, drug counselors, civic leaders, committees formed regarding drug abuse, college administrators, persons confined in state institutions for drug law violations, and adult and juvenile drug dependent users. Due to time limitations, 12 cities and counties were selected for the study.

The report stated that it "is the consensus of the people surveyed that the only way to make some concerted effort in drug enforcement in North Dakota is through a state effort. All law enforcement agencies interviewed, both large and small, assigned a high priority to the state assuming the major role in drug enforcement. These agencies indicated city and county resources were inadequate to support a major effort toward full-scale drug enforcement. They indicated a state-level effort would be the only way to make the most impact on the problem."

The report continued, "Small departments or departments without narcotics investigators assigned highest priority to a state unit investigating cases in their areas. However, large departments with narcotics investigators spoke mostly in terms of needing assistance from the state in the area of undercover officers on loan to their departments."

Based upon the interviews, the report concluded that the following drug enforcement problems exist in North Dakota:

1. Drug dealers are very mobile and routinely cross jurisdictional lines which causes law enforcement coordination difficulties under the present governmental structure.

2. Drug enforcement is a very unique type of enforcement and requires a specialized approach to the problem of enforcement.

3. The local law enforcement agencies and their personnel are well known in their communities and are readily identifiable by the drug law violator so that necessary clandestine investigation is difficult if not impossible.

4. Prosecutors stated that if all undercover officers were experienced and capable police officers, their problems in obtaining credible testimony would be less difficult.

5. Most law enforcement agencies have limited or no "buy money" budgets which are required in any drug investigation effort. This makes it almost impossible to obtain the necessary evidence.

Mr. Sande concluded in his report that marijuana and amphetamines are the two most popular illegal drugs in the state. LSD still appears around the state and is considered a problem, although there appears to be a statewide reduction in its use due to public awareness concerning the dangerous

pitfalls of LSD use. Cocaine is available throughout the state in an increasing amount. No one interviewed thought that heroin was yet a serious problem, although it was acknowledged that it exists in the state.

It is believed that drugs sold and used in North Dakota are brought into the state from Winnipeg, Minneapolis, Denver, and Arizona. The report concluded that those interviewed believe there is a serious statewide drug problem that requires an immediate and concentrated response at the state level.

As further background for the drug law study, the Committee on Criminal Justice System sought invitations from district legislators to hold meetings in large, small, and medium-sized North Dakota cities as a means of learning citizen concerns about drug laws and drug problems and the validity of the conclusions made in the "Drug Investigation and Enforcement Needs" report. Six cities were chosen as meeting sites based on size and geographical location. The committee traveled throughout North Dakota from February 20-25, 1978, holding meetings in Mott, Williston, Minot, Devils Lake, Grand Forks, and Oakes.

Drug Enforcement Unit

As a result of testimony received during its meetings, the Committee on Criminal Justice System agrees with the "Drug Investigation and Enforcement Needs" report that the only way to make some concerted effort in North Dakota drug enforcement is through a state-level effort.

The committee, therefore, recommends a bill which would establish a state-level drug enforcement unit under the Attorney General. The drug enforcement unit would consist of a director and such other personnel as the Attorney General would designate. The unit would be charged with enforcing the Uniform Controlled Substances Act and all other laws which deal with illegal drugs.

The drug enforcement unit would be authorized to arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances; to coordinate and cooperate in training programs dealing with controlled substance law enforcement at the local and state levels; to establish a centralized information system to include records of drug dependent persons and other controlled substance law offenders within the state; to make such information available for federal, state, and local law enforcement purposes on request; and to cooperate in locating and destroying illicit plants from which controlled substances may be extracted.

Drug enforcement unit employees designated by the Attorney General would have all powers conferred by law upon any peace officer of the state.

Section 19-03.1-32 of the Uniform Controlled Substances Act would be amended to allow state drug enforcement unit personnel to carry firearms; execute and serve warrants; make arrests; make seizures of property under the Uniform Controlled Substances Act; and perform such other law enforcement duties as the Attorney General designates.

The present drug control cash fund which is used for obtaining evidence for the enforcement of any state law relating to the control of drug abuse would be increased from $25,000 to $100,000. The Attorney General's office testified that the present $25,000 per biennium for "buy money" does not go far. The five agents in the drug enforcement unit are presently allotted only $200 per month apiece with which to buy drugs, and that is not enough to go after the big drug pushers.

The bill contains a general fund appropriation of $998,000 for the biennium to carry out the duties of the drug enforcement unit.

Marijuana and Hashish Possession Penalties

The present penalty for possession of any amount of marijuana, the definition of which includes hashish, is a Class A misdemeanor for which there is a maximum penalty of one year imprisonment, a fine of $1,000, or both.

The committee received testimony that hashish is six to 10 times stronger than marijuana, yet it is included within the definition of marijuana.

The committee therefore recommends a bill which would separate the definition of hashish from that of marijuana, and would make possession of any amount of hashish a Class C felony with a maximum penalty of five years' imprisonment, a fine of $5,000, or both.

To aid in the study of the marijuana possession law, a committee survey was taken of district court judges, judges of county courts with increased jurisdiction, county justices, and state's attorneys to determine the usual sentence and/or fine imposed for first time and subsequent marijuana possession offenses.

From public testimony during the interim and from the survey of judges, the committee believes the public attitude favors lesser penalties, although not decriminalization, for possession of small amounts of marijuana for personal use, but favors stricter penalties for possession of larger amounts which may be possessed for resale.

The committee therefore recommends graduated penalties for possession of marijuana. The committee proposes that any person, except a person operating a motor vehicle, who possesses less than one ounce of marijuana would be guilty of a Class B misdemeanor with a maximum penalty of 30 days' imprisonment, a $500 fine, or both. A person possessing less than one ounce of marijuana while operating a motor vehicle would be guilty of a Class A misdemeanor with a maximum penalty of one year imprisonment, a fine of $1,000, or both. Any person possessing one ounce to two and one-half ounces of marijuana would be guilty of a Class A misdemeanor; and anyone possessing more than two and one-half ounces would be guilty of a Class C felony, with a maximum penalty of five years' imprisonment, a $5,000 fine, or both.

The committee additionally proposes that whenever a person pleads guilty or is found guilty of a first offense regarding possession of 2.5 ounces or less of marijuana and a judgment of guilt is entered, a court would be under the duty to expunge the conviction from the record if the person is not subsequently convicted within one year of a further violation of the Uniform Controlled Substances Act.

Conveyance Forfeiture

The committee recommends amending Section 19-03.1-36 of the Uniform Controlled Substances Act dealing with items subject to forfeiture. The section provides that all conveyances, including aircraft, vehicles or vessels, used or intended for use to transport or facilitate the transportation of illegal controlled substances, raw materials, products, or equipment for the purpose of sale or receipt are subject to forfeiture. At present, property subject to forfeiture under the Uniform Controlled Substances Act may be seized by the State Laboratories Department. When property is forfeited, the State Laboratories Department may then retain it for official use; sell that which is not required by law to be destroyed and use the proceeds for the payment of forfeiture and sale proceedings; require the Attorney General to take custody of the property and remove it for disposition; or forward the property to the federal drug agency for disposition.

The committee believes that the state, county, or city law enforcement agency, which entailed the expense and time involved in a drug-related matter, should be reimbursed from the conveyance forfeiture. An amendment to Section 19-03.1-36 would therefore provide that a district court shall order a seized conveyance to be forfeited upon conviction of the person arrested, upon a guilty plea, or upon the failure of the law enforcement agency to locate and arrest the person who used the conveyance subject to forfeiture after one month.

The proposed amendment would allow a law enforcement agency to retain it for official use, or turn it over to the Attorney General or the federal drug agency for disposition. It would also allow a law enforcement agency to sell a conveyance and use the proceeds for payment of proper expenses resulting from forfeiture and sale proceedings, with any remaining proceeds to be deposited in the appropriate state, county, or city general fund. When two or more law enforcement agencies are involved in seizing a conveyance, the proceeds remaining after payment of forfeiture and sale expenses would be divided proportionately between the agencies.

Marijuana For Medical Treatment

The committee received testimony during its tour of North Dakota and reviewed scientific literature stating that marijuana use may alleviate the nausea and ill effects of cancer chemotherapy and may also be effective in controlling glaucoma. Marijuana is presently listed under Schedule I of the Uniform Controlled Substances Act as a substance which has high potential for abuse and as having no accepted medical treatment use in the United States. The committee believes the medical profession should be allowed to prescribe the use of marijuana under strictly controlled circumstances.

The committee recommends a bill which would establish a research program in the State Department of Health. A patient qualification review board would be established consisting of three physicians. One physician would be certified in opthalmology which is the treatment of eye disease; a second physician would be certified in internal medicine and medical oncology which is the treatment of cancer; and the third physician would be certified in psychiatry. The research program would be limited to cancer chemotherapy patients, glaucoma patients, and such other disease groups as the patient qualification review board would approve. The patient would have to be recommended by a physician and certified by the review board. Certification would be allowed in two instances. First, if a patient were involved in a life threatening or sense threatening situation and was not responding to conventional controlled substances and, second, when conventional controlled substances have proven to be effective but the patient has incurred severe side effects. In any case, the patient would have to give informed, written consent to the use of marijuana.

Pharmacies would also be certified by the patient qualification review board to distribute marijuana obtained from the National Institute on Drug Abuse.

The State Health Officer and patient qualification review board would report their findings and recommendations to the Governor and the 1981 Legislature regarding the effectiveness of the research program.

The recommended act would be effective for two years and would have to be reenacted by the 1981 Legislature if it were found to be a desirable program.

Drug and Alcohol-Related Deaths

One of the findings of the Drug Investigation and Enforcement Needs study commission by the Attorney General was that citizens must become more aware and concerned about drug problems and dangers in their own areas and must support local efforts to respond to drug abuse. The committee during its tour of North Dakota also learned that the citizens believe alcohol is probably an even greater problem than drugs in North Dakota. To help make North Dakota citizens aware of the dangers and problems caused by drugs and alcohol, the committee recommends a bill which would require that a death certificate and a medical certification of the cause of death specifically identify whenever alcohol or a controlled substance, not taken by a deceased person under medical supervision, can be determined as the primary or a contributing cause of death. The State Registrar of Vital Statistics is then to annually compile a statistical report for public release listing the number of such deaths; the age and sex of each deceased person; the type of controlled substance, when involved in a death; and whether alcohol or the controlled substance involved was the primary or a contributing cause of death.

Other Drug Related Bills Considered

Two other bills relating to drugs were considered but not recommended by the committee.

One bill would have made it a Class A misdemeanor to manufacture, sell, or deliver drug paraphernalia used for ingesting, smoking, administering, or preparing marijuana, hashish, hashish oil, or cocaine. Specific examples of prohibited paraphernalia were set forth in the proposal. The committee believed the proposal would have been too difficult to enforce because some paraphernalia items such as water pipes can also be used for legitimate purposes.

Another bill considered by the committee would have required each hospital facility and physician treating a drug addict to supply the Division of Alcoholism and Drug Abuse with the name and address of each drug addict treated, the person's age and sex, and the type of drug or drugs involved. The division would annually compile a statistical report on drug treatment, excluding names and addresses, for public release. The proposal was opposed by the North Dakota Medical Association primarily because of conflicts in physician-patient communication and confidentiality.

CRIMINAL JUSTICE SYSTEM STUDY

Appellate Review of Criminal Sentences

The committee recommends a bill which would allow a defendant to appeal the length of a felony or misdemeanor sentence to the Supreme Court.

The North Dakota Supreme Court has stated:

> "Where the trial court is given by statute the discretion of imposing a penalty within limitations fixed by the statute, and the trial court, in passing sentence, exercises such discretion within the limitations fixed by statute, this court has no power to review the discretion of the court in fixing the term of imprisonment." **State v. Holte,** 87 N.W.2d 47 (N.D. 1957).

This holding has been reaffirmed on several occasions since that time. Presently, the only provision for correction or reduction of a sentence is Rule 35 of the North Dakota Rules of Criminal Procedure. Rule 35 states that a sentencing court may reduce a sentence within 120 days after a sentence is imposed or upon revocation of probation.

North Dakota law also provides that the Parole Board is to consider the possibility of parole for each prisoner within one year after admission to the Penitentiary or within six months after admission to the State Farm. (Section 12-59-06, NDCC).

A concern about judicial discretion in sentencing was expressed during the committee's meetings. It was stated that it does not matter to an inmate that a judge takes the human element into sentencing when there are varied sentences for similar crimes, and it causes a great amount of bitterness. As a result of testimony received by the committee and the committee's survey of judges as to sentences imposed for first-time and subsequent marijuana possession offenses, the committee believes there is a disparity from court to court in sentences for similar crimes.

The committee therefore recommends a bill which would allow a person convicted of a felony or misdemeanor to appeal the length of the sentence imposed to the Supreme Court. A person could appeal the sentence alone or in combination with the conviction, but could not seek consecutive appeals of the sentence and conviction. The Supreme Court would be allowed to hear the

merits of the appeal, or the Chief Justice of the Supreme Court could appoint a single justice of the Supreme Court or a hearing examiner to hear a sentence appeal and make recommendations to the Supreme Court. When a single Supreme Court justice or a hearing examiner hears the appeal, the Supreme Court could accept or reject the recommendations or further hear and consider the merits of the appeal.

The Supreme Court could then affirm the sentence under review; substitute any penalty open to the sentencing court other than probation or conditional release, including an increased sentence; or send the case back to the trial court for any further proceedings which could have been conducted prior to imposing the sentence under review, and for any necessary resentencing.

The Supreme Court, upon sentence review, would have to consider the nature of the offense, the character of the offender, protection of the public interest, and the manner in which the sentence was imposed, including the sufficiency and accuracy of the information upon which the sentence was based.

If the Supreme Court imposes a sentence in excess of the one initially imposed by the sentencing court, it must specifically identify the additional aggravating facts it considered in imposing the increased sentence. Time served on the sentence under review would be credited against the substituted sentence.

State's Attorney Inquiry

Section 11-16-15 of the North Dakota Century Code presently allows a state's attorney who has been notified or knows of any violation or criminal act causing a death to investigate the facts of the violation or criminal act by issuing his subpoena for any person whom he believes has any information or knowledge of the violation to appear before the state's attorney and testify concerning the violation. The committee recommends increasing the state's attorney inquiry authority to include any felony which the state's attorney has been notified of or which the state's attorney has reason to believe has been committed.

The committee received testimony from state's attorneys that it is getting more and more difficult to obtain information from the citizen witness, and expanded state's attorney inquiry authority may provide the incentive for the reluctant witness to come forward. This is believed to be particularly true in the area of narcotics cases where it is no longer sufficient to deal with the user if there is to be any effect on trafficking in illicit drugs. The committee therefore believes that when a state's attorney has reason to believe a felony has been committed, the state's attorney should be allowed, prior to a crime being charged, to inquire into the facts of a violation or criminal act.

Murder Penalty

The committee recommends amending Sections 12.1-16-01 and 12.1-32-01 of the North Dakota Century Code to make the crime of murder a Class AA felony with a maximum penalty of life imprisonment. Murder presently is a Class A felony for which a maximum penalty of 20 years' imprisonment, a fine of $10,000, or both, may be imposed. Under the present law and the good time law, a convicted murderer sentenced to 20 years could be eligible for parole in about 13.5 years. A court may extend the prison sentence of a convicted murderer to life imprisonment, however, if the murderer is found to be a dangerous special offender under Section 12.1-32-09. To be a dangerous special offender, one or more of the following criteria must be found:

1. The convicted offender is a dangerous, mentally abnormal person...
2. The convicted offender is a professional criminal....
3. The convicted offender is a persistent offender....
4. The offender was convicted of an offense which seriously endangered the life of another person, and the offender had previously been convicted of a similar offense....
5. The offender is especially dangerous because he used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

Problems have occurred in trying to show that a person is a dangerous special offender, for example, when a first-time offender who cannot be shown to be mentally abnormal strangles another person with a piece of clothing. The committee believes a 20-year maximum penalty for murder is not enough and that sentencing to a longer term should not be dependent upon showing a person is a dangerous special offender. The committee therefore recommends increasing the maximum penalty for murder to life imprisonment.

Simple Assault Penalty

The committee recommends increasing the penalty for simple assault to a Class A misdemeanor. The present penalty for simple assault is a Class B misdemeanor except when the victim is a peace officer acting in an official capacity, and the actor knows that to be a fact, in which case the of-

fense is a Class C felony. The penalty for aggravated assault under Section 12.1-17-02 is a Class C felony. The committee believes there is not that significant a difference between simple assault and aggravated assault to justify the penalty difference between a Class B misdemeanor and a Class C felony. The committee therefore recommends an increase in the simple assault penalty to a Class A misdemeanor.

Violation of Custody Decree

The committee recommends a bill to provide that any person who intentionally removes, causes the removal of, or detains his or her own child under the age of 18 years outside North Dakota with the intent to deny another person's rights under an existing custody decree shall be guilty of a Class C felony for which there is a maximum penalty of five years' imprisonment, a fine of $5,000, or both. Situations have occurred in North Dakota where the noncustodial parent removes his or her child from the state in violation of a custody decree and the wishes of the custodial parent. The custodial parent then attempts to regain the child through the court system of the state to which the child is removed. In most states, kidnapping of a child by one of the parents is not treated as a crime. Additionally, many states do not have to recognize the custody decrees of other states. Twenty states, including North Dakota, have passed the Uniform Child Custody Jurisdiction Act which generally promises respect for custody terms worked out in other states. That still leaves 30 states where custody decree recognition will not necessarily occur. Most states, however, will extradite a person to a state where the person is charged with a felony. The committee therefore recommends making it a Class C felony to remove a child from the state in violation of a custody decree.

UNIFORM JUVENILE COURT ACT

Transfer of Juveniles to "Adult" Court

The committee recommends a bill which would amend the definition of "child," change the requirements for juvenile transfer to other courts, and provide for the disposition of alcoholic or drug addicted children. Problems have arisen with the definition of "child" under Section 27-20-02 of the Uniform Juvenile Court Act. The present definition of "child" includes a person under the age of 18 who is neither married and cohabiting with spouse nor in the military service of the United States. Problems have arisen when a person under the age of 18 is no longer married, no longer married and cohabiting with spouse, or no longer in the military service. The question then arises whether such a person reverts to being a "child."

A question also arises when a person is found by a juvenile court not to be amenable to treatment or rehabilitation as a juvenile through available facilities during a proceeding and is transferred for trial as an adult. The question arises whether that person reverts to being a "child" in a subsequent proceeding.

The committee recommends amending the definition of "child" to deal with these questions. The amendment would provide that a "child" means an individual who meets any two conditions. The individual must be under the age of 18 and neither married nor in the military service; or under the age of 20 with respect to a delinquent act committed while under 18; and in either instance must not have been found not to be amenable to treatment or rehabilitation as a juvenile through available facilities. To deal with the question of persons under 18 who are no longer married nor any longer in the military service, or who have been found in a proceeding not to be amenable to treatment or rehabilitation as a juvenile through available facilities, the definition of a "child" would provide that an individual who has attained adult status under the subsection defining "child" would not revert to being a "child" because the condition causing adult status terminates.

The committee also believes that subsection 1 of Section 27-20-34 which provides for juvenile transfer to other courts should be amended to lower the transfer age. The committee received testimony that the level of maturity and experience of today's youth is greater than in the past. The number and type of juveniles committed to the State Industrial School is also changing with more and younger people being committed for more serious crimes. Present Section 27-20-34 provides that after a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under state statutes, the juvenile court before hearing that petition on its merits may transfer the offense for prosecution to the appropriate court if: (1) the child is over 17 and requests a transfer; or (2) the child was 16 or older at the time of the alleged conduct; a hearing on whether the transfer should be made is held; notice is given to the child and his parents at least three days before the hearing; and the court finds there are reasonable grounds to believe the child committed the delinquent act, the child is not amenable to treatment or rehabilitation as a juvenile, the child is not treatable in an institution for the mentally retarded or mentally ill, and the interests of the community require that the child be placed under legal restraint or discipline.

The committee recommends a third reason for juvenile transfer to adult court, that being that the court after a hearing determines the child was 14 or older when the alleged crime was committed; the alleged crime was murder, armed robbery, kidnap-

ping, or gross sexual imposition; and there is reasonable cause to believe the child committed the alleged crime.

Additionally, the age would be lowered from 16 to 14 in the present transfer provision where a hearing is held, notice is given of the hearing, and the court finds there are reasonable grounds to believe the child committed the act, the child is not amenable to treatment as a juvenile, the child is not treatable in an institution for the mentally retarded or mentally ill, and the interests of the community require that the child be placed under legal restraint or discipline.

The committee found there is presently no adequate provision in the juvenile court system for the disposition of alcoholic or drug addicted children. Section 27-20-35 presently provides only for the disposition of mentally ill or mentally retarded children.

The committee therefore recommends amendment of subsection 2 of Section 27-20-35 providing that when a child has been committed for a period of not more than 60 days to an appropriate institution for study and report on the child's mental condition, the court shall be under the duty to order the child detained and appropriate proceedings instituted for the child's commitment to an appropriate institution if the child is found to be an alcoholic or a drug addict.

Sealing and Disposal of Juvenile Records

The committee recommends a bill which would amend the procedure for sealing and disposal of juvenile records and which would repeal the present section relating to the destruction of juvenile records. The committee received testimony that the present law is not effective because it has not been implemented. It was said the clerks of court have not destroyed juvenile records according to the provisions of Section 27-20-54.1. Additionally, it is believed some juvenile records, especially in the area of deprivation, should be preserved. It is believed that keeping deprivation records is not meant to be a reflection on the child but rather is a protective measure. According to testimony, the actual sealing of juvenile records is conducted differently in each court. Some courts file the records in an envelope, some courts burn them, and some courts place a judicial order in the file which states the record is sealed. Under present law, all juvenile records are sealed two years after the imposition of a sentence, and the records are then destroyed four years after the final discharge of the sentence. Juvenile supervisors oppose the automatic destruction of juvenile records after four years because the individual may still be eligible for adjudication in juvenile court at the end of the fourth year.

The committee therefore recommends amending Section 27-20-54 to provide under subsection 1 that the juvenile court shall order the sealing of its files and records for every child who is the subject of a delinquent or unruly child proceeding by formal adjudication or informal adjustment or under a juvenile court proceeding commenced before July 1, 1969, if the court finds (1) two years have elapsed since the expiration of any informal adjustment or final order of disposition and the final discharge of the child; or (2) the petition against the child has been dismissed for lack of jurisdiction or failure of proof.

Additionally, two years after the expiration of any informal adjustment or final order of disposition or discharge, a child, parent, or guardian may apply to the juvenile court to direct the destruction of all orders, records, and papers, and the disposal of all exhibits relating to the child contained in the files of the juvenile supervisor and the juvenile court. The juvenile court may order their destruction after a hearing if it finds that since the expiration of any informal adjustment, final order of disposition, and final discharge, the person has not been convicted of a felony, a misdemeanor involving moral turpitude, or adjudicated a delinquent or unruly child, and no proceeding is pending seeking his conviction or adjudication.

The amendment would provide that 10 years after expiration of any informal adjustment or final order of disposition and discharge, the court shall order the destruction of all orders, records, papers, and exhibits relating to the child which are contained in the files of the juvenile supervisor and the court, unless earlier ordered under the application procedure to destroy orders and records.

Each state law enforcement agency and state law enforcement officer, upon receipt of a court order, must destroy all files, records, and references to the child pertaining to apprehension, detention, and referral to juvenile court, as well as any record of disposition made by the juvenile court.

The juvenile court would be allowed to retain documents and records for administration, planning, research, and statistical information purposes provided all names have been expunged from documents and records subject to an order. Present Section 27-20-54.1 which deals with the destruction of records would be repealed.

OTHER CRIMINAL JUSTICE SYSTEM BILLS CONSIDERED

Five other bills relating to the criminal justice system were considered but not recommended by the committee.

The prosecution and defense subcommittee of

the Judical Planning Committee proposed a bill for a full-time prosecution and defense system in North Dakota. The bill would have established the office of district attorney and prosecutorial districts in the state which would coincide with the judicial districts. A full-time district attorney would be elected in each prosecutorial district for a term of six years. The district attorneys would be assigned the responsibility of prosecuting all criminal and traffic offenses in their districts which are presently prosecuted by the state's attorneys. A full-time deputy district attorney would be appointed in each district and, if necessary, assistant district attorneys would also be appointed depending on the workload. The purpose of the proposal would be to free the state's attorneys to concentrate on their numerous other responsibilities to the counties.

The bill would have also created a State Public Defender Board with the primary responsibility for the selection of a state public defender director. The director would oversee the activities of the public defender system. District defender offices would be created which would coincide with the judicial districts. The public defenders would be responsible for defending persons unable, without substantial financial hardship, to obtain effective defense representation in such matters as felonies, misdemeanors, juvenile proceedings, criminal traffic offenses, civil commitment proceedings, probation revocation proceedings, parole release and revocation proceedings, and criminal extradition proceedings.

The cost of a full-time prosecution and defense system was estimated at between $2 and $3 million per biennium. The committee does not recommend the proposal due to the cost and the inability of the state's attorneys to agree to the proposal.

The State's Attorneys Association proposed a bill which would have established a State's Attorneys Training Coordination Council to provide for the education, training, and coordination of the technical efforts of all state prosecutors and to maintain and improve prosecutor efficiency and effectiveness in enforcing the laws of the state. The proposal called for a $125,000 appropriation for the biennium. The committee believes a formal council structure is not needed at this time.

The committee also considered a proposal which would have created a special criminal justice training fund to be administered by the Law Enforcement Council exclusively for the training of criminal justice system personnel. The proposal would have levied a 10 percent penalty assessment on every fine, penalty, and forfeiture imposed and collected for criminal offenses, violation of local ordinances, and motor vehicle offenses, excluding nonmoving traffic violations. The Law Enforcement Council presently conducts training programs for all peace officers, sheriffs, state's attorneys, and corrections officers. The Law Enforcement Council also funds programs for court and juvenile justice personnel. These programs are presently funded by federal money through the Law Enforcement Assistance Agency (LEAA) but assurance of continued funding through LEAA cannot be guaranteed. The proposed fund established from a criminal penalty assessment would have been used to continue the training programs. The committee liked the concept of a criminal fines assessment for training purposes but could not recommend it because the committee believes it is in direct conflict with Section 154 of the North Dakota Constitution which provides that the fines imposed for the violation of state laws and all other sums which may be added to it by law shall be used for the benefit of the common schools.

The committee also considered a proposal which would have amended Section 27-20-26 of the Uniform Juvenile Court Act. Section 27-20-26 presently provides that legal counsel must be provided for a child not represented by his parent, guardian, or custodian. The amendment would have provided that a child may waive his right to legal counsel at any time if the waiver is knowingly, intelligently, and voluntarily made. The committee does not recommend the proposal because it questions whether a juvenile can make an intelligent waiver of legal counsel.

A final proposal considered by the committee would have amended Chapter 62-01 of the North Dakota Century Code relating to possession and licensing of pistols. The proposal would have provided that only persons carrying concealed pistols would be required to obtain a license. Types of persons prohibited from possessing a pistol would have been specifically listed. The committee believes that changes should be made in the pistol possession and licensing law but, due to receiving the proposal late in the interim, adequate time for consideration of the changes proposed was not available to the committee.

EDUCATION

House Concurrent Resolution No. 3037 directed a study of the entire field of the financing of elementary and secondary schools in North Dakota with emphasis on the foundation program, the effect of various tax sources on the foundation program, transportation costs, costs of summer sessions and the relationship and impact of such programs on foundation program payments, and the methods of accounting and reporting used by the various schools and school districts.

House Concurrent Resolution No. 3063 directed a study of the organization and financing of special education and related services, and age limitations for special education.

Committee members were Senators James Smykowski, Chairman, Phillip Berube, Evan Lips, Bonnie Miller Heinrich, Gary Nelson, Curtis Peterson, Claire Sandness, Gilman Strand, and Harvey Tallackson; and Representatives L.E. Berger, LeRoy Erickson, Irven Jacobson, Kenneth Knudson, Gordon Larson, Bruce Laughlin, John McGauvran, Alice Olson, Orville Schindler, Steven Swiontek, Larry Tinjum, and Vernon Wagner.

The report of the Committee on Education was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

FINANCING OF ELEMENTARY AND SECONDARY EDUCATION

Background

The foundation program has been in effect since 1959 when the Legislative Assembly enacted this comprehensive program for financing elementary and secondary education based on the recommendation of an interim study committee that the state guarantee 60 percent of the cost of education. The program was not significantly changed until 1973 when the Legislative Assembly enacted Senate Bill No. 2026. Among other things, that legislation provided for a 20-mill school district equalization factor, weighting factors dependent upon the size of schools, increased reimbursement for transportation costs, and an increase in the state per-pupil payment. The study of educational finance has been continued during each interim since the 1973 legislation.

HEW Grant to Study Educational Finance

In 1977 the Department of Public Instruction received a grant from the United States Department of Health, Education, and Welfare to study the state equalization plan. The study is being conducted by Dr. Richard Hill, professor of education at the Center for Teaching and Learning at the University of North Dakota. Problems the study hopes to consider are declining enrollments, overburden on some communities due to such programs as special education, the erosion of the capital improvement base, the question of whether the tax base is where the pupils are, whether or not the 20-mill equalization factor should be adjusted for differences in assessments, state-federal problems, the question of whether the foundation program has impeded reorganization, and the question of whether the program subsidizes inefficiency. The purpose of this study will be to frame recommendations for modification of present foundation programs to more nearly equalize educational opportunity. The study will concentrate on the question of distributing the foundation program payments rather than on the size of the total appropriation.

The committee received testimony from many individuals about possible changes to the existing system but decided that, since Dr. Hill is studying many of the same areas and because his study will not be completed until 1979, recommendations for most of the desired changes would be premature at this time. One example of an area of concern is the weighting factors which are used to compensate for the variances in costs in running different-sized schools. Preliminary findings of the study group and the testimony of several individuals indicated that the factors currently used do not fairly represent the differences in cost. However, the committee decided to wait for the final results of the study and defeated a motion which would have called for a bill draft to change these factors.

Direct Payments to School Districts

At the present time, the state foundation aid payments are made to the county equalization fund and are then redistributed to the appropriate school districts. Although the county officials are now required to forward this money to the appropriate school district within seven days pursuant to a law passed during the 1977 Session, testimony indicated it would eliminate one step and reduce the workload on local officials if the payments were made directly from the state to the local school districts. Since the state already certifies how much each school district is to receive and how much the state portion of this is to be, the major change to the Department of Public Instruction would be in the number of checks which the department would have to write and send.

Federal Impact Program

Other problems with the foundation program are created by the requirements of Public Law 874, the federal impact program. This law was enacted to provide school districts containing federal installations or pupils from such installations with compensation for the property tax moneys the district loses because the federal property is exempt from taxation. Because property taxes are equalized, the Legislative Assembly concluded in 1973 that it was equitable that a portion of such in lieu payments also be equalized. However, under the Office of Education regulations, portions of the 874 payments may be subtracted only if North Dakota meets what is termed a "wealth neutrality" test of 85 percent. This means that 85 percent of funds received by school districts must be equalized. If this level of equalization is not reached, the state's impact funds under 874 will be cut off. Although North Dakota was found to have qualified for these funds this year, compliance will be more difficult every year. Because the federal regulations appear to be more restrictive than the law requires, the Council of Chief State School Officers which is made up of the state superintendents of all states is requesting that the regulations be changed.

The Effect of Various Tax Sources on the Foundation Program

The committee was directed to study the effect of various tax sources on the foundation program, and especially the effect of large industrial plants, both those subject to property taxes and those subject to taxes in lieu of property taxes, including a study of deductions from foundation program payments for taxes received from such plants and other sources of tax revenue. The committee was also interested in this subject because all sources of funds for school districts which are not equalized make it more difficult for the state to meet the "wealth neutrality" test for federal impact program payments.

There are three sources of nonproperty tax revenues available to school districts which received committee attention. The laws providing for the oil and gas gross production tax, the coal severance tax, and the coal conversion facilities tax each provide for a direct distribution of funds to school districts and, unlike the property taxes which they are in lieu of, these funds are not considered in determining the amount of foundation program payments to which school districts are entitled.

The committee obtained information which illustrated the effect on a school district of receiving property tax revenues from a large industrial plant as compared to receiving distributions from the oil and gas gross production tax. Those districts having large industrial plants subject to the property tax receive less from the foundation program because of the taxes generated by the plants in an amount equal to a tax of 41 mills against the taxable valuation of the plants. However, a school district which receives a distribution from the oil and gas gross production tax receives the full foundation program payment in addition to whatever that district receives from the oil and gas revenues.

The committee considered two bill drafts which would have equalized a portion of the oil and gas gross production tax revenues and a portion of the coal tax revenues distributed to school districts. These proposals would have reduced foundation program payments to school districts receiving revenues from these outside sources in an amount equal to the portion of school taxes in the respective counties represented by the 21-mill levy.

These bill drafts drew a considerable amount of discussion with persons from throughout the state testifying before the committee. Those who favor this concept maintain it is only fair to equalize all moneys received by school districts, particularly in view of the fact federal impact moneys are equalized. Those opposed to this concept generally argued that the revenue from mineral taxes is already shared through the portion distributed to the state general fund and that the school districts receiving these funds are often in sparsely populated areas and need the revenue. The committee tabled both bill drafts.

Textbook Fees

Another area of concern involved charges by local school districts for textbooks. It was reported to the committee that since the February 1978 North Dakota Supreme Court decision in **Cardiff v. Bismarck Public School District,** 263 N.W.2d 105, the Department of Public Instruction has received requests for guidelines showing the local boards what they can and cannot charge for. The court decision was the result of a suit brought by parents of school children attending elementary schools in the school district. They challenged the authority of that district to charge rental fees for the use of necessary textbooks. The court held that the North Dakota constitutional provision that the legislature provide for a uniform system of free public schools throughout the state included textbooks, not merely tuition, and thus the district was prohibited from charging fees for the use of necessary school textbooks. The court further stated that their "conclusion must necessarily apply only to the elementary schools, as they are the only ones covered in this action." 263 N.W.2d 105, at 113. The implication seems clear that this decision would hold for all elementary and secondary

school children attending public schools should the appropriate action be brought. Because of this decision, and the request from the Department of Public Instruction for guidance, the committee members believed it important to address this issue directly. It was estimated that this will cost approximately $6 million for the biennium.

Consolidation of Mill Levies

One of Dr. Hill's preliminary study conclusions was that the number of separate fund levies should be reduced and that the school district general fund maximum levy be proportionately increased. A bill was prepared which would have consolidated all the mill levies currently in effect which are discretionary with a vote of the local board and which have a specific maximum which may be levied into a general fund levy. The effect of this would be to raise that general fund levy from its current statutory maximum of 24 mills, to a maximum of 91 mills. The concept behind this proposal was to grant authority to school boards to expend funds wherever the need might exist without increasing the total mills which may be levied by the boards. During discussion, problems were pointed out. Some of the school districts which have gone to the people to increase their general fund limit to a specified number of mills but which are also levying some of these discretionary levies said that this change would be harmful to them as they would again have to seek voter support for an increase simply to put them in the same position they are in today. It was also noted that there are a number of these "discretionary" mill levies which were not included in this draft because there is no specific maximum limit on them. Therefore, the "housekeeping" effect of this bill draft was diminished and the committee voted not to recommend it to the Legislative Council for adoption.

Recommendations

The committee recommends two bills as the result of the general study of educational finance. The first relates to the payment of state foundation aid payments directly to school districts rather than having these funds go through the county equalization fund. The changes that were made to existing law in this bill reflect the fact that schools would be receiving both county equalization fund payments and state foundation aid payments. Section 15-40.1-03 was changed to show that the county equalization fund no longer contains state payments. Section 15-40.1-04 was changed to show the determination of funds due to school districts rather than to the county equalization fund and Section 15-40.1-05 provides that the Department of Accounts and Purchases would make these payments to the school districts rather than to the county equalization fund. County equalization moneys would be distributed only to school districts operating schools in the county and county auditors would no longer handle state foundation aid moneys pursuant to the amendments to Section 15-40.1-10. This bill amends other sections of law to reflect the fact that school districts would receive funds from the state in addition to payments from the county equalization fund.

The second "education finance" bill recommended by the committee deals primarily with school textbooks. It prohibits the local school districts from charging for those textbooks necessary for participation in instructional courses. This prohibition does not include personal and consumable items. The second section of this bill lists which items a school board is authorized to charge payment of fees for. These include, among others, student health plans, security deposits for the return of textbooks, and fees for behind-the-wheel driver's education instruction. The bill also specifically states that these prohibitions do not apply to charges for goods, including textbooks, and services provided in connection with any postsecondary instructional programs. The bill also repeals Sections 15-43-07, 15-43-08, 15-43-09, and 15-43-10 which provide for charging for textbooks, purchase of textbooks from families moving from a school district, discretionary authority of school districts to provide free textbooks, and prescribing the duty of parents or guardians of pupils to furnish textbooks.

SPECIAL EDUCATION

Federal Special Education Legislation

The discussion with regard to special education centered primarily around methods of complying with Public Law 94-142 and how to pay for the necessary changes. P.L. 94-142, the "Education for all Handicapped Children Act of 1975," affects state special education programs in a number of ways. The primary purpose of the Act is "to ensure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs." (Section 121a.1)

Subchapter II of the Act provides a program for assistance to states for education of handicapped children. The terms of the Act apply to each of the states and the trust territories of the United States. To qualify for grants under the Act, each state must meet certain eligibility requirements outlined in the Act. Whenever the commissioner of the United States Office of Education, after reasonable notice and opportunity for hearing to the state educational agency involved, finds there has been a failure to comply substantially with any provision of Sections 1412 or 1413 of the Act, or that in the administration of the state plan there is a failure to comply with any provision of the Act or with any requirements set forth in the applica-

tion of a local educational agency or intermediate educational unit approved by the state educational agency pursuant to the state plan, the commissioner shall, after notifying the state educational agency, withhold any further payments to the state under the Act. The commissioner may also withhold other funds available under such programs as are available for the provision of assistance for the education of handicapped children. An action might also be brought under Section 504 of the Rehabilitation Act of 1973. If successful, this could result in the loss of all federal funding to the state.

Delivery of Special Education Services

It is estimated that approximately 70 percent of the handicapped children throughout the state have been identified and their needs are being served by some 600 special education teachers. About 40 counties are involved in multicounty special education programs with from two to five counties participating in each. One of the principal problems is providing the educational and related services required by the federal legislation in the smaller school districts. Although the 1973 Legislative Assembly mandated implementation of special education services by 1980, if the state wishes to retain federal funding, it must comply with the federal timetable which calls for implementation by September, 1978.

The first problem which the committee looked at was how these services should be delivered. Because school districts are held accountable for educating handicapped children, it was believed they should be given the responsibility for the organizational planning of that education. The committee looked at three alternatives for establishing multidistrict special education programs. One proposal was developed by the Department of Public Instruction, with citizen input. The second plan mirrored the existing law on multidistrict vocational education, and the third plan was drafted by the State Association of County Special Education Directors. All of these plans allow school districts to band together to provide the services required and all also envision the end of the present county special education programs. Much of the discussion centered around the composition of the executive board, the use of smaller administrative boards to handle the day-to-day operations, hiring of instructional and "related services" personnel, and the handling of the money necessary to run the programs. It was finally decided that an amended version of the bill proposed by the Department of Public Instruction is the most flexible. Testimony from the State Superintendent of Public Instruction indicated that his department would implement regulations under that proposal to allow the different multidistrict centers to use the best method possible to solve their own unique problems.

Along with this administrative move to school district-oriented special education, the committee believes a similar move should be made with regard to finances and therefore, as part of the multidistrict bill, recommends a five-mill school district levy for special education to replace the present three-mill county levy and the three-mill levy available to school districts located in counties not using the levy.

The state appropriation for special education for the current biennium is approximately $10,750,000. The county mill levies will raise approximately $2 million and federal moneys for programming will total approximately $671,000. For the next biennium, the Department of Public Instruction will ask for approximately $15.3 million for special education.

Conflicts with Federal Law

The committee was also charged with the task of resolving any conflicts which might exist between current state law and Public Law 94-142. The federal legislation mandates that transportation and other related services be provided at no cost to the parents of handicapped children. The issue of transportation created a problem for the committee particularly for handicapped students who are placed at one of the state institutions. The federal authorities interpret this provision to mean that the state or local educational agency, or both, must pay for whatever the individual educational program calls for. However, many people testified about the obvious budgetary problems which would result from not knowing beforehand how many trips the institution would be responsible for. Testimony revealed that the Grafton State School was closed for six holidays each year and this number was chosen as the number of round trips home which would be paid for. Using this number, the cost to the state was estimated to be $218,893 by the Director of Institutions' office.

Age Limitations

The committee was also charged to study the age limitations for special education. It was noted that there were some discrepancies between the two sections of law providing for qualifications for admission to the School for the Blind and the School for the Deaf. Suggestions were called for from the directors of these two schools and the committee decided to recommend similar language for both which would leave some discretion with the local directors in setting the age limit. In other special education programs, the state is providing limited funding for children from ages three through six and no state funding for the education of children from birth to age three. The federal legislation allows each state the choice of services which they will offer to handicapped children under age six. Because of the cost of the other mandates of Public Law 94-142, the committee concluded that it is

necessary to cut back on some of the services provided to preschool children.

Advisory Council on Special Education

The Superintendent of Public Instruction recommended that the committee investigate the necessity of continuing the advisory council on special education. It is believed that the present law is vague as to when this group is to be used and what weight their recommendations are to be given. A representative of the board testified that they had discussed this action and agreed with it. It is the consensus of that group that they are seldom called on in their advisory capacity and have no objections to the manner in which special education is being administered by the department.

Recommendations

In the area of special education, the committee recommends five bills. The first bill allows the creation of multidistrict special education programs. This bill represents a shift away from the county organization of special education and toward school district organization. The present chapter of law dealing with county special education programs, Chapter 15-59.1, is repealed. The proposal allows two or more school districts to form a multidistrict special education program and to submit the organizational plan for such a program to the state superintendent for his approval. The Superintendent of Public Instruction would establish regulations to serve as guidelines for the multidistrict special education programs. The bill lists some of the information which must be decided upon by the local districts and included in this plan, such as the number of members on the executive board, selection of officers, and terms of office, among others. However, it leaves most of the "operational" decisions up to the local districts involved so that they can adopt a plan best suited to solving their own problems.

Another section of the bill enumerates the powers and duties of the multidistrict board and provides for payments from the county equalization fund to school districts for transportation of pupils to cooperative courses and programs both within and outside the district. This is a change from existing law which allows for payment of transportation costs to programs and courses only when they are held outside the district. The state institutions providing educational and related services to handicapped youths would be made eligible to receive and expend federal money and to contract with school districts and multidistrict special education programs to provide the required services.

The committee included in this bill several other measures aimed at relieving the financial burden on the local school district. The three-mill levy was changed to five mills and was made discretionary with a vote of the school board rather than requiring a vote of the people. Also, state cooperation for education and transportation was increased.

Under existing law, the director of special education can reimburse a school or school district up to 1.5 times the state average per-pupil cost of education for instruction, and up to two times the state average per-pupil cost of education for transportation, equipment, and residential care. These figures are increased by this bill to three times the state average per-pupil cost of education for instruction and four times the state average per-pupil cost of education for transportation, equipment, and residential care.

Finally, the bill provides for the education of certain handicapped children from ages three through six based upon regulations to be adopted by the Superintendent of Public Instruction. Services to children falling within those guidelines would be mandated and the state would assist in paying for them. Services to others in that age group would be permissive and the financial burden would be assumed completely by the local school district.

Two other bills would provide for six round trips home annually for each of the patients under the age of 21 at the San Haven State Hospital, Grafton State School, School for the Blind, and School for the Deaf. These provisions are worded so that the institutions may provide either the transportation itself or reimbursement at the state rate for the mileage involved.

The bill which deals with the School for the Blind and the School for the Deaf also revises those sections of the law listing the qualifications for admission to those schools and attempts to make these sections uniform, providing some room for the discretion of the institution director in determing the age qualification.

Other conflicts between state law and Public Law 94-142 were resolved with the fourth bill. This would require the heads of the state institutions to establish a procedure for determining when a patient under the age of 21 is in need of a surrogate parent and how the appointment of such a surrogate parent should be made. Federal law provides that these surrogate parents are necessary in situations where the actual parent of the child is either unknown or unable to represent the interests of the child in working out the individual educational program and deciding such things as changes in placement. This bill also prohibits the Jamestown State Hospital from charging for educational and related services to handicapped patients under the age of 21, another example of compliance with the direct federal mandate that these persons be given a "free appropriate education."

The final bill recommended by the committee repeals the Advisory Council on Special Education.

FINANCE AND TAXATION

The Committee on Finance and Taxation was created by motion at the August 9, 1977, meeting of the Legislative Council, as the result of a request by the State Tax Commissioner for a Legislative Council study of income tax rates. Although there had been a resolution introduced during the 1977 Session calling for such a study, it was indefinitely postponed upon the recommendation of the Legislative Council Resolutions Committee. The Council decided that such a study should be conducted during the interim but decided not to limit it to income taxes. The motion which passed authorized the chairman to create a new committee to evaluate the tax structure and tax rates and to report back to the Council. It was emphasized that this was not a mandate to study all taxes but merely an authorization, should that committee so decide, to study more than just income tax.

Committee members were Senators Chuck Goodman, Chairman, Steve Farrington, Donald Hanson, Lester Shirado, and Frank Shablow; Representatives Gordon Berg, William Gackle, Alvin Hausauer, and Francis Weber; and Citizen Members David Germain, William Goetz, Robert McCarney, and Earl Oliver.

The report of the Committee on Finance and Taxation was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report, with the exception of the portion recommending a bill to change income tax rates, provide for an inflation credit, and repeal the business privilege tax on individuals, was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

INCOME TAX STUDY

Background

The first North Dakota state income tax was enacted in 1919 under a program of economic reform after the Nonpartisan League came into power. The rates started at one-fourth of one percent on the first $1,000 of "earned" income and the top rate was 10 percent for net income over $40,000. Through the years many changes were made to this rate structure. The rates in effect prior to the recently enacted initiated measure were enacted by the Legislative Assembly in 1973 and can be found in North Dakota Century Code Section 57-38-29. These rates began at one percent for the first $1,000 of taxable income and the top rate of 10 percent applied to taxable income over $8,000. For the fiscal year ending June 30, 1978, the North Dakota personal income tax net yield was $69,171,351 which was 27.86 percent of the general fund revenue collections.

Besides tax rates, a citizen's tax liability is also dependent on how taxable income is determined. The method of determining taxable income has changed substantially over the years. In 1959 North Dakota adopted certain definitions of gross income and deductions of the federal income tax law. In 1967 a major change was made by which state income tax liability was "federalized"; that is, federal taxable income became the starting point for computing North Dakota taxable income. In 1977 the Legislative Assembly passed Senate Bill No. 2190 which also "federalized" the state income tax law to conform with federal income tax law as it existed on December 31, 1976. Previously, the state law was only "federalized" to include amendments in the federal law through December 31, 1974. The effect of this change was to include changes in federal law which benefit the taxpayer, most of which were included in the Tax Reform Act of 1976 such as changes in the method of determining standard deductions.

Recommendations of the State Tax Department

As noted previously, the committee was created at the request of the State Tax Commissioner, who called attention to the fact that nearly one-fourth of North Dakota taxpayers are paying the highest rates on their marginal income. This is because the progressivity of the state income tax rates ends with individual taxable income of $8,000. In terms of gross income, a family of four earning $15,500 a year is in the 10 percent tax bracket on their top income. As a result of inflation, the percentage of taxpayers in this bracket increases each year.

At the request of the committee, personnel of the State Tax Department made three alternative recommendations to the committee for revising individual income tax rates. Two recommendations were the result of work by an ad hoc committee appointed by the Tax Commissioner consisting of legislators and representatives of agriculture, labor, and business.

The first of these alternative recommendations would stretch the tax rates so that the top rate of 10 percent would apply to taxable income over $14,000. Based on information from the 1975 individual income tax returns, a model was developed by the Tax Department which indicated that the projected revenue loss under this plan would be $11.4 million per year or $22.8 million per biennium. The second alternative also involved a change in the tax rates. Under this proposal, the top rate of 10 percent would apply only to taxable income over $18,000. Based upon the model mentioned earlier, it was estimated that this plan would result in a projected revenue loss of $16.9

million per year or $33.8 million per biennium. The third plan was simply to make the North Dakota personal income tax a percentage of the federal income tax. This is the method which is currently used by Nebraska where the rate is currently 17 percent of the adjusted federal income tax. This rate is set annually on November 15 by the Nebraska Board of Equalization and Assessment.

There are a number of problems which would occur should North Dakota adopt the percentage of federal tax liability method. One of these is with income which is currently taxed by the federal government but which cannot constitutionally be taxed by the state. Another problem is with income averaging since state taxable income is currently used for all five years in income averaging. Some change would be necessary under the percentage of federal tax method to change either the federal tax figure or the state tax figure into a state taxable income figure. Other problems would be forecasting state income tax revenues and the elimination of a number of special exemptions and deductions presently used in the computation of North Dakota individual income tax.

The recommendations of the Tax Department also included changes in the corporate income tax structure. Prior to passage of the initiated measure, the "effective" tax rate for corporations was approximately four percent because federal income taxes are deductible. Of the 46 states currently imposing a corporate tax, only four other states have an effective rate of four percent and only two states have an effective rate of less than four percent. To increase the corporate share of the income tax burden, the Tax Department recommends that either (1) corporate rates be made comparable to individual rates; (2) the federal tax deduction be eliminated for corporations; or (3) the federal tax deduction of corporations be limited to a certain amount.

Committee Proposals

At the initial meeting of the committee, Citizen Member Robert McCarney proposed a special session to allocate $15 million in revenue sharing to all political subdivisions and school districts to give legislators time to study and work on the tax problems facing the state. He also proposed repeal of the business privilege tax and a revision of the tax rates for both individual and corporate income tax. On individuals, the lowest tax rate of one percent would apply on the first $3,000 of taxable income. The highest rate would be 7.5 percent and would apply to taxable income over $30,000. The tax rates on corporate income would be changed so that the lowest rate of three percent would apply to the first $3,000 of taxable income and the highest rate of 8.5 percent would apply to all taxable income over $25,000. The committee requested a fiscal note from the Tax Department on these changes in personal and corporate income tax rates. The Tax Department estimated that the loss to state revenues from the individual income tax change would be $29,353,000 per year, so the net effect would be an annual loss of approximately $26 million. This portion of Mr. McCarney's proposal, the rate changes for personal and corporate income tax, was placed on the ballot as an initiated measure and was approved by the voters at the November 7 general election.

At the April 1978 committee meeting, Senator Goodman, Committee Chairman, submitted a proposal to accomplish the following:

1. Change the individual income tax rates to a low of one percent on the first $2,000 of taxable income and a high of 10 percent on taxable income over $16,000. It was estimated that the loss of revenue to the state would be approximately $26 million per biennium.

2. Bring the individual income tax standard deductions and filing requirements into conformance with federal law. This would result in an estimated relief of $4 million per biennium.

3. Change the corporate income tax rate spread from a low of two percent to a top rate of 7.5 percent. The resultant tax gain to the state was estimated at $4 million per biennium.

Senator Goodman submitted a second proposal to the committee at a meeting in August which called for:

1. An inflation-credit rebate of 20 percent, up to a maximum of $300, on individual income tax returns for the taxable year 1978. The estimated tax loss to the state for this would be $7.8 million.

2. Change the individual income tax rates to a low of one percent on the first $2,000 of taxable income and a high of 10 percent on taxable income over $18,000. These rates are the same as provided in the second alternative presented by the Tax Department. The estimated tax loss over a three-year period would be $50.7 million.

3. Repeal the business privilege tax on individuals but not on corporations. The estimated tax loss for three years would be $14.1 million.

The committee recommends a bill to accomplish the changes contained in this last proposal. The bill would be effective for all taxable years beginning on or after January 1,1978 and therefore carries an emergency clause so that it might be applied to

returns filed in early 1979. The estimated loss to the state general fund if this measure were to be enacted would be $72.6 million for taxable years 1978, 1979, and 1980. *

The last committee meeting was held in late October and the electorate approved an initiated measure on November 7 to change individual and corporate income tax rates. Therefore, some comparisons of the two proposals are in order.

Both measures would be effective for taxable years beginning on or after January 1, 1978, and will therefore reduce revenue for one year in the current biennium and both years of the coming biennium. The estimated loss to the general fund would be $78 million for the initiated measure for three years and $72.6 million for the committee bill. Neither measure changes the date of federalization of the state income tax law, which is currently through December 31, 1976.

Other changes are also apparent. The committee bill would provide individual taxpayers with a credit on taxes paid in 1978 of a total of approximately $7.8 million while the initiated measure provides a lower permanent rate structure for all individual taxpayers but nothing similar to this credit. The committee bill would repeal the business privilege tax on individuals but would make no changes in corporate tax liability. The initiated measure would not affect the business privilege tax but would increase corporate tax rates.

To illustrate the differences in individual income tax rates as they were in the prior law, as they are in the law as it exists under the initiated measure, and the rates as they would be under the committee bill, the Tax Department provided the committee with the information contained in the following tables:

* See italicized text to follow

I. TABLE OF CURRENT INCOME TAX RATES

Individuals Taxable Income:

Up to $1,000	Computed at	1 %	
$1,000 to $3,000	$ 10.00 plus	2 %	of excess over $1,000
$3,000 to $5,000	$ 50.00 plus	3 %	of excess over $3,000
$5,000 to $6,000	$110.00 plus	5 %	of excess over $5,000
$6,000 to $8,000	$160.00 plus	7½ %	of excess over $6,000
Over $8,000	$310.00 plus	10 %	of excess over $8,000

II. TABLE OF RATES UNDER THE INITIATED MEASURE

Individuals Taxable Income:

Up to $3,000	Computed at	1 %	
$ 3,000 to $ 5,000	$ 30.00 plus	2 %	of excess over $ 3,000
$ 5,000 to $ 8,000	$ 70.00 plus	3 %	of excess over $ 5,000
$ 8,000 to $12,000	$ 160.00 plus	4 %	of excess over $ 8,000
$12,000 to $30,000	$ 320.00 plus	5 %	of excess over $12,000
Over $30,000	$1,220.00 plus	7½ %	of excess over $30,000

III. RATES UNDER COMMITTEE BILL

Individuals Taxable Income:

Up to $2,000	Computed at	1 %	
$ 2,000 to $ 4,000	$ 20.00 plus	2 %	of excess over $ 2,000
$ 4,000 to $ 6,000	$ 60.00 plus	3 %	of excess over $ 4,000
$ 6,000 to $ 8,000	$120.00 plus	4 %	of excess over $ 6,000
$ 8,000 to $10,000	$200.00 plus	5 %	of excess over $ 8,000
$10,000 to $12,000	$300.00 plus	6 %	of excess over $10,000
$12,000 to $14,000	$420.00 plus	7 %	of excess over $12,000
$14,000 to $16,000	$560.00 plus	8 %	of excess over $14,000
$16,000 to $18,000	$720.00 plus	9 %	of excess over $16,000
Over $18,000	$900.00 plus	10 %	of excess over $18,000

To illustrate the effect on various individual taxpayers, the chairman asked the Tax Department to apply the different rates to different classes of taxpayers. The following tables show the percentage of tax relief granted to different classes of taxpayers under the initiated measure and under the committee's bill

as compared to prior law. Several assumptions have been made in compiling these figures. The tables on married taxpayers filing joint returns assumed four exemptions, such as a typical family with two children. The standard deduction was also assumed for all taxpayers. The statistics concerning the committee bill do not include any relief to be realized from the tax credit for 1978 nor do they include any relief a taxpayer might realize from the repeal of the business privilege tax on individuals.

FILING STATUS COMPARISONS

TABLE 1. MARRIED FILING JOINT STATUS: Current Law to Initiated Measure.

Federal Adjusted Gross Income	North Dakota Taxable Income	Current Law N.D. Tax Due	Initiated Measure N.D. Tax Due	Reduction	
				Dollar	Percentage
$ 5,000		.00	.00	.00	0%
$ 10,000	4,158	84.74	53.16	31.58	37%
$ 15,000	7,925	304.38	157.75	146.63	48%
$ 25,000	15,043	1,014.30	472.15	542.15	53%
$ 50,000	30,116	2,521.60	1,228.70	1,292.90	51%
$100,000	52,620	4,772.00	2,916.50	1,855.50	39%

TABLE 2. MARRIED FILING JOINT STATUS: Current Law to Committee Bill

Federal Adjusted Gross Income	North Dakota Taxable Income	Current Law N.D. Tax Due	Plan B N.D. Tax Due	Reduction	
				Dollar	Percentage
$ 5,000		.00	.00	.00	0%
$ 10,000	4,158	84.74	64.74	20.00	24%
$ 15,000	7,925	304.38	197.00	107.38	35%
$ 25,000	15,043	1,014.30	643.44	370.86	37%
$ 50,000	30,116	2,521.60	2,111.60	410.00	16%
$100,000	52,620	4,772.00	4,362.00	410.00	9%

TABLE 3. SINGLE STATUS: Current Law to Initiated Measure

Federal Adjusted Gross Income	North Dakota Taxable Income	Current Law N.D. Tax Due	Initiated Measure N.D. Tax Due	Reduction	
				Dollar	Percentage
$ 5,000	2,276	35.52	22.76	12.76	36%
$ 10,000	6,334	185.05	110.02	75.03	41%
$ 15,000	9,393	449.30	215.72	233.58	52%
$ 25,000	16,020	1,112.00	521.00	591.00	53%
$ 50,000	28,610	2,371.00	1,150.50	1,220.50	51%
$100,000	45,975	4,107.55	2,418.16	1,689.39	41%

TABLE 4. SINGLE STATUS: Current Law to Committee Bill

Federal Adjusted Gross Income	North Dakota Taxable Income	Current Law N.D. Tax Due	Plan B N.D. Tax Due	Reduction	
				Dollar	Percentage
$ 5,000	2,276	35.52	25.52	10.00	28%
$ 10,000	6,334	185.05	133.36	51.69	28%
$ 15,000	9,393	449.30	269.65	179.65	40%
$ 25,000	16,020	1,112.00	721.80	390.20	35%
$ 50,000	28,610	2,371.00	1,961.00	410.00	17%
$100,000	45,975	4,107.55	3,697.55	410.00	10%

The bill and the portions of this report relating to income tax rates, an inflation credit, and the repeal of the business privilege tax were deleted by the Legislative Council at its meeting in Bismarck in November 1978. They are printed in this report, however, pursuant to Rule 5 of the Supplementary Rules of Operation and Procedure of the Legislative Council.

Interest, Penalties, and Refunds

The committee invited the North Dakota Society of Certified Public Accountants (CPA) to make suggestions for changes in the present income tax laws. This group suggested that the state should pay interest on overpayments of income and sales and use taxes.

As finally developed, this would be at the rate of seven percent annually from 60 days after the due date of the return to the date of refund. It was believed that the 60-day period would give the Tax Department a reasonable amount of time in which to make the refund and, if it were not done in that time, the taxpayer deserved to be compensated for the loss.

The CPA Society also suggested that the penalty for failure to file an income, sales or use tax return, or to pay the tax within the time required, should be changed so that only the five percent or $5, whichever is the greater amount be considered the penalty and the charge of one percent for each month of delay be designated as interest. At the present time, this monthly charge is a penalty and therefore cannot be deducted for federal income tax purposes. By leaving the initial penalty section intact, the Tax Department retains the necessary leverage for making certain that the taxes will be paid. As the Tax Department expressed no serious reservations about these provisions and believed that the fiscal effect would be negligible, the committee accepted the proposal and recommends it. The income tax refund law would be amended to remove an obsolete reference to an effective date and the provisions of the bill would be effective for taxable years beginning January 1, 1979.

PROPERTY TAX STUDY

Background

The property tax in North Dakota is the principal revenue source for political subdivisions, and it now raises approximately $150 million a year. Although state law requires that property be assessed at its true and full value, it is common knowledge that property is currently assessed at a statewide average of approximately 10 percent of its true and full value. Inflation in recent years has pushed property values upward at a very rapid pace, but some classes and types of property have increased in value much more rapidly than others. Assessments, on the other hand, have increased at a much slower rate, and although all property is assessed at a lower percentage of its full value than was the case a few years ago, the comparative difference between different classes of property has actually been compounded by the trend.

Prior to the formation of the committee, the State Board of Equalization announced in September 1977 that the target level of assessments in 1979 would be 10.5 percent of true and full value of all property, with no tolerance. Subsequent to the formation of the committee, the State Board of Equalization announced that local assessors would be instructed to assess all property at 100 percent of market value beginning on February 1, 1979. In effect, assessors would then be following state law as it has existed for a number of years. It was reported that the action of the State Board of Equalization was timed to provide the Legislative Assembly with the opportunity to make the necessary changes in state law.

The committee heard testimony from a number of individuals and groups suggesting different solutions to the dilemma faced by the committee. The committee members discussed in considerable detail their individual philosophies concerning the proper role of the property tax and methods to improve it. The committee reviewed various proposals on the assessment of property which were considered by the 1977 Legislative Assembly. Some of these proposals will be discussed in further detail in this report.

Recommendations of the Tax Department

At the committee's invitation, the State Tax Commissioner and members of his staff developed recommendations for the overhaul of the laws and the administration of the property tax in North Dakota.

The first recommendation made by the Tax Department was for a county assessor system. Cities and townships would continue to have the option of their own assessor, provided they had the same qualifications as that of the county assessor. To reduce the financial burden on local government of maintaining a county assessor's office, the Tax Department recommended that the salary of the county assessor be funded by the state, and to attract and maintain a quality assessor force, the position would be compensated under guidelines of the state personnel classification system. Further, the county assessor would be hired by the county commissioners for a fixed term of four years, but could be dismissed before the end of his term only for cause and with the concurrence of the state supervisor of assessments.

Another recommendation of the Tax Department was that a special Equalization Aid Review

Committee, consisting of the Tax Commissioner, the Superintendent of Public Instruction, and the Commissioner of Agriculture, be created to set the policies under which the State Supervisor of Assessments would conduct studies of assessment levels. This recommendation also provided for a requirement that either the buyer or seller of property disclose the full purchase price.

The third recommendation of the Tax Department would change the valuation system for agricultural land so it would include the capitalization of cash rents in addition to using market sales as a guide for assessments. Either the renter or owner would be required to report all cash rents to either the county assessor or the state supervisor of assessments to establish a rental information data bank.

The next recommendation of the Tax Department would provide for deferred preferential assessment of agricultural land in the peripheries of rapidly expanding cities. Under this proposal, two assessments would be made on such property at the request of the landowner, one based upon the value of the land as farmland and the other for its highest and best use. Only the farm assessment would be used unless the landowner sold the land for a higher and better use, at which time the second assessment would be used and applied for the number of years specified in the statute.

The fifth recommendation of the Tax Department would expand the program which reduces property taxes and rents for low income senior citizens and disabled persons to apply to all low income people regardless of age.

The sixth recommendation would provide for the replacement of mill levy limitations imposed by state law with limitations on budgetary increases by local units of government. In addition, it was recommended that the mill levy provisions in the Constitution, including the mill levy for the State Medical Center, the four-mill levy authorized for state purposes, and the debt limitations on political subdivisions based on assessed valuation, be removed from the Constitution and, if desired, be included in state statutes.

The next recommendation of the Tax Department was that new property tax exemptions enacted by the Legislative Assembly should be accompanied by repayment of money lost by political subdivisions as a result of the exemptions.

The eighth recommendation was that the timing and frequency of tax bills should be reviewed. This recommendation was that there be a provision for optional quarterly tax payments to give the taxpayers the opportunity to make smaller payments at the taxpayers' option.

The ninth and final recommendation of the Tax Department was to eliminate fractional assessments and restore the 100 percent level of assessment.

Assessment at True and Full Value

The action of the State Board of Equalization instructing local assessors to assess at 100 percent of market value beginning in 1979 brought the issue directly before the committee. Section 57-02-27 of the North Dakota Century Code provides that all property subject to taxation based on the value of the property shall be assessed at its true and full value in money. That section further provides that in determining the true and full value of property, the assessor shall not adopt a lower or different standard of value because it is to serve as a basis of taxation. Subsection 4 of Section 57-02-01 provides a definition of "true and full value," and provides that that term means the usual selling price which could be obtained at a private sale and not at a forced public auction sale. This definition further provides that in arriving at the true and full value, consideration may be given to the earning or productive capacity, if any, the market value, if any, and all other matters that affect the actual value of the property to be assessed.

Instead of assessing property at true and full value, however, assessors have been applying a lower percentage of value to property each year. In the 10 years from 1966 to 1976, the weighted average of all classes of property, based upon the sales ratio study, indicated that assessments decreased from an average of 25 percent of true and full value to 12.3 percent. Although there has been criticism of the information provided by the sales ratio study, primarily because of the unavailability of reliable information by local taxing officials, most independent analyses indicate that actual market values are often higher than those indicated by the sales ratio study.

It has been argued that the use of fractional assessments makes the understanding of the property tax system unnecessarily difficult for the taxpayer. The property tax system is further complicated by a number of factors such as the fact that a de facto system of classification has developed under which different types of property are assessed at different percentages of value and the fact that Section 57-02-28 provides that the net value of property to be used in the computation of taxes shall be 50 percent of the true and full value of the property. Therefore, if a taxpayer knows what the full value of his property is, he must not only apply the actual percentage of value used by the assessor to determine his taxable valuation, but he must also reduce the assessor's figure by another 50 percent to arrive at taxable valuation.

The committee members learned that there are

several complications which must be faced if the law and practice concerning property taxes are to be brought together. For example, if all property were to be assessed at true and full value, the one-mill constitutional levy for the medical center would generate many times the income it produces under the existing system. The state foundation aid program for public schools is tied to the equalization of property taxes, which means in practice that the amount a school district receives from the state general fund is reduced by the money generated by the equivalent of a 41-mill levy against the property in that school district. If property were to be assessed at 100 percent of true and full value and there were no further changes in state laws, local property taxpayers would pick up a much larger portion of local school costs instead of that money coming from the state general fund.

A further complication is presented by the fact that many property tax exemption statutes for senior citizens and disabled persons are tied to a certain amount of assessed valuation of the claimants' residential property. Therefore, if property were assessed at true and full value, the statutory exemptions for these individuals would be greatly reduced. Still another complicating factor is the fact that political subdivision bond limitation levels are constitutionally and statutorily tied to the assessed valuations of the political subdivisions. Therefore, if property were assessed at true and full value, the constitutional and statutory debt limitations of the various political subdivisions would be increased dramatically.

Because of different levels of assessment which exist in various political subdivisions, it was noted that if all taxing districts were brought to a uniform level of assessments, some districts would benefit and others would suffer as compared to the revenues generated under the existing system.

One solution proposed to the committee to alleviate these problems would be for the Legislative Assembly to pass a bill reducing all authorized mill levy and debt limitation statutes. As the average assessed value for property in the state is approximately 10 percent, it was suggested the statutory mill levies and debt limitation provisions be amended to reduce them to one-tenth of the existing levels. It was noted that the implementation of such a law would require that adjustments be made by taxing officials and political subdivisions. In addition, problems created in political subdivisions which have obtained local voter approval for increased levies would also become apparent. To handle some of these problems, it was suggested that any reform be taken in two steps, one as a temporary measure and the second permanent solution to take effect at some time in the future.

If the taxable property in the state were to be assessed at 100 percent of true and full value, instead of the value now placed upon it which averages approximately 10 percent, the bonding limitations of political subdivisions would be increased approximately tenfold.

If a measure providing for 100 percent assessments were not intended to also increase bonding limitations of political subdivisions, the question is raised whether the Legislative Assembly can provide for lower limitations than those provided in the State Constitution. In a 1919 case, the North Dakota Supreme Court held that the state constitutional provisions on debt limitations do not operate as a limitation on the Legislative Assembly to further restrict the powers of political subdivisions. In this case, **Great Northern Railway Company v. Duncan**, 42 N.D. 346, 176 NW 992, the court said the constitutional limitation does not confer power to create indebtedness, but acts as a limitation on the power of a political subdivision, and the Legislative Assembly may impose additional restrictions on the incurring of indebtedness.

Classification of Property

As noted previously, a de facto system of classifying property has developed in North Dakota, although there is no provision in state law for this system. However, the authority of the state to classify property for purposes of taxation has been established by the holdings of the North Dakota Supreme Court in several cases. Section 176 of the North Dakota Constitution provides that taxes shall be uniform upon the same class of property.

Based upon the sales ratio study, the various classes of property and their assessment ratios in 1976 were as follows: farmland 10.5 percent, residential property 15.5 percent, commercial property 16.8 percent, and property assessed by the State Board of Equalization approximately 24 percent. In 1977 these ratios were: farmland 6.8 percent, residential property 10.4 percent, commercial property 12.2 percent, and property assessed by the State Board of Equalization 19 percent.

Several attempts have been made in the past to enact legislation in this state to provide for a statutory classification program. There were two bills introduced in the last legislative session to establish a property tax classification system. One bill would have in effect "legalized" the de facto classification system in effect while the other one would have provided for three classes of property with lower percentages than the existing ratios. Both bills were withdrawn during the 1977 Session. The committee also reviewed several classification bills from preceding legislative sessions.

Most of the classification bills which have been

considered in North Dakota through the years have established a separate classification for property assessed by the State Board of Equalization, and the ratio used for this class has usually been higher than the percentage used for any other class. Such a classification system would not withstand a challenge under a federal law enacted in 1976 as it applied to railroad property. According to the Railroad Revitalization Act, it is unlawful for a state to assess railroad property at a value which bears a higher ratio to the true market value than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property. Therefore, in any classification bill enacted in the future, railroad property cannot be classified at a higher ratio than that of other commercial property.

The commitee makes no recommendations concerning the classification of property for assessment purposes. Proposals were presented to the committee to provide for a classification system similar to the de facto system now in effect or to classify property based upon the use of that property. The opponents of property classification maintain that it is unfair to tax some property at a higher percentage than other property. Although the proponents of property classification argue that some property should be assessed at the lower ratio because it is served by fewer governmental services, the opposition maintains that mill levies are tied to services rather than levels of assessment. For these and other reasons, the proposals for property tax classification systems were defeated.

Assessment of Agricultural Land

Several committee members expressed particular concern about the assessment of farmland. Unlike the income or sales taxes, the real property tax does not respond quickly to changing economic conditions. This fact has created particular problems for agricultural land in a time of inflating land values but fluctuating prices on agricultural goods.

The North Dakota Farm Bureau presented a proposal which had been developed by that organization's tax committee which would make substantial changes in the method of assessing agricultural land in North Dakota. Under this proposal, all property would be assessed at 10 percent of its true and full value and agricultural land would be subject to a special formula using the average cash rents within the taxing jurisdiction which would be used to determine the highest value per acre within that jurisdiction. The average property taxes per acre in the taxing jurisdiction would be subtracted from the average cash rent per acre within that jurisdiction, and the difference would be divided by the sum of the Federal Land Bank loan rate for new loans plus three percent for recapture of investment. For less productive land, the most current soil capability information would be used. The value of agricultural land could not be increased nor decreased by more than five percent in any year. This proposal became the basis for one of the committee recommendations.

The committee also considered a proposal to provide for preferential assessment of agricultural lands in the peripheries of rapidly expanding cities. This proposal was very similar to House Bill No. 1029 from the 1977 Legislative Assembly except that it would have applied to all agricultural lands regardless of ownership, as contrasted to the previous bill which was limited to agricultural land owned by bona fide farmers.

Upon application by the landowner, the assessor would have made two assessments on the agricultural land. One assessed valuation would be based upon the value of the land as agricultural property and would be uniform with the assessed valuation of adjoining agricultural lands. The second valuation would have been based upon the prevailing market value of the land, including nonagricultural factors. When all or any part of the land subject to this optional method of assessment would be sold, leased, or the use changed so that it would no longer classify as agricultural land, the property would be subject to the additional taxes which would otherwise have been assessed against it if the optional method of assessment had not been available. The taxes which would have been due on the lands for the five years before the year of termination of the optional method of assessment would be computed and the property owner would owe the difference between that amount and the amount which he had actually paid in taxes on the property during that period. After considerable discussion of this proposal, the committee tabled a bill draft on the subject.

Miscellaneous Proposals

Under a law passed in 1977, county directors of tax equalization will succeed township and city assesssors unless cities or townships choose to employ an assessor. The 1977 law specifically provides that the standards for city and township assessors will reflect their limited jurisdiction and they need not meet the same minimum requirements established for county directors of tax equalization. The committee considered a proposal to require city and township assessors to have the same qualifications as required for county directors of tax equalization. Some committee members expressed the viewpoint that this requirement would effectively eliminate most city and township assessors. The committee indefinitely postponed this proposal.

Another suggestion considered by the committee was to place a freeze on the assessed valuation of all real property for a two-year period.

It was noted a freeze on property assessments would raise constitutional questions because the State Constitution requires that taxes be uniform on a class of property, and a freeze on assessment levels also freezes in inequities and prevents corrections of existing inequities to allow for uniformity. Opponents of this concept also argued that it would simply delay coming to grips with the problems of inequitable assessments. Another problem would be created by freezing railroad valuations which might be in conflict with the Railroad Revitalization Act of 1976. The committee killed a proposal bill draft providing for a property tax freeze.

The committee also considered a proposal to require statements of full consideration be filed in connection with property sales. As proposed, the grantee of properties would have the option of filing with his deed either a statement that he had filed a report of the amount paid for the property with the State Tax Commissioner or a statement on the deed showing the full consideration paid for the property conveyed. The proponents of this concept believe it is necessary to obtain reliable information regarding market prices of real estate. The opponents of this concept maintain that it would infringe on the rights of property owners to have to reveal the price paid for property. Others do not believe market price is the proper criteria to use in determining assessments. The committee killed a bill draft to provide for statements of full consideration on property sales.

Recommendations

The committee recommends three bills related to property taxes. One bill would provide for the taxation of all property at true and full value. To accomplish this, the bill reduces all existing mill levy provisions in the statutes to 10 percent of their previous amounts. The bill would not be effective until 1981, and contains provisions to protect both the taxpayers and the taxing districts for the first two years after its effective date. No taxing district would be permitted to levy taxes expressed in dollars more than 10 percent over and above the amount that was levied by that taxing district in the year prior to the effective date of the act. To protect taxing districts from the possibility of losing revenue under the provisions of the bill, there is a provision that each taxing district could levy at least as much in dollars as the amount levied by that district in the year before the effective date of the bill.

To cover those taxing districts which have voted upon a specified mill rate or an excess mill levy, the bill provides that those levies would be reduced to 10 percent of the previous amount. Because Article 60 of the Amendments to the North Dakota Constitution provides for a one-mill levy for the State Medical Center, that mill levy is not reduced but the valuation of all taxable property against which that levy would be extended would be 10 percent of the net assessed valuation rather than the full value as would be used for all other purposes.

The bill would reduce the bonding limitations of all political subdivisions to 10 percent of the former statutory limitations. To provide the same property exemptions for senior citizens and disabled persons as are provided under existing laws, the statutes which provide specific assessment limitations on property exemptions for such persons would be amended to increase the dollar amount of the exemption to account for the fact that the property would be assessed at 100 percent of its value.

The second bill recommended by the committee is modeled after the proposal of the North Dakota Farm Bureau which provides the formula for the assessment of agricultural property based on cash rent. This bill provides that for property used for agricultural purposes, "true and full value" means the value for tax purposes of the property and consideration shall be given to the earning or productive capability of the agricultural property. This bill provides that all property subject to taxation would be assessed at 10 percent of its true and full value. The bill also provides that in valuing property upon which there is a mine, the property would be valued to reflect the value of the minerals.

The formula used in this bill for agricultural land would use the average cash rents within a township or assessor district in the case of unorganized townships to determine the highest value per acre within that taxing district. The average property taxes per acre would be subtracted from the average cash rent per acre within the taxing district, and no leases for one year or less would be used in determining the average cash rent per acre. The difference would be divided by the sum of the Federal Land Bank loan rate for new loans stated as a percentage as of the assessment date of the current year plus three percent for recapture of investment.

The bill provides that to determine a fair value for agricultural land which is less productive than the highest value land in the taxing district, the most current soil capability information would be used. The formula would use a five-year average for determining cash rent in a taxing district, and the bill contains provisions for the first few years

of the implementation. The true and full value of agricultural land would not be increased nor decreased by more than five percent for any year. Owners of agricultural land would have the duty to furnish the assessor a certified copy of cash rent contracts. If a landowner failed to furnish a copy of a cash rent contract, his property would be assessed at the highest value determined for that taxing district. The cash rent contracts would be protected by secrecy laws similar to those for the state income tax.

The bill would amend Section 57-02-28 to provide that the value of property to be used in the computation of taxes would be 50 percent of the assessed value of the property, and the resulting amount would be known as the taxable valuation. The existing law provides that the net value of property used in the computation of taxes is to be 50 percent of the true and full value, but as a practical matter true and full value has not been the same as assessed valuation for a number of years.

Members of the committee asked personnel in the Tax Department to analyze the effects of this measure on some sample counties. The results of this analysis will be available during the 1979 Session. It was admitted there are many unknown ramifications of this proposal, and the full impact may be difficult to determine, but members of the committee expressed interest in presenting this bill to the Legislative Assembly as an alternative to the current method of assessing agricultural land.

The third bill recommended by the committee would provide for the assessment of property at 10 percent of its true and full value in 1979 and 1980. This bill is intended to provide for the period of adjustment prior to the effective date for the 100 percent assessment bill. The bill contains minimum and maximum levy limitations on taxing districts similar to those in the 100 percent assessment bill except these limitations would be effective in 1979 and 1980. Taxing districts would be permitted to levy at least as much in dollars in 1979 and 1980 as they had in 1978. In addition, no taxing district would be permitted to levy in 1979 and 1980 taxes in excess of 10 percent over and above the amount which was levied by that taxing district in 1978. The provisions for minimum and maximum levy limitations provide for changes in the tax base of the taxing districts.

This bill would also amend Section 57-02-28 to provide that the computation of taxes would be based upon the assessed valuation rather than the true and full valuation of the property. Because it would be effective for taxes levied in 1979, the bill contains an emergency clause.

GARRISON DIVERSION OVERVIEW

The Garrison Diversion Overview Committee is a special committee created by House Concurrent Resolution No. 3032. The committee was charged with the responsibility of legislative oversight of the Garrison Diversion Project and was directed to represent the citizens of North Dakota and the legislative branch of government in all activities concerning the Garrison Diversion Project through November 30, 1978.

The resolution directed that the committee consist of the floor leaders and their assistants from the House and Senate of the Forty-fifth (1977) Legislative Assembly. Those committee members were Senators David Nething, Chairman, Francis Barth, S.F. Hoffner, and Russell Thane; and Representatives Richard Backes, William Kretschmar, Corliss Mushik, and Earl Strinden.

The report of the Garrison Diversion Overview Committee was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

The committee saw its primary role as one of keeping informed of events concerning the Garrison Diversion Project, and offering assistance when it was needed. The method chosen by the committee to keep itself informed was to hold a series of meetings at which a number of state and federal officials involved in various aspects of the Garrison Diversion Project appeared and briefed the committee on their activities.

Much of the information received by the committee concerned the status of a number of lawsuits involving the Garrison Diversion Project at the time of the meetings. For purposes of clarity, the three main lawsuits will be discussed briefly at this point.

National Audubon Society v. Andrus, Civil No. 76-0943, is a case brought by the Audubon Society alleging violations of the National Environmental Policy Act and seeking an injunction halting construction of the Garrison Diversion Unit. The Secretary of the Interior and the National Audubon Society stipulated to a settlement of the case on May 11, 1977, under which construction of the project would be halted pending the completion of a supplementary environmental impact statement, a new fish and wildlife mitigation plan, a legislative package, and congressional action on the legislative package.

In August 1977, the President signed the public works appropriation bill (P. L. 95-96), which included $18.66 million for continued construction of the Garrison Diversion Unit. Following the passage of P. L. 95-96, the state filed a motion to dismiss, arguing that Congress had reaffirmed its support of the Garrison Diversion Unit, determined the legality and the adequacy of the environmental impact statement, and directed the continued construction of the project. This motion was denied and the district judge refused to allow an appeal of that order.

Following the President's attempt to defer the funds and the passage of Senate Resolution 525 in August 1978, which disapproved that deferral, the Department of the Interior resumed some construction and Audubon filed a motion for an injunction to enforce the May 1977 stipulation. When the Department of the Interior replied that it considered itself bound by the Senate resolution, Audubon filed a memorandum directly contesting the constitutionality of the Impoundment Control Act of 1974, under which Senate Resolution 525 was passed. On November 7, 1978, a 20-day temporary restraining order was granted against further construction.

North Dakota v. Andrus, Civil No. A77-1041, is an action filed in federal district court in Bismarck under the Freedom of Information Act. The Secretary of the Interior had denied the state access to three documents prepared by the Department of the Interior, Office of Management and Budget, and the Council on Environmental Quality which had been shown to the Audubon Society. The district judge granted a summary judgment for the United States, and on appeal the Eighth Circuit Court of Appeals reversed, and held that the United States waived any privilege by disclosing the documents to the Audubon Society. The district court has signed an order consistent with the decision of the Court of Appeals and the order included an award of expenses and attorneys' fees for North Dakota in an amount in excess of $20,000.

The third major case reviewed by the committee was entitled **North Dakota v. United States**, Civil No. 77-1048. This action, which was filed in the North Dakota Supreme Court and later removed to federal district court in Bismarck, sought a review of the contractual obligations of the Secretary of the Interior under the terms of the 1966 master contract, and alleged that the United States failed to comply with the provisions of the Impoundment Control Act of 1974. The United States attempted to move the case to Washington, D. C., by consolidating it with the Audubon case, but the con-

solidation was rejected by a multi-judge panel. North Dakota filed a motion for summary judgment, but before that motion was ruled upon, the United States notified the court that it would immediately begin pre-construction and construction activities. In response to this move, North Dakota proposed a stipulation and order of dismissal in October 1978. Construction began and continued until the temporary restraining order was issued in the Audubon case.

The committee held a number of meetings in various locations throughout the interim. Its first meeting was held in Bismarck on May 17, 1977. Attorney General Allen Olson, and Mr. Gary Helgeson, Assistant Attorney General, appeared and gave a presentation on the status of the lawsuits discussed above.

A progress report on the construction of various features of the Garrison Diversion Unit was given by Mr. Warren Jamison, who was the Project Manager for the Bureau of Reclamation at that time. He also told the committee about the plans for the preparation of the supplemental environmental impact statement required by the stipulation in the Audubon case.

Mr. Homer Engelhorn, Manager of the Garrison Diversion Conservancy District, also appeared and told the committee of his plans to organize a group of North Dakotans to travel to Washington for talks with influential Congressmen concerning the Garrison Diversion Project. Representative LeRoy Hausauer, Chairman of the Legislative Council, authorized committee members to attend these talks in Washington.

In June 1977 the committee members, along with representatives of the Conservancy District and other North Dakota officials, traveled to Washington and met with a number of Congressmen and urged their support for the funding of the Garrison Diversion Unit.

On August 22-23, 1977, the committee toured several features of the Garrison Diversion Project. The committee assembled at the Garrison Diversion Conservancy District headquarters in Carrington and viewed a movie entitled "Garrison Diversion — A North Dakota Resource" before touring the Snake Creek pumping station, which pumps water from Lake Sakakawea into Lake Audubon, and the headworks of the McClusky Canal, where Lake Audubon empties into the canal. The committee also traveled along the canal and observed the fish screen structure and the Lonetree Reservoir, before returning to Carrington, where it met with the employees of the Conservancy District. The committee also toured the NDSU Irrigation Field Trials at Oakes, where the members observed the effects of irrigation and the application of herbicides and fertilizers on various crops. Some members also took a bus tour of a number of farms in the Oakes area where various types of irrigation procedures were employed.

The next meeting was held in Fargo on October 6, 1977, in conjunction with the Conservancy District Board of Directors meeting. Mr. Helgeson updated the committee on the various lawsuits and Mr. Murray Sagsveen, Director of Legal Services for the State Water Commission, reported on several related lawsuits, including one concerning the Channel A Project at Devils Lake.

Mr. Jamison told the committee about the plans for the expenditure of the fiscal year 1978 funds, and legislation concerning "best management practices" was proposed by Adjutant General C. Emerson Murry, who had been appointed by Governor Link to represent North Dakota in the preparation for the negotiations with Canada concerning the International Joint Commission report. Following the adjournment of the meeting, the members attended the Conservancy District Board of Directors meeting.

In February 1978 Senator Nething and Representative Backes represented the committee at a meeting with the North Dakota Congressional Delegation. They traveled to Washington, D.C., and participated in meetings at which North Dakota's strategy in all phases of the Garrison Diversion Project was discussed.

The final meeting of the committee was held in Bismarck on November 9, 1978. General Murry appeared and advised the committee of North Dakota's proposal for phased construction of the Garrison Diversion Unit. He told the committee that the state is proposing the construction of the initial steps of the originally authorized project. The state also is proposing that negotiations be held with Canada when they are made necessary by construction of various projects, rather than attempting to negotiate the entire project at one time. He also said that negotiations between the State Department and Canada had not begun yet because the Department of the Interior has not yet prepared a proposal that could be negotiated.

The committee also met Mr. Darrell Krull, who is the new Project Manager for the Bureau of Reclamation, and he told the committee about the construction schedule which had been followed until the temporary restraining order halted all construction. Mr. Engelhorn told the committee that the Conservancy District supports the phased construction of the originally authorized 250,000 acre plan and also supports the absolute nondegrada-

tion standard adopted by the International Joint Commission. Mr. Murray Sagsveen appeared and discussed the potential effect of the Federal Endangered Species Act on the Garrison Diversion Unit, and told the committee that he believes the Endangered Species Act would probably have a greater impact on the Garrison project than the National Environmental Policy Act. Mr. Helgeson also appeared and briefed the committee on the latest events in the various legal actions.

As a result of the information the committee received during the interim, several courses of action are being recommended.

The committee is recommending a concurrent resolution which would re-create the Garrison Diversion Overview Committee. Under House Concurrent Resolution No. 3032, which created the committee in 1977, the committee will expire on November 30, 1978. The information received by the committee indicated that there will continue to be a great deal of activity concerning the Garrison Diversion Unit in the next interim, and that there may well be an even greater need for legislative participation, particularly in the area of contact with Canadian officials. For that reason, a resolution would immediately re-create the committee to exist through April 30, 1981.

The committee is also recommending that the Legislative Council communicate with Governor Link and Manitoba officials and arrange a meeting between representatives of North Dakota and Manitoba. General Murry suggested that some type of direct dialogue between North Dakotans and Manitobans would enable North Dakota to demonstrate its good faith and might help to resolve some of the existing differences. The committee agreed and urges the Legislative Council to arrange a meeting between representatives of the executive and legislative branches of North Dakota and Manitoba.

A motion was also passed at the last meeting to direct the Legislative Council staff to work with the Attorney General's office in developing legislation to enable North Dakota to recover damages for the expenses incurred in defending the various lawsuits concerning the Garrison Diversion Unit. Although Attorney General Olson told the committee that North Dakota has recovered expenses for the Freedom of Information Act lawsuit, that recovery was expressly permitted under the Freedom of Information Act. Attorney General Olson told the committee that the problem is more widespread than just Garrison-related issues, and since the committee believed that it did not have the time necessary to consider such legislation, it is recommending that the legislation be drafted by the Legislative Council staff and the Attorney General's office, and introduced by the Attorney General.

The committee is also recommending one bill. The bill would require the director of the agricultural experiment station to promulgate rules and regulations for the determination of "best management practices." The term "best management practices" is defined as the application of water and chemicals in amounts that maximize crop production and economically efficient farming and minimize pollution and degradation of water supplies. The Garrison Diversion Conservancy District would be required to allocate project waters in a manner consistent with the best management practices determined by the director. This bill was suggested by General Murry, who said this type of bill would be valuable in the upcoming negotiations with Canada. The bill would demonstrate to the Canadians that North Dakota subscribes to the absolute nondegradation standards and is attempting to enforce such standards by legislation.

HEALTH SERVICES

House Concurrent Resolution No. 3083 directed the Legislative Council to study the State Department of Health, State Hospital, and State Health Department's supervisory relationship with comprehensive mental health and retardation centers. Senate Concurrent Resolution No. 4077 directed the Legislative Council to conduct a study of the internal organization, policies, and programs of human service and mental health and retardation centers.

These studies were assigned to the Committee on Health Services whose members were Representatives Earl Strinden, Chairman, Bernie Anderson, Pauline Benedict, Brynhild Haugland, Jean Herman, Fern Lee, Henry Lundene, Robert Martinson, Harold Mund, Royden Rued, Enoch Thorsgard, Michael Unhjem; and Senators Hal Christensen, L. L. Naaden, George Rait, and Rolland Redlin.

The report of the Committee on Health Services was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

At its organizational meeting committee members discussed the directives of House Concurrent Resolution No. 3083 and Senate Concurrent Resolution No. 4077. Committee members decided to invite the chairman of the State Health Council to describe the Health Council's functions; to visit the State Hospital and mental health and retardation centers in the state; to hear reports from various "referral" people and professionals in the health services field; to review the structure of each mental health and retardation center, the types of services provided by each center, and how the centers are financed; to study the alcohol and drug abuse treatment services provided by various state agencies; to study health planning and the district health units in the state; and to study Title XX of the Federal Social Security Act as a source of funding for mental health and retardation centers.

The committee also discussed the need to study the human service centers in the state and how their services compare to those provided by the mental health and retardation centers and social service centers in the state; the duplication of services between the mental health and retardation and area social service centers; and the inability of the centers to employ and retain staff psychiatrists.

In reviewing the state's human service delivery system, the committee concluded:

1. The state does not have an overall comprehensive plan for the delivery of human services.
2. It is difficult to evaluate the performance of agencies providing human services.
3. There is a lack of management control in the present human service delivery system.
4. There is an overlap of services and unnecessary competition in the delivery of human services.
5. The mental health and retardation centers provide some services because funds are available rather than because the services are needed.
6. There is public confusion as to where various types of human services can be obtained.
7. The centers providing human services across the state are experiencing funding problems and the state general fund appropriation to those centers is becoming inadequate.

COMMITTEE ACTIVITIES

The committee, with the assistance of the State Health Department, State Social Service Board, Division of Mental Health and Retardation, and the various human service and mental health and retardation centers involved, studied the structure, operations, programs, funding, staffing, problems, and relationships between the centers in the state. The committee visited the State Hospital, and the mental health and retardation centers in Jamestown, Minot, and Grand Forks, and heard reports by the directors and board members of the Fargo and Mandan centers. It also visited the human service centers in Williston and Dickinson and heard reports by the directors of the Devils Lake Human Service Center and the Heart of America Human Service Center in Rugby. The committee also visited district health units and several social service agencies across the state. During each visit the committee received testimony from interested citizens, health and social service professionals, and referral persons regarding the human services delivery system in North Dakota.

STUDY OF THE HUMAN SERVICE AND MENTAL HEALTH AND RETARDATION CENTERS

Staff and Budgets of the Centers

The committee studied the types of human services staff providing services in each region of the state and the budgets of each of the human service and mental health and retardation centers.

The following is a summary of staff members, by region, for area social service, human service, and mental health and retardation centers, and county social service boards. The information is based upon reports filed with the committee in the spring of 1977.

Total Region No. 1 (Williston area) Staff

Northwest Human Resources Center	28
County social service boards	26
Total	54

Total Region No. 2 (Minot area) Staff

Minot Area Social Service Center	46
North Central Mental Health and Retardation Center	44
County social service boards	86
Total	176

Total Region No. 3 (Devils Lake area) Staff

Lake Region Human Service Center	21
County social service boards	94
Total	115

Total Region No. 4 (Grand Forks area) Staff

Grand Forks Area Social Services Center	29
Center for Human Development	30
County social service boards	78
Total	137

Total Region No. 5 (Fargo area) Staff

Fargo Area Social Service Center	13
Southeast Mental Health and Retardation Center	73
County social service boards	128
Total	214

Total Region No. 6 (Jamestown area) Staff

Jamestown Area Social Service Center	7
South Central Mental Health and Retardation Center	40
County social service boards	96
Total	143

Total Region No. 7 (Bismarck area) Staff

Social and Rehabilitation Services Center	14
Memorial Mental Health and Retardation Center	57
County social service boards	143
Total	214

Total Region No. 8 (Dickinson area) Staff

Badlands Human Services Center	40
County social service boards	57
Total	97

Total Staff of all Regions

Area social service centers	109
County social service boards	708
Human service centers	89
Mental health and retardation centers	244
Total Staff	1,150

The following is information on the 1977-79 budgets for the human service and mental health and retardation centers:

HUMAN SERVICE CENTERS
1977-79 Budgets

	Federal Funds	State Funds	Local Funds	Patient Fees	Other Funds	Total
Northwest Human Resources Center, Williston	$876,976	$483,870	$29,500	$2,000	$	$1,392,346
Badlands Human Service Center, Dickinson	1,018,366	583,581	80,000	16,000	1,182	1,699,129
Lake Region Human Service Center, Devils Lake	507,581	354,626				862,207
Total	$2,402,923	$1,422,077	$109,500	$18,000	$1,182	$3,953,682
Percentage of Revenue	60.8	35.9	2.8	.5	-0-	100.00

MENTAL HEALTH AND RETARDATION CENTERS
1977-79 Budgets

	Federal Funds	State Funds	Local Funds	Patient Fees	Other Funds	Total
Center for Human Development, Grand Forks	$542,339	$335,935	$163,000	$160,000	$90,000	$1,291,274
Memorial Mental Health and Retardation Center, Mandan	680,112	365,665	200,000	80,000	160,000	1,485,777
South Central Mental Health and Retardation Center, Jamestown	471,000	301,030	180,000	322,000	16,800	1,290,830
North Central Mental Health and Retardation Center, Minot	595,292	341,098	151,800	150,000	98,402	1,336,592
Southeast Mental Health and Retardation Center, Fargo	1,720,370	368,000	1,058,000	329,815	188,289	3,664,474
Total	$4,009,113	$1,711,728	$1,752,800	$1,041,815	$553,491	$9,068,947
Percentage of Revenue	44.2	18.9	19.3	11.5	6.1	100.00

The following chart shows total expenditures for fiscal year 1977 for the area social service centers:

EXPENDITURES FOR AREA SOCIAL SERVICE CENTERS
Fiscal Year 1977

	Salaries and Wages	Fees and Services	Supplies	Equipment	Total Expenditures
Minot — Region 2	$ 244,619.73	$ 66,976.44	$3,046.94	$ 4,563.05	$ 319,206.16
Grand Forks — Region 4	244,773.86	48,077.84	1,624.63	11,020.35	305,496.68
Fargo — Region 5	158,841.67	37,235.99	708.80	2,194.03	198,980.49
Jamestown — Region 6	176,555.44	48,491.42	793.86	379.91	226,220.63
Bismarck — Region 7	261,099.02	59,857.15	2,208.88	3,696.63	326,861.68
Total	$1,085,889.72	$260,638.84	$8,383.11	$21,853.97	$1,376,765.64
Estimated:					
Federal Share	$760,122.80	$182,447.19	$5,868.18	$15,297.78	$963,735.95
State Share	325,766.92	78,191.65	2,514.93	6,556.19	413,029.69

HUMAN SERVICE CENTER STUDY

The committee visited the Northwest Human Resource Center in Williston and the Badlands Human Service Center in Dickinson and heard reports from the Lake Region Human Service Center, Devils Lake, and Heart of America Human Service Center, Rugby. The Badlands Human Service Center said its staff believes it has been successful in developing an integrated program of social service and mental health and retardation services. The Northwest Human Resources Center reported that the community and the center's three-county area are very satisfied with the services provided by the Northwest Human Resources Center. Many individuals appeared before the committee in Williston and Dickinson expressing their support for the centers.

Several committee members observed that the success of the Badlands and Northwest centers is evidence of the success of combined human service centers. They said in the future other area social service centers and mental health and retardation centers in the state should combine as human service centers. The committee invited human service centers to make recommendations to amend Sec-

tion 54-40-09 relating to human service centers. Based upon these recommendations and other changes desired by the committee, the committee recommends legislation which includes the following in regard to human service centers:

1. A human service center is established by the majority vote of county commissioners within a multicounty area at a joint meeting of the boards of county commissioners. Previously, a center was established by the appointment of a board of directors and the approval of an agreement between authorized representatives of the agencies and political subdivisions for whom the services were rendered.

2. A statement that human service centers shall function as single collocated administrative units.

3. The membership of the board of directors was changed from not less than 11 to not more than 13 members. Within 60 days after the effective date of the Act, new boards shall be appointed for existing centers. The board members shall be appointed by the boards of county commissioners meeting jointly.

4. The powers and duties of the centers are more specifically defined.

5. A provision that pursuant to written agreement with the center, the State Department of Health, State Social Service Board, the mental health and retardation service units, and other state departments and governmental units performing human service functions within the multicounty area shall identify and delegate the planning and delivery of human services within their jurisdiction to the human service center. The human service centers shall deliver such human services in the manner prescribed by the state departments and governmental units accountable for such services.

6. A provision that persons employed by the centers will be state employees and all employment practices shall be subject to the state central personnel system. Employees at the human service centers had already been classified under the state pay plan.

7. A provision that human services provided by a human service center for the Health Department and the Social Service Board shall be subject to joint certification by the Health Department and the Social Service Board for quality assurance on or after July 1, 1981, or on any earlier date requested by a human service center.

Also considered, but not adopted, was a proposal by the Southeast Mental Health and Retardation Center to amend Section 54-40-09 relating to human service centers to provide:

1. That the board of directors of the human service centers consist of two members from each county appointed by the boards of county commissioners of the respective counties within the multicounty area.

2. An effective date of September 30, 1979, for the establishment of eight regional human service centers.

3. That human service centers have access to funds under Title XIX of the Social Security Act.

4. That the mental health, developmental disability, and alcohol and substance abuse components of each human service center be licensed by the Department of Human Services.

MENTAL HEALTH AND RETARDATION CENTER STUDY

The committee visited the mental health and retardation centers in Jamestown, Minot, and Grand Forks and heard reports from the Fargo and Mandan centers. The Jamestown center is under the direction of the superintendent of the State Hospital; whereas, the other mental health and retardation centers are under the direction of a local board of directors and an executive director appointed by the board of directors. The Jamestown center board of directors is an advisory board rather than an administrative board as at the remaining centers.

The committee found that the centers are experiencing the following problems:

1. Inadequate and unstable funding sources.

2. Inability to employ or retain staff psychiatrists.

3. Employee turnover.

4. Duplication of services with area social service centers.

5. No standardization or cohesiveness in programs among the centers.

6. Local boards of directors which do not always have sufficient expertise and time to efficiently operate the centers.

Dr. Hubert A. Carbone, Superintendent of the State Hospital and Director of the Mental Health and Retardation Division of the State Health Department, presented a report entitled "A Proposal for an Integrated Comprehensive Mental Health and Retardation Delivery System for North Dakota." Under his proposal the mental health and retardation centers would be under the direction of the Mental Health and Retardation Services Division of the State Health Department which would have ultimate authority and responsibility for the development and implementation of policies, programs, and administrative procedures of the centers. Citizen advisory, rather than administrative, boards for the centers would continue to be appointed by county commissioners in the regions served by each center. The committee requested a bill draft to implement Dr. Carbone's proposal.

The committee heard much testimony on the proposal from the mental health and retardation centers, the Health Department, and local boards of directors and private agencies. After some amendments, the committee recommends the bill with the following provisions:

1. That the Mental Health and Retardation Division of the State Health Department shall supervise and direct within the limits of legislative appropriations any mental health and retardation service unit established pursuant to Chapter 25-12.

2. That the Mental Health and Retardation Division shall collocate the service unit in each region with the area social service center in each region by July 1, 1981, and develop such rules and regulations as may be necessary to operate a collocated service unit.

3. That the Mental Health and Retardation Division of the State Health Department is authorized to continue to license mental health and retardation service units.

4. That each mental health and retardation service unit shall have a board of directors of not more than 13 members with the following powers and duties:

   a. To determine, review, and evaluate services and programs provided by the units and make periodic reports thereon to the Mental Health and Retardation Division of the State Department of Health, together with any recommendations the board may have for improvement in services, programs, or facilities.

   b. Recruit and promote local financing from private and public sources.

   c. Promote and arrange for cooperation and working agreements with other social service agencies, public and private, and with individuals and organizations in the educational field and judicial branch of government.

   d. Determine and submit budgets to the Mental Health and Retardation Division for approval and submission within the State Health Department budget request.

   e. Perform any other act necessary to properly administer the mental health and retardation service unit.

   f. Determine the type of services to be provided by the unit, subject to the approval of the director of the Mental Health and Retardation Division.

   g. Within the limits of legislative appropriations, employ such personnel as may be necessary to properly staff the mental health and retardation service units. The employment of the executive director and the medical director shall be subject to the approval of the director of the Mental Health and Retardation Division.

COLLOCATION OF AREA SOCIAL SERVICE AND MENTAL HEALTH AND RETARDATION CENTERS

Prior to the final meeting of the committee, the State Department of Health and the Social Service Board met and agreed to support the following relating to the delivery of human services on the regional level:

1. The collocation of comprehensive mental health and retardation and area social service centers in all eight regions of the state by July 1, 1981.

2. Provide for joint client intake, identification of client needs, interagency referral, interprogram policy development, interprogram planning and coordination, and interprogram staff development and training in each collocated center.

3. Encourage both private and public human service agencies to join in the collocation effort.

4. Require that each collocated agency shall be represented by its chief officer on an in-

teragency coordinating council which shall meet monthly to coordinate and deliver center human services within the region.

5. The interagency coordinating council shall meet, not less than annually, with advisory boards, boards of directors, supervisory departments, and other interested human service delivery entities within the region to develop and implement a coordinated and comprehensive human service delivery plan for the region.

6. Provide a fiscal incentive to the county where the collocated center will be located to join in the collocation effort.

7. Bring all personnel, under state supervisory control, within the collocated center under the state central personnel system.

8. Identify the medical component and the social service component in each human service center and provide for joint certification by the State Department of Health and the Social Service Board of such centers for quality assurance.

9. Provide Title XIX funding for a defined medical component in each human service and comprehensive mental health and retardation center.

The committee heard testimony from the Health Department, the Social Service Board and private agencies in support of a bill to implement these recommendations.

The committee recommends a bill, including the above provisions, for the collocation of mental health and area social service centers in all regions of the state by July 1, 1981.

STUDY TO ESTABLISH AN INTERAGENCY COUNCIL

In his report entitled "A Proposal for an Integrated Comprehensive Mental Health and Retardation Delivery System for North Dakota" Dr. Carbone also proposed the establishment of an interagency council. Appointed to this council would be the directors of the State Department of Health, Social Service Board, Vocational Rehabilitation Division, Department of Public Instruction, Employment Security Bureau, and Director of Institutions' Office. The council would be given the responsibility to meet monthly to establish policies and develop agreements and parameters for the delivery of mental health and retardation services. Interagency council members would agree upon the distribution of federal funds administered by each agency so each agency would be allocated funds to facilitate the development of programs and the stability of service delivery systems.

In response to Dr. Carbone's proposal, the committee considered a bill draft to establish a human services interagency council with the responsibility to plan and coordinate the human services system of this state and to allocate federal funds for such services.

The committee received testimony on the bill. The State Health Department supported the concept of an interagency council but was opposed to the proposed bill draft as presented. The department believed the interagency council should not determine policy for the agencies under the council. It believed the interagency council should be directed to evaluate and assess the statewide needs and resources available and that the role of the Governor as the chairman of the interagency council should be included in the bill draft. The department also believed the interagency council should not be given the authority to establish working arrangements and agreements concerning the distribution of federal funds administered by each agency represented on the council.

The Employment Security Bureau testified in support of the bill. It said an interagency council would help to coordinate and eliminate the duplication of human services provided by the state. The Department of Public Instruction said it is opposed to the concept of an interagency council which would determine the distribution of all federal funds received by the Department of Public Instruction. However, the department said it favors cooperation between state agencies in planning human service programs. A representative for the private agencies providing human services in the Fargo area said these agencies support the creation of an interagency council. The agencies believe a bill such as the one establishing an interagency council is necessary to organize the delivery of human services in the private sector.

The State Social Service Board also said it supports the concept of an interagency council but is opposed to the bill as presented. The board said it opposes the concept of an interagency council with the authority to allocate funds received by member agencies. It said the bill provides authority to the interagency council to allocate member agency funds but does not place responsibility for such funds and for program results with the council.

The committee decided not to recommend the bill establishing a human services interagency council.

STUDY TO ESTABLISH A STATE DEPARTMENT OF HUMAN SERVICES

After visiting the Dickinson and Williston human service centers, the committee decided that bringing human service agencies together at the state level into a Department of Human Services may improve the human service delivery system across the state. The committee requested a bill draft to establish a State Department of Human Services which would have the powers and duties now held by the State Social Service Board, the Mental Health and Retardation Division of the State Health Department including institutions under its jurisdiction, and the Division of Alcoholism and Drug Abuse of the State Health Department.

The bill provided that the Governor, with the consent of the Senate, appoint a Human Service Board consisting of seven members. It also directed that the mental health and retardation centers combine with social service centers in each region of the state to form human service centers by July 1, 1981.

The Health Department testified that the mental health and retardation services have been strengthened in the past few years in North Dakota. It said quality mental health and retardation services will not be improved by creating another department responsible for such services. The State Health Council also testified in opposition to the creation of a Human Services Department. The council believes such a department would create additional bureaucracy and expense for the state. The Social Service Board testified that of 34 states which have established a Human Services Department only one state has returned to the type of department it had prior to establishment of a Human Services Department. The board said the committee should review the experience of other states and then pass a bill incorporating all the positive aspects of other states' experiences.

The Southeast Mental Health and Retardation Center presented an alternative bill draft to create a Department of Human Services. Under this bill draft the State Hospital would have been excluded from the Department of Human Services and it provided for the autonomy of the human service center board of directors. The director of the Department of Human Services would be appointed by the Governor rather than by the Social Service Board and the board members would be selected from each of the eight area human service center boards. The State Health Department testified in opposition to this bill draft. The department said its major concern is that under this bill draft the Division of Mental Health and Retardation is removed from the Health Department, but not jurisdiction of the State Hospital. Fractionalizing mental health care is not the way to achieve a uniform delivery of mental health services across the state, the department said.

The committee decided not to recommend a bill establishing a Department of Human Services.

STUDY OF THE ENVIRONMENTAL CONTROL SECTION OF THE STATE HEALTH DEPARTMENT

The committee discussed conducting a study of the Environmental Control Section of the State Health Department. It decided since the Budget "A" Committee had taken action to conduct a performance review of the Environmental Control Section it would hear progress reports from the consultants chosen by the Budget "A" Committee (Booz, Allen and Hamilton) and include the consultants' recommendations in its final report. The final report of the consultants included the following findings:

1. The substance of many environmental control programs in the section is dictated by federal guidelines.

2. Priorities for program implementation are sound and reflect the needs of this state.

3. A high percentage of the professional staff are quite young but they are technically qualified for the work they perform.

4. In the federal Environmental Protection Agency's (EPA) view, program results are very good. North Dakota's federally funded programs are believed to be as good or better than any state within Region 8.

5. To date environmental compliance has been achieved with virtually no appeal or litigation.

6. Inspection of permitted facilities needs additional emphasis to assure that environmental compliance is being maintained.

7. The section's dependence on federal funding has required an accounting of its work performance and has demanded the use of a rigid system of program budgeting.

8. Notwithstanding the control system requirements imposed by EPA, the management systems that link the various levels of section management are very informal.

9. One consequence of the section's informal management procedure is its critical dependence on the special relationship of trust and respect between the section chief and the Legislative Assembly.

10. New responsibilities related to the state's administration of federally mandated programs may tax the informal management arrangement now utilized by the section.

11. The organizational structure of the section is sound, except for the placement of the Environmental Sanitation and Food Protection Division within the section.

12. While no organizational changes in the section are considered necessary now, several questions will surface in the future that will merit some study:

    a. As the section chief approaches retirement age, consideration should be given to whether his replacement should serve both as section chief and as executive officer of the Health Department.

    b. The role of the Environmental Sanitation and Food Protection Division should be reevaluated in the future, perhaps just before the retirement of the section chief. That division's performance might be enhanced if it were assigned to another section of the Health Department.

    c. As the new federal programs in the Water Supply and Pollution Control Division take more definitive shape, consideration should be given to implementing a more formal program management organization below the division director level.

    d. As the present section chief approaches retirement specific plans should be made for his replacement.

13. The internal management and control system should be modified slightly to put in place two new tools that will have high utility to the section chief's replacement:

    a. The section should formalize the analysis of the results being obtained from air and water monitoring programs, and develop a method for summary presentations of these results on a periodic basis.

    b. Upon the initiation of a new federal EPA construction grants program, a monthly reporting procedures should be started to enable the section chief to obtain quick visibility of the status of the enlarging number of project types, particularly for projects in which the section is drawing upon outside resources.

STUDY OF THE DISTRICT HEALTH UNITS

The committee visited the First District Health Unit in Minot and heard reports from the directors of the Upper Missouri District in Williston and the Southwestern District in Dickinson. Testimony at these units indicated that services provided by the units emphasize preventive health in programs offered such as child and youth, maternal and infant, and family planning programs, immunization and water purification programs, clinics for senior citizens and services such as checking blood pressures.

For many years there were only five district health units in the state. The creation of new districts was limited since only federal funds were available to these units. The passage of House Bill No. 1173 by the 1977 Legislative Assembly appropriating $600,000 to district health units was an incentive for the creation of additional health units. In the last two years three additional units have been established and many other counties have increased their health services. Nine counties continue with no public health nurse or sanitation services and four counties have only a public health nurse.

Committee members encouraged the State Health Department to include adequate funds in its 1979-81 budget request for local health departments.

STUDY OF THE STATE HOSPITAL

During the committee's visit to the State Hospital, an overview of the hospital's function was presented and it was reported that the hospital had 541 patients. The hospital's goal is to have a one-to-one ratio of clinical employees to patients; the current ratio of clinical employees to patients is about 3 to 4.

The hospital said the staff is well trained and educated but additional staff is needed. Additional professional treatment for the patients is needed in all treatment areas at the hospital. There is also a need for the replacement or modernization of a number of old buildings at the State Hospital.

CENTRAL PERSONNEL DIVISION STUDY

Section 3 of Senate Bill No. 2010 of the 1977 Legislative Assembly directed the Division of Mental Health and Retardation of the State Health Department, the mental health and retardation centers, and the Central Personnel Division to determine the changes that would take place in salary levels of center personnel if such centers would be included under the supervision of the Central Personnel Division.

The Central Personnel Division presented a report regarding the classification of mental health center personnel under the state classification system. Two hundred positions were included in the survey of the four mental health and retardation centers not currently under the central personnel classification system. The actual salary rate for individual employees was reported for 156 of the positions. Forty-seven percent of these positions would fall into the current state classification system, 43 percent were below comparable positions in the system, and 10 percent were above comparable state classification salary ranges. All 200 positions would fall into present titles under the system and all positions could be classified and brought into the state pay plan. The 10 percent of the positions with salaries above comparable state classification salary ranges were primarily in the higher level positions. Additional appropriations possibly would be required to bring center positions into the state pay plan.

HIGHER EDUCATION

Senate Concurrent Resolution No. 4015 directed a study, with the assistance and cooperation of the State Board for Vocational Education and the State Office of Adult Education, to investigate the needs and financing of adult and vocational education, giving special emphasis to the effect of agricultural and industrial development in creating new and emerging occupations, financing of adult education including evening schools, and the vocational needs of the adult minorities of the state.

Senate Concurrent Resolution No. 4070 directed a study of the feasibility of and necessity for a Midwest Regional Education Compact.

House Concurrent Resolution No. 3052 directed the Legislative Council to consult with the Old West Regional Commission in developing plans for a regional veterinary educational system.

Committee members were Senators S. F. Hoffner, Chairman, Curtis Peterson, Frank Shablow, James Smykowski, Harvey Tallackson, and Russell Thane; Representatives Richard Backes, John Crabtree, William Gackle, Gordon Larson, Richard Lokken, Joann McCaffrey, Doug Nordby, and Mike Timm; and Citizen Member Bryce Streibel.

The report of the Committee on Higher Education was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

ADULT AND VOCATIONAL EDUCATION

Senate Concurrent Resolution No. 4015 directed the Legislative Council, with the cooperation and assistance of the State Board for Vocational Education and the State Office of Adult Education, to conduct an interim study of the needs and financing of adult and vocational education. The committee chose to limit its study to (1) adult basic and secondary education (ABSE) including general education development (GED); and (2) vocational or job programs not requiring a degree. The committee specifically chose not to study general interest or avocational courses, continuing professional education courses, or postsecondary courses leading to a degree offered by institutions of higher education or professional schools.

ADULT EDUCATION

Although there are a number of federally funded programs administered on the state level providing a wide variety of adult education programs, the number of programs which actually deliver either ABSE or GED services is limited. Not counting sponsoring organizations which serve a limited clientele such as the military or the Bureau of Indian Affairs, adult education courses are offered by:

1. The adult education program administered by the State Office of Adult Education located in the Division of Continuing Education at the University of North Dakota in Grand Forks.

2. The Division of Independent Study which is under the State Board of Public School Education but has offices in Fargo. This is a state-funded correspondence program for high school level course work. About 20 percent of these students are adults.

3. The State Board for Vocational Education which provides basic education for adults to supplement their vocational education.

The committee concentrated its study on the adult education program headquartered at the University of North Dakota since it is the officially designated state agency for administering adult education in North Dakota.

The three basic items for the committee to determine concerning the study of adult education were:

1. The needs and objectives of adult education, including the need for state funding.

2. What legislation is needed, including any possible revision of North Dakota Century Code Chapter 15-46 relating to evening schools.

3. The proper administrative structure for adult education.

The National Advisory Council on Adult Education has estimated that more than 160,000 North Dakota adults 25 years of age and older lack a high school education. In several counties, more than 40 percent of the adult population falls into this category. Persons involved with adult education programs on Indian reservations testified concerning special problems encountered by persons on the reservations, including high unemployment caused by lack of basic skills.

Testimony before the committee indicated that since 1967 about 15,000 adults have been served by about 30 local programs with funds administered by the State Office of Adult Education, with statewide enrollments increasing each year. The average annual cost per student has been about $120, based on costs incurred by the programs of instruction exclusive of state administration and special projects. Federal law requires that states provide at least 10 percent of the total money spent on ABSE when federal money is used. In North Dakota there are no state appropriations for this purpose, so the matching funds are provided by the local education agencies and by the University of North Dakota Division of Continuing Education. These matching funds, including "in kind" contributions and allocated salaries, total about $40,000 per year. In a recent year, 22 local programs served 2,369 adults.

The State Office of Adult Education currently receives approximately $360,000 per year in federal funds, including funds to defray administrative costs. A total of $538,625 in federal funds was received by school districts for adult basic and secondary education programs during the 1977-78 school year, including $311,473 administered by the State Office of Adult Education, $110,198 in CETA funds dedicated for adult basic or remedial education, $78,954 administered by the State Board for Vocational Education and set aside for disadvantaged adults, and $38,000 targeted for basic education and remedial services in the Upward Bound programs for veterans at North Dakota State University.

During the past year, four or five communities indicated an interest to the state office at UND in establishing their own adult education programs. However, because of limited funding, the state office was unable to offer any financial support and the programs were not provided. During that same time, a number of existing programs were disbanded, and these decisions were made locally. A serious problem was noted with the federal money received for this program. Federal regulations require that no more than 20 percent of that money can be spent for level two or secondary education. However, more than 20 percent of the students are at the secondary level.

A group of local ABSE directors recommended to the committee that a minimum of $80,000 per year in state funds be appropriated and that half of this amount be earmarked for state administration to free up federal funds now used for this purpose, and that the other half be used to support instruction at the secondary level.

The committee members expressed the opinion that, although a grant of state money would not necessarily increase the federal level of funding, it is important to establish at least a minimum level of funding so as to indicate support for these types of programs.

The committee reviewed Chapter 15-46 which relates to evening schools and which provides that the state is to pay one-half of the salaries of evening school teachers. Chapter 15-46 also contains a requirement that local school boards establish evening schools upon the direction of the city or county superintendents of schools or the State Superintendent of Public Instruction, or upon petition of 10 or more persons desiring instruction in an evening school. In addition, this law provides for a county mill levy to raise $500 for matching school district funds for evening schools. This legislation was enacted during the early part of this century and the state funded evening school teachers' salaries from 1917 to 1929. The appropriations for this program ended during the depression and have never been reinstated, although the law requiring state funding has not been repealed. The committee members were of the opinion that many of the provisions found in Chapter 15-46 are obsolete and should be changed to apply to adult education programs.

It was pointed out that North Dakota's adult education program is the only such program in the country which is not under the control of the state educational department. The Office of Adult Education was physically located at the University of North Dakota by Executive Order in 1967 pursuant to a provision in the Federal law which authorized the governor of each state to designate an appropriate agency if no other agency or officer qualified. Although there were no specific complaints about the way this program has been administered, nor were there any complaints from the University of North Dakota which houses the program, it was noted that the mere geographical displacement between the program at Grand Forks and the other state administrative offices housed in Bismarck created problems. It was also noted the Superintendent of Public Instruction works closely with local school superintendents, and placing the Office of Adult Education in his department should give the program better exposure. The committee concluded that, administratively, the distribution of money and services would be more efficient if the program were placed under the control of the Superintendent of Public Instruction.

Recommendations

The committee recommends three bills relating to adult education. The first bill appropriates, from the general fund, the sum of $80,000 to the State Office of Adult Education for the purpose of funding and administering adult basic and secon-

dary education programs throughout North Dakota for the biennium beginning July 1, 1979, and ending June 30, 1981.

The second bill is a revision of Chapter 15-46 changing its applicability from evening schools to adult education programs. The first section grants the local school board of any public school district the power to establish an adult education program, making it available to all persons over 16 years of age who, from any cause, are unable to attend the public schools of the district. The second section allows the board of a public school district to make an annual appropriation for the purpose of aiding and promoting these adult education programs. This bill also repeals that section of Chapter 15-46 which would require a local school district to establish an evening school upon the petition of 10 or more persons over 16 years of age. Also repealed are those sections which provide for state payment of one-half of the salaries for the evening school teachers and which place control of the funds for evening schools under the county superintendent of schools.

The third bill adds a new section to Chapter 15-21 empowering the Superintendent of Public Instruction to coordinate adult basic and secondary education programs, to administer state and federal funding for such programs, and to hire a director and such assistants as may be necessary for those purposes.

VOCATIONAL EDUCATION

The State Board of Public Education is designated as the State Board for Vocational Education pursuant to Chapter 15-20.1 and is charged with administration of the provisions relating to vocational education. The board is also charged with administering the funds provided by the federal government and by the state for vocational education. Presently, funds allocated to the Division of Vocational Education are dispersed to 148 high schools in the state and to six secondary multidistrict vocational education centers. The six multidistrict centers are in Oakes, Grafton, Devils Lake, Cooperstown, Wahpeton, and Valley City.

At the postsecondary level, vocational programs are offered at Bismarck Junior College, Dickinson State College, Lake Region Junior College, North Dakota State School of Science, NDSU- Bottineau, UND-Williston, and the Standing Rock Community College at Fort Yates. Adult vocational education programs, principally in farm management education, are offered at 24 locations throughout the state.

The committee studied a report entitled "North Dakota Vocational Education Master Plan Committee Report, 1970-1975." This report contains the results of a year long effort by approximately 125 citizens of North Dakota who studied vocational education and made suggestions and recommendations for future action. At the present time, if consumer and homemaking students are included in the statistics, there are between 53,000 and 55,000 students enrolled in vocational education courses throughout the state.

It was suggested that the study of vocational education be organized in a manner similar to the study conducted during the 1967-69 interim. At that time, a separate subcommittee was appointed to study the problems of vocational education. The committee agreed to let Mr. Carrol Burchinal and Mr. Reuben Guenthner of the Vocational Education Department and Senator S. F. Hoffner, Chairman of the Higher Education Committee, select a citizen committee to study vocational education in North Dakota and to make recommendations to the State Board for Vocational Education and the interim Committee on Higher Education. This study committee was to investigate the needs and financing of adult, secondary, and postsecondary levels of vocational education throughout the state. A 30-member committee was selected, consisting of persons representing business, agriculture, school administrators, vocational education directors, postsecondary vocational institutions, and minorities.

The study committee held five meetings, deciding at its first to dedicate each subsequent meeting to the study of a different area of vocational education. The areas of study were adult vocational education, postsecondary vocational education, secondary vocational education, and vocational education for minorities. Mr. Ted Renner, a consultant hired by the State Board for Vocational Education, assisted the study committee with this study. One meeting was held at the Oakes Multidistrict Vocational Education Center and committee members toured the facility. Another meeting was held at Lake Region Junior College in Devils Lake. During that two-day meeting, time was set aside for committee members to tour the Sioux Manufacturing Plant located on the Fort Totten Indian reservation.

At all of these meetings, people specializing in the particular area being studied presented information and recommendations to the study committee. At the end of the meetings, a list of recommendations for that area of vocational education was drawn up by the members of the study committee and voted upon. There was no attempt to prioritize these recommendations as it was believed that each was important in its own right. At various times during this study, preliminary reports of the progress of the study committee were made to the interim Committee on Higher Education.

Recommendations of the Citizens Study Committee on Vocational and Adult Vocational Education

The final recommendations of the study committee were as follows:

Recommendations Relative to Adult Vocational Education

1. Provide for an appropriation to Section 15-46-03 to establish an increased level of adult education. Reimbursement to a participating district would be established by a state agency designated by the legislature.

2. Funding priority list: (1) support existing programs; (2) if there is funding for expansion it should be used to expand programs with part-time staff because of the number of people served in these programs. This would include people involvement for program retraining and new and emerging programs utilizing full- or part-time staff; and (3) if additional funds are still available they can be used for the expansion of full-time programs.

3. To coordinate and clarify for all North Dakotans what adult education is, not only vocational education but also postsecondary academic, continuing professional education, general interest and avocational courses and basic skills education; and to identify for all the public as to where these programs are offered.

Recommendations Relative to Postsecondary Vocational Education

1. It is recommended that the State Board for Vocational Education establish a method of reimbursement of approved vocational programs at the three designated junior colleges which funds all costs of those programs, exclusive of funding for leases of instructional facilities on a long-term basis, not covered by tuition, fees, and state aid.

2. It is recommended that the State Board for Vocational Education purchase and assign the equipment used in approved vocational programs at the three designated area postsecondary colleges.

3. It is recommended that the State Board for Vocational Education establish a policy which allows funding for leases of instructional facilities on a long-term basis at the three junior colleges.

4. It is recommended that the State Board for Vocational Education appoint a staff person to work directly with the designated area postsecondary vocational institutions.

5. It is recommended that the State Board for Vocational Education be the sole agency for annually approving all vocational programs at the postsecondary institutions in North Dakota.

Recommendations Relative to Vocational Education

1. Present legislation be reviewed to remove unneeded language relative to terms of office of members of center boards as reflected in Chapter 15-20.2.

2. Clarify present legislation as applicable to multidistrict centers to include and make it applicable to mobile labs and cooperative vocational education.

3. Recommend to the State Board for Vocational Education to review existing legislation relating to determination of local costs and resulting reimbursement procedures regarding funding support for multidistrict centers, mobile labs, and cooperative arrangements. The intent of this review should be to modify present legislation or initiate new legislation to provide incentive-type funding to prevent further withdrawals of participating schools currently participating in existing centers, mobile labs, and cooperative arrangements and by this action to encourage additional participation of now nonparticipating schools, which will consequently result in meeting the State Board for Vocational Education's goal of making vocational education available to as many of the state's students as possible and through these actions to also utilize training facilities to the maximum degree. The proposed legislation should result in a reimbursement effort of from 50 to 66 2/3 percent of the operational budget.

4. Recommend to the State Board for Vocational Education a review of existing reimbursement procedures regarding funding for secondary school vocational programs, and further recommend that reimbursement should be between 60 to 80 percent of the cost of salary, travel, and equipment.

Recommendations Relative to Vocational Education for Minorities

It is recommended that the State Board for Vocational Education establish and fund a committee with appropriate representation from, but not necessarily limited to, Fort Berthold Community College, Little Hoop Community College, Standing Rock Community College, Turtle Mountain Community College, and United Tribes Employment Training Center to formulate a com-

prehensive plan for postsecondary and minority vocational education in the state, including areas such as service delivery, institutional roles, and program funding.

The recommendations of the Citizens Study Committee on Vocational and Adult Vocational Education were first presented to the State Board for Vocational Education. As many of the recommendations could be implemented by the board without any legislative action, the board has taken them under advisement. Other recommendations, such as the one requesting reimbursement for evening schools, are covered in the recommendation of the Committee on Higher Education to provide state funding to supplement federal and local funding for adult education programs. Another of the citizens committee recommendations, calling for the State Board for Vocational Education to be the sole agency to approve postsecondary vocational programs in North Dakota, may be in violation of Article 54 of the Amendments to the North Dakota Constitution which grants full authority over courses at institutions of higher education to the State Board of Higher Education. Some of the recommendations, including the one related to the purchase of equipment used in approved vocational education programs at the three designated postsecondary institutions and the recommendation to establish a committee to formulate a plan for minority education, will require funds and the state board has included them in its budget request. On the other hand, the state board decided not to request funding for the additional position which would be required under the recommendation to assign a staff person to work directly with the designated postsecondary vocational institutions.

The committee is recommending a bill as a result of the recommendation related to mobile labs used by multidistrict vocational education centers.

Recommendation

The committee recommends a bill relating to the assessment of participating districts for expenses of multidistrict vocational education centers using mobile units solely. This bill would amend Section 15-20.2-08 to include language which would allow center boards utilizing mobile units solely to divide the expenses of that mobile unit among the school districts participating in the center. This proration is to be determined by the program utilization of each of the participating school districts using both the ratio of the school district's high school enrollment to the total high school enrollment of all participating school districts in the center, and the school's accessibility to these programs.

MIDWESTERN EDUCATION COMPACT

An initial draft of the Midwestern Regional Education Compact was introduced as Senate Bill No. 2508 during the 1977 Legislative Session. When a final draft was not completed during the legislative session, Senator Russell Thane, the original sponsor, recommended the bill be indefinitely postponed and a resolution be passed to study the concept during the interim.

The Midwestern Education Compact (the word "Regional" has been dropped from the title since early drafts) was drafted by the Midwestern Conference of the Council of State Governments and the Midwestern Governors Conference. Senator Thane served both as a member of the drafting committee for the compact and as a member of the Committee on Higher Education. The purpose of the compact, as stated in Article I, is "to provide greater educational opportunities and services utilizing both public and private institutions through the establishment and efficient operation and maintenance of coordinated educational programs and services for the citizens residing in the several states which are parties to this compact, with the aim of furthering access to and choice of education."

Testimony before the committee indicated several advantages to joining a compact of this kind. Among them would be greater opportunities for students from this state to attend institutions in other states with programs not offered in this state, the possible exchange of professors, reduced contract costs with other states, and a better position in negotiating contracts. It was noted a compact of this kind is particularly advantageous for a smaller state.

However, passage of the compact does not automatically mean tuition reciprocity or other types of agreements between states. These must be worked out between each of the individual states. The compact itself would act as a "clearinghouse" to let students know what types of educational opportunities are available both in North Dakota and in the other compacting states.

At the present time, three major multistate regional education compacts exist in the United States. The Southern Regional Education Compact, which was established in 1948, presently consists of 16 member states: from Texas east to Florida and north to Maryland and Delaware. The Western Interstate Commission for Higher Education was established a few years later, in 1951, and presently includes the 11 most westerly states in the continental United States, plus Alaska and Hawaii. The New England Board of Higher Education dates from 1955 and includes all six states in that region. The primary purpose of each of these

groups is to promote efficient and economical use of limited higher educational resources, especially in graduate and professional fields.

The original Midwest plan was to involve the 12 states which comprise the Midwestern Conference of the Council of State Governments. However, the Midwest Governors Conference also was investigating the possibility of sharing educational programs and, as a result, the present plan includes the membership of both of these organizations. Thus, there are 15 states initially eligible, including Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, and Wisconsin. It was pointed out that states not included in this group would be eligible to join later upon consent of a majority of the participating states. It was also noted that at least two of the 15 eligible states already belong to another compact and may not wish to join in this one.

North Dakota is presently involved in several voluntary agreements between states and individual institutions on a smaller scale throughout the country. There is a tuition reciprocity agreement with Minnesota to improve postsecondary opportunities for the students of both states. Also, the Legislative Assembly has authorized the Board of Higher Education to contract with schools of veterinary medicine, dentistry, and optometry throughout the country to provide spaces for North Dakota residents interested in entering those professions. Additionally, Concordia College, Moorhead State University, and North Dakota State University cooperate in an arrangement called the Tri-College University Consortium whereby students from one college can take courses at the other two colleges at no extra cost and without going through three separate admission procedures.

Two neighboring states, South Dakota and Minnesota, have already passed the enabling legislation to form a Midwestern Education Compact, but at least six states must enact the compact before it will become initially effective. The cost to each participating state is contingent upon two variables, the actual budget and the number of states and the population mix of the member states. The board which will be appointed by the member states will determine the budget requirements. The compact provides that one-half of the total budget shall be apportioned among the compacting states in equal shares and the other half shall be apportioned according to the ratio of each state's population to the aggregate population of the entire group of compacting states. In a briefing paper by the Midwestern Office of the Council of State Governments, it has been estimated that if the Midwestern Education Compact consisted of 12 selected states and had an annual budget of $400,000, which has been described as a minimal budget for such a compact, North Dakota's share would be $18,866.67. With the same assumptions, if the budget were increased to $600,000, North Dakota's share would be $28,300.

Recommendation

The committee recommends a bill to enact the Midwestern Education Compact. It was noted that this bill must be passed in "substantially" the same form by at least six states to become effective.

Some significant features of the compact as contained in Section 1 of the bill are:

> Article 3 establishes the Midwest Education Board, gives each compacting state five members on that board but only one vote and establishes some of the internal operating procedures such as the election of officers, hiring of an executive director, and minimum meeting requirements, among others. Board members from each state would consist of the Governor or his designee, two legislators, and two citizens, one of whom shall be from the field of education.
>
> Article 4 lists the powers of the board including the power to contract, to inventory educational programs in the compacting states and serve as a clearinghouse, and to prepare a comprehensive educational guide for the compacting states.
>
> Article 5 controls the raising and spending of funds by the board, including the formula for apportioning compact costs among the member states described previously in this report. This article also provides that the accounts of the board are to be open for inspection by duly authorized representatives of the compacting states and other persons authorized by the board.
>
> Article 6 lists the states initially eligible to join the compact and requires at least six states to ratify it before it becomes effective.
>
> Article 7 details the method of withdrawal from the compact and also provides for suspension or termination of states upon default in the performance of any of their obligations. A withdrawal would not be effective until two years after enactment of a withdrawal statute.

Section 2 of the draft provides for a method of appointing North Dakota's members to the ex-

ecutive board; Section 3 requires contracts under the compact be filed in the Secretary of State's Office; Section 4 allows the Governor and the Legislative Assembly to periodically review the executive board's activities; Section 5 requires notice of withdrawal be sent to all members of the board and the executive director; and section 6 provides an effective date of July 1, 1979, and directs the Secretary of State to notify the Governor and legislatures of all eligible states of the ratification of the compact by North Dakota.

REGIONAL VETERINARY EDUCATIONAL SYSTEM

Under current law, Sections 15-10-28 and 15-10-28.1, the State Board of Higher Education is granted the authority to enter into contracts with out-of-state institutions of higher education for the purpose of providing veterinary education to North Dakota students. In the past, North Dakota has contracted with institutions in Colorado, Iowa, Kansas, Minnesota, and Missouri. The problem with the current contract procedure is that the contracts are easily cancelled by the other states, and the arrangements produce uncertain educational opportunities for North Dakota veterinary students.

The Old West Regional Commission, consisting of the governors of North and South Dakota, Montana, Nebraska, and Wyoming, and a federal co-chairman, began its study of a regional veterinary educational system based upon the findings of a study conducted by Dr. Clarence Cole of Ohio State University. The commission established a study team consisting of the chairmen of the veterinary medical departments in each state in the Old West Regional Commission.

The plan arrived at by the Old West Regional Commission study team provides that the first year of professional curriculum would be offered at North Dakota State University, South Dakota State University, and the University of Nebraska at Lincoln (UNL) in the initial stages of the regional program. Classes at each of these institutions would be composed of DVM candidates plus approximately equal numbers of bachelor's or master's degree candidates. After the first year of the professional curriculum, all DVM candidates would proceed to the next two years of the curriculum at the base school at UNL. Those students that participated as bachelor's or master's students would enter the employment market or continue graduate studies in a related field. The final year for DVM candidates would be spent at various places of training, such as at universities or with actual veterinary practitioners.

Montana and Wyoming, two states in the Old West Regional Commission, have asked not to be considered part of the plan at this time, and other states could participate in this program on a contractual basis or would have the option to participate on an active basis in the same manner as the other states.

Following this study plan, it was recommended to the Old West Regional Commission that a regional plan be set into motion and that the Old West Regional Commission fund a development project to move the region toward a long-range plan to meet the comprehensive needs for veterinary medical education and services. The model recommended for further development was the study team plan mentioned above. It was also recommended that individual states have the option to participate either on an active basis by providing portions of the professional curriculum or by contracting with other actively participating states for student access to the program.

The objectives of the proposed development project are as follows:

1. To prepare a detailed developmental program of the options provided by the study team plan:

   a. To explore alternative funding options for the establishment of the regional plan.

   b. To develop essential draft documents concerning the program; i.e., preaccreditation reports, interstate agreements, preliminary architectural plans, etc.

2. To provide a schedule for supplying the essential information necessary for making critical decisions within each of the Old West Region states.

3. To provide an organizational and supervisory structure that assures liaison among the five states and the Old West Regional Commission concerning the detailed development program.

To carry out this study, a nonprofit corporation, Veterinary Education and Service Project (VESP, Inc.), was formed to receive the $280,000 which the Old West Regional Commission set aside for the project, and a full-time director, formerly a veterinary school dean, was hired.

The probable cost for the construction of additional facilities has been estimated by the architectural and planning firm, the Ehrenkrantz group. Its studies took into account coordination with existing facilities on each campus and program responsibilities at each university.

The total capital expenditures are estimated at the proposed time of bid to be $45,866,056. Nebraska will need to build facilities costing $28,302,610; North Dakota, $2,971,965; South Dakota, $2,971,965; and Montana, $3,148,636. The planned new construction at Wyoming is estimated to cost $8,470,890 with $3,500,000 of that amount for the new regional college component and the remaining $4,970,890 for additional college of agriculture space not related to the new regional college. Thus, while the total estimated building costs are $45,866,056, the amount actually assigned to the regional college of veterinary medicine is $40,895,176.

The tentative schedule of project development events for participating states calls for a final completion of the preclinical facilities and institutional occupancy by June 1982. The first class of veterinary students in the first year of the professional curriculum at the separate participating universities would begin in September 1982. The final completion of construction of the clinical facilities and institutional occupancy would occur in March 1984 and the first class of veterinary students to graduate would be in June 1986. North Dakota can expect 13 students to participate in the program each year. At the present time, an inquiry is being made into the possibility of federal funding for at least 50 percent of the cost of this program.

From testimony given before the committee, it appears that some of the practicing veterinarians in North Dakota are not in favor of this plan. The primary concern is with the cost of the new facilities. Many of the veterinarians believe that the present method of contracting with other veterinary medical schools is sufficient to provide North Dakota with the veterinarians that it will be needing in the future. It was pointed out that many of the states are as dependent on the money North Dakota supplies for the seats as North Dakota is dependent upon them for providing those seats. It was also noted that at a recent meeting of the state veterinarians a resolution to oppose this plan was defeated.

The study resolution expressed support for the development of a regional system of veterinary medical education and directed the committee to consult and cooperate with the Old West Regional Commission's study, but no legislation was anticipated as a result of this study during this interim. Therefore, the committee makes no recommendations concerning the regional veterinary educational system, preferring to wait until the proposed plan is more formalized and more information is available.

INDUSTRY, BUSINESS & LABOR

The Committee on Industry, Business, and Labor was assigned two study resolutions. Senate Concurrent Resolution No. 4081 directed a study of the purposes and effects of the Municipal Industrial Development Act; and Senate Concurrent Resolution No. 4089 directed a study of the feasibility and desirability of regulating the transfer of control of banking institutions. In addition, the chairman of the Legislative Council authorized the committee to study the transfer of control of credit unions and savings and loan associations.

Committee members were Senators Theron Strinden, Chairman, Stella Fritzell, Clayton Lodoen, Chester Reiten, Jens Tennefos, and Stanley Wright; and Representatives Paul DuBord, John Gengler, James Gerl, Ray Metzger, Charles Scofield, and Wilbur Vander Vorst.

The report of the Committee on Industry, Business, and Labor was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

MUNICIPAL INDUSTRIAL DEVELOPMENT ACT STUDY

North Dakota Century Code Chapter 40-57 (Municipal Industrial Development Act of 1955) authorizes municipalities (defined as cities, counties, and municipal parking authorities in the case of parking projects) to issue bonds to finance revenue-producing enterprises engaged in:

1. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.

2. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.

3. Providing hospital, nursing home, or other health care facilities and service.

4. Improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.

5. Public vocational education.

6. Any other industry or business not prohibited by the Constitution or laws of North Dakota.

Except for items 3, 4, and 5, projects financed by industrial revenue bonds cannot include those undertakings financed by revenue bonds issued under North Dakota Century Code Chapter 40-35 (water supply systems, sewage, waste, and storm water systems, gas and electric supply systems, parking lots, trailer courts, and facilities for motor vehicles and house trailers, public transportation systems, and airport facilities).

Although bonds issued under Chapter 40-57 are usually referred to as industrial revenue bonds, municipalities are authorized to issue revenue or general obligation bonds to finance projects, acquire property for projects, lease projects to industrial or commercial enterprises or school districts for vocational education purposes, provide for the payment of the bonds, mortgage the projects in favor of the bondholders, contract with any political subdivision and state agency concerning the projects, accept federal funds for projects, sell property connected with the projects, and issue revenue bonds to refund bonds previously issued.

Revenue bonds issued to finance projects may be authorized by ordinance or resolution of the governing body of the municipality.

General obligation bonds issued to finance a project may be authorized by a municipality only after approval by two-thirds of the electors of the municipality at an election called for that purpose.

Original 1955 Act

As originally enacted in 1955, Chapter 40-57 authorized cities to issue revenue bonds for projects defined as any properties, real or personal, useful in connection with revenue-producing enterprises engaged in:

1. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.

2. Storing, warehousing, distributing, or selling products of agriculture, mining, or manufacture.

Specifically exempted from the types of projects financed by industrial revenue bonds were those undertakings financed by revenue bonds issued under Chapter 40-35.

Subsequent Amendments to the 1955 Act

As enacted in 1955, Chapter 40-57 was available only for use by cities. However, in 1965 the definition of municipality was expanded to include counties and in 1977 the definition was further expanded to include municipal parking authorities in the case of parking projects.

Within the definition of project is a listing of authorized activities of revenue-producing enterprises. In 1965 this listing was expanded to include any industry or business not prohibited by the Constitution or laws of North Dakota. In 1973 a specific authorization for the purchase, acquisition, construction, maintenance, and operation of a hospital was added. In addition, the listing was expanded to include improvements or equipment used for the abatement or control of environmental pollution in connection with any revenue-producing enterprise. Public vocational education was added to the list in 1975; and in 1977 the list was expanded to specifically provide for hospital, nursing home, or health care facilities and service.

With respect to bonding authority of municipalities, in 1961 general obligation bonds were authorized to be issued under Chapter 40-57. In addition, state banks were authorized to purchase industrial revenue bonds up to five percent of their capital. In 1971 state or national banks were authorized to purchase bonds up to 10 percent of their unimpaired capital and surplus, and in 1977 the amount was increased to 25 percent of their unimpaired capital and surplus. In 1965 private bond sales were authorized. In 1977 municipalities were authorized to issue refunding bonds to refund bonds previously issued under Chapter 40-57.

With respect to taxes, the original 1955 Act prohibited tax exemptions for projects. In 1965 this prohibition was removed and a five-year exemption from the personal property tax and the corporate income tax was enacted. The tax exemptions were repealed in 1975 (new industry tax exemptions were authorized under Chapter 40-57.1 in 1969).

Recommendations Made to Committee

After reviewing the changes made to the original 1955 Act, the committee focused its attention on the various municipalities which have approved the use of industrial revenue bonds and upon the types of projects for which industrial revenue bonds have been issued.

From information available to the committee, it appears that 25 cities have authorized 64 issues of industrial revenue bonds. Individual bond issue amounts range from $40,000 to $16 million, with a cumulative total of $106,818,000.

The information also indicated that eight counties authorized 10 industrial revenue bond issues and one general obligation bond issue. The amount of individual county issues ranged from $300,000 to $20 million, with a cumulative total of $68 million.

The figures with respect to the number and amounts of industrial revenue bond issues are based on information starting with the first industrial revenue bond issue in 1961 and extending through 1977.

The various types of revenue-producing enterprises financed through industrial revenue bonds may be grouped into seven broad and to some extent overlapping categories: agriculturally related, food processing and distribution, light industry, retail, health care, utility pollution control, and vocational education. More specific examples include hospitals, light industry/manufacturers, food product processors, grain and feed processors, fertilizer plants, shopping centers, retail outlets, and nursing homes.

The committee received testimony from representatives of cities and counties which have issued industrial revenue bonds and from representatives of enterprises financed by industrial revenue bonds. The testimony described the use of, and any problems with, Chapter 40-57. In addition, information was supplied on specific questions proposed by the committee to the representatives of the entities involved.

On a promotional side of Chapter 40-57, the Business and Industrial Development Department pointed out five advantages of industrial revenue bond financing:

1. The municipality is able to market its bonds at a lower interest rate than private industry, thus building cost is reduced.

2. Bond interest is exempt from state and federal income taxes on issues of less than $1 million dollars (larger amounts under special circumstances).

3. The building and equipment may be sold to industry on a lease-purchase basis, thus corporate funds are available for operating capital which otherwise would be tied up in capital investment.

4. No municipality has the power to operate any project except as a lessor.

5. Bond issuance indicates local support for the project.

An outline of the mechanics for receiving industrial revenue bond financing is that an enterprise requests the governing body of the municipality to issue industrial revenue bonds, the municipality issues the bonds, the proceeds of the bonds are used to construct the project, and the project is leased to the enterprise. Rentals under the lease agreement coincide with payments of principal and interest on the bonds. If the enterprise defaults on the bonds, only the enterprise is liable. The only instance where the municipality would be liable on the bonds is where the municipality has issued general obligation bonds (only one issue of general obligation bonds under Chapter 40-57 has been made).

The concerns expressed to the committee were:

1. Chapter 40-57 does not require the municipality to consider a bond issue's effect on existing firms.

2. Bonds issued under Chapter 40-57 should be available only for noncompetitive users.

3. Bonds issued under Chapter 40-57 should not be available to finance competing industries, retail businesses, hotels, and motels.

4. Although the original intent of Chapter 40-57 is assumed to be for financing industrial development and creation of jobs, bonds are available to industries that engage in more than manufacturing and warehousing.

5. No state or local agency has complete information on the issuance of bonds under Chapter 40-57.

6. Chapter 40-57 provides no method for a municipality to review a project to ensure proper use of bond proceeds.

7. Enterprises play cities and counties against one another for bond issuance.

8. Advertisements of industrial revenue bond sales create an impression that the bonds are liabilities of the issuing municipality.

9. Large enterprises normally receive bonds under Chapter 40-57, while small enterprises do not.

10. Bonds issued under Chapter 40-57 compete with "legitimate" municipal issues for attracting investment funds.

Representatives of enterprises receiving financing through industrial revenue bonds pointed out that interest rates under industrial revenue bond financing are one and one-half to two percent lower than for conventional financing, but the availability of industrial revenue bond financing does not make an unsatisfactory project satisfactory. The availability of industrial revenue bond financing comes into play for a borderline project or in making project site selection decisions. From the enterprise's standpoint, the bonding procedures under Chapter 40-57 are complex, but no statutory problems are present with respect to bond issuance. Representatives of enterprises testified that there has not been the extent of abuse in North Dakota that warrants additional regulation. Contrary to what representatives of municipalities suggested, representatives of enterprises contended that the amount of outstanding industrial revenue bonds or a default on industrial revenue bonds does not affect the bond rating of a municipality or the ability of the municipality to market its legitimate issues.

Committee Recommendations

During the course of the study, the committee experienced the effect which lack of adequate information concerning industrial revenue bond issues has on determining the effects of Chapter 40-57. There is no agency which is required or even authorized to compile information concerning industrial revenue bond issues in North Dakota. This lack of verified information made it difficult for the committee to determine the types of revenue-producing enterprises financed by industrial revenue bonds, the location of such enterprises, the amount of industrial revenue bonds issued in North Dakota, and any adverse effects from such bond issues.

The committee recommends a bill to amend the statute which presently provides that no notice to or consent of any governmental body or public officer of the state is required for the issuance of bonds under Chapter 40-57. The bill provides that upon the issuance of bonds under Chapter 40-57, the project lessee must furnish to the State Securities Commissioner information concerning the name of the project lessee, location and nature of the project, amount and nature of the bonds issued, general terms and nature of the financing arrangement, and a copy of any financial statement of the offering. As recommended by the committee, the bill is intended to provide a means whereby the Securities Commissioner could compile information concerning bond issues under Chapter 40-57.

Much of the testimony presented to the committee, and the discussion by committee members, concerned the use of industrial revenue bond financing by retail enterprises and by enterprises which may be in competition with existing enterprises. The committee, recognizing the need to promote discussion and public awareness of

municipally sponsored financing of revenue-producing enterprises, recommends a bill to require the governing body of the municipality to give notice and hold a public hearing on a proposed bond issue under Chapter 40-57. The notice is to be published weekly for two weeks prior to the hearing and is to specify the time and place of the hearing, and the amount and purpose of the proposed bond issue. The bond issue could not be approved by the governing body unless, after the public hearing, it appears that the approval is in the public interest of the municipality.

A substantial portion of the study concerned the use of industrial revenue bonds for financing retail or competing enterprises. It was thought that the original intent of the Municipal Industrial Development Act was not to provide industrial revenue bond financing for retail enterprises or for enterprises which would directly compete with existing enterprises. Information presented to the committee indicated that a number of industrial revenue bond issues were made for retail enterprises and also for enterprises considered to be in direct competition with existing businesses. In addressing this problem, the committee makes two recommendations that restrict the use of industrial revenue bond financing for retail enterprises and for enterprises in competition with existing businesses, without severely restricting the use of industrial revenue bond financing.

The committee recommends a bill that would restrict the issuance of industrial revenue bonds for competing enterprises. The bill requires a potential project lessee to notify competitors of the potential project in a manner similar to the notification required for obtaining property and income tax exemptions under Chapter 40-57.1. The notice is to be published prior to the consideration of the application for bond issuance by the governing body of the municipality. The governing body could not approve the bond issue unless it appears that the impact and effect of the issue upon existing industry and business will not result in an unfair advantage for the proposed project to the substantial detriment of existing enterprises. Under this approach, competitors of a potential project would be given notice and opportunity to appear before the governing body of the municipality concerning the bond issuance. In addition, the governing body would not be prohibited from issuing industrial revenue bonds to competing enterprises, but would have to consider the impact and effect of the issue and could not approve an issue where the proposed project would receive an unfair advantage to the substantial detriment of existing enterprises.

The committee recommends a bill to restrict the issuance of industrial revenue bonds for retail enterprises. The committee reviewed the restriction on the granting of property and income tax exemptions to new industries under Chapter 40-57.1.

That restriction is contained in Section 40-57.1-02 and concerns the limitation on retail sales in the definition of "project." The bill limits the definition of project under Chapter 40-57 so that an enterprise receiving industrial revenue bond financing could engage in the retail sale of products only where the products were assembled, fabricated, manufactured, mixed, or processed by that enterprise, and in the incidental sale of any service of a kind essential to the primary activities of that enterprise. In addition, the bill removes the provision that revenue-producing enterprise includes any industry or business not prohibited by the Constitution or laws of North Dakota.

The committee reviewed the use of industrial revenue bond financing for the construction of vocational education facilities for the use of school districts. Committee members were concerned that such financing could be used to avoid electorate approval of the construction of facilities under regular financing. The committee did not want to prohibit the use of industrial revenue bond financing for vocational education facilities; however, it did not want to continue authorization for such financing as a means of avoiding electorate approval where otherwise required. The committee recommends a bill to provide that a school board could not enter into any financing arrangement under Chapter 40-57 for vocational education facilities without approval of the electorate of the school district to the same extent and degree required if the school board would construct or acquire a vocational education facility by financing other than industrial revenue bond financing.

BANK TRANSFER STUDY

The study resolution assigned to the committee directed a study of the feasibility and desirability of regulating the transfer and control of banking institutions. At the beginning of its study, the committee determined that it should also consider what types of state control there are over the transfer of savings and loan associations and credit unions. At the committee's request, the Legislative Council chairman authorized the committee to include in its study the feasibility and desirability of regulating the transfer of control of savings and loan associations and credit unions.

The impetus for the study resulted from the 1977 Select Senate Committee on the Bank of North Dakota. That committee was concerned over the extent the state regulates the protection of depositors in the event of bank failure, the establishment of a bank, and the transfer of control of a bank. As a result of 1977 legislation requiring a bank to secure and continue in force Federal Deposit Insurance Corporation insurance

of deposits, and existing state statutes on bank establishment, that committee's attention focused on the regulation of bank control transfer. That committee considered two alternative bill drafts, but did not recommend either to the 1977 Session due to the limited time for adequately studying the two alternatives.

One alternative considered by that committee was based on 1975 House Bill No. 1586, with an additional provision that minority stockholders were granted the right to have their stock purchased by the person who acquires control of the banking institution.

The second alternative required a prospective owner to file an acquisition statement with the Commissioner of Banking and Financial Institutions. The acquisition could be made unless the State Banking Board disapproved it within 60 days after filing or unless within 60 days the commissioner called a public hearing before the board.

State Regulation of Corporate Takeovers

North Dakota Century Code Chapters 10-19 through 10-23 are known as the North Dakota Business Corporation Act. Section 10-20-10 governs the sale, mortgage, or other disposition of all or substantially all the property and assets of a corporation, if not made in the usual and regular course of its business. The section provides for adoption of a resolution recommending the transaction and submission thereof to a vote of the stockholders, written notice to each shareholder, and authorization by a vote of the shareholders.

Section 10-20-11 provides that any shareholder who files a written objection prior to or at the meeting at which the sale or exchange is authorized, and who did not vote in favor thereof, may make written demand for the payment of a fair value of the shares as of the day prior to the date on which the vote was taken. If the sale or exchange is made, the corporation pays to the shareholder the fair value of the shares. Upon payment the shareholder surrenders the certificate or certificates representing the shares and the shareholder ceases to have any interest in the shares or in the corporation.

Sections 10-20-10 and 10-20-11 do not apply to banking institutions because corporations governed by a special statute, such as public utility, insurance, banking, cooperative, building and loan, annuity, safety deposit, surety, and trust companies, are generally excepted from the application of the Business Corporation Act.

The State Banking Board approves the issuance of bank charters when a bank is originally established and supervises the activities of ongoing banks, but does not exercise any control over the transfer of established banks. Any notification concerning the transfer of a bank is solely on a voluntary basis. However, the Federal Deposit Insurance Corporation has a requirement whereby if owners become aware of a five percent change in ownership, they must advise the Federal Deposit Insurance Corporation of the change.

North Dakota Century Code Chapter 26-21.1 regulates insurance company takeover bids, which are defined as the acquisition, or offer to acquire, pursuant to tender offer or request or invitation for tender, any equity security of a North Dakota domestic insurance company, if after acquisition thereof the offeror would, directly or indirectly, be a record or beneficial owner of more than five percent of any class of the issued and outstanding equity and securities of such corporation. No offeror may make a takeover bid unless at least 20 days prior to the bid the offeror files with the Commissioner of Insurance and the target company copies of all information required by the chapter and either within 10 days following the filing no hearing is ordered by the commissioner or requested by the target company, or the commissioner finds no cause for a hearing exists, or the commissioner adjudicates that the takeover bid is not in violation of the insurance laws as a result of the hearing.

Testimony Presented to Committee

Thirty-three states provide for some type of notification to the State Banking Department upon change in bank ownership. The time for notification varies from prior to the change in ownership to after the change of ownership, and the percentage of control which would trigger the notification requirement ranges from 10 percent to over 50 percent.

The major distinction between banks and savings and loan associations and credit unions with respect to transfer of control is that banks are stock companies, while savings and loan associations and credit unions are mutual associations.

As mutual associations, the depositors of savings and loans and credit unions are members and elect the directors. There is no transfer or sale of savings and loan associations or credit unions.

There are 137 independent banks in North Dakota, with over 100 owned by local interests, e.g., family-owned banks. Over the next 10 years there may be increased sale of banks where the present owners do not have future family members to take over the banks.

Testimony received by the committee expressed concern over the lack of protection of minority

stockholders and the lack of protection of depositors in the event of a bank transfer. It was pointed out that minority stockholders are at the mercy of majority owners and that depositors are at the mercy of the intentions of any new owners of a bank. In addition, it was pointed out that the assets of a bank are highly liquid and could be removed by unscrupulous owners within a very short period of time.

The committee recognized that any type of regulation should balance the interests of all groups involved: depositors, stockholders, creditors, and the public. It was pointed out that a bank is different from a business corporation in that a bank deals with the money of depositors. Of the 128 state-chartered banks (excluding the Bank of North Dakota) as of June 30, 1978, the ratio of total capital to total deposits was 9.37 percent. The concern expressed to the committee was the ability of banking authorities to prevent bank takeover by unsavory foreign interests. Although it was acknowledged that the Federal Deposit Insurance Corporation regulates the sale of control of banks, it was questioned why the state should rely on the Federal Deposit Insurance Corporation to control state banking in North Dakota.

The committee considered two different approaches to possible regulation of the sale of control of banks. The pre-sale approach is where regulation is exercised prior to the sale, and the post-sale approach is where review is made after the sale has been negotiated. The representatives of bankers associations supported the post-sale approach over the pre-sale approach. Their contention was that the involvement of a state agency prior to actual completion of negotiations would hinder the negotiations.

With respect to protection of minority stockholders, the testimony indicated that protecting the minority affects the cost of acquiring a bank and there is a problem in determining what is the actual value of a minority share. It was acknowledged that the minority may need some protection, but protection through notification was urged as sufficient.

As a result of the testimony and information presented to the committee, the proposals considered by the committee took into account the statutory requirements in other states and the regulations of the Federal Deposit Insurance Corporation. It was thought that any regulation should take the initial step of providing notification to the Department of Banking and Financial Institutions and other shareholders. In addition, any proposed regulation should parallel existing requirements with respect to establishment of a bank.

Committee Recommendation

The committee recommends a bill based upon recommendations made to the committee by the Independent Community Banks of North Dakota.

The bill's approach is not to restrict the sale or disposal of banks, but to provide a means whereby the State Banking Board could review the qualifications of new owners and the qualifications of new management. Although the same criteria for purchasing and for incorporating a bank apply, a totally different procedure is used with respect to bank purchases.

The bill implements a post-sale approach to regulating the transfer of control of banks. The bill provides for notification to the State Banking Board of any transaction which would result in acquiring control of the banking institution. The board has 30 days to issue an order calling a hearing to examine into the same criteria examined by the board in issuing a new charter to a bank. In addition, the board can examine into whether the interests of other stockholders, depositors, and creditors of the institution and to the public will be jeopardized by the change in control and management. If the board determines there may be a problem with the transaction, it could issue its order disapproving the transaction and notify the parties.

JUDICIAL SYSTEM

The Committee on Judicial System was assigned one study resolution. Senate Concurrent Resolution No. 4021 directed the Legislative Council to initiate a joint study with the Judicial Council to study the state's entire judicial system in light of the new Judicial Article of the Constitution. The study was to determine what, if any, structural changes might be made necessary by the passage of the new Judicial Article, and what timetable such changes should follow. The resolution also directed that the committee be composed not only of legislators and judges, but also of citizens and persons associated with and familiar with the state's judicial system. The committee was to seek the cooperation of the North Dakota Supreme Court, the North Dakota State Bar Association, the North Dakota State's Attorneys Association, and other judicial and court-related organizations.

Legislative Committee members were Senators Howard Freed, Chairman, Raymon Holmberg, Charles "Chuck" Orange, Lester Schirado, and Frank Wenstrom; and Representatives Pat Conmy, William Kretschmar, Henry Lundene, Craig Richie, Wayne Stenehjem, Michael Unhjem, Janet Wentz, and Dean Winkjer.

Representing the Judicial Council as members were District Judges A.C. Bakken, Eugene Burdick, and Douglas Heen; and Mr. Joel Medd, Judge of the Benson County Court with Increased Jurisdiction. Judge Bakken replaced former District Judge Ralph Maxwell after the latter's resignation. Citizen Committee members were Mrs. Mildred Burns Johnson; Mr. Harry Pearce; Mr. William Strutz; and Mrs. Lois Vogel. Throughout its study the committee received the cooperation and assistance of Mr. William Bohn, Court Administrator; Mr. Joel Gilbertson, Staff Attorney, Joint Procedures Committee; Ms. Christine Hogan, Assistant Court Planner; Mr. Lawrence Spears, Court Planner; and the legislative subcommittee of the Citizens' Committee on the New Judicial Article (chaired by Mr. Harry Pearce).

The report of the Committee on Judicial System was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

The new Judicial Article of the State Constitution, which was approved by North Dakota voters in September 1976, provides that the judicial power shall be in a unified judicial system, consisting of a Supreme Court, a district court, and such other courts as may be provided by law.

The committee determined that the concept of a "unified" judicial system involved five basic components, and that these components should be considered in developing a statutory framework for the system. Those components are (1) consolidation and simplification of the court structure; (2) centralized rulemaking; (3) centralized management; (4) centralized budgeting; and (5) state financing of the judicial system.

The committee recognized that the implementation of a unified judicial system in North Dakota required two types of action—statutory change by legislative action and the promulgation of rules by the Supreme Court. The committee believed that although much of its work would be affected by the action of the Supreme Court (e.g. with respect to judicial redistricting), it was important that the committee develop an initial plan for the structure of the unified judicial system. To prevent duplication of efforts and the development of conflicting results, the committee decided to work closely with the rules subcommittee of the Citizens' Committee on the New Judicial Article and with the Supreme Court.

As a starting point for its work, the committee considered a bill draft developed jointly by the court planning office of the Supreme Court and the Legislative Council staff. This bill draft was based on the recommendations made by the legislative subcommittee of the Citizens' Committee on the New Judicial Article, which had studied the new Judicial Article and the present court system, and had heard presentations from persons from other states relative to their efforts in court unification.

The legislative subcommittee recommendations called for a unified judicial system composed of three levels, the Supreme Court, district courts, and municipal courts. It was recommended that a division of the district court, presided over by associate district judges, be created to improve judicial services in rural areas by providing a number of law trained, circuit riding judges with limited original jurisdiction in each judicial district.

The subcommittee also recommended that the current practice of trials de novo in district court on appeal from lower courts be eliminated by requiring that all trials be "on the record" and tried to a law trained judge in the first instance. This would be accomplished by requiring law trained

municipal judges in cities with populations above 5,000. Lay municipal judges would have jurisdiction only when no jail term could be imposed, and a defendant would have to consent to being tried by a lay judge with no opportunity to appeal. If a defendant refused to consent, an associate district judge would preside over the trial. The legislative subcommittee also initially recommended that municipal judges and associate district judges be appointed rather than elected, and that the presiding district judge in each district be given supervisory and administrative control over the office of the clerk of the district court.

The three level unified judicial system concept recommended by the legislative subcommittee was approved by the interim committee, with some alterations. After considering seven drafts of the main revision bill, the committee recommends it to the Legislative Council. The committee's recommendation represents a major change in the existing court structure in North Dakota. The present North Dakota judicial system consists of six courts — a Supreme Court, district courts, county courts of increased jurisdiction, county justice courts, county courts, and municipal courts. As mentioned above, the committee recommends that North Dakota have a three-tiered court system — the Supreme Court, district courts, and municipal courts.

The committee also decided that the main revision bill should consist only of those provisions which are essential to the implementation of the unified judicial system. Other provisions, which are considered important but not necessary to the system, are presented in separate bills.

The main revision bill originally created eight chapters of the North Dakota Century Code and called for the repeal of 12 chapters. The committee later decided that Chapter 27-25, relating to the Judicial Nominating Committee, should be presented in a separate bill. In addition, the committee recommended inclusion in the main revision bill of two alternatives for Chapter 27-04.1, relating to the district courts. The concept of the associate district judgeships, as recommended by the legislative subcommittee, gave rise to a great deal of controversy within the committee and the controversy could not be resolved. For that reason, the committee included Alternative 1 and Alternative 2 for Chapter 27-04.1 to enable the legislature to consider two approaches. Alternative 1 provides for the creation of a number of associate district judgeships, while Alternative 2 provides for additional district judgeships in lieu of the associate district judgeships.

Five other bills and one concurrent resolution which are recommended by the committee are considered separately in this report. One of these bills provides for amendments to the North Dakota Century Code which will be made necessary by the passage of the main revision bill. This "secondary revision bill" revises statutory material throughout the Century Code where it speaks to county courts, county justices, and police magistrates which cease to exist under the main revision bill. The concurrent resolution recommends the amendment of one section and the repeal of one subsection of the State Constitution. The other bills, which call for substantive changes in the law, relate to judicial retirement, assignment of Supreme Court justices to temporary duty in district courts, the appointment of temporary judges, and the creation of a Judicial Nominating Committee.

Because of the length of the main revision bill it is not discussed on a section-by-section basis in this report. Instead, a chapter-by-chapter analysis will be made with emphasis on the most important points contained in each chapter.

MAIN REVISION BILL

Chapter 27-01.1 — General Provisions

Chapter 27-01.1 of the main revision bill sets forth the general provisions of the unified judicial system. The chapter provides for a unified system consisting of a Supreme Court, the district courts, and the municipal courts, to be administered by the Chief Justice of the Supreme Court, pursuant to rules promulgated by the Supreme Court. All courts with law trained judges are to be courts of record. The chapter also contains a temporary section, which will not be codified, which abolishes county courts, county justice courts, and county courts of increased jurisdiction, and transfers all untried cases and unfinished business on the calendars of those courts to the calendars of the district courts.

The chapter follows current law in providing that courts shall not be open on Sundays or holidays and that court proceedings shall be public, but while under current law a judge may, in his discretion, exclude the public from cases of a scandalous or obscene nature, a new provision allows the exclusion of the public only as provided by law or by rule adopted or approved by the Supreme Court. This change is intended to promote uniformity throughout the judicial system with respect to closed proceedings. Counties are required to provide office and courtroom space and other necessary facilities for the district courts, and that space will be leased to the state. All furniture, equipment, and supplies located in the courtrooms and offices on the effective date of the Act will become the property of the unified judicial system, unless declined by the Court Administrator.

Chapter 27-01.1 also requires costs and other assessments imposed by the courts to be deposited with the county treasurer, while criminal fines must be deposited in the state school fund as required by Section 154 of the State Constitution.

Chapter 27-02.1 - Supreme Court

Chapter 27-02.1 places the responsibility for preparing and submitting a comprehensive budget for the unified judicial system in the State Court Administrator, which budget includes all salaries and expenses for the Supreme Court and its employees, and the district courts and their employees.

The chapter provides for the election of the Chief Justice of the Supreme Court by the justices of the Supreme Court and the judges of the district courts. The phrase "judges of the district court" includes associate district judges, if such judgeships are created.

The Supreme Court retains its appellate jurisdiction and original jurisdiction to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and injunction, and is given the power to exercise administrative supervision over the unified judicial system, and the authority to promulgate rules and regulations in the exercise of its supervision.

Chapter 27-03.1 - Supreme Court Officials

Chapter 27-03.1 grants the Chief Justice the power to employ or authorize the employment of all necessary personnel for the unified judicial system and to establish their duties, responsibilities, and salaries. While recognizing that Section 94 of the State Constitution prohibits the Supreme Court from exercising any power of appointment, the committee determined, after considering research conducted by committee counsel, that the language of Section 94 would not be construed to prevent the appointment or employment by the Supreme Court of personnel necessary to carry out the duties of the judiciary.

The chapter provides for a Clerk of the Supreme Court to be appointed by a majority of the Supreme Court justices and to hold office at their pleasure. The clerk is directed to collect a $50 filing fee for each appellate or original action filed in the Supreme Court, and is to deposit such fees promptly with the State Treasurer.

The office of the State Court Administrator is created and the Chief Justice is to appoint a person to fill that position. Chapter 27-03.1 also provides for a State Law Librarian and provides for the supervision of the librarian by the Supreme Court. Security services for the court are to be provided, upon request by the Chief Justice, by the State Highway Patrol and other law enforcement agencies.

Chapter 27-04.1 - District Courts

The main revision bill provides two alternatives for Chapter 27-04.1. Alternatives 1 and 2 are identical, however, with the exception of three sections, and for that reason the two alternatives are discussed together and the differences are pointed out. The alternatives are presented in separate chapters in the bill because of the difficulty in numbering the sections caused by the different number of sections in each alternative. Chapter 27-04.1 provides for seven judicial districts until changed by order of the Supreme Court, and the seven districts recently created by a Supreme Court redistricting order are listed in the chapter. The bill recognizes that, under the new Judicial Article, judicial districts and the location of the judges' chambers may be changed by Supreme Court order.

District judges will be elected to six-year terms and must be electors of the district in which they are elected at the time of their election. The residency requirement is in addition to the requirements of Section 94 of the State Constitution that judges be United States citizens, North Dakota residents, and learned in the law. Although current law does not require district judges to be residents of the district they serve, such residency was required by the Constitution prior to the effective date of the new Judicial Article. The residency requirement applies only to judges who are elected, and does not apply to those who are appointed to fill vacancies. This was intended to aid in the appointment of interested, qualified persons to district judge vacancies. In those districts having more than one district judge, a presiding judge is to be selected by the Supreme Court.

As under present law, the chapter provides that a Supreme Court justice or a judge of the district court may retire for physical or mental disability. If a finding of disability is made by two-thirds of the remaining Supreme Court justices and district judges, the judge would receive compensation for the remainder of the term to which he was elected and then receive retirement benefits.

District courts are assigned general jurisdiction, as provided under current law and mandated by the Constitution. This general jurisdiction is statewide, but the chapter also provides that judges must act only within their district except in enumerated instances. These instances are when a district judge is requested or designated to act in another district by a judge of that district or by the Supreme Court, or when requested by a party to act in an adjoining district if the judges of that adjoining district are absent, incapacitated, or dis-

qualified. A judgment rendered in matters outside a judge's district is voidable but not void.

Chapter 27-04.1, Alternative 1, creates a number of associate district judgeships. The associate district judges were envisioned by the committee as law trained, circuit riding judges with limited jurisdiction, and they would be judges of the district court. Twenty-nine associate district judges are to be elected to six-year terms in districts assigned by the Supreme Court.

The legislative subcommittee initially recommended that the associate district judges be appointed by the presiding judge of the district, and the committee considered several appointment methods. These methods included appointment by the presiding district judge, appointment by the Governor, and an initial appointment by the Governor, followed by an election after at least three years in office. The appointment plans were rejected after both the interim committee and the legislative subcommittee decided that, although appointment might result in more qualified judges, there would be strong opposition by the public to a bill calling for appointment of judges. Associate district judges are to be United States citizens and North Dakota residents, and are to possess an unrevoked admission to the Bar of North Dakota, but are not required to be electors of the district in which they are elected at the time of their election. In considering the residency requirement for associate district judges, the committee decided against the requirement in an effort to attract a sufficient number of qualified candidates in all areas of the state, including the rural areas.

Alternative 1 provides that, on the effective date of the Act, all county justices and judges of county courts with increased jurisdiction are to become **interim** associate district judges for the duration of the terms to which they were elected, after which period the interim associate district judgeships would cease to exist. Interim associate district judges will have the authority prescribed by the presiding district judge and will be paid the salary they would have received as a county justice or judge of increased jurisdiction by the county in which they were elected. The boards of county commissioners are authorized to increase the salaries of the interim associate district judges in the same manner as they may currently increase the salaries of county justices and judges of increased jurisdiction. The committee envisioned that the interim associate district judges would assist in the transition to the unified judicial system.

The associate district judgeships will be filled by election at the general election in 1980, and until that time the only trial court judges would be the district judges, municipal judges, and the interim associate district judges, consisting of the existing county justices and judges of county courts with increased jurisdiction. Prior to the 1980 election, the Secretary of State is directed to determine by lot the length of the terms of office, of the associate district judges, with approximately one-third elected to two-year terms, one-third elected to four-year terms, and one-third elected to six-year terms. This determination is to be made on a timely basis to enable those interested in seeking office to be aware of the terms of the offices they seek. The authority of the associate district judges is limited to civil cases with not more than $10,000 in controversy, criminal misdemeanor cases, small claims cases, probate matters including trusts, preliminary hearings and arraignments in felony cases, domestic relations matters, municipal ordinance violations, and mental health and addiction proceedings. In addition, any other cases may be assigned by the presiding district judge. This provision was intended to allow a presiding district judge to assign a felony case or a major civil case to an associate district judge if the presiding district judge believes the associate district judge is competent and qualified to handle such a case.

Chapter 27-04.1, Alternative 2, creates 29 additional district judgeships instead of the associate district judgeships created by Alternative 1. Fourteen of the new district judgeships are to be filled at the general election in 1980, and 15 are to be filled in 1982.

To assist in the transitional period, Alternative 2 provides that judges of county courts with increased jurisdiction are to become **interim** district judges on July 1, 1979, and are to serve in that position until the expiration of the term to which they were elected. Under Alternative 2, the current county justices would not become interim district judges and the office of county justice would cease to exist on July 1, 1979. As with the interim associate district judges under Alternative 1, the interim district judges are to receive the salary prescribed for the office to which they were elected, and the salaries are to be paid by the counties in which they were elected. The interim district judges would have the same authority as that prescribed for the associate district judges in Alternative 1.

Chapter 27-06.1
District Court Clerks, Reporters, and Bailiffs

Chapter 27-06.1, which provides for various district court personnel, is primarily a compilation of present law with as few substantive changes as possible.

The chapter provides for the duties of district court clerks by combining three existing sections of Chapter 11-17 into one section. Although minor changes in language have been made, the duties remain the same, but the Supreme Court is given the power to change the duties by rule. The chapter retains the fee schedule for various services of the clerk contained in present law, but also gives the Supreme Court the power to change the fee schedule by rule. The chapter follows current law by authorizing the clerk to destroy certain records, but once again gives the Supreme Court the power to supersede the provision by rule.

A new feature of the chapter is a provision for the supervision of the clerks by the presiding district judges. The committee considered including language which would allow a district judge to commence removal proceedings against a clerk for malfeasance in office, but it was decided that this area is adequately covered by Title 44 of the North Dakota Century Code, which allows the removal of officers, including the clerks of court, by grand jury proceedings or by action of the Governor.

The chapter also allows each judge of the district court to appoint a court reporter and lists court reporters' duties. Court reporters would take all oral testimony, objections, rulings, exceptions, and instructions in shorthand. The committee considered a bill draft proposed by the Court Reporters Association which would have required court reporters to pass an examination given by the National Shorthand Reporters Association, but decided to adhere to its original policy of making only those substantive changes necessary to implement the new Judicial Article. Chapter 27-06.1 also provides for the preparation of transcripts, certification thereof, and fees for transcripts in the same manner as current law.

Chapter 27-07.1
Probate Jurisdiction of District Court, County Probate Officer, Magistrate

Chapter 27-07.1 was originally a lengthy chapter but, as most of the provisions relating to probate matters are contained in other chapters of the North Dakota Century Code, the committee agreed that the chapter should consist of only four sections.

The chapter provides that the district court of each county has exclusive original jurisdiction of probate and testamentary matters. In a provision designed to keep probate matters at a local level, the presiding judge in each district is directed to appoint a probate officer for each county who would have authority over all uncontested probate matters. The probate officer would be a part of the unified judicial system, and any qualified person may be appointed, including the clerk of the district court.

The office of the magistrate is also created as part of the unified judicial system, and the presiding judge of each district is empowered to appoint a magistrate in each county in which there are no chambers of a district judge or an associate district judge. If the presiding district judge fails to appoint a magistrate, the county probate officer and the clerk of the district court are to serve as magistrates with no additional compensation. Magistrates are to have the authority assigned by the presiding district judge. This section is intended to provide residents of sparsely populated areas with a local judicial officer to perform such duties as setting bail, issuing search warrants, and holding preliminary hearings.

Chapter 27-24 — Municipal Courts

Chapter 27-24 requires only those municipal judges in cities with a population of 5,000 or more to be licensed attorneys and, because it is often difficult to find a qualified person in the community who is willing to serve as a municipal judge, municipal judges are not required to be residents of the cities they serve. Municipal judges are to be paid by the municipalities and their salaries are not to be in relation to the fees or fines collected by their courts.

The legislative subcommittee initially recommended that municipal judges be appointed, but the committee decided to provide for the election of municipal judges. The executive officers of the municipalities are directed to fill vacancies in the office of municipal judge by appointment, subject to confirmation by the governing body and an alternate judge may also be appointed to serve when the municipal judge is not available. At the request of the governing body of the city, the presiding judge of a district may appoint an associate district judge or a district judge to serve as a municipal judge pending the election or appointment of a municipal judge, but such an appointment is not to exceed an aggregate period of 30 days. This limitation is intended to prevent cities from requesting reappointments of a district judge or an associate district judge to serve the city at state expense.

The chapter follows current law in providing that persons found guilty of the violation of a municipal ordiance may be required to work off the fine, and in allowing suspended sentences to be imposed by municipal judges.

Some procedural matters in trials for the violation of a city ordinance would be changed by Chapter 27-24 of the main revision bill. Current law allows lay municipal judges to impose a

sentence of imprisonment upon conviction, and provides that there shall be no right to a jury trial in municipal court, but an appeal by trial de novo in district court is provided for, at which level there is a right to a jury trial, and an opportunity for review of the sentence by a law trained judge after being fully advised of the facts. Since the main revision bill eliminates the trial de novo and provides only for appeals on the record directly to the Supreme Court, the committee believes that it is necessary to provide a right to a jury trial at some level. The committee was also advised by committee counsel that rulings of the United States Supreme Court would not permit a lay judge to impose a jail term if a cure by trial de novo were not provided. Chapter 27-24 provides that a lay judge does not have jurisdiction to try a case if sentence upon conviction may include imprisonment unless the defendant consents in writing to being tried by a lay judge. The chapter also provides that there is no right to a jury trial before a lay judge. If it is determined that the sentence may include imprisonment and the defendant does not consent to the jurisdiction of a lay municipal judge, the presiding district judge is to assign an associate district judge or a district judge to hear the case. A law trained judge would have jurisdiction to try a case where there may be imprisonment and there would be a right to a jury trial before a law trained judge. Trials before either a law trained judge or a judge of the district court would be on the record and there would be the right to appeal to the Supreme Court, while trials before a lay judge would not be on the record and there would be no appeal therefrom.

Chapter 27-24 also requires municipal judges to attend a continuing education session each year. The state would pay the expenses of lay municipal judges, while the municipalities would pay the expenses of law trained judges. The committee believes that because lay municipal judges would be from small towns which would experience a hardship in paying such expenses, it is necessary for the state to assume them.

JUDICIAL NOMINATING COMMITTEE

To avoid further uncertainty in the filling of judicial vacancies by the Governor, the committee believes it imperative that a bill creating a judicial nominating committee, as required by Section 97 of the State Constitution, be passed by the 1979 Legislature. To separate the matter from more controversial issues contained in the main revision bill, the committee decided to submit Chapter 27-25 as a separate bill.

The bill is similar to one introduced in the 1977 Legislature, although several substantive changes have been made which will be considered later. A judicial nominating committee is created which would consist of nine members, three of whom would be appointed by the Chief Justice of the Supreme Court, three by the president of the State Bar Association, and three by the Speaker of the House of Representatives. Each appointing authority would be required to appoint at least one licensed attorney and at least one citizen who is not a judge or an attorney. Committee members would serve three-year terms and would be limited to serving two full three-year terms. A mechanism for an initial staggering of members' terms is also included in the bill.

A list of from two to seven nominees would be submitted to the Governor by the committee within 60 days after the committee's receipt of notice of a vacancy in the office of Supreme Court justice or district court judge. Within 30 days after receiving the list of nominees, the Governor would be required to either appoint one of the nominees to serve until the next general election, or call a special election. The bill allows for the submission of names to the committee by citizens and provides that committee members are ineligible for appointment during their term and for two years thereafter.

Under the bill introduced in the 1977 Legislative Session, three members of the committee would be appointed by the Governor rather than the president of the State Bar Association, but the committee believes that the executive branch would be adequately represented in the process by the actual appointment of a nominee by the Governor. Language in the 1977 bill which prohibited the consideration of political affiliation in the appointing of persons to serve on the committee and in the selection of nominees for appointment to fill the vacancy has been removed. The committee decided that as a practical matter it is impossible to remove all partisan politics from the judicial selection procedure, and the inclusion of language prohibiting consideration of political affiliation would only invite political consideration.

The committee also made several other minor changes in the 1977 bill. The time in which the committee must act has been changed from 30 days after receiving notification of a vacancy (in the 1977 bill) to 60 days thereafter (in the bill recommended by the committee), and the minimum number of nominees to be submitted to the Governor by the committee has been reduced from three to two.

TEMPORARY JUDGES

The bill creating Chapter 27-26 of the North Dakota Century Code which provides for temporary judges is submitted as a separate bill because it is not considered to be essential to the implementation of the unified judicial system. The

committee's intent is to create a mechanism to assist in clearing backlogs on the dockets of all courts, other than the Supreme Court, when that need arises.

The Supreme Court is given the authority to appoint any qualified person to serve as a temporary judge in any court other than the Supreme Court when the appointment is necessary and will promote the efficient administration of justice. A person appointed temporary judge must be a North Dakota resident and have been engaged in the active practice of law for three years. A temporary judge appointed under this bill would be paid five percent of the gross monthly salary of a regular judge for each day of service. A term of 30 days is prescribed for a temporary appointment, but the jurisdiction of a temporary judge extends beyond the expiration of that term when it is necessary to dispose of matters relating to cases heard during the appointment period.

The bill allows the temporary judges to be transferred during their term of appointment and requires any challenge to the eligibility, appointment, or qualification of an appointee to be made in a direct proceeding.

TEMPORARY ASSIGNMENT

This bill provides for the assignment of Supreme Court justices to temporary duty in the district courts. In considering this bill, the committee heard testimony from several Supreme Court justices who said that hearing cases at the district court level would be an educational and enjoyable experience for some justices, but that not all justices have the experience or the desire to hear cases at the trial level. In accordance with those comments, the bill provides that a justice, upon his request, shall be assigned, by the other justices, to temporary duty in the district courts. The assignment would be allowed only if it would not interfere with the efficient administration of justice. Each justice may be so assigned only once each biennium and only one justice may be assigned at any one time. The bill also provides that a justice cannot participate in the review of any case which he heard or decided while serving in the district court.

JUDICIAL RETIREMENT

In considering judicial retirement, the committee recognizes that it is imperative that the unified judicial system attract a sufficient number of well-qualified people to seek judicial office. To attract well-qualified people, most of whom would be in their peak earning years if engaged in private practice, an attractive retirement package is needed. The Public Employees Retirement System (PERS), of which most present judges are members, is considered inadequate by the committee because most judges enter into judicial service relatively late in life. The committee is therefore recommending two alternative retirement bills for introduction to and consideration by the 1979 Legislature, and those bills have been forwarded to the Legislative Council's Retirement Committee.

Alternative 1 is a return to the judicial retirement system as it existed before judges were brought into the Public Employees Retirement System on July 1, 1973. A judge would be entitled to receive 50 percent of the salary payable to judges in the classification the retired judge last held upon attaining age 65 with 20 years of service, or age 70 with 10 years of service. A judge would also be entitled to begin receiving retirement benefits between ages 65 and 70 with between 10 and 20 years of service. If a judge does not have the required number of years of service, that judge would be entitled to receive a proportional amount of the prescribed benefit.

Alternative 1 also provides that retirement benefits would be waived if a judge failed to retire upon attaining 73 years of age, except that if the judge had less than 10 years of service, he would be allowed to complete his term without waiving any benefits. Judges would receive credit for the time they were members of PERS. Alternative 1 also provides three optional methods of payment, under which the judges could choose to have their spouses receive various portions of their retirement benefits. Alternative 1 requires judges to contribute five percent of their salary during their first 20 years of service, and the judges or their legal representatives would be entitled to receive the amount of the assessments withheld in lieu of receiving judicial retirement salary. Retired judges and justices would be eligible to be assigned to active judicial duties, for which they would receive compensation. This compensation would have no effect on the judges' retirement benefits, except that no retired judge would be entitled to receive more than 100 percent of the salary of an active judge of the court from which he retired.

Alternative 2 creates a judicial retirement fund to be administered by the judicial retirement board. Each judge would contribute nine percent of salary, and the state would contribute 21 percent of each judge's salary. Upon attaining age 65 or completing 20 years of service, a judge would be eligible to receive a retirement benefit equal to 2.5 percent of the salary payable to active judges of the classification a retired judge last held multiplied by the number of years of service, with an upper limit of 60 percent. Alternative 2 also provides for a waiver of benefits if a judge fails to retire before reaching 73 years of age, and judges may select one of the three optional payment plans contained in Alternative 1.

SECONDARY REVISION BILL

The secondary revison bill is a bill, consisting of 177 sections, which amends all sections of the North Dakota Century Code that are affected by the main revision bill. Most of the sections amend current law by removing references to county courts, county justices, county judges, and police magistrates and replacing them, where necessary, with references to the district court and district court judges. The bill also amends several sections of the North Dakota Century Code which require the payment of certain expenses by the counties. These sections include provisions for expenses of jurors and defense costs of indigents, which will become expenses of the unified judicial system, as is required by the concept of state funding of a unified judicial system.

CONSTITUTIONAL AMENDMENT

The committee is also recommending a concurrent resolution which calls for the amendment of Section 173 of the Constitution of the State of North Dakota and for the repeal of subsection 6 of Section 69 of the State Constitution.

Section 173 requires the election of various county officials, including a county judge, in each county, and further provides that the county judge shall serve as clerk of the district court in counties with a population of 15,000 or less. The concurrent resolution recommended by the committee would remove the references to county judges, both as being elected officials and as holding the office of the clerk of the district court.

The concurrent resolution also calls for the repeal of subsection 6 of Section 69, which provides that the legislature shall not pass any laws to regulate the jurisdiction or duties of justices of the peace, police magistrates, or constables. The office of the justice of the peace was abolished in 1959 pursuant to the authority of Section 112, which allowed the legislature to abolish that office and to confer the jurisdiction of that office upon the county judges. Section 112 has since been repealed by the new Judicial Article. The committee decided that this section is outdated and unnecessary, and that it should be repealed along with other changes necessary to implement the unified judicial system.

A temporary section provides that the amendment of Section 173 would not be effective until January 1, 1983, and requires the election of clerks of the district court in counties with less than 15,000 population at the general election in 1982. This temporary section is intended to allow the present county judges in those counties to continue to serve as clerks of the district court until new clerks can be elected.

LEGISLATIVE AUDIT AND FISCAL REVIEW

The Legislative Council by law appoints a Legislative Audit and Fiscal Review Committee as a division of its Budget Section. The committee was created "for the purposes of studying and reviewing the financial transactions of this state; to assure the collection and expenditure of its revenues and moneys in compliance with law and legislative intent and sound financial practices; and to provide the legislative assembly with formal, objective information on revenue collections and expenditures for a basis of legislative action to improve the fiscal structure and transactions of the state." (NDCC Section 54-35-02.1)

In setting forth the committee's specific duties and functions, the legislature said, "It shall be the duty of the legislative audit and fiscal review committee to study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditor in regard to such reports, and when necessary, to confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state." (NDCC Section 54-35-02.2)

The Lieutenant Governor by law serves as chairman of the Legislative Audit and Fiscal Review Committee. Other members were Representatives Ralph Christensen, Arnold Gronneberg, Ralph Hickle, Tish Kelly, Richard Kloubec and Malcolm Tweten; and Senators Rodney Mau, L.L. Naaden, Frank Shablow, and Jens Tennefos.

During the interim, the State Auditor presented 68 audit reports to the committee. A list of the audits is on file in the Legislative Council office. An additional 53 audit reports were filed with the committee, but were not formally presented. The committee's policy is to hear only audits of major agencies and audit reports containing major exceptions; however, an audit not formally presented could be heard at the request of a committee member or members.

The report of the Legislative Audit and Fiscal Review Committee was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

STATE ACCOUNTING SYSTEM

The committee spent a considerable amount of time during the interim discussing the adequacy of the State of North Dakota's current accounting system, changes that could be made to improve the system, and the possible need for consolidated financial statements for the state.

Audit of the Department of Accounts and Purchases

In the Department of Accounts and Purchases' audit report for the years ended June 30, 1975, 1976, and 1977, the State Auditor recommended that the Department of Accounts and Purchases:

1. Determine the informational needs of all users (of the current accounting system).

2. Develop or approve the departmental development of programs to meet user reporting needs.

3. Consider the use of current departmental financial programs when developing the system.

4. Issue a detailed accounting manual on use of the system.

5. Devise a system to assure the accuracy of cost center information.

The Department of Accounts and Purchases expressed the belief that the audit report was implying, and possibly directing, the Department of Accounts and Purchases to develop a modified accrual system with balance sheet capabilities. The department said it is not certain that the legislature would be willing to appropriate the necessary funds to design and maintain such a system. The Department of Accounts and Purchases also reported that there are a number of things it has been instructed to do by law, but the department does not have enough staff to comply with the law. It said one such instance is a 1965 law which instructs the Department of Accounts and Purchases to prepare a consolidated balance sheet for the state. There has never been an attempt at preparing such a statement due to shortage of staff.

Charitable and Penal Institutions Accounting and Budgeting Systems

At the March 1978 meeting, after hearing the State Auditor's recommendation that the Director of Institutions should develop an accounting manual outlining a system to account for all moneys received, expended, and accumulated, the committee requested the staff to gather information concerning the accounting procedures utilized by institutions under the control of the Director of

Institutions' office to determine whether it is practical for those institutions to create accounting systems separate from the system utilized by the Department of Accounts and Purchases.

Upon completion of research, staff reported that, to the extent it is feasible to do so, state agency, department, and institution accounting and budgeting should be handled by the central accounting system. Staff also supported the recommendations of the State Auditor which requested the Department of Accounts and Purchases to determine the financial information needs of users, and develop or approve development of programs to meet user needs. The State Auditor explained that his recommendation called for the Director of Institutions to create a separate accounting system only if the Department of Accounts and Purchases' accounting system could not provide the necessary information.

State Board of Higher Education Uniform Accounting System

The committee heard a report by the Board of Higher Education on the progress of the uniform accounting system for the institutions under the State Board of Higher Education. The board reported that members of the uniform accounting project team have designed a uniform accounting system, and that the system is in the process of being implemented. Implementation of the system is planned to be complete by January 1980. The board estimated the total cost of implementation to be $1.3 million with an annual operating cost of $430,000.

Consolidated Financial Statements

The committee expressed interest in reviewing consolidated financial statements for the State of North Dakota. Therefore, the State Auditor conducted a study and prepared prototype financial statements to present fiscal year 1976 financial data on state governmental operations in accordance with generally accepted accounting principles. The State Auditor said the prototype report should not be regarded as financial statements in the conventional sense, but should be regarded as an evolutionary step in the development of comprehensive and understandable financial reporting. He added that he has not audited or examined these statements. The prototype report included a consolidated balance sheet and a consolidated statement of revenues and expenditures, which are shown as follows:

STATE OF NORTH DAKOTA
PROTOTYPE CONSOLIDATED BALANCE SHEET*

June 30, 1976

ASSETS

Cash	$ 268,386,000
Investments	551,935,000
Accounts and interest receivable (net)	48,830,000
Taxes receivable (net)	2,943,000
Loans receivable (net)	154,567,000
Inventories	11,055,000
Prepaid expenses	111,000
Property, plant and equipment (net)	329,053,000
Total Assets	$1,366,880,000

LIABILITIES AND FUND EQUITY

Liabilities:	
Accounts and interest payable, deposits	$ 422,078,000
Repurchase agreements	20,807,000
Other liabilities	7,310,000
Deferred revenue	992,000
Bonds payable	68,728,000
Notes payable	798,000
Total Liabilities	$ 520,713,000
Fund Equity:	
Fund balances and retained earnings	$ 647,228,000
Fund balances and reserves held in trust for others	198,939,000
Total Fund Equity	$ 846,167,000
Total Liabilities and Fund Equity	$1,366,880,000

* Unaudited

STATE OF NORTH DAKOTA
PROTOTYPE CONSOLIDATED STATEMENT OF REVENUES AND EXPENDITURES

For Fiscal Year Ending June 30, 1976*

Revenues:		
Federal		$ 142,362,000
Sales and services		98,263,000
Taxes, assessments		312,274,000
Licenses and permits		9,263,000
Rents and royalties		5,707,000
Investment/interest income		62,689,000
State political subdivisions		9,414,000
Other revenues or receipts		168,782,000
Total Revenues		$808,754,000
Less: Refunds	$12,146,000	
Interdepartmental collections	8,114,000	(20,260,000)
Net Revenues		$788,494,000
Expenses:		
Salaries and wages		$ 58,880,000
Fees and services		15,823,000
Supplies and materials		11,606,000
Grants, other distributions		250,977,000
Contract payments		60,375,000
Loan cancellations, bad debt expense		1,607,000
Investment/interest expense, bond principal payments		20,481,000
Depreciation, deletions		5,397,000
Cost of goods sold		42,918,000
General and administrative		57,675,000
Higher education - instruction and research		52,497,000
Benefit payments/contribution refunds		18,953,000
Other		417,000
Total Expenditures		$ 597,606,000
Less: Interdepartmental expenditures		(6,579,000)
Net Expenditures		$ 591,027,000
Revenues Over Expenses		$ 197,467,000

* Unaudited

Recommendations and Conclusions Regarding the State Accounting System

A special committee meeting was held in August 1978 to resolve the discussion between the State Auditor and the Department of Accounts and Purchases concerning the state accounting system, and to give each department a chance to present and clarify the issues involved.

A discussion memorandum on the state accounting system was jointly prepared by the Executive Budget Office and the State Auditor and presented to the committee. The summary of the memorandum stated the following:

"The question on what financial data are needed for state government to meet its reporting requirements to the Legislative Assembly, the general public, and other readers must be answered by the aforementioned groups. If data to meet informational requirements of financing state general fund operations is all that is needed, the current statement relating to the status of the state general fund is adequate. If information is needed to report financing of all governmental operations and to report stewardship of all assets entrusted to the state (all departments), the current central accounting and reporting systems must be modified.

"If the current accounting system is to be modified, a determination of needed modification must be made. The results should then be assessed to determine the most economical method to meet these additional reporting requirements. The decision on what is needed and how the system should be operated rests, at this point, with recommendations of the Audit and Fiscal Review Committee to the next Legislative Assembly."

The Executive Budget Office reported that, according to its records, only 20 of the 185 agencies, boards, and institutions reporting on the state accounting system have professional accountants on their staff. Another 20 have account technicians on staff but they normally do not have adequate training in the accounting area. The Budget Office said if there are modifications made to the state accounting system, it would like to see staff training and professional development sessions held to educate the personnel working with the system.

Representatives from the Denver office of Deloitte Haskins and Sells, an international accounting firm, presented a report to the committee on their observations and recommendations regarding North Dakota's accounting and budgeting systems. The firm had conducted interviews with key financial personnel of the State of North Dakota, and prepared a report on that effort, at no cost to the state.

The firm reported that North Dakota's present accounting system is on the cash basis whereby revenues are recorded when received, rather than when earned, and expenditures are recognized when paid rather than when incurred. The firm said a cash basis accounting system does not necessarily provide useful or reliable financial information and is not in conformity with generally accepted accounting principles. It said that under a cash basis system the results of the state's operations for a fiscal year can be significantly distorted merely by the timing of when liabilities are paid.

The firm said the state's present accounting system is not simple because significant adjustments are required to prepare financial statements in conformity with generally accepted accounting principles and that the system is not flexible enough to provide useful financial information to all essential users on a timely basis. The firm said it could not recommend a reporting system to North Dakota which would not be in accordance with generally accepted accounting principles.

The firm noted that the system being designed by the Board of Higher Education and financial reporting requirements of state school boards to the Department of Public Instruction call for accrual accounting.

The firm said the four major shortcomings of the state's current accounting system are as follows:

1. The current accounting system is maintained on a cash basis.

2. There is limited automatic integration of operating systems with the central accounting system.

3. There is limited financial control of state assets (i.e., inventories, accounts receivable, fixed assets).

4. The duplication of accounting systems (i.e., Highway Department's budget reporting and general ledger, fixed assets system, inventory systems). There appears to be a department focus on the installation of selected systems instead of a more balanced department and statewide approach.

The firm presented the following recommendations on improving North Dakota's current accounting system:

1. Maintain state's official accounting system on an accrual (modified accrual) basis.

2. Expand current central accounting system into a comprehensive financial information system.

3. Conduct a study to develop an implementation plan for installing a comprehensive financial information system.

The committee requested the estimated cost of revising the state's accounting and budgeting systems, and information concerning activities necessary to develop a comprehensive financial information system maintained in accordance with generally accepted accounting principles for state governments. The Deloitte Haskins and Sells firm presented a report in that regard at the October 1978 meeting. In its report, the firm presented three approaches to developing a comprehensive financial information system for North Dakota. The firm said North Dakota should not commit to one of these approaches until the conclusion of what they called "Phase I activities." The objectives of Phase I would be to (a) identify user requirements for a comprehensive financial information system; (b) develop an implementation work plan and time schedule; and (c) develop a cost/benefit analysis.

The firm estimated that professional consultant fees to accomplish Phase I activities would approximate $40,000 plus out-of-pocket expenses. This estimate assumes the availability of one state systems analyst full time for approximately 10 weeks.

The following are Deloitte Haskins and Sells' three approaches to developing a comprehensive financial information system, along with its cost estimates for the implementation of each approach:

1. The system would focus on appropriation control without providing general ledger

capabilities. There would be minor integration of operating systems with the central accounting system, and each department would be responsible for maintaining its own financial system. Total estimated cost range for implementation of this approach is $360,000 to $516,000. Of that amount, it is estimated that $156,000 to $228,000 is due to time to be spent by state personnel.

2. The system would be geared toward complete accounting for state financial resources, such as assets, liabilities, revenues, and expenditures. Departments would be responsible for some integration of operating systems with the central accounting system. Total estimated cost range for implementation of this approach is $410,000 to $589,000. Of that amount, it is estimated that $176,000 to $258,000 is due to time to be spent by state personnel.

3. Similar to approach 2, the system would focus on complete accounting for state financial resources; however, there would be extensive integration of operating systems with the central accounting system, to be accomplished as a statewide coordinated effort. Total estimated cost range for implementation of this approach is $546,000 to $786,000. Of that amount, it is estimated that $240,000 to $352,000 is due to time to be spent by state personnel.

The firm said that each approach total cost estimate includes a cost range of $122,000 to $169,000 for the State Highway Department's new financial system, exclusive of project management cost.

The firm said the Phase I study would present relevant information to the committee early next interim, and would provide viable alternatives for the committee to chose from in regard to possible implementation of accounting and budgeting system changes.

The Executive Budget Office estimated that any approved systems changes would not be implemented until July 1981, and that Phase I of the study would probably not be completed before June 1979.

The committee recommends that the Department of Accounts and Purchases request an appropriation of $50,000 to complete Phase I of the study relating to the proposed comprehensive financial information system; that the department present a report on the Phase I study to this committee at its first meeting of the next interim; and that the department request a contingent line item in its 1979-81 budget request to allow implementation of accounting and budgeting systems changes should such implementation be approved by this committee after hearing the Phase I report. The committee also recommends consideration of the prototype financial statements prepared by the State Auditor as a part of the Phase I study.

DEPARTMENT OF ACCOUNTS AND PURCHASES

The committee was informed that North Dakota Century Code Section 54-44-04(12) provides that the Department of Accounts and Purchases is vested with the duties, powers, and responsibilities involved in the development and installation of financial records and procedures for all state departments and agencies. The Executive Budget Office reported that the Department of Accounts and Purchases does not have a procedure manual for all agencies; however, it issues policy memorandums to various agencies when particular problems arise.

The committee recommends that the Department of Accounts and Purchases establish guidelines and provide more assistance to state agencies, departments, and institutions in establishing and maintaining financial procedures relating to cash, accounts receivable, receiving reports, payroll, internal control, inventory, fixed assets, and other related areas.

At the August 1978 meeting, the Budget Office reported that the Department of Accounts and Purchases is preparing a manual to be completed by July 1, 1979. It was further reported that after the manuals are distributed to the various state agencies, personnel from the Budget Office will be available to answer any questions those state agencies may have about the procedures explained in the manual, and that the Budget Office may conduct training seminars to familiarize state personnel with the accounting system.

STATE AUDITOR'S OFFICE

Audit of the State Auditor's Office

North Dakota Century Code Section 54-10-04 requires the legislature to provide for an audit of the State Auditor's office. The Legislative Council contracted with Eide, Helmeke, Boelz and Pasch, Certified Public Accountants, for such an audit for the year ended June 30, 1977. This audit included a financial examination and a determination of compliance with the 1973 and 1976 State Auditor performance review recommendations. The firm presented its audit report at the committee's March 1978 meeting.

The firm recommended that the State Auditor's office work with the Central Personnel Division to establish classifications and staff levels for its staff auditors that are more closely aligned to those defined by the public accounting profession.

The firm expressed the belief that the State Auditor's office has progressed sufficiently in its conformance to professional standards in its financial and compliance audits that it should now undertake performance audits on a regular basis, providing such activity does not deter or replace the State Auditor's financial and compliance audit responsibility.

The firm commended the State Auditor's office for the substantial progress it has made in implementing and complying with the recommendations included in the 1973 and 1976 reports and also for the improvement in the quality of its performance of the post-audit function.

Performance Reviews

At the March 1978 meeting, the State Auditor presented a schedule indicating the performance reviews (expanded scope audits) his office is conducting or proposes to conduct. He reported that the review of the State Board for Vocational Education is in progress and that he would soon begin the review of the Combined Law Enforcement Council. Other areas or programs the State Auditor proposes to review include: state investments; timing of bill payments; management of federal cash; cost center data; consolidation of grant activities; foundation payments; and teachers' retirement fund contributions.

The committee encourages the State Auditor to continue with the current program of conducting performance reviews, providing the State Auditor has available time and funds.

Discussion of Audit Reports with Boards and Commissions

During the first two meetings of the interim, the State Auditor presented audit reports of some of the institutions of higher education. Those reports contained some audit recommendations which the institutions did not agree with. The committee asked for the position of the Board of Higher Education in regard to the unresolved recommendations. It was reported that the board normally does not have the opportunity to discuss the institutions' reports before they are presented to the committee.

The committee encourages the State Auditor to discuss audit reports with the Board of Higher Education, as well as with other applicable boards and commissions, prior to presentation of the reports to the committee. The committee also recommends that action taken by such boards and commissions be presented by the audited agency to the committee at the time its report is presented. The committee believes such information will be beneficial when reviewing audit reports.

Request Agencies to Comply with Auditor's Recommendations

Early in the interim, the committee became concerned due to the number of audit reports which stated that agencies and institutions were not complying with prior audit recommendations. The State Auditor reported that a few agencies were simply not complying with some of his audit recommendations, and that he is obligated to repeat recommendations when prior audit recommendations are not complied with.

At the October 1977 meeting, the committee recommended that all state agencies and institutions be asked to comply with, and implement, within the limits of the law, recommendations contained in the State Auditor's audit report pertaining to each agency or institution. The committee stated that such compliance and implementation is to be with a view toward improvement of governmental operations, including fiscal operations, and to full execution of the law.

The committee further recommended that agencies and institutions be notified that they will be heard by this committee prior to any committee action recommending legislative support or rejection of the State Auditor's recommendations relating to a particular agency or institution. A letter dated January 4, 1978, and signed by Lt. Governor Wayne Sanstead as chairman of the committee, was mailed to all state agencies and institutions, notifying them of the committee's recommendations.

Request State Auditor to Follow Up on Recommendations

At the June 1978 meeting, the committee took additional action in a further attempt to ensure agencies' and institutions' compliance with the State Auditor's recommendations. The committee requested the State Auditor's office to determine whether agencies have complied with the auditor's recommendations within six months after a report has been accepted by the committee, and that the State Auditor report recommendations not implemented to the committee or another appropriate committee of either the Legislative Assembly or the Legislative Council.

INTERNAL AUDITORS

At the June 1977 meeting, in the North Dakota State University audit report for the year ended June 30, 1975, the State Auditor recommended the internal auditor report directly to the president rather than to the vice president of finance (or business affairs). The State Auditor reported that this recommendation was also applicable to the University of North Dakota, as its internal auditor also reports to the vice president. He said that, of the state's colleges and institutions, only the University of North Dakota and North Dakota

State University employ internal auditors. He said the independence of the internal auditor is jeopardized when he reports directly to the vice president of finance.

At the June 1978 meeting, the State Auditor reported that the Board of Higher Education, at its May 1978 meeting, had established a policy which called for the office of the internal auditor to report directly to the president of the institution.

PURCHASING STUDY — NORTH DAKOTA STATE UNIVERSITY

In the North Dakota State University audit report for the year ended June 30, 1975, the State Auditor made the following recommendations in regard to NDSU purchasing practices and procedures:

1. The individual departments be prohibited from independently purchasing goods and services and that all exemptions from central purchasing should be rescinded.

2. All purchases be approved by the purchasing department based on requisitions submitted by ordering departments and that the purchase orders should be issued by the purchasing department.

3. A central receiving department be established and utilized by NDSU.

The committee referred the recommendations on NDSU's purchasing practices to Budget "B" Committee for consideration because the Budget "B" Committee had contracted with a Council of State Governments' study team to study the purchasing procedures of the state.

At the June 1978 meeting, Legislative Council staff reported that the final report and recommendations of the Council of State Governments' study of North Dakota's purchasing system was submitted to Budget "B" Committee at its April 1978 meeting. It was further reported that the study team's recommendations relating to the purchasing practices and procedures at NDSU are as follows:

1. Individual departments should be allowed to make independent purchases within a set of clearly established policies and procedures.

2. A requisition system should be implemented similar to that employed by the University of North Dakota.

3. A central warehousing and receiving system should be implemented.

ADMINISTRATION OF TITLE XX FUNDS

At the June 1978 meeting, the committee requested the State Auditor to perform an expanded scope audit of the Community Services Division of the Social Service Board, with particular attention being given to utilization and administration of Title XX funds. The committee was concerned that the management of the Social Service Board did not appear to be performing adequately in the areas of community services and management services.

The State Auditor performed the audit and presented his report at the October 1978 meeting. He said the review of Title XX administration revealed that increased attention is needed in the management information system area to ensure:

1. The availability of adequate and timely data on the financial status of the Title XX program.

2. That financial information is accurate.

3. That additional information for monitoring program activities is available.

Mr. Thor Tangedahl, Executive Director, Social Service Board, acknowledged that his department has been experiencing difficulties in the management services area. He said the department has been operating without a management services director for a number of months and expressed confidence that the problems in the management services area would be brought under control when a new director is hired.

UNSATISFIED JUDGMENT FUND

In the Unsatisfied Judgment Fund audit report for the years ended June 30, 1975, 1976, and 1977, the State Auditor pointed out that during the fiscal year 1975 administrative expenses of $36,578 were charged against the Unsatisfied Judgment Fund, and that Section 39-17-02 restricts the amount of administrative expenses chargeable to the fund to $35,000 annually.

Mr. Gerald VandeWalle, then representing the Attorney General's office, which handles the administration of the Unsatisfied Judgment Fund, reported that the biennial appropriation for the Unsatisfied Judgement Fund is approximately $70,000, but with the annual limitation required by Section 39-17-02, there is a question as to whether or not the appropriation is restricted. Mr. VandeWalle asked that Section 39-17-02 be amended to eliminate the annual limitation. The committee recommends a bill to amend Section 39-17-02 to eliminate the $35,000 annual restriction on administrative expenditures of the Unsatisfied Judgment Fund.

WRITEOFF OF ACCOUNTS RECEIVABLE

During the interim, the committee heard reports pursuant to Section 25-09-02.1 relating to the writeoff of accounts receivable. The report by the State Hospital for the year ended June 30, 1977, indicated that $5,244,316 of accounts receivable had been written off. The report for the year ended June 30, 1978, indicated that $2,022,296 of patients' accounts receivable were written off during that year. The report by the Grafton State School indicated that $33,280,016 of residents' accounts receivable had been written off as of June 30, 1977. This marked the first time there had been an accounts receivable writeoff at Grafton State School, and officials indicated it would now become an annual process.

OTHER ACTION AND DISCUSSION

At the October 1978 meeting, the State Auditor presented his report on the State Board for Vocational Education audit for the years ended June 30, 1976 and 1977. The State Auditor had performed an expanded scope audit with the assistance of the Department of Health, Education, and Welfare audit agency and the United States General Accounting Office. The report included the State Auditor's assessment of management effectiveness in the areas of finance, compliance, economy and efficiency, and program results. Representatives of the State Board for Vocational Education indicated they did not agree with some of the State Auditor's findings and recommendations. Due to the complicated nature of the report and apparent disagreement on some of the issues, the committee recommended that action on the report be deferred until the first meeting of next interim.

Also at the October 1978 meeting, in the audit report on the Workmen's Compensation Bureau for the years ended June 30, 1976 and 1977, the State Auditor recommended that the bureau cash all of their certificates of deposit at maturity and reinvest through the Bank of North Dakota to simplify the computation of accrued interest for inclusion in the financial statements. Mr. Quentin Retterath, Commissioner of the Workmen's Compensation Bureau, said the bureau believes that since employers throughout the state have deposited advance premiums with the bureau that some of this money should be in local areas and available for employers' use. The committee deferred action on this recommendation until the first meeting of next interim, to allow for further investigation and discussion.

At the request of Representative Fleming, the committee reviewed the proceedings which led to the suspension of the director of administration at Grafton State School. Representative Fleming had questioned the propriety of the payment of severance pay to the suspended individual. The Director of Institutions reported that the director of administration had come under suspicion of taking property from the Old Main Building, a building which had since been demolished. He said the property allegedly taken was old office furniture no longer on the inventory records. The director said it had been determined by the legal counsel of the Director of Institutions' office and the Attorney General's office that the payment of severance pay was legal and proper. The committee took no further action.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

House Concurrent Resolution No. 3100 directed the Legislative Council to study legislative rules with emphasis on finding methods of improving the legislative process. Senate Concurrent Resolution No. 4018 directed a study of the entire legislative process, with emphasis on the best possible method of using the 80 natural days available under the Constitution of North Dakota, the appropriateness of the interim structure, the proper use of standing committees and interim committees, and the provision of professional and other staff personnel during the legislative sessions and during the interim between sessions.

The chairman of the Legislative Council directed the Committee on Legislative Procedure and Arrangements to take under its jurisdiction consideration of the legislative interest in construction of the new multipurpose office building on the Capitol grounds inasmuch as Section 9 of Chapter 139 of the 1977 Session Laws, the legislation providing for the new office building, provides that additional space must be provided either within the present Capitol or in the new building for no fewer than six legislative committee rooms and one large legislative hearing room. The Legislative Council, by motion, directed the Committee on Legislative Procedure and Arrangements to handle statutory revision responsibilities during the 1977-78 interim.

In addition to the above, the Legislative Council is directed by Section 54-35-11 of the North Dakota Century Code to make all necessary arrangements, except for the hiring of legislative employees to work during the regular session, to facilitate the proper convening and operation of the Legislative Assembly, and this responsibility was assigned to the Committee on Legislative Procedure and Arrangements.

Committee members were Representatives Richard Backes, Chairman, William Kretschmar, Corliss Mushik, Oscar Solberg, Earl Strinden; and Senators Francis Barth, S. F. Hoffner, David Nething, Russell Thane, and Frank Wenstrom. The committee sought and obtained the valuable counsel of Mr. Leo Leidholm, Secretary of the Senate; Mr. Roy Gilbreath, Chief Clerk of the House; and Mr. Boyd Wright, Director of Legislative Interns. The committee met a total of 10 times during the interim.

The report of the Committee on Legislative Procedure and Arrangements was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

LEGISLATIVE RULES AND PROCEDURES

At the direction of the Legislative Council, the staff prepared a questionnaire to all members of the Legislative Assembly following the 1977 Session. Five major portions of the questionnaire were committee procedures, floor procedures, session procedures, organizational session procedures, and miscellaneous questions. Of the 150 questionnaires sent, 76, or just slightly over 50 percent, were returned.

The committee reviewed the tabulation of the results of the questionnaire, including all of the comments made by those legislators who responded. The committee directed its staff to prepare a synopsis of suggestions and to categorize the specific suggestions for further committee consideration. After consolidation of specific suggestions, a total of 187 suggestions were made. The committee considered each suggestion, and determined that 77 of them should be further considered. The committee established priorities and proceeded to review the suggestions, but there was insufficient time to give full consideration to all of them. Most of the recommendations of the committee on rules and procedures resulted from suggestions contained in the questionnaires.

Use of Legislative Time

Section 56 of the North Dakota Constitution was amended in 1976 to increase the allowable length of a legislative session from 60 "legislative days" to 80 "natural days." In answer to a question on the questionnaires concerning how legislators would prefer to see the 20 extra days used, 35 percent of those responding said they believed the extra days should be used as a supplement to the traditional 60-day session to be used if needed, 34 percent of those responding believed the extra days should be used as a reserve for a special session to be called as determined by a concurrent resolution passed by both houses, 18 percent believe the extra days should be used as a means to implement "recessed sessions" in which the regular session would be recessed for committee hearings and then reconvened for the remaining days, 12 percent responded that the extra days should be used as a means to implement annual sessions, and one percent said the extra days should be used as a sup-

plement to the regular session to be used in a special session upon approval by the legislative leaders or through a mail ballot.

The committee makes no specific recommendations concerning the use of the extra days available to the Legislative Assembly. Concern was expressed for the fact that North Dakota is an agricultural state, and longer sessions create a hardship for farmer legislators. In addition, the viewpoint was expressed that extending all deadlines during the legislative process would simply delay the day of decision on major issues. The committee does recommend certain changes in specific deadlines, and these are discussed in other portions of this report.

Hour a Legislative Day Begins

Senate Rule 1 and House Rule 1 currently provide that the regular session of each house shall begin at 2:00 p.m. Many legislators commented on their questionnaires that the 2:00 p.m. adjournment is confusing and causes problems. Section 56 of the North Dakota Constitution, which provides that a regular session of the Legislative Assembly shall not exceed 80 natural days during the biennium, defines a natural day as a period of 24 consecutive hours. It was noted it has been a tradition for the Legislative Assembly to recess at the end of a day's business and to reconvene at 1:00 or 1:30 p.m. the next calendar day. Each house takes up committee reports and other business prior to adjournment at 2:00 p.m., at which time each house adjourns and is immediately gaveled back to order and a new legislative day begins. It was noted there are specific advantages to this procedure, including the fact that bills which are amended prior to 2:00 p.m. can be placed on the calendar for second reading and final passage after 2:00 p.m., because that is the next legislative day. It was noted that to eliminate the 2:00 p.m. adjournment would also affect the reconsideration of bills and resolutions, as the rules provide that if a motion to reconsider is made after the end of the next legislative day, a two-thirds vote of the members-elect is required to adopt the motion. However, it was noted that the 2:00 p.m. adjournment creates particular problems, in addition to causing confusion for the public and members of the Legislative Assembly, in that it is not possible to do business on Monday afternoons until 2:00 p.m. because the prior legislative day expired the previous Saturday.

The committee recommends amendments to Senate Rules 1 and 76 and House Rules 1 and 84 to provide that a legislative day would begin at 7:00 a.m., but a session could begin at any hour of the day, and if no hour for reconvening was set at the time of adjournment of the last session, the regular session of each house would begin at 2:00 p.m.

Day of Convening of Legislative Sessions

Section 53 of the North Dakota Constitution was amended in 1976 to provide that the Legislative Assembly shall recess after the Organizational Session "until 12:00 noon on the first Tuesday after the third day in January or at such other time as may be prescribed by law but not later than the eleventh day of January." Section 54-03-02 of the North Dakota Century Code provides that if the first Tuesday after the first Monday falls on January 2, the Legislative Assembly shall reconvene on the first Wednesday after the first Monday in January.

A problem was created by the fact that the first Tuesday after the first Monday in January 1979 is January 2. Under the provisions of the Constitution, it would appear the 1979 Legislative Assembly should begin on Tuesday, January 9, 1979. However, the constitutional provision contains the language "or at such other time as may be prescribed by law but not later than the eleventh day of January." The statute would indicate the 1979 Session should begin on Wednesday, January 3.

The committee members expressed an interest in convening at the earliest possible date, which would favor January 3. The committee staff advised the committee that the weight of legal authority appears to favor the statute because the statute could have been enacted under the new constitutional provision. The committee suggests to the Legislative Council that the Legislative Assembly convene on January 3, 1979. In addition, the committee obtained an opinion from the Attorney General, which indicates that the proper date of convening of the 1979 Session is January 3, 1979.

The committee concluded that the constitutional provision and the statute were drafted to solve the same problem, and that was to prevent the legislative session from beginning on January 2, or the day immediately following a holiday. However, because the constitutional provision and the statute would indicate the legislative session should begin on different days if the first Tuesday after the first Monday falls on January 2, the committee concluded the statute should be amended. It was the consensus of the committee members that flexibility in such a case is desirable. Therefore, the committee recommends a bill draft to amend Section 54-03-02 to provide that if the first Tuesday after the first Monday falls on January 2, the Legislative Council would establish a date between January 2 and January 11 for the convening of the Legislative Assembly.

Calling the Organizational Session to Order

Section 54-03-04 of the North Dakota Century Code provides that on the first day of the Organizational Session of the Legislative Assembly, the President of the Senate and the Speaker of the House, or in the absence of either, then some other member or other person appointed by the members present, shall call the members of their respective houses to order. Concern was expressed in response to the questionnaire that a problem develops when the Speaker of the House of Representatives is no longer a member of the Legislative Assembly.

Section 41 of the North Dakota Constitution was amended in 1968 to provide that terms of legislators begin on December 1 following their election. Therefore, it is possible for a Speaker of a prior session to no longer be a legislator at the time of the Organizational Session. In three of the last four sessions, the Speaker of the prior session has not returned as a member of the House of Representatives. Although these speakers were no longer members of the House, no one else had been elected as Speaker and thus a tradition has developed of inviting the Speaker from the previous session to call the Organizational Session to order. This tradition was called into question in the 1976 Organizational Session because the House of Representatives was equally divided between the two political parties. Although the former Speaker had no vote, he was in a position to make procedural decisions.

The committee reviewed the procedures followed in neighboring states. Minnesota has a statute which provides that the Secretary of State shall call the Minnesota House to order and shall preside until a Speaker is elected. Montana has a law providing that either the Secretary of State or, in his absence or inability, then the senior member-elect present must take the chair and call the members-elect to order.

The committee recommends a bill to amend Section 54-03-04 to provide that the President of the Senate and the member of the majority party of the House with seniority based upon terms of service in the House shall call the members of their respective houses to order. In the absence of the President of the Senate, the President Pro Tempore shall call the members of the Senate to order. In the absence of both the President of the Senate and the President Pro Tempore, then some member or other person selected by the members present shall call the members of the Senate to order. If no party has a majority in the House, the bill provides that the member of the House with seniority based upon terms of service in the House shall call the House to order. If two or more members of the House are tied for seniority and seniority is a factor in determining who shall call the House to order, the bill provides that the persons so tied for seniority shall draw lots to determine who shall call the House to order.

Limitations on the Introduction of Bills

Several legislators responded to the questionnaires with the suggestion that the number of bills which may be introduced be limited. Some of the suggestions specifically requested that identical bills be prohibited or restricted in some manner.

The committee reviewed the rules of other states on this subject. Colorado, Indiana, and Nebraska limit the number of bills which legislators may introduce. The Colorado rule limits the number of bill introductions to six bills per individual legislator, while Nebraska has a limit of 10 bills per legislator. Indiana limits the number of bills a legislator may introduce to 34 in long sessions and five in short sessions. Prefiled bills do not count toward the total in either session in Indiana.

Several committee members expressed reluctance to place an absolute limit on the number of bills a legislator may introduce. Views were expressed to the effect that an absolute limitation would work a hardship on freshmen legislators and legislators who lived some distance from Bismarck and who have less access to staff. The view was also expressed that an absolute limitation may raise constitutional questions and could actually slow down the process because some legislators would have to look for sponsors for bills over their limits.

On the other hand, committee members expressed interest in improving the efficiency of the legislative process by reducing the number of bills introduced on the deadline for filing bills. Therefore, the committee recommends proposed amendments to Senate Rule 29 and House Rule 30 to provide that no member of either house shall introduce more than three bills as prime sponsor after the 10th legislative day. It was noted that the deadline for the introduction of executive agency bills would remain the fifth legislative day, as would the general deadline for filing bills which is the 15th legislative day. The viewpoint was expressed that adoption of these rules amendments would balance out the workload of standing committees and both houses during the early part of each legislative session.

Joint Sponsorship of Bills

Another method of reducing the number of bills introduced is by permitting sponsorship from both houses on bills introduced in either house. Although the number of identical bills introduced

in both houses during any session is limited, committee members expressed the viewpoint that any reduction in the number of bills introduced would be desirable. The committee reviewed the rules of several other states which permit cosponsorship by members of both houses, including Wisconsin, and Joint Rule 53 in that state provides that any measure may have the names of one or more cosponsors from the other house.

The committee recommends proposed amendments to Senate Rules 28 and 31 and House Rules 29 and 32 to permit joint sponsorship of bills and resolutions. The new language in Senate Rule 28 and House Rule 29 would permit the names of one or more cosponsors from the other house. Senate Rule 31 and House Rule 32 would be amended to permit not more than five sponsors from each house, while the current rules permit only five sponsors from the house of introduction. The viewpoint was expressed that joint sponsorship will not only reduce duplication of bills, but at times will take politics between the houses out of bill introductions. In addition, it was noted that joint sponsorship will show there is interest in both houses in a proposed bill.

Strike-Through Method of Drafting Bills Which Delete Existing Statutory Language

For a number of years, the North Dakota Legislative Assembly has used triple parentheses to set apart language in existing state statutes which are being deleted in bills under consideration. This method of setting apart statutory deletions has been confusing, particularly when several pages are deleted. The Legislative Council staff, which drafts the vast majority of bills introduced and which will be performing the enrolling and engrossing function in the future, will type all bills on computer terminals during the 1979 Session. The present method of deleting statutory language by using triple parentheses creates problems with the computer bill drafting program. The committee reviewed Session Laws of several other states which use the "strike-through" method of deleting statutory language.

The committee recommends proposed amendments to Senate Rules 31 and 65 and House Rules 32 and 66 to change the provisions on drafting statutory deletions from providing for triple parentheses to language that deletions are to be set off from the remainder of the text by typing a line through (striking through) the deleted matter. In addition to removing language relating to the bracket system of amending statutes, Senate Rule 65 and House Rule 66 are to be amended to make these rules consistent and to clearly indicate that bills, but not resolutions, be presented to the Governor for approval.

In addition to recommending the rules amendments, the committee directed the Legislative Council staff to use the strike-through method in bills which are drafted for the 1979 Session and to amend the bill drafting manual accordingly. The committee also went on record recommending that future Session Laws have new language underlined and deletions indicated by the strike-through method. It was noted that in the past North Dakota Session Laws have included enrolled bills which do not illustrate the actual changes but only show the law as it reads after removal of deleted material and insertion of new material. The staff was directed to consult with the Governor on his preferences concerning the form of bills presented to him for his signature, and upon consultation with the Governor it was learned that he supported the change in the bill typing format and also supported the idea of printing the Session Laws as indicated above.

Distribution of Bills

Senate Rule 31 and House Rule 32 provide for the distribution of the copies of introduced bills. The Senate rule provides that 11 copies of each bill, memorial, or resolution shall be filed with the Secretary of the Senate who shall distribute one copy to the chairman of the committee to which the measure is referred, one copy to the President of the Senate, one copy to the Legislative Council, one copy to be held by the Secretary until otherwise directed by the Senate, one copy for the printer of bills, one copy for the printer of the journal, three copies for the news media, one copy for the Greater North Dakota Association, and one copy for the prime sponsor. The House rule provides for only nine copies of each measure introduced. The House rule does not provide for the distribution of copies of bills to the Greater North Dakota Association nor to the prime sponsor. In addition, the House rule provides for the distribution of one copy to the chairman of the Committee on Enrollment and Engrossment instead of to the presiding officer in that chamber. The committee decided that there should be uniformity in the distribution of introduced measures and therefore recommends that House Rule 32 be amended so that the same number and distribution of measures introduced would be followed in that chamber as is done in the Senate.

Conference Committees

Several suggestions were made on the questionnaires concerning conference committees. Particular concern was expressed concerning the lack of notice which sometimes precedes conference committee meetings. Another matter of concern was the reappointment or replacement of conferees if they are unable to reach an agreement after a certain number of meetings.

The committee recommends proposed amendments to Joint Rule 6. This rule would be amended to provide that the chairmen of conference committees shall have the time and place of the meeting of a conference committee posted on the bulletin board prior to the meeting or the chairmen shall announce the time and place of the meeting to their respective houses. In addition, Joint Rule 6 would be amended to provide that if the conference committees are unable to agree, another conference committee consisting of the same or new members shall be appointed from each house but if the conference committees are unable to agree after three reports to the floor, the bill shall be returned to the house having possession, and new conference committees, consisting of members from each house who have not previously served on a conference committee on the bill under consideration shall be appointed. The viewpoint was expressed that the first proposed amendment would increase public awareness of conference committee meetings, and the second proposed change would alleviate problems created by deadlocked conference committees.

Committee Meeting Times

It was called to the committee's attention that some committees, particularly the Joint Constitutional Revision Committee, have no designated meeting time. Therefore, it is very difficult for such committees to schedule hearings and be assured of having a quorum. This situation is particularly serious when citizens travel some distance for a hearing only to find a committee will not be meeting because of conflicts with other committee schedules. There are other committees, such as the House Veterans Affairs Committee, select committees, and procedural committees which do not have a scheduled meeting time. The committee recommends proposed amendments to Senate Rule 41, House Rule 42, and Joint Rule 24 to provide that committees scheduled to meet on Wednesday of each week, including the appropriations committees, shall meet from 8:00 a.m. to 10:30 a.m. on that day instead of 9:00 a.m. to 12:00 noon as the rules currently provide. In addition, Joint Rule 24 would be amended to provide that the Joint Constitutional Revision Committee shall meet on Wednesday of each week from 10:30 a.m. to 12:00 noon.

Deadline on Rereferrals to Appropriations Committees

The Senate and House rules presently provide that all bills or resolutions carrying an appropriation of $5,000 or more shall be referred or rereferred to and acted upon by the Committee on Appropriations. A problem is created when bills are rereferred to the Appropriations Committee immediately prior to the crossover date, and the Appropriations Committee has insufficient time to give adequate consideration to these measures. The committee recommends proposed amendments to Senate Rule 38 to provide that all Senate bills required to be rereferred to the Committee on Appropriations, except delayed bills, shall be rereferred not later than the 23rd legislative day. If an appropriation bill is not reported to the floor and rereferred as required, the bill shall be deemed rereferred and shall be under the jurisdiction of the Committee on Appropriations at the end of the 23rd legislative day. The committee recommends a proposed amendment to House Rule 39 which provides similar provisions for House bills.

The reason the committee chose the 23rd legislative day is because that is 10 legislative days before the traditional crossover date. It was believed that this requirement would provide the Appropriations Committees with sufficient time to consider the bills rereferred to them.

Jurisdiction of Appropriations Committees

A suggestion was made in response to the questionnaires that the Appropriations Committees should not be able to change the intent of legislation beyond the amount of the appropriation. Concern was expressed because it is believed that the Appropriations Committees usually do not have as full a hearing as the substantive committees have on bills. Although committee members expressed the viewpoint that the Appropriations Committees must have reasonable latitude to make amendments relating to fiscal matters, it was believed something should be placed in the rules to prevent the Appropriations Committees from making amendments to bills which have no relation to the appropriations.

The committee recommends proposed amendments to Senate Rule 38 and House Rule 39 to provide that the Committees on Appropriations shall not change the intent of any measure which is rereferred to one of these committees after a hearing in another standing committee, unless necessitated by consideration of the appropriation contained in the measure.

Procedure for Selection of Interim Studies

In response to the questionnaire sent after the 1977 Session, several suggestions were maded concerning the Legislative Council Resolutions Committee (LCRC). These suggestions ranged from some which suggested the abolition of the LCRC to suggested improvements in the operating procedures of that committee. Under existing rules, the procedure for study resolutions is that they are rereferred to the LCRC after consideration by a standing committee in the house of origin. After

the 35th legislative day, the LCRC's of both houses meet jointly and consider and report all bills and resolutions which have been rereferred to them.

Committee members expressed the viewpoint that the workload at the end of the session is such that the present system cannot work. Some expressed the view that part of the problem is that resolutions calling for studies need not be introduced before the 33rd legislative day, and need not be reported back from the standing committee before the 44th legislative day. It was the consensus that the LCRC does not have sufficient time to consider the many study resolutions which are assigned to it, and it is not possible to schedule hearings because of conflicts with other legislative work late in the session.

The committee recommends proposed amendments to Senate Rules 29, 36, and 44; House Rules 30, 38, and 45; and Joint Rule 8; and the repeal of subsection 17 of Senate Rule 39, subsection 18 of House Rule 40, and Joint Rule 20. These proposed rule changes would abolish the LCRC and would require study resolutions to follow the same path through the legislative process as bills. Thus, the deadline for the introduction of study resolutions would be the 15th legislative day. Study resolutions would be reported back from standing committees in the house of origin no later than the 31st legislative day instead of the 44th legislative day. The crossover date would also be the same for study resolutions as it is for bills.

As the recommended rules amendments would not replace the Legislative Council Resolutions Committee with any other mechanism to screen resolutions, that responsibility would presumably fall upon the Legislative Council after each session. The committee also recommends a bill to amend Section 54-35-02 of the North Dakota Century Code, to provide specific authority to the Legislative Council to screen and prioritize study resolutions. This bill also contains several style changes, including the division of the section into subsections, changing the word "legislature" to read "legislative assembly" to conform with the proper constitutional name of the legislative branch, and to provide authority for a member of the Legislative Council staff to represent the Council at the annual meeting of the National Conference of Commissioners on Uniform State Laws, in conformance with the bylaws of that organization. As the rules amendments would become effective during the 1979 Session, the bill contains an emergency clause to make it effective for the period immediately following the session when the Legislative Council would have to screen and prioritize study resolutions passed by the 1979 Session.

Resolutions of Commendation

Several legislators suggested that something be done concerning the proliferation of resolutions memorializing athletic teams or beauty queens and similar resolutions to commend or congratulate persons or organizations.

The committee recommends proposed amendments to Senate Rule 34 and House Rule 35 to provide that no resolution which commends, lauds, congratulates, or otherwise honors any person or group, other than memorial resolutions extending condolences, shall be introduced or further considered unless the person or group is being recognized for an achievement which has brought national attention or recognition. There were 19 resolutions of praise or commendation introduced in the House during the 1977 Session, only two of which were for national recognition. In the Senate there were 16 such resolutions, only one of which was for national recognition. The committee noted that there are many gray areas in which it may be difficult to determine whether a resolution properly fits into this category, such as resolutions thanking persons or groups for certain actions, but the committee members expressed the belief that just having rules of this kind would have an effect on the number of such resolutions introduced.

Legislative Retirement Program

Although the statutes for the Public Employees Retirement System (PERS) provide that the program shall include appointive and elective officials at their sole election, members of the Legislative Assembly are effectively excluded from coverage under the program by other provisions of the law. To be eligible, a person must be a "permanent employee" which is defined to mean a person who is employed for five continuous months for 20 hours per week. Even if the Legislative Assembly were to meet for the full 80 legislative days allowed under the Constitution, this would total only four working months under the present five-day-per-week system. Another limiting factor is the fact that legislators are limited by the Constitution to a salary of $5 per day, and therefore the salary to be used in the computation of retirement benefits under PERS would provide minimal retirement benefits even if legislators were eligible.

As North Dakota is among only 10 states which provide no retirement benefits for legislators, the committee agreed to look at options available in legislative retirement programs. The staff was requested to notify the Committee on Retirement of the interest of this committee in this subject. The committee reviewed retirement programs for legislators in other states. Thirteen states have retirement programs for legislators using a method of computing benefits other than a formula tied to

salaries. Twenty-seven states based benefits upon a formula tied to a percentage of salaries paid.

The demands of legislative service are requiring more and more time be spent by legislators to perform these services. Legislative duties require sacrifices and legislators must spend time away from their families and businesses. The viewpoint was expressed that some way should be found of providing a retirement program to compensate legislators for losses during their productive years. It was also noted a retirement plan would make it possible for more persons to serve in the Legislative Assembly.

Because of the press of other priorities pending before the committee, the members decided not to pursue further study of legislative retirement during this interim. Instead, the committee recommends a resolution to study legislative retirement programs during the next interim.

Legislative Internship Program

The committee reviewed the legislative internship program which has been in effect since the 1969 Session. During the 1977 Session, there were 18 interns, including two undergraduate bill status reporters.

The committee recommends the continuation of the legislative internship program with the same number of interns as there were in 1977. The committee has opened the bill status reporters positions to any of the eight four-year colleges in North Dakota. Caucus interns are to be selected earlier than in the past to give the floor leaders an opportunity to interview them if they wish.

The committee recommends that 10 interns be assigned to committees, four be assigned as caucus interns, two be assigned as bill status reporters, and two be available for special assignment at the direction of the Legislative Council staff. The committee determined that no former legislators or candidates for the Legislative Assembly may serve as interns.

The committee recommends the salaries of legislative interns during the 1979 Session be increased from $700 per month to $800 per month. The committee authorized the Legislative Council Director to hire a Director of Interns to supervise the program during the 1979 Session.

MISCELLANEOUS MATTERS

Joint Meeting with the Legislative Membership of the Minnesota Interstate Cooperation Commission

On Monday and Tuesday, June 26-27, 1978, committee members met with the legislative membership of the Minnesota Interstate Cooperation Commission. On Monday the group toured the Snake Creek pumping station and some coal development plants, and a coal mine in Oliver County.

On the second day the group met for a joint meeting at which time executive branch persons from each state presented information on items of interest to both states. Items on the agenda included truck regulatory reciprocity on weight limitations, water projects and Garrison Diversion, flood plains management, power plant siting, power line rights of way, vocational education reciprocity and the Midwestern Education Compact, coal trains, and interstate grain shipments. The Minnesota legislators extended an invitation to the North Dakotans to come to Minnesota for another meeting later in 1978 or in early 1979.

Project TRAIN of the National Conference of State Legislatures

Project TRAIN of the National Conference of State Legislatures presented a program for the committee on November 7, 1977. Legislators and key staff persons from other states, including Washington, Montana, and Oklahoma, were brought to North Dakota for a joint discussion of legislative rules and procedures in the various states. Items discussed included the question of how citizen participation in the legislative process can be best served, how to best use legislative time, the best method of selecting iterim studies, the best utilization of legislative employees, and legislative deadlines.

Another program of Project TRAIN was called to the attention of the committee by another legislator who had attended the annual meeting of the National Conference of State Legislatures. This program is entitled "Public Television Coverage of State Legislatures" and is offered by Project TRAIN at no costs to the states. The committee has requested that this program be offered at the Organizational Session of the Legislative Assembly in December 1978.

Voting and Sound System in Legislative Chambers

The committee heard presentations concerning electronic voting systems and sound systems for the legislative chambers. The state has a continuing contract concerning the electronic voting system in each chamber and under that contract periodic improvements will be made in the system. As there are no major problems with this system, the committee did not recommend a new voting system at this time. Testimony indicated that if a new voting system were installed, the wiring should also be inserted for a new sound system at the same time. A problem could develop if a new sound system is not installed, however, since

microphones in the House are no longer manufactured, and cannot be replaced. Considerable dissatisfaction has been expressed concerning the Senate microphones. Because of these problems, the committee approved a plan for the repair and renovation of the sound systems in both chambers, including the replacement of all microphones. The committee contracted with Audio Systems, Inc., of Bismarck, and this project is to be completed prior to the 1979 Session if possible. If it is not possible to install the new microphones prior to the session, the existing system will be tuned up and the new microphones will be installed after the session.

Legislative Film

The committee purchased 10 prints of a legislative film produced by Brock Lee Films of Bismarck. This film was made on speculation during the 1977 Session, and describes the legislative process in North Dakota. Committee members expressed the viewpoint that this film has excellent educational value and the copies of the film are available to legislators on a loan basis for showing around the state.

Recording of Standing Committee Meetings

The committee authorized the Legislative Council staff to purchase recorders and tapes in order that all standing committee hearings may be recorded during the 1979 Session. Although problems of quality of tapes, indexing of hearings, and identity of speakers were noted, committee members expressed the viewpoint that having recorded hearings may improve the availability of information on legislative history and legislative intent.

Training Session for Committee Clerks and Interns

Executive branch members and others have suggested that a training session be established primarily to train committee clerks in the preparation of standing committee minutes. Such a training session would provide the opportunity for uniformity in the preparation of minutes and would provide committee clerks with instruction on the new "strike-through" method of preparing bills and amendments. Legislative interns and committee chairmen will also be invited to attend the training session.

Girl Scout Legislative Aide Bar Program

The Girl Scout Legislative Aide Bar Program was begun during the 1977 Session to permit Girl Scouts to fulfill requirements under a certain scouting program. The committee gave its approval to the continuation of the program during the 1979 Session. The Girl Scouts will be under the supervision of the Director of Interns and there will be five girls who will each serve five consecutive days.

Legislative Employee Screening

The committee authorized the Legislative Council staff to hire a person to screen applications for legislative employment prior to the 1979 Session. This method was used to screen prospective employees prior to the 1977 Session and proved to be of assistance to the Employment Committees.

Legislative Tour Guide Program

During the 1977 Session, a new program was inaugurated under which the Legislative Council staff hired a legislative tour guide. This person coordinated high school tours of the Legislative Assembly and personally conducted many of the tours. There is a possibility that this program will be operated in conjunction with a tour program operated by Mary College. The committee authorized the Legislative Council staff to negotiate a possible coordinated effort with Mary College.

Opening of the Bill Room

The House and Senate rules provide for the prefiling of bills prior to each legislative session. The prefiled bills, including Legislative Council interim committee bills and appropriation bills, total several hundred bills. These bills are printed in advance of the regular session but copies are unavailable because the bill room is traditionally not open until immediately prior to the legislative session. This results in countless requests for copies of bills to the Legislative Council staff and it was noted it would be much less expensive to provide printed copies of bills than photocopied versions. The committee authorized the Employment Committees to hire someone to operate the bill room prior to the convening of the 1979 Session.

Committee Rooms Used By Executive Agencies

The committee directed the Legislative Council staff to make arrangements with executive branch agencies which use traditional legislative standing committee rooms during the interim to provide that these rooms be vacated and be made available for the standing committees during the 1979 Session.

Doctor-of-the-Day Program

The committee directed the Legislative Council staff to attempt to find suitable space for the doctor-of-the-day program during the 1979 Session. The North Dakota Medical Association has offered to reinstate the doctor-of-the-day program, and will provide the necessary equipment. The program will be coordinated by the Family Practice Residency Program in Bismarck.

STATUTORY REVISION

The Legislative Procedure and Arrangements Committee was designated by the Legislative

Council as the committee for statutory revision responsibility during the interim. As a result of this responsibility, the committee recommends a bill to revise certain obsolete statutory references. The bill basically has two aspects — elimination of obsolete name references throughout the entire North Dakota Century Code, and elimination of obsolete statutory references in Volumes 3, 4A, 4B, 5A, 7, 9A, and 9B. Thus, approximately one-half of the Century Code will be updated as a result of this bill.

The bill recommended by the committee accomplishes 11 separate items. It amends Section 13-03-18 of the North Dakota Century Code to reflect an Attorney General's opinion; inserts references to the Office of the Budget in place of references to the State Budget Board and the State Audit Board; replaces references to civil defense with references to disaster emergency; repeals references to the State Scholarship Board; replaces certain references to State Examiner with State Auditor; replaces Poultry Improvement Board with Commissioner of Agriculture; replaces a reference to a Class C misdemeanor in the model rocketry law with a reference to an infraction; replaces references to the Veterans' Aid Commission with the Administrative Committee on Veterans' Affairs; replaces references to Reciprocity Commissioner with Highway Commissioner; replaces references to Board of Auditors with State Auditor; and changes the membership of the Natural Resources Council to reflect the 1977 consolidation of the Outdoor Recreation Agency and the State Park Service into the Parks and Recreation Department. These agency name reference changes result primarily from the abolition of certain state agencies over the years, and the transfer of functions of one agency to another.

LEGISLATIVE SPACE AND RENOVATION OF THE LEGISLATIVE WING

Senate Bill No. 2022, enacted by the 1977 Legislative Assembly, authorized the Board of University and School Lands to invest permanent funds of the common schools for the construction of an office building on the Capitol grounds. This legislation, which constitutes Chapter 139 of the 1977 Session Laws, provides in Section 9 that it is the intent of the Legislative Assembly that additional space be made available, either within the Capitol or in the building to be constructed, for no fewer than six legislative committee rooms and one large legislative hearing room. The chairman of the Legislative Council directed the committee to assume jurisdiction of the legislative interest in this matter.

The committee consulted with the Director of Institutions and the State Land Commissioner, and learned that the plans for the new building contained no provision for legislative space, and therefore the legislative space mandated in the law must be handled by displacement in the Capitol. The Director of Institutions developed tentative plans to create additional committee rooms within the existing Capitol. Most of the committee rooms would be established by moving the Legislative Council staff to the offices to be vacated by the Supreme Court which will be located in the new building and by converting the existing cafeteria into two committee rooms.

Because none of the possible committee rooms which could be established in the State Capitol would constitute a "large hearing room" of the scale comparable to the existing Large Hearing Room or the Highway Department auditorium, the committee recommended to the State Board of University and School Lands that a Large Hearing Room be included in the new Judical Wing and State Office Building. Subsequent to that action, the plans were changed to include a Large Hearing Room in the new building.

To conduct the study of legislative space requirements and to determine the best possible utilization of existing space, the committee hired an architectual firm to assist in this study. The architectural firm of Brunner, Hoeffel, Torno and Nester of Minot was selected by a subcommittee of this committee to conduct this study. The architects proceeded on a two-phase plan. Phase I of the architects' project consisted of studying space utilization and space requirements for various legislative functions and making suggestions for the proper use of available space. Phase II of the study included preparation of a final written report, final cost estimates, and will include appearances before appropriate standing committees during the 1979 Session.

Legislative Wing Renovation

To make maximum use of space available to the Legislative Assembly, some renovation of existing space would be necessary. Committee members were well aware of the seriousness and the sensitivity in making renovations to a public building such as the State Capitol. Therefore, in addition to retention of an architect, the committee consulted with a wide variety of citizens and officials, including the Superintendent of the State Historical Society, and directed the architect to retain, as much as possible, the appearance of historic features of the building.

A more complete description of the plans for renovation of the legislative wing, including floor

plans, are included in the architects' report. The following description is an attempt to give an overview of the project.

Ground Floor

One of the top priorities established by the committee was to provide for as many committee rooms on the ground floor as possible. Some existing committee rooms, particularly those located on the balcony level behind each house, are inaccessible to the handicapped and inconveniently located for members of the public who wish to attend hearings. Three former committee rooms are now occupied by the Legislative Council staff. The committee concurred with the recommendation of the Director of Institutions that these offices be vacated and returned to their original use. Rooms G-2 and G-3 can be remodeled for committee rooms with very little renovation required. Room G-4, which is now occupied by the secretarial staff of the Legislative Council, the offices of the Director and Associate Director for Audit and Finance, plus the Legislative Data Processing Unit, would be converted into two committee rooms plus a small doctor's examining room.

The existing bill room, which is now divided and partially used for duplicating and storage by the Legislative Council, would be returned to its original purpose. The legislative study area would be divided and a portion of that space would be used as a public coat room. The remainder of the room would be renovated to provide additional desk and telephone space for use of legislators.

The Gold Room would no longer be used as a legislative committee room, but would be turned over to the Attorney General for additional office space. The entrance to the existing Gold Room and Senate locker room would be renovated to provide space for an elevator to provide access to the basement, the first floor, the Senate balcony, and the top level of the existing Supreme Court library.

The existing offices of the North Dakota Highway Patrol on the north side of the main corridor would become an additional committee room. The existing cafeteria would be divided and would be converted to two committee rooms. A new cafeteria will be provided in the new Judicial Wing-State Office Building.

The Lewis and Clark Room would become permanent office space for the Governor's staff, and would no longer be used as a legislative committee room. The east and west walls of this room would be renovated, and additional space would be provided for an additional office on the west side in a portion of the existing Traill Room. The Traill Room would remain as a legislative committee room but the walls would be renovated to make better use of the existing space and to remove the necessity of having a pillar in the center of the room.

The committee recommends no changes in the existing men's room, House locker room, or the Blue Room. A proposal was presented to convert the existing House locker room to become a gift shop and vending stand to be operated by the handicapped, but the committee members concluded that this would leave insufficient room in the existing men's restroom to provide locker space to replace the existing space used for that purpose.

Room G-7 would become a press room to be used by the news media. It is anticipated audio hookups would connect the press room to both the House and Senate chambers. Individual cubicles would be provided for members of the press in this area. Room G-8, which is currently occupied by the Legislative Council library, would be converted into a press studio. This room would be used by radio and television personnel for interviews. No renovation is anticipated for Room G-5 and 6.

The Large Hearing Room would be renovated with a sloped floor and theater-type seats. The stage would be removed and a rear screen projection room would be provided. The temporary partitions at the rear of the Large Hearing Room, which currently provide office space for the Legislative Council and House stenos, would be removed to provide additional space for overflow in the Large Hearing Room.

First Floor

The committee recommends that an office for the Speaker of the House, to include a separate office for his secretary, be provided next to the office of the Lieutenant Governor. Although this office is on the Senate side of Memorial Hallway, it is not necessary to enter the Senate chamber to enter this office.

The three small offices on either side to the rear of the Senate chamber would become offices for the Senate floor leaders, their secretaries and interns. No change is anticipated for the Senate Conference Room. The existing office of the Senate Minority Leader would become an office for the Secretary of the Senate. The walls in this area would be changed and the approximate area now occupied by the Senate Majority Leader would be enlarged and converted to a Senate phone room. The space generally occupied by the supply room and the Majority Floor Leader's secretary's office would become a joint supply room.

The Attorney General's Licensing Office would be turned over to the permanent jurisdiction of the

Attorney General for office space. A portion of this space would be occupied by the new elevator described previously.

The telephone booths would no longer be placed in the west end of Memorial Hallway during legislative sessions. A circular information booth would be provided in the center of Memorial Hallway to the east of the traditional location of this booth.

On the House side, the committee recommends separate offices for each floor leader and their secretaries, and enlarged restrooms. These facilities would occupy the space on either side of the House chamber which are now divided into two offices each plus a very small restroom. The committee recommends that the House telephones be located in the space between the House chamber and Memorial Hallway with access on the east side of the House chamber.

The space for the House desk force is insufficient for the number of persons and the activities which must take place at that location. Therefore, the committee recommends removing the press table, enlarging the raised platform for the clerk's desk, and moving the clerk's desk forward. It is anticipated press members would be seated elsewhere in the House chamber.

In response to a request from a House member, the architect investigated the possibility of removing four desks on each side of the rear of the House chamber and creating a small aisle to provide greater accessiblity for a number of members of the House seated in the larger center sections. To do this it would be necessary to cut the brass rails at the rear of the House chamber in two places and to refinish certain desks after the four on each side have been removed. The committee discussed this possibility to some extent and finally decided to direct the architect to retain this concept in his final report.

Balcony and Second Floor

The committee recommends that Room 207 be retained as an extra committee room or be available for other legislative purposes. The entire circle of offices to the rear of the Senate balcony from Rooms 203 through 206 would become space for Senate stenographers and committee clerks. The offices immediately above the existing floor leaders' offices on the Senate side would be used as an office for the Chief Clerk of the House and offices for the Director of Interns and some of the interns. The west House balcony would become an office for House committee clerks and the east House balcony would be used by House stenographers.

The existing Supreme Court area would be used as offices for the Legislative Council staff. The Supreme Court justices' offices on the south side of the building would be used by some of the professional staff. The Supreme Court conference room and the existing clerical space for the court would be used by the clerical staff and the Data Processing Division of the Legislative Council staff. The office of the Chief Justice would be used as either an office or a conference room.

The committee recommends that the Supreme Court hearing room be retained in its present form and used as a legislative committee room. It will be necessary to remove the bench and platform at the front of the room and to upgrade the lighting system in the room. However, because of the ornate features in the room, the committee recommends that as much as possible the features of this room remain untouched. The first floor of the existing Supreme Court library would be converted into offices for the remaining members of the professional staff of the Legislative Council. To convert this space to office use, it will be necessary to remove the second or mezzanine floor of the Supreme Court library.

The vault to the west end of the first floor of the existing Supreme Court library would be removed and an entry to the area behind the Senate balcony would be opened. By installing a ramp to take care of a grade difference between the two levels, the entire area behind the Senate balcony would become accessible to the handicapped, as the new elevator would open in the general area between the existing Supreme Court library and the area to the rear of the Senate balcony.

The third floor of the existing Supreme Court library would also be accessible by the elevator. This area would become the Legislative Council library to be shared with the Attorney General's office. This space would also provide study areas within the library for use by legislators and others.

Miscellaneous Considerations Related to Renovation Project

Accessibility for the Handicapped

One of the major concerns throughout this study was that many areas within the legislative wing are not accessible for the handicapped. This is particularly the case with the House and Senate balcony areas. Even if these areas were no longer used for standing committee meetings, the fact that they are inaccessible for the handicapped results in reducing employment possibilities for handicapped persons. Construction of an elevator as described earlier in this report will make all of the work areas on the north side of Memorial Hallway accessible for the handicapped. However,

the east and west balconies on the House side remain inaccessible.

The committee considered several possibilities to make all areas accessible, including stair elevators, removal of a flight of stairs and installing an elevator on the south side, and the construction of catwalks across Memorial Hallway. It was concluded that stair elevators have serious limitations and the removal of a flight of stairs would be prohibited under fire regulations. The item which generated the most discussion and controversy was the suggestion to construct catwalks across Memorial Hallway. The architect presented an estimate that the cost of two catwalks would be approximately $45,155. Several persons objected to the concept of the catwalks, believing that to install them across Memorial Hallway would destroy the aesthetic vertical effect of the hallway. The committee received different opinions of federal regulations regarding accessibility for the handicapped. The committee recommends none of the other options in addition to the elevator on the north side to take care of this situation.

South Addition Proposal

The architect retained by the committee suggested extending the south side of the legislative wing to provide additional office and staff space for the House of Representatives. This concept would involve the extenstion of the south wall of the legislative wing to make a circular row of offices to the rear of the House similar to those that exist off the Senate chamber on the north side of the legislative wing. The architect presented a proposed floor plan of this addition, which he estimated would cost $1,350,000, and which would include a pillared area on the ground floor to permit access by vehicles to the tunnel entrance on the south side of the Capitol. The architect said if this area were enclosed and the tunnel driveway were closed, the additional cost would be $205,000. Although the committee does not recommend this addition, a committee member requested that a statement be included in this report for the information of anyone who may wish to pursue this matter in the future.

Electronic Bulletin Boards

Several persons testified concerning the appearance of the bulletin boards used to announce committee hearings. The possibility of electronic bulletin boards was explored and the committee consulted with an executive of an electronics firm concerning this possibility. The possibility exists to develop TV type displays, which would be programmed to rotate various standing committee schedules. In addition, they could be programmed to permit the person at the information desk to operate a keyboard to put a particular hearing schedule on the board. Various options are available, including a printer which would permit a person to receive a printout of what appears on the screen. The committee recommends a budget item to provide for the installation of electronic bulletin boards to be available in at least two locations in the legislative wing.

Renovation Budget Request

The committee recommends a separate bill in the Legislative Assembly appropriation to cover the cost of the Capitol renovation project recommended by the committee. The amount recommended for this project is $1,647.195 which includes remodeling of the three levels in the legislative wing and the existing Supreme Court area, installation of an elevator on the north side, electronic bulletin boards, and computer cable ducts to provide direct computer access to Central Data Processing which will be located in the new Judicial Wing-State Office Building.

NATURAL RESOURCES

Senate Concurrent Resolution No. 4055 directed the Legislative Council to study the feasibility and desirability of providing assistance to local authorities to develop and put into effect local codes for energy conservation in building construction or of adopting a statewide code for energy conservation in building construction.

Senate Concurrent Resolution No. 4073 directed the Legislative Council to study the capacity of the State Water Commission and State Engineer to aid in the development of irrigation and other water resource development projects within the state, with emphasis on whether the bonding authority of the State Water Commission would limit such aid and development, and the staff requirements of the State Engineer in conducting such development projects.

Senate Concurrent Resolution No. 4076 directed the Legislative Council to study the distribution that should be made of moneys received by the State of North Dakota pursuant to the Mineral Leasing Act of 1920, as amended (30 U.S.C. 191).

These studies were assigned to the Legislative Council's interim Committee on Natural Resources. Committee members were Senators Chuck Goodman, Chairman, Stella Fritzell, Donald Hanson, J. Garvin Jacobson, Shirley Lee, Gary Nelson, Rolland Redlin, and Stanley Wright; and Representatives Bernie Anderson, Gordon Berg, Ralph Dotzenrod, Arnold Gronneberg, Ralph Hickle, Byron Langley, Bruce Larson, Rick Maixner, Clarence Martin, Ray Metzger, Jack Murphy, Eugene Nicholas, Duane Rau, Larry Richter, and Richard Rocheleau.

In addition to the studies listed above, the chairman of the Legislative Council assigned to the committee the responsibility to study and develop a legislative response to the federal requirements under the Surface Mining Control and Reclamation Act of 1977.

The report of the Committee on Natural Resources was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

BUILDING CODE STUDY

At the committee's organizational meeting, Senator Donald Hanson, a committee member and sponsor of Senate Concurrent Resolution No. 4055, told the committee that although the resolution itself was directed toward study of an energy code in building construction, it had been his intent to include a study of general building construction codes. Subsequently, the scope of the study was expanded by the chairman of the Legislative Council to include the feasibility and desirability of providing assistance to local authorities to develop and put into effect local building codes, or the feasibility and desirability of adopting a statewide building code.

The committee received testimony that many building codes are used in North Dakota. While most of the larger cities have adopted one of the nationally recognized building codes, many cities use locally developed codes. Testimony also indicated that local building officials had difficulty enforcing local codes because of the lack of an adequate continuing education program. In addition, many areas of the state are presently without the protection afforded by any building code. As a consequence of the diversity of building codes used in North Dakota, the various segments of the building industry have experienced some difficulty in determining and conforming to local requirements.

The first bill draft requested by the committee was based on Senator Hanson's written recommendations and included provisions for (1) adopting a nationally recognized code as the state code; (2) allowing political subdivisions to adopt more stringent requirements than those mandated by the code; (3) exempting unheated and uninsulated buildings and designated historical buildings from code requirements; (4) allowing political subdivisions to continue enforcement of their present code or to adopt the state code; (5) enforcing the state code by local authorities; and (6) continuing education programs by the State Construction Superintendent.

The committee received testimony on the draft from the State Construction Superintendent, director of the Office of Energy Management, State Fire Marshal, State Electrical Board, State Plumbing Board, local building officials, building code associations, architects, and builders.

Testimony from representatives of the International Conference of Building Officials and the Building Officials and Code Administrators (BOCA) indicated that both groups provide continuing education and consulting services to aid

local building officials in administering and enforcing the Uniform and Basic-BOCA building codes.

Based on testimony received and a survey of North Dakota cities with building codes, the committee concluded that more North Dakota cities use the Uniform Building Code promulgated by the International Conference of Building Officials than any other building code.

In formulating a bill draft providing for a state building code, the committee attempted to provide protection for people of North Dakota while allowing enforcement and administration of the code by local governments to better meet local needs. Although the provisions of nationally recognized codes are similar, the committee believes that adoption of the Uniform Building Code, since it is the most commonly used code in the state, would cause less inconvenience for local building officials than adoption of another code.

The committee's discussion culminated in a bill providing for a state building code. The committee recommends a bill providing:

Section 1: A statement of purpose that the bill is intended to provide national building standards while eliminating restrictive regulation and ensuring adequate construction to protect the people in North Dakota.

Section 2: Definitions of particular terms used in the bill.

Section 3: Adoption of the 1976 Uniform Building Code with the 1978 accumulative supplement as the state code, to be implemented and amended as needed by the State Construction Superintendent; and provision for local amendment with comparable or superior standards.

> The committee believes that the State Construction Superintendent is the proper officer to implement the state building code, particularly in light of his present responsibilities under the state energy code and the Uniform Standards for Mobile Homes Act. Authorizing the superintendent to amend the state building code was considered desirable to allow the code to better meet the needs of the people of North Dakota and yet keep current with national developments in building codes. Allowing local amendment of the code was considered necessary to better meet local conditions while still retaining the national standards imposed by the code.

Section 4: Exemption from the terms of the code for the state fire, electrical, and plumbing codes, buildings exempt from the state energy code, and any building used for agricultural purposes, unless a place of human habitation or for use by the public.

> The committee exempted existing state codes after receiving testimony that those codes are adequate. Buildings exempt from the provisions of the state energy code and buildings used for agricultural purposes, unless places of human habitation or for use by the public, were exempted from the terms of the state building code in keeping with the committee's policy of affording protection to the people of the state without unnecessarily intruding into their lives or the functioning of local government.

Section 5: Enforcement of the code by cities or townships within their area of zoning jurisdiction; enforcement by counties in those areas in which the code is not administered by a city or township; optional relinquishment of enforcement authority by cities or townships to the counties; and authority to provide joint enforcement or contract for private enforcement of the code.

> The committee concluded that, while adoption of a state building code was preferable to fostering the adoption of many local codes throughout the state, enforcement of the code should be placed in the hands of local authorities, more familiar with local needs. While enforcement of the code is discretionary, the provisions adopted by the committee guarantee that all areas of the state are covered by the provisions of the code. Enforcement of these provisions remains a local choice. To aid local governments in enforcing the code, the bill allows joint enforcement and contractual enforcement.

Section 6: As an aid to local authorities in enforcing the code, the bill directs the construction superintendent to furnish them with the necessary information and continuing education programs.

Sections 7, 8 and 9: Since the powers granted to cities, townships, and counties to affect the construction of buildings through their zoning authority may overlap the activities governed by the state building code, local zoning authority was made subject to the provisions of the code.

WATER RESOURCE DEVELOPMENT STUDY

The committee received testimony from the State Engineer, Water Commission staff, North Dakota Water Users Association, Bank of North Dakota, Lewis and Clark 1805 Regional Council for Development, Farmers Home Administration,

and North Dakota Association of Rural Electric Cooperatives.

The State Engineer reported that the demand for services provided by the Water Commission has increased in recent years. The state engineer said the commission's present $3 million bonding capacity is inadequate to finance additional services, and an increase in the commission's bonding limit would allow it to accomplish many additional projects. The State Engineer stated that the additional staff requirements necessitated by providing additional services could be amortized over the period of bond indebtedness.

Based on testimony received and information obtained from Montana, South Dakota, and Wyoming on the water financing authority of agencies in those states, the committee requested three bill drafts providing alternative means of increasing the Water Commission's bonding capacity.

The first alternative simply amended current statutory provisions relating to total amount of revenue bonds that may be outstanding, maturity term of the bonds, and interest paid on the bonds.

The second alternative eliminated the present bonding limitation and provided that before conducting a project the Water Commission must estimate the cost of the project and the revenues to be derived from it. Under this alternative, the project could not be undertaken unless the revenues to be derived will pay the cost of maintenance, repair, and operation of the project and the principal and interest of the bonds.

The third alternative raised the Water Commission's bonding limit to $20 million and provided that the commission may, upon authorization by the Legislative Assembly, issue revenue bonds in excess of $20 million. In addition, the second and third alternatives provided for a change in the bond's maturity term. Additional comments from the State Engineer and others indicated that estimating the costs of particular projects might not be a proper function for the Water Commission at this time. Under present policies, the commission should only provide financial assistance and act only as a consultant in feasibility matters, and cost estimating services would require additional personnel beyond the estimated number needed to provide increased financial assistance in the development of water projects. Further, a $20 million bonding limit with provision for excess issues was sufficient to allow the Water Commission to perform additional services. Taking these comments into account, the committee adopted Alternative 3 which left the bond's maturity term at its present 30 years.

The committee recommends a bill to raise the Water Commission's bonding limit from $3 million to $20 million with possibility of an issue in excess of $20 million where specifically authorized by the Legislative Assembly.

FEDERAL MINERAL REVENUE RECEIPTS STUDY

The 1976 amendments to the Mineral Leasing Act increased the state's share of federal mineral receipts from 37.5 percent to 50 percent and provided that such moneys paid to the state shall be "used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (i) planning; (ii) construction and maintenance of public facilities; and (iii) provision of public service."

North Dakota presently receives approximately $1 million annually as its share of federal mineral revenues from United States lands located in North Dakota. Presently, these moneys are allocated to state school aid under the terms of North Dakota Century Code Section 15-40.1-13.

The committee reviewed information pertaining to the number of surface and mineral acres in North Dakota owned by the United States and the income derived from those lands. In addition, the committee reviewed the legislative history of the 1976 amendments to the federal act in an attempt to determine whether the terms of the amendments were mandatory or precatory. The committee also received information suggesting that the majority of other western states in which the federal government owns large acreages have not responded to the 1976 amendments.

The committee received testimony or written information from the North Dakota Coal Impact Office, United States Bureau of Land Management, United States Fish and Wildlife Service, and United States Forest Service.

The committee also reviewed information on North Dakota receipts under the terms of the Mineral Leasing Act, Taylor Grazing Act, Bankhead-Jones Farm Tenant Act, Refuge Revenue Sharing Act, and Payments in Lieu of Taxes Act.

The committee learned that payments made to North Dakota counties under the Payments in Lieu of Taxes Act would be reduced by whatever amounts the counties received under the Mineral Leasing Act. Thus, if the moneys received by the state under the Mineral Leasing Act were allocated to the counties in which the minerals were ex-

tracted, the moneys those counties presently receive under the Payments in Lieu of Taxes Act would be decreased by a like amount. Thus, while an individual county, if it received more moneys under the Mineral Leasing Act than the Payments in Lieu of Taxes Act, might profit somewhat by such an allocation, the state, as a whole, would lose money if the federal mineral payments were allocated to counties.

As a result of this information, the committee tabled further consideration of allocation of federal mineral revenue payments and makes no recommendation to provide such an allocation.

SURFACE MINING RECLAMATION STUDY

In conducting its study of a legislative response to the Surface Mining Control and Reclamation Act of 1977, the committee received testimony from the Public Service Commission and its staff, North Dakota Lignite Council, Workmen's Compensation Bureau, Geological Survey, Labor Department, and Dakota Resource Council.

Representatives of the Public Service Commission informed the committee that if North Dakota law was not amended to comply with the federal act, state reclamation law and enforcement would be largely preempted by the federal government. The committee requested the Public Service Commission staff to continue development of a legislative response.

Because of time constraints placed by the federal government on the state in developing the legislative response to the federal act, the committee adopted a procedure whereby the Public Service Commission staff drafted the necessary legislation which was then reviewed by the committee. The committee, therefore, attempted to provide the Public Service Commission with legislative input in the formulation of the state's response.

Bill drafts prepared by the Public Service Commission can be classified as amending present reclamation law, creating an abandoned mines reclamation program, and miscellaneous amendments.

The Public Service Commission reported that a portion of the federal reclamation fee collected in North Dakota for reclamation of abandoned mines may be used to finance reclamation in other states. The committee viewed this allocation of fee receipts as an aid to those states whose reclamation laws are inferior to those in North Dakota and directed committee counsel to send each member of the North Dakota Congressional Delegation a copy of a resolution urging amendment of the federal law to provide that fees collected on North Dakota lignite be used to reclaim North Dakota land or that the states be allowed to levy their own fees in lieu of the federal fee.

The committee, after reviewing successively revised drafts submitted by the Public Service Commission at three meetings, was presented at its final meeting with three new lengthy drafts and amendments by several proponents, including the Public Service Commission. Therefore, the committee recommended that the Public Service Commission continue to refine the drafts and incorporate any appropriate amendments and introduce the bills under its departmental bill introduction privilege.

The committee was unable to make final recommendations on the bills presented by the Public Service Commission for the following reasons:

1. Committee consideration of the bill drafts was the result of a request by the Public Service Commission for legislative input rather than the result of a study resolution.

2. The committee lacked the time necessary for proper consideration of the final drafts of the bills and the numerous amendments to the drafts.

3. The Public Service Commission can introduce the bills on its own volition without the need for action by the committee.

4. Approval of the bill drafts necessarily implies approval of a reclamation budget for the Public Service Commission which will be substantially increased for the 1979-81 biennium and is necessitated in large part by compliance with the federal act.

5. The issue of whether North Dakota should amend its already excellent reclamation laws to comply with the federal act is a question that should be addressed by the Legislative Assembly.

6. The period prior to the legislative session will enable the Public Service Commission to further refine the bill drafts and consider proposed amendments by other interested parties.

PRODUCTS LIABILITY

The Committee on Products Liability was assigned one interim study resolution by the Legislative Council. Senate Concurrent Resolution No. 4030 directed a study of the availability and affordability of products liability insurance and related insurance problems.

Committee members were Representatives Alvin Hausauer, Chairman, John Crabtree, John Gengler, Gordon Hill, Richard Kloubec, Wayne Stenehjem, and Steven Swiontek; and Senators Herschel Lashkowitz, Chester Reiten, Ernest Sands, and Lester Shirado.

The report of the Committee on Products Liability was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

BACKGROUND

Products liability law typically covers the liability of a manufacturer or seller of a defective product which causes injury or property damage. Today, products liability suits are generally based upon one or more of the following theories of liability: (1) negligence; (2) warranty; and (3) strict liability in tort.

Negligence — Negligence is a "fault" concept in tort which is generally defined as the failure to exercise all reasonable care in the manufacture or sale of a product. Lack of care on the part of a manufacturer may be found in the method of manufacture, the failure to give adequate warnings and clear directions, and the failure to conduct adequate tests. Wholesalers and retailers can be found to be negligent if they fail to properly inspect the product when there appear to be "noticeable irregularities" or if they voluntarily inspect a package and fail to adequately inspect or adequately warn the consumer of any defects.

The development of other theories of recovery has been encouraged, in part, by the problem a plaintiff has in proving negligence when the defendant often has control of the evidence as to the manufacturing procedures employed. Even if negligence is proven, it may not be possible to prove that the negligence was attributable to the manufacturer rather than the distributor or retailer. In North Dakota, where the theory of comparative negligence has been statutorily adopted (Section 9-10-07 of the North Dakota Century Code), the plaintiff's own negligence may bar part of his recovery. Furthermore, despite all reasonable precautions taken by the manufacturer, a defect may still exist and cause injury.

Warranty — Warranty is a form of strict liability. For instance, if an injured party proves that a warranty was breached and that the breach was the cause of the injury, the defendant will be held liable regardless of any evidence that the product was produced and sold without any negligence.

Warranties may be either express or implied. An express warranty arises when the seller makes a positive statement concerning the product. An implied warranty is imposed by operation of law regardless of the seller's statements. Section 41-02-31 provides that in every sale there is an implied warranty of merchantability; that is, that the product passes without objection in the trade and is reasonably fit for its ordinary uses. If the seller has reason to know that the buyer is relying on him to furnish a product suitable for a particular purpose, Section 41-02-32 provides a warranty that the product is fit for that particular purpose.

There are a number of problems with the warranty theory. Traditionally the warranty theory required privity of contract, i.e., the plaintiff could sue only the party with whom he has contracted. The plaintiff must also give the seller notice of the breach within a reasonable time, the seller may be able to disclaim his warranty or limit his liability, and express warranties arise only if the plaintiff relied on some assertion which was made part of the sales bargain.

Strict Liability — Strict liability in tort applies without regard to the negligence or fault of the defendant and is "in tort" because the usual contract or warranty defenses are not available.

This theory was enunciated in the 1963 California case of **Greenman v. Yuba Power Products,** 377 P.2d 897 (Calif. 1963) and was elaborated formally in Section 402A of the Restatement (Second) of Torts (1965). It requires that the plaintiff prove (1) a defect; (2) which is unreasonably dangerous; (3) and is in existence at the time the product was in the possession of the defendant; and (4) which is the direct cause of the physical injury or damage to property. The plaintiff must also show that the product is expected to and does reach the consumer without substantial change in the condition in which it is sold. The Supreme Court of North Dakota adopted the doctrine of strict liability in the case of **Johnson v. American Motors Corp.**, 225 N.W. 2d 57 (N.D. 1974).

This study was the result of the difficulty experienced by manufacturers, distributors, and dealers in obtaining liability insurance for products they manufacture, distribute, and sell. The Federal Interagency Task Force on Products Liability, which completed its study and released its final report in November 1977 found that only a few companies have been unable to obtain products liability insurance, but that there have been substantial increases in products liability insurance premiums in recent years. In other words, the Interagency Task Force found the problem to be one of affordability rather than availability.

The Interagency Task Force also identified three major causes of the problem with products liability insurance premiums. These causes are the liability insurance ratemaking procedures, uncertainties in the tort litigation system, and manufacturing practices which result in defective products. Additional causes were found to be inflation, consumer awareness, the increase in the number and complexity of products, and product misuse.

Two bills were introduced in the 1977 Legislative Assembly that would have regulated products liability actions in North Dakota. Senate Bill Nos. 2096 and 2353 contained provisions that would have limited the statute of limitations for products liability actions, provided for payment of judgments in annual installments, increased the defenses to products liability actions, limited damages to the useful life of a product, provided a collateral source rule, and limited punitive and exemplary damages. Senate Bill No. 2096 was withdrawn by its sponsor, and Senate Bill No. 2353 was defeated in the House of Representatives.

TESTIMONY

The committee received considerable testimony throughout the interim from individuals interested in various aspects of the products liability problem. Manufacturers, retailers, insurance companies, consumers, attorneys, and the North Dakota Insurance Department were represented by persons testifying before the committee. An attempt was made to arrange for a representative of the Interagency Task Force to appear and testify before the committee, but the travel arrangements could not be completed.

Representatives of manufacturers and retailers told the committee that there is a real problem in North Dakota with products liability insurance rates and said the higher premiums are being passed on to consumers in the form of higher prices. Some of the manufacturers and retailers who appeared before the committee also testified that they had difficulty in receiving information about their products liability insurance premium rates from their insurers. Manufacturers and retailers generally urged the committee to limit products liability actions and to provide a method to gather information on insurance ratemaking.

Mr. William Burfeind, who represented the American Insurance Association, an insurance trade association whose members underwrite about 85 percent of all products liability insurance, submitted a "Product Liability Legislative Package" which was developed by the American Insurance Association after a year-long study of the products liability insurance problem. The legislative package proposed an eight-year statute of limitations running from the date of sale, a defense of product modification and alteration, a state of the art defense, a restriction on introduction of evidence of subsequent repairs and improvements by the defendant, a limit on punitive damages, and the abolition of employers' workmen's compensation liens.

Several individuals representing consumer groups also appeared and testified. Mr. William Roath, a consumer education specialist with the Consumer Action Line in Grand Forks, said consumers do not want limitations placed on liability because present products liability law serves to compensate innocent victims and to prevent the continuation of manufacturing practices which result in defective products. As a solution, Mr. Roath suggested the establishment of a state liability insurance agency through the Bank of North Dakota to provide North Dakota businesses with lower rates.

Mr. Dave Bossart and Mr. Leland Hagen of the North Dakota Trial Lawyers Association testified that the underlying problem is the manufacture of defective products. They also urged the committee not to limit the right of North Dakota consumers to recover damages in products liability actions.

Testimony was also presented by Mr. Byron Knutson, North Dakota Commissioner of Insurance. Mr. Knutson testified that his office lacked information concerning products liability insurance experience for two reasons. The Insurance Services Office (ISO), which prepares rate filings for a number of insurers, does not list the names of the insurance companies for which they file rates, and those companies who do list directly with the state do not list products liability insurance as a line item in their rate filings or annual reports. Mr. Knutson said that a measure requiring more extensive reporting of information by products liability insurers would be helpful.

In general, those testifying before the committee agreed that there is a problem with products liability insurance, but they disagreed as to solu-

tions to the problem. There was general agreement that there is a lack of adequate information from products liability insurers regarding their ratemaking procedures and that additional information should be required. Those who testified did not agree when the committee considered a bill to regulate products liability actions by providing a new statute of limitation and the defense of alteration or modification of a product. Those representing manufacturers, retailers, and insurance companies testified that such measures are necessary to limit their potential liability, and said such measures would affect only a very small percentage of lawsuits. Representatives of consumer groups and the North Dakota Trial Lawyers Association opposed such measures and said they would limit the rights of innocent victims to recover and would not serve to reduce premiums for products liability insurance.

RECOMMENDATIONS

The Committee on Products Liability is recommending two bills regarding the products liability insurance problem. One bill, which is entitled the North Dakota Products Liability Act and which regulates products liability actions, was strongly opposed by a minority of the committee members. The other bill, which would require insurance companies providing products liability insurance in North Dakota to report information regarding premiums collected and claims paid to the Commissioner of Insurance, was less controversial.

The committee also considered two other bill drafts. One bill draft would have provided for statutory indemnification of a retailer by the manufacturer of a defective product, and the other would have required court costs and attorneys' fees to be assessed against the plaintiff when a court determines that a plaintiff is bringing a frivolous action. After receiving testimony on these bill drafts, the committee decided not to recommend them to the Legislative Council because current law adequately covers these areas.

NORTH DAKOTA PRODUCTS LIABILITY ACT

The committee believes that this bill, which would place certain limitations on products liability actions, would help solve the problem of availability and affordability of products liability insurance. While not all those testifying before the committee nor all the committee members believe that this bill will reduce products liability insurance premiums, the majority of the committee members believe that the measures contained in this bill will help reduce future premium increases.

The first section of the bill sets forth several legislative findings and the purpose of the bill. The legislative findings are that the number of lawsuits and the amounts of judgments and settlements have substantially increased in recent years, and that these increases have increased the cost of products liability insurance, which has resulted in higher costs being passed on to consumers. The purpose of the North Dakota Products Liability Act is to alleviate these adverse trends by providing a reasonable time within which actions may be commenced against manufacturers and providing other procedural changes to expedite early evaluation and settlement of claims.

The most controversial section of this bill provides for a new statute of limitations in certain cases. Current law in North Dakota (Section 28-01-16 of the North Dakota Century Code) provides that most products liability actions must be commenced within six years after the cause of action accrues. In a products liability action, the cause of action usually accrues when the injury occurs, so an action must be brought within six years after the date of injury. The North Dakota Products Liability Act would retain this limitation, but would add a new limitation in actions arising out of the following: breach of implied warranties; defects in design, inspection, testing, or manufacturing; failure to warn; or failure to properly instruct in the use of a product. Recovery of damages in these actions would be permitted only if the injury, death, or damage occurred within 10 years of the date of the initial purchase or within 11 years of the date of manufacture, whichever is later. Regardless of when within the 10- or 11-year period the injury occurred, an injured person would be entitled to bring an action within the time allowed by the appropriate statute of limitations found in Chapter 28-01. This limitation would apply to all persons, including minors, but would not apply to injuries occurring within two years of the effective date of the Act. There is also an exception providing that this limitation would not bar any actions based upon a defect which the manufacturer becomes aware of or which serves as a basis for the issuance of a recall in another state, if the manufacturer fails to issue a recall or warning to users in North Dakota. This exception is intended to prevent a manufacturer from failing to take these remedial actions in North Dakota because the statute of limitations provided by this bill would relieve the manufacturer of any liability.

This provision was strongly opposed by a minority of the committee members and by a number of individuals who testified before the committee, who believe the right of innocent victims to be compensated for their injuries would be unfairly limited. The constitutionality of the provision was also questioned on the basis of Section 22 of the North Dakota Constitution, which guarantees every person a remedy by due process of law for injuries done him. An Attorney

General's opinion, which was requested by a committee member, concluded that the provision "contained **possible** constitutional deficiencies in that it removes an existing remedy for the enforcement of rights" (emphasis added), but pointed out that the medical malpractice statute of limitations is similar to this provision, and that statute has not been considered by the North Dakota Supreme Court.

Manufacturers and representatives of the insurance industry, who appeared in favor of the bill, stressed several points in their testimony. The first was the uncertainty resulting from the "open-ended" liability exposure of products which makes it almost impossible to accurately rate premiums. The statute of limitations would provide the certainty necessary to accurately rate premiums. Secondly, it was said that only a very small percentage of product users would be affected. It was estimated that as few as one to three percent of all products liability actions are based on injuries resulting from defects in products older than 10 years. In many cases involving products older than 10 years, problems of stale and unreliable evidence and intervening acts or events would bar relief in any event. In addition, injured plaintiffs would frequently be entitled to relief from some other third party source, since the majority of actions affected by the statute of limitations would involve capital goods or industrial equipment and the owner of the product may still be liable, or workmen's compensation may be available. It was also pointed out that the bill would not bar some actions based on negligence or the breach of an express warranty.

The Products Liability Act also limits the contents of the ad damnum clause of complaints in products liability actions. The ad damnum clause is a statement in a complaint which asks for a specific amount of damages to be awarded to the plaintiff. The bill would allow a dollar amount to be stated only if damages of $50,000 or less were sought. If greater damages are sought, the pleading would state only that reasonable damages in an amount greater than $50,000 are sought. The committee recognized this provision is probably procedural, and that Section 89 of the North Dakota Constitution gives the Supreme Court the power to promulgate rules of procedure, and therefore included a statement that this provision could be superseded by an amendment to the North Dakota Rules of Civil Procedure.

The committee believes that jurors, who decide the damages to be awarded after a verdict, and insurers, who decide the damages to be awarded in the settlement of a lawsuit, are frequently influenced by a plaintiff's complaint that asks for a large dollar amount of damages. The committee hoped that eliminating the statement of the dollar amount in the ad damnum clause would help juries and insurers assess damages only after considering the pertinent facts. The bill would allow damages of less than $50,000 to be stated for several reasons. The committee believes that prejudice is less likely to result if amounts less than $50,000 are stated, and allowing such amounts to be stated would enable a plaintiff to show that more than $10,000 is in controversy, which is required for federal diversity jurisdiction.

This bill also creates certain defenses for manufacturers and sellers of products. A manufacturer or seller would have a complete defense if a "substantial contributing cause" of the injury was an alteration or modification of a product which occurred after the initial sale and which changed the "purpose, use, function, design, or intended use or manner of use" of the product. The committee's intent was to ensure that a defendant manufacturer would be held responsible only for defects in his own product, and not for defects added to it by others.

The final section of the Products Liability Act sets forth guidelines for the determination of defective products. Under this section, no product will be considered defective unless at the time of sale a defect or defective condition in the product made it "unreasonably dangerous" to the user or consumer. Unreasonably dangerous is defined in terms of what would be expected by the "ordinary and prudent buyer, consumer, or user" of the product in the community. The section also provides a rebuttable presumption that a product is not defective if the manufacturer complied with established government standards for manufacturing, inspecting, and testing the product.

PRODUCTS LIABILITY INSURANCE INFORMATION

This bill requires insurance companies that sell products liability insurance in North Dakota to report certain information to the Commissioner of Insurance. Insurers would be required to report the total number of products liability claims, the total amount paid in settlement or discharge of claims, the total amount of premiums paid for products liability insurance, the total number of persons insured, the total number of persons whose insurance was canceled or not renewed, and the reasons therefor. Only information relating to products liability experience in North Dakota would be required to be reported.

The committee is recommending this bill, which is similar to measures enacted in several other states, in response to testimony it received which established that it is difficult for manufacturers and retailers to get information relating to their products liability insurance premium rates from insurers. The bill is intended to create a reliable data base that will enable the insurance industry to set products liability premium rates more accurately and that will assist the Insurance Department in the regulation of those rates. In addition, it is hoped that the data base will help manufacturers and retailers understand how their premium rates are determined.

RESOURCES RESEARCH COMMITTEE (RRC)

The Resources Research Committee was assigned the responsibility to administer the North Dakota Regional Environmental Assessment Program (REAP). Section 4 of Senate Bill No. 2004 passed by the 1977 Legislature called for the appointment of a Resources Research Committee to carry on research in regard to North Dakota's resources and develop necessary information and analytical systems.

The members of the 1977-79 Resources Research Committee were Senators David Nething, J. Garvin Jacobson, Shirley Lee, and Rolland Redlin; Representatives Byron Langley, William Lardy, Eugene Nicholas, Alice Olson, and Ralph Winge; Citizen Members Bryce Streibel and Art Bunker; Institutional Members Alan Fletcher and James Sugihara; Executive Branch Members Dwight Connor, Austin Engel, Vernon Fahy, Bruce Hagen, W. Van Heuvelen, and Edwin Noble who was later replaced by Lee Gerhard.

The report of the Committee on Resources Research was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1977.

NORTH DAKOTA REGIONAL ENVIRONMENTAL ASSESSMENT PROGRAM (REAP)

Senate Bill No. 2004 provided for the "continued development and operation of the North Dakota regional environmental assessment program." The purpose of that effort was to be "for the purpose of assisting in the development of new laws, policies, and governmental actions and providing facts and information to the citizens of the state." Priority was to be given to "studies in regard to North Dakota's resources and the development of necessary information and analytic systems." The goal was "to assure that there shall not be material detrimental deterioration of the environment or quality of life in North Dakota, but that any such use shall enhance the quality of life of the citizens of this state."

The development of REAP commenced on June 1, 1975, when Dr. A.W. Johnson began his duties as the first director of REAP. That initial biennium was devoted largely to the design of the REAP computer system, implementation of two initial capabilities (the REAP Economic-Demographic Model Version 1 and the REAP Resources Reference System), and the initiation of a number of baseline data collection and research projects (see Figure 1).

The present biennium has been devoted to three major types of activities. First, the design activities initiated during the previous biennium have been pursued to their logical conclusion (the computer system is being developed, baseline data contracts completed, and the two initial capabilities enhanced). Second, an increasing number of services are being provided to users. Third, the experience gained during the first three years of REAP's existence provided a framework within which the RRC reevaluated the basic goals, objectives, and policies of REAP. That effort resulted in the first definitive statement of what REAP should be and how it should operate.

CONTINUED DEVELOPMENT

The majority of the baseline data and research projects initiated during REAP's first biennium were not intended to be completed during that biennium. Figure 1 shows their current status. Figure 2 shows the projects, and their statuses, which were initiated during the present biennium. Most of the latter contracts are extensions of, or part of, earlier contracts (e.g., "Historic Site Inventory" surveyed that portion of the state not covered by a similar study in the previous biennium). Two of the projects, "Implementation of the Economic-Demographic Model" and "Expansion and Refinement of the REAP Economic-Demographic Model," will result in a computer model that will enable REAP to make economic, demographic, and fiscal projections:

1) For the entire state, each county, and most municipalities.

2) For nonenergy-related development (e.g., a malt plant, sugar beet plant, etc.).

3) That incorporate numerous revisions in computational procedures and data to build upon the experience gained in using Version 1 of the model.

A comprehensive evaluation of the new model, known as RED-2, will begin in the spring of 1979. That evaluation will be conducted by a group of experts in economic modeling or in the economic, demographic, and fiscal characteristics of North Dakota. The model will become operational following the publication of that group's report.

The major REAP effort, in terms of expenditures, was conducted in-house and, as a result, is

not shown in Figure 2. That effort, the development of a computer system capable of supporting REAP's activities, was projected to cost $1,146,274 (about 57 percent of REAP's budget) and is rapidly nearing completion.

REAP, in conjunction with the Federal Systems Division of IBM, designed the REAP computer system as part of the activities undertaken during the preceding biennium. The RRC recommended funding for the acquisition and implementation of the system in October 1976. Since that time, the project has proceeded as follows:

January 1977 —
Memorandum of Understanding signed by REAP, Legislative Council, Central Data Processing (CDP), and Department of Accounts and Purchases. This memorandum described the procedures to be followed during the acquisition, design, implementation, and operation of the REAP system. Briefly, the memorandum placed responsibility for the design and implementation of the system with REAP while acquisition, ownership, and ongoing operational responsibilities were assigned to CDP and the Department of Accounts and Purchases.

February 1977 —
Request for proposal issued for the major components of the REAP system (computer, terminals, etc.) by the Department of Accounts and Purchases.

May 1977 —
Resources Research Committee recommendation that the Department of Accounts and Purchases acquire a Harris System 140 computer for REAP.

August 1977 —
Initial computer hardware and software installed.

September 1977 —
Computer system implementation staff brought on board.

September 1978 —
Two Memoranda of Understanding signed by REAP, the Legislative Council, CDP, and the Department of Accounts and Purchases. These memoranda resulted in the transfer of computer system implementation staff to CDP effective October 1, 1978; the assignment of responsibility for continued implementation to CDP; CDP responsible for meeting all REAP implementation target dates; state entities having access to the computer system through CDP; assurance that REAP's future requests for data processing shall be met; and a commitment by all parties to suggest legislation to define the relationships among REAP, the RRC, and Chapter 54-44.2 of the North Dakota Century Code.

December 1978 —
Most system capabilities operational. All capabilities can be demonstrated.

January-July 1979 —
Transition to full operation. User training.

System development is proceeding rapidly. The budgeted amount will not only be sufficient but will allow expansion beyond the original design objectives.

Proposed legislation adopted by the RRC at its November meeting fulfills the requirement under the September Memorandum of Understanding that all parties suggest legislation to define the relationship between REAP and CDP. The recommended legislation states that Chapter 54-44.2 is not applicable to the RRC. Inclusion of that statement satisfies the requirements of the September memorandum irrespective of the action taken by the Legislative Council or the 1979 Legislative Assembly.

USER SERVICES

REAP has provided a surprising level of service to users considering that it is still in the development phase. Figure 3 illustrates the type of users being served and the capabilities being requested for a period from April through October 1978. (Beginning in April 1978, REAP began to keep detailed information about all requests for services.)

As part of a grant obtained from the Department of Energy (see Figure 4), REAP conducted several user surveys. These surveys showed a high level of satisfaction with all REAP products except the Land Cover Analysis. That product was not suitable for the site specific analysis being performed by most recipients of that information (a factor taken heavily into account in the design of the LANDSAT project proposed for the next biennium).

The RRC conducted a review of REAP services at its November meeting. That review consisted of REAP staff presentations and public comment. The result of that process was the same as that obtained in the user survey — that, while enhancements have been identified, users were generally pleased with all services except the Land Cover Analysis.

In response to numerous questions about the variety of services available, a "User Handbook" has been prepared and is currently being distributed. This handbook contains a description of REAP, the RRC, products presently available from REAP, products to be available in the near future, and projects proposed to be undertaken in the next biennium.

USER FEES

At the September RRC meeting, a new user fees policy was adopted. That policy states:

1. All users will be charged at cost for services and products, excluding personnel costs. (No charge will be made for services and products costing less than $5.)

2. All requests from out-of-state organizations, both governmental and private, for copies of REAP software will be referred to the Resources Research Committee for disposition. Similar requests from in-state governmental bodies and educational institutions may be acted upon by the chairman of the Resources Research Committee in consultation with the director of the Legislative Council and the director of REAP.

3. Income to REAP from the sale of software will be credited to the trust fund.

Implicit in the adoption of this fee policy was the realization that the coal trust fund would not be repaid the $2 million used to establish REAP. The committee believed that user fees set at the high level required to pay back the trust fund would severely restrict access to REAP services.

FEDERAL FUNDING

Figure 4 shows the federal funding received by REAP during the current biennium. With the departure of Dr. A.W. Johnson in August 1977, REAP's active search for federal funding was essentially halted. At the September 1978 meeting, the Resources Research Committee decided to hire Mr. Harry Teter, a Washington consultant, to identify potential sources of federal funding. Mr. Teter will be under contract for a period from December 1, 1978, to June 1, 1979.

REEVALUATION OF GOALS, OBJECTIVES, AND POLICIES

In March 1978 the Resources Research Committee attempted to establish priorities for the projects to be undertaken by REAP in the 1979-81 biennium. During that process, it became clear that a reevaluation of REAP's basic goals, objectives, and operational policies based upon experience gained during the first three years of operation was necessary. The committee began an eight-month process that resulted in a definitive statement of what the committee proposed REAP to become and the projects recommended for funding in the upcoming biennium.

The committee believed that a number of conceptual problems could be avoided if the RRC was not distinct from REAP. Hence, proposed legislation and descriptions talk about a committee and a committee staff that operate an environmental assessment program. For convenience, that proposed committee will continue to be referred to as the "RRC" in this report although the proposed legislation does not indicate a name. The following text describes the future RRC role as adopted by the committee.

"The Resources Research Committee (RRC) is a statutory committee composed of representatives from both houses of the legislature, the executive branch, the state universities, and citizens at large. The RRC exists to assist in the development of new laws, policies, and governmental actions and to provide facts and information to the citizens of the state. It is responsible for:

(1) the development of a comprehensive environmental* data base for North Dakota;

(2) the development of information systems capable of meeting the needs of North Dakota decision makers;

(3) the development of assessment/modeling capabilities to forecast the environmental characteristics of North Dakota;

(4) the development of monitoring systems to detect changes in the characteristics of North Dakota;

(5) the coordination of data collection, monitoring systems, assessment/modeling capabilities, and information systems to avoid duplications of effort in areas of current interest to the RRC.

*The term "environment" includes social and economic factors as well as biological and physical factors.

"The level of effort associated with each of the above areas of responsibility is determined by the projects the RRC chooses to undertake in a specific biennium. The RRC's approach to meeting its reponsibilities is to concentrate on those areas of benefit to, and requiring coordination among, several state agencies, the three branches of government, or other state en-

tities. With the exception of a special state agency grants program, the RRC does not fund state agency projects that should normally be funded directly by the legislature.

"The RRC has a staff of highly trained scientific and technical personnel to carry out its programs. In general, the RRC staff:

(1) attempts to contract for work with existing state entities rather than with out-of-state consultants or by increasing the number of in-house staff;

(2) need not retain operational control of the capabilities developed;

(3) may assist in the coordination of data collection, monitoring systems, assessment/modeling capabilities, and information systems that fall outside the areas of current interest to the RRC;

(4) limits its activities solely to providing results based upon accepted analytic methods. Specifically, the staff attempts to draw a line between the application of accepted analytic methods to produce "analysis"; and that of interpretation of those results with respect to the "goodness" or "badness" of policy recommendations, which often is also called "analysis." (Using the staff's "analysis" as a starting point, North Dakota decision makers must provide the further "analysis" that is needed to establish, or justify, policy positions.)"

1979-81 PROJECTS

The Resources Research Committee (RRC) has a very broad area of responsibility. As such, the allocation of the limited funds available to the committee is one of its most important tasks; clearly, the committee will never be able to address all environmental questions. The projects described in this report have resulted from more than seven months of staff work and have been the principal items of discussion at three RRC meetings. Taken together, they address those areas of RRC responsibility of highest importance to decision makers.

The projects adopted by the committee resulted from a combination of REAP staff work, a broad-based needs assessment and project definition effort, RRC priorities, and a redefinition of the RRC's role. An initial list of 80 projects (11 administrative, 14 social, 35 environmental, and 20 economic) were presented to the RRC at the May 22-23, 1978, meeting. Each RRC member rated those 80 projects with respect to his/her own perceptions of the state's needs. Forty-three projects received high ratings from the committee as a whole.

RRC members were invited to submit other projects for consideration.

At the August 2-3, 1978, meeting, projects were not directly discussed; rather, the RRC established basic goals and policies for the 1979-81 biennium. The 43 high priority projects resulting from the May meeting were evaluated again — at the September 26-27, 1978, RRC meeting — with respect to the new goals and policies, technical feasibility, and benefits to the state. Eight more projects were dropped from consideration while one was added — a project to provide funding for unanticipated state agency environmental research needs.

Figure 5 shows each project with an approximate cost. It is important to note that the cost often represents a "level of effort" rather than the amount needed to totally resolve a problem. For example, it could take literally millions of dollars — and years — to find out all the information that would be of help with respect to the eutrophication (deterioration) of all North Dakota lakes. The $26,000 associated with the proposed project on eutrophic levels of lakes represents only an amount sufficient to address **some** priority needs with respect to eutrophication. Clearly, raising the funding level would mean more priority tasks would be undertaken; likewise, lowering the funding level would mean fewer priority tasks would be accomplished.

Since many of the projected costs represent levels of effort, the RRC will have an active, ongoing involvement with those projects. Proposals will be solicited from qualified contractors, evaluated by recognized experts in the various fields of research and, finally, be submitted to the RRC along with staff recommendations. In all cases, the RRC will specifically approve both the tasks to be accomplished and the contractor selected to perform the work.

A considerable effort has been made to ensure that the projects undertaken by the RRC complement and augment work being done by other state entities, rather than duplicate work or compete for funding with them. It is important to remember that projects proposed for funding by other state entities do not overlap those described here — even when the project names are similar. For example, the Health Department is proposing a project to study eutrophication of lakes as a part of its budget. That project should not be considered in

competition with the eutrophication project proposed here, since they are designed to accomplish different goals and address different needs. In fact, the two complement one another.

One of the proposed projects, "Grants for Unanticipated Environmental Research Needs," represents a new concept for the RRC. While state agencies operate on biennial budgets established almost a year prior to the start of a biennium, environmental research needs arise as a result of changing pressures on the environment, not on budget cycle requirements. As such, the RRC believed there should be funds available to ensure that state agencies can respond to important environmental issues that arise between legislative sessions. The grants project proposes the establishment of a granting source to meet such needs.

The RRC proposes to provide funds, through grants, for environmental research projects subject to the following guidelines:

1. Only state agencies are eligible applicants.

2. Projects must be completed prior to July 1, 1981.

3. The state must not incur ongoing costs.

4. The need for the environmental research must have been identified **after** the end of the 1979 Legislative Assembly and **prior** to the start of the 1981 Legislative Assembly.

The RRC will be solely responsible for determining which grant applications should be funded. The grant program will be administered as follows:

1) The REAP staff will develop guidelines for grant applications by July 1, 1979.

2) Grant applications may be submitted to any RRC member and will then be forwarded to the REAP staff.

3) The REAP staff will solicit written comments from known experts in the field of research addressed by a grant application and from state agencies with similar needs to determine the approach being taken, to ensure adequate coordination has been obtained, and to determine whether the need was "unanticipated." These written comments and the grant application will be submitted to the RRC no later than the second RRC meeting following receipt of the grant application at REAP.

4) The Emergency Commission will be notified of all applications and all grants to ensure coordination between the Emergency Commission and the RRC. The RRC may choose to approve a grant application contingent upon the approval of the Emergency Commission.

PROPOSED ORGANIZATION

With the transformation of REAP's activities from solely developmental to a mix of developmental and operational activities, the staffing structure has evolved (see Figure 6). Recently, a new division, the User Services Division, has been created to ensure that the appropriate user services are provided in a timely manner.

PROPOSED 1979-81 BUDGET

The proposed 1979-81 biennium budget is:

Salaries and wages	$ 730,685
Fees and services	896,084
Supplies and materials	73,605
Equipment	14,941
Data processing	835,685
Grants*	100,000
	$ 2,651,000

*Grants for Unanticipated Environmental Research Needs.

STATUS OF 1977-79 BUDGET

The RRC requested a $3,720,000 general fund appropriation for REAP. Action taken during the 1977 Legislative Assembly and a Governor's veto cut the REAP appropriation to $2,000,000. The present status of that appropriation is as follows:

Income	
General fund appropriations	$ 2,000,000.00
CETA grant	5,037.00
Department of Energy grant	100,000.00
National Science Foundation grant	25,000.00
Sale of products and services	25,566.66
1975-77 unexpended	8,290.23
	$ 2,163,893.89
Expenditures	
Wages and salaries	$ 401,027.24
Fees and services	607,669.16
Supplies and materials	105,148.57
Equipment	18,980.86
Data processing	1,011,068.06
	$ 2,163,893.89

CONCLUSION

The RRC urges approval by the Legislative Council of the proposed legislation and is recommending an appropriation of $2,651,000 for the operation and continued development of an environmental assessment program administered by a committee of the Legislative Council. The proposed sections call for the direct appointment of six members of the committee by the Governor, provide for data security, provide for the Emergency Commission approval of transfer of funds between REAP and state agencies for cooperative data acquisition and analysis efforts, and the other items discussed earlier in this report.

Project Title	Contract Number	Contracting Party	Principal Investigator	Dates	Amount	Status
Systems Design Contract		International Business Machines Corporation				
Phase I	1-01			10-9-75 to 12-12-76	$ 84,000	Completed
Phase II	1-02			1-30-76 to 11-29-76	189,000	Completed
Computer Analyst Support for Campus-Based Data Collection	1-03-2	North Dakota State University	Donald Peterson	7-1-76 to 6-15-78	15,088	Completed
Economic-Demographic Model Implementation (RED-1)	3-01	Arthur D. Little, Inc.	Donald Senechal	3-1-76 to 5-2-77	110,244	Completed
Economic-Demographic Model Development (RFD-1)	3-02	North Dakota State University	Dr. Thor Hertsgaard	3-1-76 to 5-27-77	32,678	Completed
Water Resources of the Knife River Basin	4-01-1	ND State Water Commission	Milton Lindvig	11-1-76 to 2-16-79	47,000	Final Report expected 2/16/79. Paid to date: $27,099.79.
Water Analyses to Support Geologic and Animal Studies	4-01-2	North Dakota State University	Robert Koob	7-9-76 to 11-30-77	21,600	Final Report received. Bill received which exceeds contract amount by $70.83.
Geology and Hydrology of the Knife River Basin	5-01-1	ND Geological Survey	Dr. B. Michael Arndt	5-5-76 to 2-28-78	132,000	Draft Report and review comments returned to Geological Survey (10/2/78). Total contract amount has been paid. Will receive Final Report when printed.
Bibliography on Geology and Water Resources of North Dakota	5-02-1	ND Geological Survey	Mary Scott	9-15-76 to 9-14-77	10,000	Received Final Invoice with check for overpayment. Holding check pending communication from NDGS that no expenses were incurred after September 14, 1977, and a list of equipment is received
Distribution of Fish in Little Missouri, Knife, Heart and Cannonball River Basins	6-01-1	University of North Dakota	Dr. John Owen	4-19-76 to 7-15-78	29,000	Final Report received. Paid to date: $23,578.85. Must receive and pay Final Billing which must include a complete financial statement for the entire project as well as an itemized list of all permanent equipment acquired.
Vertebrates of Southwestern ND: Amphibians, Birds, Reptiles, Mammals	6-01-2	University of North Dakota	Dr. Robert Seabloom	4-19-76 to 6-30-78	85,000	Final Report received. Final Billing received. Need itemized list of permanent equipment acquired. Paid to date: $80,270.04.

Land Mollusks of Southwestern ND 6-02-1	Minot State College	Dr. David Bickel	5-1-76 to 7-31-77	5,500	Completed
Aquatic Mollusks of Southwestern ND 6-02-2	University of North Dakota	Dr. Alan Cvancara	7-1-76 to 6-30-77	7,400	UND is submitting an amended invoice for salaries due to a computer error. When this invoice is paid the contract will be completed. Paid to date: $6,485.27.
Arthropods of Southwestern ND 6-02-3	North Dakota State University	Dr. Gregory Mulkern	5-1-76 to 5-30-78	40,000	Final Report received. Final Billing received. Final Report will be reviewed and Final Billing paid. Paid to date: $34,172.29.
Soil Fauna and Parasites of Southwestern ND 6-02-4	University of North Dakota	Dr. Paul Kannowski	4-19-76 to 3-31-78	35,000	Draft report reviewed. Final Billing not received. Have received billing which we are holding because it involves the final 10% of the contract amount. Paid to date: $30,317.78.
Woodlands, Shrubs and Algae of Southwestern North Dakota 7-01-1	University of North Dakota	Dr. Mohan Wali	5-1-76 to 7-15-78	79,700	Draft report reviewed. Final Billing not received. Need to receive Final Report and Final Billing which includes list of permanent equipment acquired. Paid to date: $71,730.
Grasslands and Wetlands of Southwestern ND 7-01-2	North Dakota State University	Dr. Warren Whitman	5-1-76 to 6-15-78	77,000	Draft report reviewed. Final Billing received. Need to receive Final Report and list of permanent equipment acquired. Paid to date: $63,260.96.
Evaluation of Meteorological Sites in Southwestern ND 8-01-1	North Dakota State University	Dr. S.M. Ramirez	4-19-76 to 2-4-77	57,000	Completed
Air Quality Stations in Southwestern ND 8-02-1	ND State Department of Health	W. Van Heuvelen	5-1-76 to 12-15-77	170,000	Completed
Paleontologic Sites in North Dakota 9-01-1	University of North Dakota	Dr. F.D. Holland	5-1-76 to 12-31-76	7,100	Completed
Archaeologic Sites in North Dakota 9-01-2	University of North Dakota	Dr. Frederick Schneider	5-1-76 to 10-30-77	7,564	Completed

Figure 1: 1975-1977 Contract Status Report

Figure 1: 1975-1977 Contract Status Report (Cont.)

Project Title	Contract Number	Contracting Party	Principal Investigator	Dates	Amount	Status
Historic Sites in Western North Dakota	9-01-3	University of North Dakota	Dr. Jerome Tweten	5-15-76 to 2-28-77	$14,688	Completed
Longitudinal Socioeconomic Data in Western ND	10-01-1	University of North Dakota	Dr. Mark Henry (Principal Investigator)	5-1-76 to 12-31-78	156,467	Paid to date: $135,909.59. For status of separate deliverables, see below.
(a) Input-Output Framework Report			Dr. Mark Henry			Completed
(b) Criminal Justice Report			Dr. James Larson			Draft report reviewed.
(c) Institutionally and Change-Related Social Attitudes and Behavior Report			Dr. Arne Selbyg			Draft report reviewed.
(d) Political Organization and Governmental Structure Report			Dr. Margaret LeCompte			Draft report reviewed.
(e) Recreational and Cultural Facilities and Service Report.			Dr. William Dunaway			Draft report reviewed.
Longitudinal Socioeconomic Data in Western North Dakota (Cont.)	10-01-1	North Dakota State University		5-1-76 to	80,020	
(a) Business Activity Report			Dr. Thor Hertsgaard	9-15-78		Completed. This report is included in the Input-Output Framework Report of Dr. Mark Henry.
(b) Demographic-Characteristic Report			Dr. Steve Murdock	9-15-78		Completed
(c) Medical and Health Service Report			Dr. Joy Query	12-31-78		Draft report reviewed.
(d) Education and Schools Report			Dr. Eldon Schriner	12-31-78		No Draft report received.

(e) Public Sector Costs and Revenue Report			Dr. Eldon Schriner	1-31-79		No Draft report received.
(f) Social and Employment Services Report			Dr. Eldon Schriner	1-31-79		No Draft report received.
(g) Fire Protection Report			Dr. Thomas McDonald	9-15-78		No Draft report received.
(h) Criminal Justice Report			Dr. Thomas McDonald	9-15-78		No Draft report received.
Land Cover Analysis of North Dakota	11-01-1	Bendix Corporation	Dr. Robert H. Rogers	5-10-76 to 11-15-77	145,553	Completed

Figure 1: 1975-1977 Contract Status Report

Project Title	Contract Number	Contracting Party	Principal Investigator	Dates	Amount	Status
Computer Analyst Support for Campus-Based Data Collection	1-03-1	University of North Dakota	Conrad Dietz	7-1-76 to 6-7-78	$ 17,554	Completed
Implementation of the Economic-Demographic Model (RED-2)	3-03-1	Arthur D. Little, Inc.	Don Senechal	5-25-77 to 2-21-79	137,000	Received tape of RED-2. Paid to date: $121,334.87.
Expansion and Refinement of the REAP Economic-Demographic Model (RED-2)	3-03-2	North Dakota State University	Thor Hertsgaard (Principal Investigator)	5-25-77 to 2-21-79	51,990	Validation in process.
		University of North Dakota	Mark Henry	2-21-79	2,884.63	Completed
Historic Site Inventory	9-02-1	University of North Dakota	Dr. Jerome Tweten	5-23-77 to 2-28-78	26,500	Final Report received. Final Billing not received.
Tax Department (REAP Research) Funding	10-01-2	State Tax Department	Arnold Burian	11-19-76 to 6-30-77	1,230	Completed

Figure 2: 1977-1979 Contract Status Report

TYPE OF REAP USER

REAP Users	Federal	State	Local	Private	Education	Total
Economic-Demographic Model Version 2	3	16	7	8	5	39
REAP Resources Reference System	4	20	2	6	12	44
General REAP Information	3	5	1	7	0	16
Land Cover Analysis	4	2	2	12	8	28
Other	3	12	2	7	1	25
Total	17	55	14	40	26	152

Figure 3: Users of REAP Services (April-October 1978)

Granting Agency	Objective(s)	Date	Amount	Status
Department of Energy	1) Refinement and Expansion of the Economic-Demographic Model (RED-2) 2) Evaluate Applicability of E-D Model to Other Western States 3) REAP System Usage Analysis 4) Consult with the Environmental and Socioeconomic Program in Fossil Energy Division of ERDA regarding its proposed research project for a socioeconomic monitoring system in the Appalachian region. 5) Status of R³S Data Collection and Water Data Base and Evaluate the Potential for expanding them.	8-1-77 to Completion	$100,000	Draft Final Report Submitted
National Science Foundation	REAP goal definition	6-15-78 to 4-15-79	$ 25,000	Modification of Proposal in Review at NSF
Comprehensive Employment Training Administration	Data Entry Support for R³S	1-1-78 to 8-31-78	$ 5,037	Completed

Figure 4: Federal Funds

DEVELOPMENT OF A COMPREHENSIVE ENVIRONMENTAL DATA BASE

	COST
Establishment and Operation of a National Cartographic Information Center	$ 26,000
Establishment of REAP as a NAWDEX Local Assistance Center	41,000
Access and Enter Priority Data	177,000
Non-Energy Industry and Business Relocation Survey	48,000
Socioeconomic Impacts of Oil and Gas Development	32,000
Maintain Inventory of the Soils of North Dakota	73,000
Irrigable Land in North Dakota	60,000
Inventory of Land Ownership (Surface and Subsurface) in North Dakota	37,000
Inventory of Prime Farmland and Land of Statewide Importance in North Dakota	68,000
Minable Lignite in North Dakota	40,000

DEVELOPMENT OF INFORMATION SYSTEMS

	COST
Operation and Expansion of the REAP Resources Reference System (R^3S)	$120,000
Enhancement and Continued Development of the REAP Computer System	250,000

DEVELOPMENT OF ASSESSMENT/MODELING CAPABILITIES

	COST
Operation and Enhancement of the REAP Economic-Demographic Model, Version 2	$ 80,000
Ground Water Trends in North Dakota (WATSTORE)	23,000
Eutrophic Levels of North Dakota Lakes	26,000
Air Quality Effects for Southwestern North Dakota	80,000
Projecting Effects of Legislative Decisions on Local Governmental Revenues and Costs	112,000
Evaluating Economic Alternatives to Stripmining in North Dakota	81,000
Assessing Available Information for Use in Evaluating Potential Development of North Dakota Lignite and the Effects of Federal/State Policy Variables on Future Lignite Development	48,000

DEVELOPMENT OF MONITORING SYSTEMS

	COST
Monitoring Changes in Demands for Educational Services and Selected Indicators of Educational Quality in Coal Impacted Counties	$ 16,000
Monitoring Changes in Secondary and Tertiary Employment in Areas Affected by Coal Development	53,000
Monitoring Property Tax Rates in Coal Impact Counties	34,000
Monitoring Rates of Select Criminal Offenses in Coal Impact Counties	16,000
Monitoring the Cost of Living in Communities Affected by Coal Development	63,000
Pollution Tolerance in Fishes, Wildlife and Domestic Animals of the Knife River Basin	120,000
Monitoring Changes in the Availability of Health Services in the Coal Impact Area	16,000
Permanent Monitoring Stations	59,000
Remote Sensing Applications for Support of Decision Making in North Dakota	150,000

Figure 5: Proposed Projects

Figure 5: Proposed Projects (Cont.)

COORDINATION OF DATA COLLECTION, MONITORING SYSTEMS, ASSESSMENT/MODELING CAPABILITIES, AND INFORMATION SYSTEMS

	COST
User Outreach Program	$ 40,000
Access/Support REAP Data From Agencies	40,000
Habitat Classification of North Dakota	12,000

ADMINISTRATIVE PROGRAMS

	COST
Administrative Support	$430,000
Training Support for REAP-Related Capabilities	40,000
User Services	25,000
Grants for Unanticipated Environmental Research Needs	115,000

Figure 5: Proposed Projects

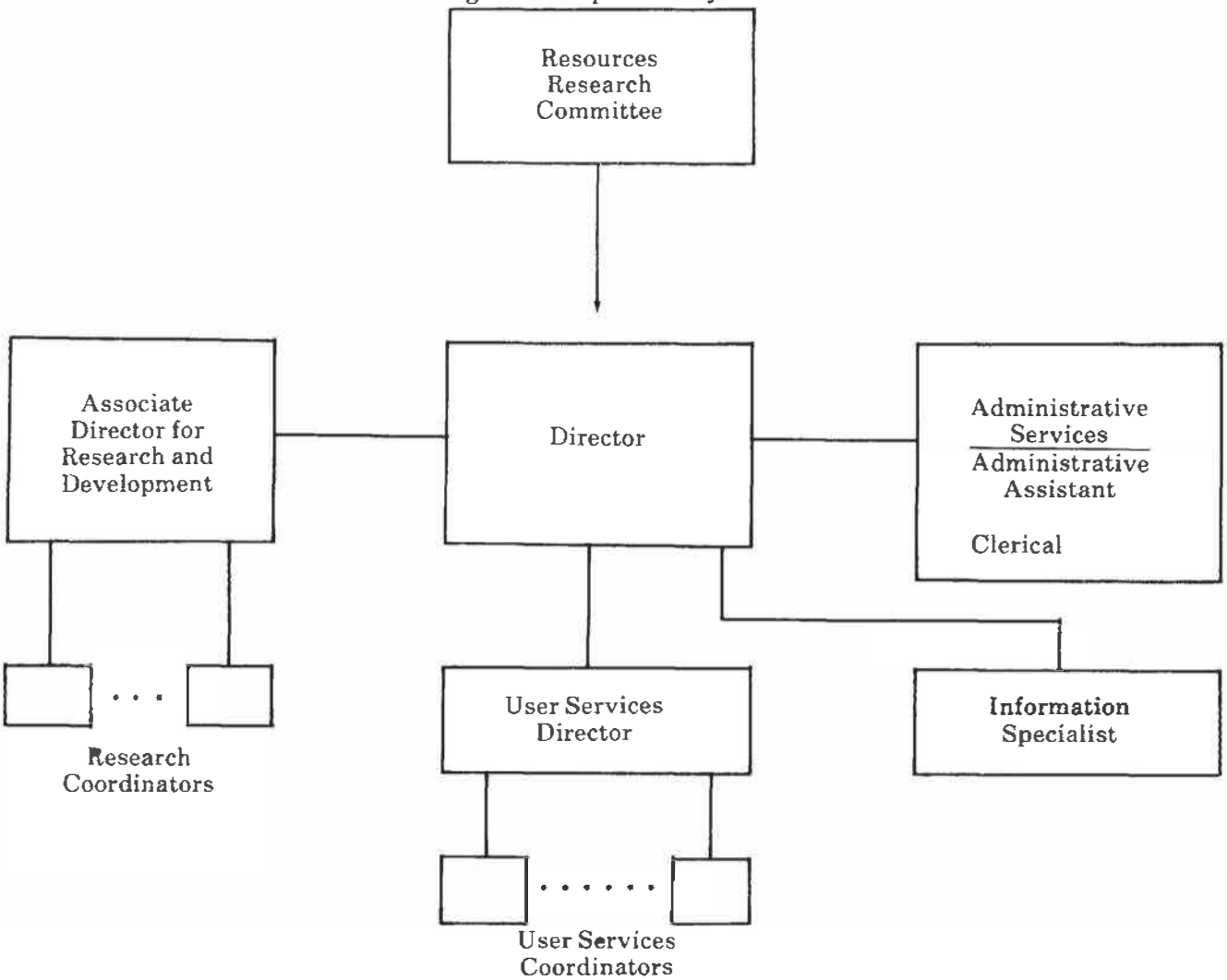

Figure 6: Proposed Organizational Chart

RETIREMENT

North Dakota Century Code Section 54-35-02.3, enacted by the 1977 North Dakota Legislative Assembly, provides for the biennial appointment of a Committee on Public Employees Retirement Programs by the Legislative Council. The section provides:

1. The Committee on Public Employees Retirement Programs shall consider legislative measures and proposals which affect, actuarially or otherwise, the retirement programs of state employees or employees of any political subdivision. The committee shall make a thorough review of any measure or proposal which it takes under its jurisdiction, including an actuarial review. The committee shall report its findings and recommendations, along with any necessary legislation, to the Legislative Council and to the Legislative Assembly.

2. The committee shall solicit draft measures and proposals from interested persons during the interim between legislative sessions, and may also study measures and proposals referred to it by the Legislative Assembly or the Legislative Council.

Committee members are Senators Bonnie Miller Heinrich, Chairman, Stephen Farrington, and Gilman A. Strand; and Representatives James Gerl, Irven Jacobson, Kenneth Knudson, and Gordon Larson.

The report of the Committee on Retirement was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

At its organizational meeting, the committee decided that all proposals would have to be made in writing so the committee might better determine a proponent's intent and all proposals would have to be submitted to the committee by January 1, 1978, to allow enough time for actuarial evaluation.

The committee utilized the services of public employee retirement programs, public employee organizations, governmental associations, and the Associated Press to disseminate information on the committee and its purpose and on requirements for proposals. In addition, the committee notified each legislator and county auditor of the committee's requirements.

The committee began its study with a survey of all state level retirement programs and several local public retirement programs relating to:

1. Description of the management of each program.

2. Current financial status of each program.

3. Benefits available under each program.

4. Cost of administering each program.

5. Number of persons in each program.

6. Retirement formula used to determine benefits in each program.

7. Number of annuitants (current beneficiaries) in each program.

The committee received proposals from local public retirement programs, state level retirement programs, state and local officials, legislators, Legislative Council committees, educational organizations, state and local employees, retirees, and employment organizations. In all, the committee received proposals from 43 individuals or organizations. Many proponents included more than one item in their proposals so the number of proposals exceeds 43.

The proposals relate to increasing benefits, decreasing benefits, lowering the retirement age, raising the retirement age, eliminating a retirement age, providing for credit for prior service, withdrawal from Social Security, creating new plans, consolidating existing plans, and eliminating existing plans. The following is a summary of proposals presented to the committee:

1. Proponent: Arthur H. Gehring
   Summary: Amend Section 54-52-02.4 to allow those employees who worked for a "significant time" prior to July 1, 1966, but had their service broken during the period from July 1, 1966, to June 30, 1977, to receive prior service credit if continuously employed for the last five years prior to retirement. Such amendment should be made retroactive.

2. Proponent: Pauline Ovesen
   Summary: Allow proponent prior service credit despite a five-month service break between July 1, 1966, and June 30, 1977.

3. Proponent: C.E. Rice
Summary: Revise definition of "continuously employed" to include in it all employees who were granted leave without pay by their department heads and were considered full-time employees by the department which employed them.

4. Proponent: Pendergast, et al (Cass County employees)
Summary: Repeal Section 54-52-17 (10); require political subdivisions under PERS to poll employees when exercising option affecting employees; do not allow employees to exercise option of withdrawing from PERS and then rejoining the system; allow employees who terminate employment prior to retirement to receive part of employer's contribution; return part of political subdivision's contributions upon termination by employee.

5. Proponent: Duane D. Kessler
Summary: Study feasibility of applying all unused sick leave toward credit for months of service in retirement.

6. Proponent: Richard A. Espeland
Summary: Require immediate participation in PERS rather than present five-month waiting period; allow only "permanent budgeted positions" to participate in PERS.

7. Proponent: Marjorie Bye
Summary: Raise PERS benefit formula multiplier from 1.04 percent to 2.0 percent or maximum actuarially sound percentage; credit employees for all years service if service break did not exceed one year; allow full benefits after 30 years' service regardless of age.

8. Proponent: Elton W. Ringsak, Jr.
Summary: Identical to proposal 7

9. Proponent: Henry A. Lahaug
Summary: Increase PERS benefit formula multiplier to 1.5 percent; provide cost of living increases; allow full benefits for those working after age 65.

10. Proponent: Robbin E. Hendrickson, et al
Summary: Provide for return to old PERS annuity plan.

11. Proponent: Raymond M. Griffin
Summary: Allow PERS membership to be optional with provisions for purchasing prior service credit by paying employer's and employee's shares plus reasonable interest; return part of employer's contribution to employee if forced out of system, e.g., one-half share plus 5 percent interest.

12. Proponent: Vernon R. Pederson
Summary: Place all supreme and district court judges under plan equivalent to old judicial retirement system.

13. Proponent: Judicial System Committee
Summary: Create new judges' retirement system for all judges with benefits equal to 75 percent present judge's salary; various benefit options; unknown division of contributions.

14. Proponent: Reuben D. Braaten
Summary: Allow cities to establish retirement programs with freedom of investment.

15. Proponent: Legislative Procedure and Arrangements Committee
Summary: Investigate possibilities of providing legislative retirement program.

16. Proponent: Ralph M. Wood
Summary: Raise patrolmen's maximum contribution and benefits and provide credit for additional service of less than one year.

17. Proponent: Allen I. Olson
Summary: Investigate feasibility of withdrawing from the Social Security system and providing alternative benefits.

18. Proponent: Teachers' Task Force
Summary: Allow teachers' aides to be members of TFFR if certified to teach in North Dakota.

19. Proponent: Teachers' Task Force
Summary: Raise assessments and contributions to 6.25 percent; allow full retirement at age 60 with 35 years service; base benefits on high five out of last 10 years.

20. Proponent: Teachers' Task Force
Summary: Provide penalties for fraud against TFFR; exempt refunds from legal process; allow TFFR Board to waive 120-day waiting requirement.

21. Proponent: Teachers' Task Force
Summary: Provide that retired teachers' benefits are discontinued upon return to teaching and if subsequent earnings exceed maximum allowed by Social Security; contributions recommenced upon resumption of teaching.

22. Proponent: Teachers' Task Force
Summary: Extend period within which a person must have taught in North Dakota before entering military service to receive credit for such service from 24 to 30 months.

23. Proponent: Teachers' Task Force
Summary: Allow the Board of Higher Education to establish a TIAA-CREF program for members of TFFR, whether or not vested, and allow TFFR members to withdraw assessments and contributions plus interest for deposit in TIAA-CREF.

24. Proponent: Teachers' Task Force
Summary: Remove requirement that annuitant electing to come under 1971 law pay to TFFR the difference between the amount actually paid and that amount required on the annuitant's salary for the last year of teaching under the 1971 law; provide that a college teacher need not have contributed to TIAA-CREF while teaching in North Dakota; provide a standard TIAA offset to use in determining college teachers' benefits from TFFR.

25. Proponent: Teachers' Task Force
Summary: Allow nonpublic school teachers to participate in TFFR if they participated in TIRF by paying to TFFR the difference between the amount actually paid and that required on the teacher's salary under Section 15-39-14.1; teacher must pay both shares plus interest; provide that nonpublic teachers are eligible for minimum TFFR benefits.

26. Proponent: Teachers' Task Force
Summary: Provide minimum benefits for those eligible for benefits under Chapter 15-39; exempt college and nonpublic school teachers.

27. Proponent: Teachers' Task Force
Summary: Study desirability of providing for comprehensive post-retirement adjustment programs for TFFR and PERS.

28. Proponent: W. A. Muehlhausen
Summary: Provide that TIAA-CREF offset is composed of only the employer's contribution and not the employee's assessment also.

29. Proponent: Barbara Adam
Summary: Same as proposal 28

30. Proponent: North Dakota Higher Education Association
Summary: Reintroduce 1977 Senate Bill No. 2462 (same effect as proposal 7)

31. Proponent: John S. Penn
Summary: Allow deceased teacher's beneficiary to exercise option for increased benefits if teacher would have been able to exercise option upon retirement.

32. Proponent: North Dakota School Boards Association
Summary: Allow school districts to levy the actual amount necessary to supply matching contributions to TFFR.

33. Proponent: Fargo Firemen's Relief Association
Summary: Allow association to reduce benefits, raise retirement age, and increase secretary's compensation.

34. Proponent: State Employees Association
Summary: Adjust present retirement plans so all state employees make similar contributions and receive similar benefits based on salary and length of service.

35. Proponent: Joann McCaffrey
Summary: Prohibit compulsory retirement for public employees and provide full credit for service beyond normal retirement age.

36. Proponent: Gordon Larson
Summary: Allow those college teachers who are members of both TFFR and TIAA-CREF to make additional assessments to receive TFFR benefits equal to those of public school teachers.

37. Proponent: Charles Mertens
Summary: Provide that benefits under PERS are payable as of retirement date regardless of when applied for; provide that disability benefits are payable the first day of the month after disability.

38. Proponent: Edward J. Klecker
Summary: Provide for retirement program for employees of the State Penitentiary; 25 years service; retirement at age 55; increased contributions and assessments.

39. Proponent: Bismarck Firemen's Relief Association
Summary: Increase minimum contributions and assessments to fund to 12 percent and 7 percent, respectively.

40. Proponent: Gerard L. D'Amour
Summary: Allow PERS member to retire after 35 years service regardless of age.

41. Proponent: Dorothy R. Anderson
Summary: Allow prior service credit if service break did not exceed one year and occurred before January 1, 1977.

42. Proponent: State Court Administrator
Summary: Provide past service credit for county court employees who become state employees under the Unified Judicial System.

43. Proponent: Public Employees Retirement System Board of Directors
Summary: Require state officials appointed after July 1, 1979, to be members of PERS.

The committee reviewed each proposal and solicited testimony from proponents, retirement program administrators, and other interested parties. Although empowered to retain actuarial assistance, the committee was able to utilize the actuarial assistance contracted for by various state and local retirement programs. In submitting proposals for actuarial evaluation, the committee combined similar proposals, e.g., those relating to prior service credit, and was thus able to ascertain the actuarial effects of an entire group of proposals. The committee obtained both written actuarial information and oral testimony on many proposals.

Several proposals were submitted after the January 1, 1978, deadline established by the committee and the committee reviewed each of these proposals separately. After determining that actuarial information could be obtained in time for the committee to take action, the committee decided to take several late proposals under its jurisdiction and make appropriate recommendations. Other proposals, however, were submitted too late to allow the committee to obtain actuarial data and the committee, although it took jurisdiction over these proposals, was unable to make any recommendation.

After obtaining actuarial information on the proposals, the committee made findings of fact with respect to each proposal. The findings include the actuarial effect, fiscal effect, number of people affected, and the form in which the proposal was submitted. It should be noted that not all of the proposals were submitted for actuarial evaluation because the proposals either were contrary to recent action by the Legislative Assembly and would have required a significant expenditure of the committee's time and finances, or required a large expenditure of time and finances and were considered important enough to warrant a two-year interim study.

A copy of the committee's findings on particular proposals is being furnished each proponent who will then secure a sponsor for the proposed legislation. A copy of the committee's findings of fact will be appended to each proposal when it is introduced.

In addition to the findings directly responsive to the proposals, the committee, in its report on each proposal, has attempted to alert the Legislative Assembly to any problems, dangers, or advantages it perceives with regard to that proposal.

The committee, on its own volition, recommends two pieces of legislation for introduction. The committee recommends a bill to delete from the North Dakota Century Code provisions of two options formerly available to employees and political subdivisions under the Public Employees Retirement System. The period in which the options are available has expired and the committee believes a "housecleaning" bill to be of general value.

The committee also recommends a resolution providing for a study of automatic cost-of-living adjustments for retirees under state retirement programs.

The committee recommends that the Legislative Council staff instruct the sponsors of proposed retirement legislation that they must get a report from the Retirement Committee before introducing such legislation. The committee also recommends that it be authorized to meet twice during the legislative session before the bill introduction deadline to consider and report on any proposals which were received too late in the interim for committee consideration and others which might be proposed during the session.

The committee notes that it has no legal jurisdiction over amendments to retirement bills but recognizes that such amendments can materially affect the actuarial soundness of the bills. The committee, therefore, recommends that any amendments to retirement bills be accompanied by actuarial and fiscal information on the effects of the amendments.

The committee believes the process employed in soliciting and reviewing retirement proposals was worthwhile. However, the committee has several recommendations which it believes will expedite the proposal and review process in the future. The committee recommends that statutory provision be made for inclusion of former legislative members as citizen members on the committee to better provide continuing expertise. The committee recommends that no member of a public retirement program be a citizen member of the Committee on Retirement. The committee recommends that all future proposals also be presented to the appropriate retirement board, if any, for formalization and possible consolidation and then be presented to the committee in bill form.

The committee wishes to emphasize the problems it perceives in reviewing and reporting on proposals which are not presented in bill form. Firstly, the committee sometimes found it difficult to discern the proponent's true intent. This was particularly true in those instances in which the proponent was unable to personally appear before the committee. Secondly, some proposals were so broad as to prevent any meaningful response by the committee. The committee is charged with the responsibility of reporting on the effects of specific retirement proposals. When the proposals are so broad that their effects cannot be determined, the committee cannot meaningfully respond. Finally, the committee believes the responsibility for securing introduction of proposals lies with the proponents. In those instances in which the committee has to report on proposals not in bill form, who will determine if the bill as introduced conforms with the original proposal and thus with the committee's report? The committee believes that each of these problems could be alleviated if the proposals were required to be in bill form when submitted to the committee.

SOCIAL SERVICES

The Committee on Social Services was assigned two studies. House Concurrent Resolution No. 3081 directed a study of the licensing requirements and procedures, and the care and treatment provided patients and residents, of health care facilities and other residential care facilities, including methods of making residents aware of their rights, an ombudsman procedure for grievance investigation, and an evaluation of the licensing standards and procedures of the various state agencies involved. Senate Concurrent Resolution No. 4079 directed a study of the feasibility of enacting comprehensive human rights legislation in North Dakota and the adequacy and enforcement of present statutes relating to human rights legislation.

Committee members were Representatives Brynhild Haugland, Chairman, L. E. Berger, Larry Herslip, Robert Martinson, Ruth Meiers, Alice Olson, Anna Powers, Burness Reed and Vernon Wagner; and Senators Hal Christensen, Adam Krauter, George Rait, and Jens Tennefos.

The report of the Committee on Social Services was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

STUDY OF CARE FACILITIES FOR THE AGED

House Concurrent Resolution No. 3081 reflected legislative concerns that patients in North Dakota's nursing homes and boarding care homes are often not made aware of their rights to care and treatment, these rights are not clearly defined, and there is some confusion as to which state agency has responsibility for licensing and regulating boarding care homes.

A major problem area is the residential care or a boarding care type of home which denominates itself as a boardinghouse, lodginghouse, hotel, or motel, and is therefore subject only to licensing and regulation by the State Laboratories Department. However, the department only licenses an establishment for its lodging and food service capabilities, and not for its patient or resident care facilities. This situation, combined with the residents' lack of knowledge of their rights to care and treatment, was an important basis for this study.

The resolution also reflected the concern that nursing homes and intermediate care facilities (ICFs) are regulated and licensed by the State Department of Health, while boarding homes for the aged and infirm are licensed and regulated by the Social Service Board.

During the 1977 Legislative Session, House Bill No. 1046 would have provided a patient's bill of rights, as well as for informed consent by patients to provision of medical services. The 1977 bill also required notice of the patient's rights to be posted in a conspicuous place in all health care facilities and to be furnished to all patients and residents of those facilities, and the reporting of any physical injury inflicted on a patient or resident of a health care facility to the State Board of Medical Examiners. Complaints were to be investigated by the Attorney General who would prosecute any violations of the sections of the bill. The bill also forbade any retaliation against a patient, resident, or employee of a health care facility because he or any member of his family made a good faith report or complaint, upon a violation of the law or regulation, to the State Board of Medical Examiners. The bill failed to pass.

North Dakota Law

In North Dakota the licensing of nursing homes comes under the heading of licensing of medical hospitals (North Dakota Century Code Chapter 23-16). Department of Health regulations provide that long-term care facilities, which include nursing homes and ICFs, are classed as medical hospitals and licensed under Chapter 23-16.

Boarding homes for the aged and infirm are licensed by the Social Service Board pursuant to Chapter 50-18. Boarding homes for the aged and infirm do not provide medical services.

Pursuant to Chapters 19-02 and 23-09, the State Laboratories Department regulates food and lodging institutions and establishments, including certain boardinghouses, lodginghouses, hotels, and motels which provide food services, and which have a large number of permanent or semipermanent residents. Oftentimes, residents of these facilities are senior citizens in varying stages of physical or mental disability. Because the department licenses these facilities, stressing sanitation and safety, they are not provided with the benefits of visitation or regulation by the Department of Health or the Social Service Board. Therefore, the quality of the residents' treatment and care is unregulated.

Minnesota and South Dakota Law

In South Dakota and Minnesota nursing homes

and residential care facilities, or homes for the aged and infirm, are licensed and regulated by the State Health Department. The law in both states specifically excludes the licensing of purely lodging establishments, such as hotels or boardinghouses, and provides a definition of a nursing home or boarding home that requires regulation by the Health Department. The law in both states requires periodic and unannounced inspection of regulated facilities, and provides specific criteria for the revocation or suspension of a license.

The South Dakota Health Department has a contract with the South Dakota Public Welfare Department for Medicaid and welfare payment regulation of persons in homes regulated by the Health Department. Pursuant to this agreement, the South Dakota Public Welfare Department will transfer patients or residents from one kind of facility to another, depending on the type of care or treatment required. As an aid in the South Dakota Health Department efforts to determine which facilities are subject to its regulation as a boarding care home, the South Dakota Attorney General has ruled that any institution which assists its residents with walking, dressing, medication, or toilet usage, or which promises supervision or provides supervision of the person, or which employs any staff to aid residents in addition to cooks or maids for cleaning, is considered to be a boarding care home subject to Health Department regulation.

The Minnesota Public Welfare Board retains exclusive licensing authority over residential facilities for the handicapped of any age.

Interim Study

The agencies involved in licensing of care facilities for the aged in North Dakota are the State Laboratories Department (hotels, motels, lodginghouses, boardinghouses), Social Service Board (boarding homes for the aged and infirm and adult foster homes), the Department of Health (nursing homes and ICFs), and State Fire Marshal's office. The Jamestown State Hospital and Grafton State School are also involved because many of their former patients are residents in the various types of care facilities. According to the State Laboratories Department, there are between 12 and 36 hotels or motels providing some degree of custodial care which should probably more accurately be classified as boarding homes for the aged and infirm.

Title XVIII of the Social Security Act (Medicare) is available to most persons 65 or over regardless of their income or assets. Medicare's most visible service is the acute hospital service. However, post hospital extended care services and other services are available. Medicare will pay for a portion of the cost of up to 100 days of care in a skilled nursing facility, but will not pay for care in an ICF. Medicare will also pay for some health care services. Medicare will pay only for nursing home care when the patient has been in a general hospital for at least three days prior to a transfer to a skilled nursing facility. The transfer ordinarily must have been within 14 days of the discharge from the hospital. Moreover, Medicare only pays when the person needs skilled nursing services. Most of the North Dakota nursing homes were certified to provide post hospital extended care services during the early years of the Medicare program. In the course of time, all but four of the facilities withdrew, citing the small number of patients and the retroactive denial of payment for services as the reasons.

Title XIX of the Social Security Act (Medicaid) is available for persons whose income and assets are limited regardless of age. Funds are provided through federal and state appropriations and payment is made through the state. Medicaid's program of joint state and federal grants is administered by the Department of Health, Education and Welfare (HEW) and by each participating state. Participating states must submit a plan acceptable to HEW, and within that plan designate a "single state agency" to administer the program. The Social Service Board is the "single state agency" in North Dakota. That agency is required to establish and maintain quality of care standards for the state's nursing homes, and to enforce federal statutes and regulations. Participation by a state in the Medicaid program is voluntary. If the state elects to participate, however, it must comply with the federal statutes and regulations to remain eligible for federal funds. Once a state's plan is approved, the federal government pays from 50 to 80 percent of the costs incurred by the state in providing medical assistance to indigents, a term which includes qualified nursing home and ICF patients. With Medicaid funds, the state reimburses both skilled and intermediate nursing facilities for services rendered to eligible individuals under a payment schedule adopted by the state but subject to HEW guidelines. Federal financial participation is based on the per capita income of the state. Because eligibility for medical assistance is largely based upon financial need, the applicant is required to provide the Social Service Board with information sufficient to render a decision concerning eligibility, including residence, family composition, income, real and personal property, and medical expenses.

Medicare and Medicaid pay for over one-half of the nation's nursing home costs. Revenues for the nation's nursing home industry reached an

estimated $7.5 billion in 1974, with over half coming from state and federal governmental sources. Of the public funds used for the reimbursement of nursing home costs, Medicare contributed $3.5 million while Medicaid paid $3.7 billion and private patients paid $3.5 billion.

Before a nursing home can be reimbursed by Medicare or Medicaid, it must first be certified for participation in the program. A nursing home can be certified only after it has been found to be in compliance with all relevant state and federal statutes and regulations, a finding made by the appropriate state agency, or by HEW if the home receives Medicare.

The conditions of participation are the same for Medicare and Medicaid except for the manner in which utilization review is accomplished. In North Dakota the Social Service Board satisfies this requirement, in nursing homes and ICFs certified for Medicaid only, through its screening and medical review activities.

The "single state agency" administering Medicaid may delegate the responsibility for inspecting the homes for compliance with state and federal regulations to another agency. The Social Service Board has entered into an agreement delegating responsibility for inspections to the State Department of Health, the "survey agency."

Pursuant to this agreement between the board and the department, surveys are conducted in the state's nursing homes and ICFs to determine eligibility of those facilities to participate in the Medicaid program administered by the Social Service Board. Facilities are inspected by the Department of Health at least once a year followed by a once-a-year followup survey to check on deficiencies. The survey team includes a registered nurse, medical records administrator, sanitarian, dietician, and nursing home administrator. The followup is usually conducted by a registered nurse. The department has an agreement with the State Fire Marshal who makes a building safety check. For licensure and certification purposes there are three occasions for inspection — environmental inspection, survey team inspection, and fire inspection. The sanitarian and fire safety surveyor travel independently of the other members of the survey team. If all the facets of a facility meet federal regulations, it receives certification for Medicaid and, as a spinoff, a state license. Inspection usually takes five days.

There are six Social Service Board screening teams which are responsible for a utilization review and quality care review in accordance with federal regulations for Medicaid and Medicare recipients. Screening teams are composed of a registered nurse and a social worker. It is their job to determine the level of care, intermediate or skilled, for patients in nursing homes and ICFs. Screening teams go to facilities many times during the year and an inspection can take from 1.5 to two weeks. Screening teams examine all records, talk to all patients who are Medicaid or Medicare recipients, and conduct in-service training for the staff of the facility when there is a particular problem.

Although the Legislative Assembly appropriates a considerable amount of money through Medicaid, thereby enabling nursing homes and ICFs to meet high standards of care, the cost of care in boarding homes for the aged and infirm, adult foster care, or other boarding care facilities must come out of an individual's personal savings — Social Security, Supplemental Security Income (SSI), or other personal income. The strain is on county budgets to supplement the federal SSI payments for those in basic care facilities.

The 1977 Legislature passed Senate Bill No. 2135 allowing state reimbursement to counties for 50 percent of their actual expenditures in general assistance. This new law also calls for a cost of care determination for all boarding homes for the aged and infirm.

Testimony on Care Facilities

The committee invited administrators from five identifiable groups of care facilities for the aged, including lodginghouses, boardinghouses, hotels, and motels; adult foster homes; boarding homes for the aged and infirm; nursing homes; and intermediate care facilities to present testimony concerning care of the aged, licensing alternatives, patients' rights, drug control, inspections, treatment of patients, and other related areas so that the committee could identify problems and seek solutions.

Administrators of boardinghouses testified that they provide care for patients for approximately $5.09 per day per patient. According to their testimony, they provide services not required of boardinghouses, and they felt criticism leveled at them was unjustified. Social Security benefits which are sometimes combined with SSI payments were said to be a primary source of fee payment for many boardinghouse residents.

Foster homes, which provide food, shelter, and care for four or less adults, also receive moneys for patient fees from combined welfare and Social Security payments. One foster home administrator, however, testified that no county welfare money has been made available to her patients since June 24, 1977. Another administrator testified that private-pay patients generally pay

more than medical assistance recipients in foster homes.

Administrators of boarding homes for the aged and infirm described their facilities as basic care facilities. Testimony revealed that rates paid by the counties for patients at this type of facility vary, but the rates are less than amounts received from private-pay patients. One administrator recommended that a standard rate for basic care facilities be established, a better relationship between screening committees and facilities be established, and a better relationship between the state and the facility be established. Another administrator suggested elimination of boardinghouses as care facilities because of the poor service they provide.

Administrators of nursing homes and ICFs were represented by the North Dakota Hospital Association. The association expressed its interest and concern over reimbursement regulations. It felt government unfairly denies reimbursement to facilities which usually means that unrecovered costs must be passed on to private-pay patients. Failure to reimburse for actual nursing hours per patient, per day was one example cited. The association stressed that more nursing homes should consider Medicare certification to alleviate use of Medicaid dollars. The association expressed concern about duplication of inspections at facilities, placement and transfer of patients from one care facility to another, and lack of physician coverage for geriatric medicine.

The Social Service Board distributed its manuals on allowable costs for boarding homes for the aged and infirm, nursing homes, and ICFs. The board said it pays up to 110 percent of minimum federal staffing guidelines, which define the average number of nursing hours per patient per day necessary to provide adequate care to skilled and intermediate care patients. Upon the request of a facility, a waiver may be granted by the board for nursing hours necessary beyond the minimum to provide adequate care.

The Social Service Board pointed out that Senate Bill No. 2135, passed in the 1977 Session, is intended to relieve the burden of general assistance payments on the counties. Most residents in boardinghouses are private-pay residents and Social Security is not general assistance. It is the board's opinion that the 50 percent state reimbursement to counties for general assistance expenditures applies to nursing homes and ICFs, as well as boarding homes for the aged and infirm.

The Social Service Board expressed its view that boarding homes for the aged and infirm are personal care facilities rather than medical facilities, which should be licensed by the Social Service Board. Its major concern was with the level of care and the possibility of the cost of that care rising if new licensing procedures and standards are established. The Social Service Boards said it believes a rise in cost would affect the individual in a care facility and the individual's county.

The Social Service Board recommended that some provision for people being released from the State Hospital be included in a bill draft because those people are released to facilities that provide care, but not to the extent provided at the State Hospital.

The Department of Health said it believes the real issue to be addressed is that any change in the cost structure of personal care homes may have a devastating effect on residents. It pointed out that joint licensure may be the most effective and economical way to protect individuals in basic care homes.

The State Laboratories Department recommended that licensing of all care facilities be by one regulatory agency with adequate enforcement authority.

Committee Tour

Committee members individually and as a group toured various care facilities throughout the state. As a group the committee visited the Mandan Villa, a combined nursing home, ICF, and boarding home for the aged and infirm, and the Bismarck Baptist Home, also a combined facility (the Baptist Home also has apartments for rent to people not needing care).

Ombudsman

The committee heard testimony from North Dakota's nursing home ombudsman, Ms. JoAnn Hildebrand. The position was established through 100 percent federal funding under the Older American's Act of 1965, a HEW program. Planning and coordination of programs servicing the elderly is an intricate function of this position. A copy of the nursing home ombudsman report, along with an "in-house description" of the job title (aging services specialist) was made available to the committee. The ombudsman position is an independent position supervised by the Social Service Board. The ombudsman attempts to act in a fair and impartial manner as an advocate and information source for patients and their families. The board stated it will not request a state appropriation to continue the ombudsman program if federal funding stops.

The committee also received written testimony from Mr. Ray Berndt, the former ombudsman at the State Hospital in Jamestown. He suggested

that if the Legislative Assembly creates an ombudsman for the elderly its office should be an independent agency in the legislative branch of government.

The chairman appointed a subcommittee, consisting of Representatives Berger, subcommittee chairman, Wagner, Meiers, and Olson; and Senator Rait to investigate the recommendation that an independent ombudsman be created responsible only to the legislative branch. The subcommittee included a number of sources in their considerations, including "Patients and Their Complaints: A Critical Study of New York State's Nursing Home Ombudsman," "The Ombudsman: Missing Links Between Citizens and Government?", a publication of the National Conference of State Legislatures, the American Bar Association resolution suggesting model ombudsman essentials for a state statute, Iowa's statute governing the operation of the office of "citizens aide", South Carolina's statute establishing a nursing home ombudsman, Minnesota's statute establishing an office of health facility complaints, Florida's statute establishing a state nursing home ombudsman committee, and the Social Service Board's procedures for investigating and disposing of reports alleging abridgement of patients' rights within boarding homes for the aged and infirm.

The subcommittee recommended to the committee that the current ombudsman program should be continued with federal funding, but a state appropriation for that program should be considered if federal funding is discontinued.

Homemaker/Home Health Aide Service

The committee heard testimony concerning Title XX, the Homemaker/Home Health Aide Service, of the Social Security Act and its implementation in North Dakota. The testimony revealed the possibility of the program losing its county funds. It was pointed out that the program allows aged and handicapped individuals, who without some basic care assistance would otherwise have to be maintained in an institution, to remain in their homes, thereby saving the taxpayers money by reducing the expenditure of Medicaid dollars. Under the program, people are hired to come into homes for a certain number of hours every week as homemaker aides to help with house cleaning, grocery shopping, and the like; or as health aides to help with personal hygiene, basic medical care, and first aid. The Social Service Board said state aid for the program would be sought in the next legislative session.

Equalization of Costs

The committee considered a bill draft, based on a Minnesota statute, relating to equalization of costs for private-pay and medical assistance recipient patients in care facilities. The bill draft forbade charging residents not receiving medical assistance rates which exceed by more than 10 percent those rates approved by the Social Service Board for medical assistance recipients. However by July 1, 1980, the bill requires rates for all residents of care facilities to be equal.

Representatives of the North Dakota Health Care Association and the Americana Health Care Corporation expressed their opposition to the bill draft. They pointed out that Minnesota's statute is currently being challenged in court on the grounds that it violates the due process clause of the Fourteenth Amendment (United States Constitution); impairs the obligations of existing contracts; inhibits the ability of facilities to provide adequate care because the reimbursement does not provide enough income to cover the "reasonable costs" of the operation of the facility, thereby violating the Medicaid Act and regulations; and that the Minnesota plan was not approved by the federal government. They further pointed out that some facilities would discontinue Medicaid contracts if the bill were passed.

The Social Service Board testified it would need more money if the state changed criteria for "reasonable costs" and subsequently increased reimbursements to facilities. However, further testimony pointed out that the federal government defines "reasonable costs" and the limitations within the definition are inflexible.

Other testimony revealed that private-pay patients are subsidizing the Medicaid program and the higher rates they pay for services depletes their savings. It was reported that care facilities seem to move medical assistance recipients from home to home to make room for more private-pay patients.

The committee makes no recommendation concerning the equalization of costs bill draft.

Licensing Proposals

The committee considered six bill drafts relating to defining and licensing care facilities for the aged. Some of these bill drafts were amended versions of original drafts and others were entirely new concepts or amendments to current law.

Alternative 1 amended Section 23-16-01, defining boarding care homes, placing boarding care homes under the licensure of the Health Department, and providing for compensation and cooperative arrangements with the Social Service Board. It also repealed Chapter 50-18.

Alternative 2 created new sections defining the various care facilities within the state, exempting certain facilities from regulation, placing all care

facilities for the aged under the licensure of the Health Department, providing for interagency consultation and cooperation, providing for consultation and cooperation between the Social Service Board and the Health Department, amended Section 23-16-01 to exclude care facilities for the aged from that section, and repealed Chapter 50-18.

Alternative 4 was an amended version of Alternative 2 proposed as the result of a joint meeting of representatives of the Social Service Board, State Department of Health, and State Laboratories Department. This alternative maintained the licensing authority for all care facilities for the aged under the Department of Health, changed some of the terminology of Alternative 2, provided for an agreement to be executed with the Social Service Board in regard to Medicaid and Medicare reponsibilities, and provided for cooperation between the State Laboratories Department and Department of Health, in determining when a hotel, lodginghouse, or boardinghouse licensed under Chapter 23-09 should be licensed as a personal care home (formerly boarding home for the aged and infirm). Alternate 4 was later relabeled Proposal I for clarification purposes.

The Social Service Board proposed a bill draft providing for licensing and regulation of nursing homes, intermediate care facilities, and other health care facilities by the Department of Health and licensing and regulation of personal care homes, which were specifically defined, by the Social Service Board. The Social Service Board and the State Laboratories Department, under the bill draft, would have been responsible for determining the licensing of questionable care facilities. This bill draft was partially based on Alternative 4, but did not repeal Chapter 50-18.

The Department of Health proposed a bill draft, based on Alternative 4, which provided for joint licensure of personal care homes by the Department of Health and the Social Service Board. The department said the purpose behind its proposed involvement in personal care homes is to make certain individuals in homes receive the appropriate level of health care. This bill draft was relabeled Proposal III.

The final proposal on care facilities for the aged was made by the Social Service Board. This bill draft was labeled Proposal II. It creates two new sections to Chapter 50-18. The first section provides for cooperation between the State Laboratories Department and the Social Service Board in determining responsibility for licensing hotels, lodginghouses, and boardinghouses and places that may change their operation from that of a hotel, lodginghouse, or boardinghouse to that of a boarding home for the aged and infirm. The second section provides for authority for the Social Service Board to enjoin operations of those facilities operating without a license. The bill draft also amends the definition of boarding home for the aged and infirm in Section 50-18-01 by adding language which specifies the type of care which would make some hotels, lodginghouses, or boardinghouses subject to licensure as boarding homes for the aged and infirm. The North Dakota Health Care Association and representatives of some boarding homes for the aged and infirm expressed their preference for keeping the licensure of these facilities under the jurisdiction of the Social Service Board.

Recommendations

The Committee on Social Services recommends one bill relating to licensing of care facilities for the aged, Proposal II, the final bill draft proposed by the Social Service Board. As set forth in the preceding paragraph, the bill provides for an expanded definition of boarding home for the aged and infirm, joint responsibility for determining the licensing of questionable care facilities and injunctive powers for the Social Service Board.

HUMAN RIGHTS STUDY

During the 1977 Legislative Session, two bills were considered relating to human rights, and both failed to pass. Senate Bill No. 2424 was designated the North Dakota Human Rights Act of 1977. The bill prohibited discrimination because of race; color; creed; religion; sex; ancestry; national origin; age; marital status; the presence of any sensory, mental, or physical disability; or status with regard to public assistance. The bill provided for a Human Rights Commission to administer the Act. Chapter 50-26, the provisions for the Governor's Council on Human Resources, was repealed but placed in the Act as an advocacy division. The bill also specified a complaint procedure, defined discriminatory practices, provided for enforcement, provided for judicial review of a commission order, and provided for an appropriation of $226,086 for the biennium.

Senate Bill No. 2045 was designated the North Dakota Equal Employment Opportunity Act. The bill prohibited employers, employment agencies, labor organizations, or licensing agencies from discriminating in employment practices. The Labor Commissioner was to administer the Act. The Act specified a complaint procedure as well as a procedure for judicial appeal. The bill was amended to exclude employers of less than 15 employees and to ensure that the Act would not adversely affect veterans' preference. The bill was also amended to reduce the penalty for violation of

the Act and to specifically authorize an employer to establish bona fide employment policies relating to the employment of spouses of existing employees.

State Constitutional and Statutory Provisions

Article 1, Section 1, of the State Constitution provides: "All men are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property and reputation; and pursuing and obtaining safety and happiness."

Various provisions in the North Dakota Century Code relate to civil rights. Chapter 12.1-14 relates to official oppression, elections, and civil rights. Section 23-21.1-08 makes it unlawful for any organization subject to Chapter 23-21.1 to deny the privilege of interment of the remains of any deceased persons solely because of the race or color of the deceased person. Section 26-30-04 defines unfair methods of competition and unfair and deceptive acts or practices in the insurance business. Subsection 11 of Section 26-30-04 prohibits the refusal to ensure risks solely because of race, color, creed, sex, or national origin. Section 27-09.1-02 provides that a citizen shall not be excluded from jury service on account of race, color, religion, sex, national origin, or economic status. Section 34-01-17 provides that no employer shall refuse to hire, employ, or license, or shall bar or discharge from employment, any individual solely upon the ground of age when reasonable demands of the position do not require an age distinction; provided the individual is well versed in the line of business and is qualified physically, mentally, and by training and experience to satisfactorily perform the duties assigned to him or for which he applies. Chapter 34-06.1 provides for equal pay for men and women.

Human Rights Statutes of Adjacent States

Most states have human rights legislation of one form or another. Thirty-eight states have human rights legislation approved by the Equal Employment Opportunity Commission (EEOC) which qualifies them to be a "designated 706 agency." 706 agencies are entitled to jurisdiction of discrimination complaints for a 60-day period for investigation and resolution before the EEOC will assume jurisdiction. Ten other states have piecemeal human rights legislation which is not sufficient to qualify them for EEOC 706 agency status.

North Dakota's neighboring states, Minnesota, Montana, and South Dakota all have comprehensive human rights legislation enabling them to qualify as a "designated 706 agency." Minnesota statutes prohibit unfair discriminatory practices. It is the public policy of Minnesota to secure freedom from discrimination for all persons. Minnesota's Human Rights Act is administered by the Department of Human Rights, which is headed by a human rights commissioner appointed by the Governor and confirmed by the Senate. The Act provides for enforcement and procedures from the initial filing of a charge of unfair discriminatory practice through judicial review of any action ordered by the commissioner.

The Montana Freedom From Discrimination Act prohibits certain unlawful discriminatory practices. The Act is administered by the Human Rights Commission which is within the Montana Department of Labor and Industry. The Act specifies the procedures for filing and investigating a complaint, formal efforts to eliminate discriminatory practices, conduct of hearings before the commission, and court appeals.

The South Dakota Human Relations Act of 1972 prohibits certain unfair and discriminatory practices. The Act is administered by the Human Rights Commission, which is under the direction and supervision of the Division of Human Rights, but the commission retains its quasi-judicial, quasi-legislative, advisory, and other nonadministrative and special budgetary functions. The Act also provides for procedures upon filing a complaint with the commission, notice of the complaint, commission hearings and orders, and judicial review.

Federal Statutes

There are several federal laws providing for civil rights and prohibiting discriminatory practices. Some of the more commonly known ones are the Equal Pay Act of 1960, Civil Rights Act of 1964, Age Discrimination in Employment Act of 1967, Fair Housing Act of 1968, Equal Employment Opportunity Act of 1972, Equal Educational Opportunity Act of 1974, and Equal Credit Opportunity Act of 1976. In addition, several federal assistance programs contain miscellaneous sections which restrict or prohibit discrimination in the administration of those programs.

Several federal agencies receive complaints of violation of human rights, including the Department of Health, Education, and Welfare, (HEW), the Department of Housing and Urban Development (HUD), the Treasury Department (through the regional administration of the national banks), and the Labor Department (through the EEOC). Each of these agencies receive complaints about violations of human rights in North Dakota. In 1977 HEW received eight complaints. The Fair Housing and Equal Opportunities Department of HUD received 84 complaints between July 1, 1975, and September 30, 1977. The regional administration of national banks received 13 complaints in

1976 and 10 complaints in 1977. The EEOC has received 44 charges from North Dakota citizens in the past fiscal year.

Testimony

The regional director of the EEOC, Denver, Colorado, Mr. Pedro B. Esquivel and the EEOC's district counsel, Dr. Segismundo Pares, appeared before the committee to discuss human rights legislation. They reported that the EEOC is currently considering approximately 123,000 discrimination cases under the Civil Rights Act of 1964 and the Equal Employment Opportunity Act of 1972, each of which can take from two to three years to discharge.

Mr. Esquivel said if a state passes legislation comparable to federal legislation and an agency is empowered to handle discrimination complaints, the state will receive a 706 designation which allows for federal deferment of a discrimination charge to the state for 60 days.

Dr. Pares distributed considerable information to the committee including the text of the Equal Employment Opportunity Act of 1972, the regulations of the EEOC, charts showing the process by which the EEOC investigates and resolves discrimination charges, an affirmative action and equal employment guidebook for employers, and guidelines on discrimination because of sex, religion, and national origin. Mr. Esquivel pointed out that all decisions of a state agency are reviewed by EEOC. He noted that federal funding is available for states to administer their human rights legislation.

The committee also heard testimony from the former director of the South Dakota Division of Human Rights, Ms. Mary Lynn Myers. Ms. Myers was invited by the committee to present testimony on the workings of a human rights commission and the effectiveness of human rights legislation on the state level. Ms. Myers presented testimony on South Dakota's Comprehensive Human Relations Act. She distributed statistics on complaints and complaint costs, an explanation of the complaint procedure and its cost, a guide for complainants and respondents, sunset findings on the South Dakota Human Rights Commission, and the rules of the commission. Ms. Myers said she believes legislation which provides for a human rights commission on the local level is more responsive to the needs of people and therefore more effective.

The committee also heard testimony from Mrs. Ruth Karim, Pierre, South Dakota. She testified that she believes human rights legislation is a financial and social burden, not a benefit, to South Dakota citizens. She suggested that an alternative to creating a human rights commission and providing administrative hearings for the disposition of complaints is to enact legislation to provide that discrimination cases be initiated by action in the appropriate court with the right to a jury trial.

Other testimony regarding human rights legislation identified the main problem regarding human rights in North Dakota as the lack of any place or person to refer people to and pointed out human rights legislation as a means of providing a guarantee for enforcement of human rights on the local and state levels. Further testimony supported human rights legislation but proposed the maintenance of the advocacy role which is fulfilled by the Governor's Council on Human Resources. Testimony also pointed out the continued involvement of the federal government in human rights enforcement even if North Dakota passes human rights legislation. (If a state qualifies as a 706 agency the EEOC must defer to settlement of the complaint by a state, but it retains the right to review the decision of the state and the right to assume jurisdiction upon failure of a state or local agency to resolve the complaint.)

Others testifying on human rights asked the committee to consider whether there was a lack of human rights legislation in North Dakota, what the legal consequences of legislation would be, and what the cost of legislation would be. It was also suggested that any Human Rights Act should closely follow federal guidelines.

Proposed Bill Draft

The committee considered a bill draft proposing comprehensive human rights legislation with alternative considerations explained by comments. The bill draft forbade discrimination because of race; color; religion; national origin; sex; age; marital status; the presence of any sensory, mental, or physical disability; or status with regard to public assistance. The bill draft forbade discrimination by employers, employment agencies, labor organizations, advertising, housing practices, financial institutions or lenders, educational institutions, public accommodations, public services, advertising public accommodations or services, credit transactions, and insurance transactions; and forbade the concealing, aiding, compelling, or inducing of unlawful discrimination. The bill draft provided for an independent commission on human rights consisting of five members appointed by the Governor, with the advice and consent of the Senate. The commission administration was to be handled by separate compliance and advocacy divisions. The bill draft contained certain exceptions to discriminatory practices, including bona fide occupational qualifications. The bill draft also provided for a complaint procedure, enforcement powers, judicial review, and annual report to the Governor, and local human rights commissions.

Recommendation

The Committee on Social Services makes no recommendation concerning the human rights study.

STATE AND FEDERAL GOVERNMENT

House Concurrent Resolution No. 3086 directed the Legislative Council to study the membership, duties, and responsibilities of all boards, committees, commissions, and councils, other than occupational and professional licensing boards. The study was to include consideration of whether any of the entities have overlapping powers and duties, whether any entity should be eliminated or consolidated, whether each entity presently performs the functions for which it was originally created, and whether the membership of each entity is responsive to the people of the state.

The Committee on State and Federal Government members were Representatives Dan Rylance, Chairman, Marjorie Kermott, Fern Lee, Clarence Martin, Anna Powers, Burness Reed, Allen Richard, and Warren Schuett; and Senators Phillip Berube, Kent Jones, Rodney Mau, and Kent Vosper.

The report of the Committee on State and Federal Government was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

The study of the membership, duties, and responsibilities of state boards and commissions first began with an assessment of the number of such entities in state government. The committee found that there are presently over 100 boards and commissions subject to the study.

The committee, realizing that it could not conduct detailed reviews of over 100 governmental entities, selected 33 entities (hereafter "boards" or "board") for initial study. The committee agreed generally to review boards with potential for overlapping functions. Other boards were chosen to determine their public responsiveness.

Each of the following boards was sent a questionnaire prepared by the committee:

Teachers' Professional Practices Commission
North Dakota Student Financial Assistance Program Advisory Board
State Board for Indian Scholarships
Burleigh County Board of Special Education
Williams County Board of Special Education
State Committee for Reorganization of School Districts
Education Factfinding Commission
Advisory Council on Special Education
Farmers' Advisory Committee
Milk Stabilization Board
Board of Directors of Minot Fair
Federated Cooperative Agricultural Association
Agricultural Code Commission
Governor's Council on Human Resources
North Dakota Heritage Commission
North Dakota Educational Broadcasting Council
Council on Arts and Humanities
Theodore Roosevelt Rough Rider Award
State Historical Board
State Library Commission
Yellowstone-Missouri-Ft. Union Commission
North Dakota Heritage Study Committee
Public Employees Retirement System
Merit System Council
North Dakota Trade Commission
Unemployment Advisory Council
Legislative Compensation Commission
Legislative Council
State Laboratories Commission
Sterilization Approval Board
Board for Trial of Contests of Presidential Electors
Aeronautics Commission
Game and Fish Advisory Board

The questionnaire requested (1) names and qualifications of all board members; (2) criteria used in selecting board members; (3) number of regular and special meetings in 1975 and 1976; (4) average length of time spent in meetings; (5) types of subjects considered at meetings; (6) maximum amount of per diem and types of expenses paid board members; (7) total per diem and mileage and travel expenses incurred by the board during the fiscal year ending June 30, 1977; (8) all sources of funds; (9) total expenditures from public funds for each of the past 10 fiscal years; (10) form and availability of rules and regulations; (11) form and availability of minutes; (12) programs under which the board receives federal funds or administers or participates in federally sponsored programs; (13) original legislative intent, present scope of activities, and future activities planned for the board; (14) present usefulness of original legislative intent; (15) changes in duties or composition necessary to continue effectively serving the public; (16) other boards with similar or overlapping functions; (17) possibility of combining functions with other boards; (18) harm to the public should the board be terminated; (19) description of how to improve the board's value to public; and (20) rationale for board's existence.

In considering the responses to the questionnaire, the committee asked four questions:

1. Is it necessary that the function of the board be performed?

2. Can the board be eliminated and its function assigned to another entity?

3. If the board should be retained, should it be restructured in order to better perform its function?

4. Is the membership of the board logical and proper in light of its function and objectives?

In each case, after the responses to the questionnaire were received, members of the selected boards were asked to appear before the committee and testify concerning the membership and functions of their board and any recommendations they might have concerning their board. In many instances, a board being reviewed had not been active for many years and was unable to furnish a representative to testify before the committee. The committee spent many hours of its time in this fashion, collecting testimony from state officials, board and commission members and persons affected by the board's activities.

After receiving testimony that the Yellowstone-Missouri-Fort Union Commission has been inactive for several years but the functions assigned to the commission may be of future relevance, the committee recommends a bill to terminate the Yellowstone-Missouri-Fort Union Commission and transfer its functions to the State Historical Board.

After receiving testimony that the Federated Cooperative Agricultural Association and the Agricultural Code Commission have not been active since their inception in 1935; that the Sterilization Approval Board has been inactive for several years and is of questionable constitutionality; and that the Heritage Study Committee is inactive and a transfer of its functions is unnecessary, the committee approved and recommends a bill to terminate these boards.

After receiving testimony that the Trade Commission is inactive, the committee approved and recommends a bill to terminate the commission and transfer its funds to the general fund.

After receiving testimony that the functions of the North Dakota Heritage Commission for funding and construction of the North Dakota Heritage Center will be completed by 1981, the committee recommends a bill to terminate the Heritage Commission as of July 1, 1981.

After receiving testimony that the Board of Education's Student Financial Assistance Agency could continue to award scholarships to North Dakota students without the aid of the Student Financial Assistance Program Advisory Board, the committee recommends a bill to terminate that board.

After receiving testimony that the Board of Directors of the Minot Fair has been inactive for several years and desires termination, the committee recommends a bill to terminate the board and transfer the board's fund to the State Fair Association.

After receiving testimony that the name of the Council on the Arts and Humanities is misleading in that the council no longer assists humanities projects, the committee recommends a bill to change the council's name to the North Dakota Council on the Arts.

After receiving testimony that the name of the State Library Commission is incorrect inasmuch as it is no longer a commission but is the Director of Institutions, the committee recommends the bill change the name of the commission to either State Library or State Librarian depending on the context. The Director of Institutions will continue to have authority to appoint the State Librarian.

In response to the effect of recent judicial redistricting on the membership districts of the Business and Industrial Development Commission, and after receiving testimony from the director of the Business and Industrial Development Department, the committee recommends a bill to revise the commission's membership districts along county lines.

In response to the effect of recent judicial redistricting on the membership districts of the State Board for Public School Education, and after receiving testimony from the Superintendent of Public Instruction, the committee recommends a bill to revise the board's membership districts along county lines.

In response to the effect of recent judicial redistricting on the membership districts of the Game and Fish Advisory Board, and after receiving testimony by board members and officials of the Game and Fish Department relating to the effectiveness of the board, length of members' terms, and the powers and duties of the board, the committee recommends a bill to:

1. Base membership on the eight districts in effect for North Dakota Resource Conservation and Development projects.

2. Limit members to two terms of four years.

3. Provide for review by the board of applications for the position of Game and Fish Commissioner.

4. Allow the board flexibility in setting dates for meetings.

(1) ...

As a result of the committee's concern with the appointment process provided for many of the boards reviewed, and after receiving testimony from members of the Educational Broadcasting Council that they did not oppose Senate confirmation and favored staggered terms of office and formal ties with the Board of Higher Education and the Department of Public Instruction, the committee recommends a bill providing for Senate confirmation of future appointments, staggered terms of office, and a reduction of members from 12 to nine while maintaining formal ties with the Board of Higher Education and the Department of Public Instruction.

(2) ...

After receiving testimony that coordination of activities among "heritage" boards would be useful, the committee recommends a bill to provide for semiannual joint meetings of representatives of the North Dakota Council on the Arts, State Historical Board, Educational Broadcasting Council, State Library, and Heritage Commission.

After receiving testimony that statewide advertisement of employment opportunities with the state would benefit qualified candidates, the committee recommends a bill to require advertisement of such positions by the State Personnel Board and to appropriate $50,000 to the board to fund the advertising.

The committee also became concerned with the differences in per diem payments allowed the members of statutory boards. The amount of per diem payments currently allowed statutory board members ranges from zero to $100. The committee believes that standardizing per diem at $50 would accomplish four purposes:

1. It would allow many qualified people to serve as board members who could not otherwise afford to serve.

2. It would reflect a legislative attitude that positions on all statutory boards are equally important.

3. It would present an additional factor to consider in creating new boards.

4. It would simplify future changes in amount of per diem.

Therefore, the committee recommends adoption of a bill to provide a standard $50 per diem payment for members of statutory boards and commissions other than professional and occupational licensing boards. Information is being solicited from the various boards affected to determine the fiscal effect of this bill.

In addition to its review of selected boards and commissions, the committee considered various means of stopping or slowing the proliferation of statutory boards and commissions and providing continuing legislative review of such boards. The committee believes that steps should be taken to ensure that boards and commissions are not created or continued without adequate legislative consideration. Therefore, after receiving testimony from various state officials and others and giving it appropriate weight, the committee recommends the adoption of three bills to accomplish the results as set out:

1. Provide that no board, council, committee, or commission may be created or continued beyond its statutory termination date except by affirmative vote of two-thirds of the members of each house of the Legislative Assembly. This bill does not apply to bills which are a result of Legislative Council studies; bills which terminate, dismember, or transfer or alter the functions of existing boards; or bills creating occupational or professional licensing boards.

2. Initiate a "sunset" procedure for the automatic termination, and the review, continuation, or reestablishment of designated statutory boards. The committee selected the State Board for Indian Scholarships, Student Financial Assistance Program Advisory Board, and the scholarship program administered by the State Board of Nursing for initial review. The bill provides for the mechanics of termination, performance reviews of the boards by the state auditor, consideration of the performance reviews and the holding of hearings and the preparing of reports and recommendations on the reviews by the Legislative Audit and Fiscal Review Committee, and legislative review of all boards scheduled for termination. The bill provides for selection of additional boards by the Legislative Council prior to the 1981 Session and each succeeding session. Each selection will be reviewed by the Legislative Assembly. The bill requires no appropriation.

(3) ...

The committee, in its study of boards and commissions, concluded that, although such entities

must adopt administrative rules in order to effectuate legislative intent, the Legislative Assembly remains, in the final analysis, responsible for the laws of the state and the programs they create. Therefore, the committee recommends a bill to allow the chairman of the Legislative Council to provide for review of selected administrative rules by a Legislative Council interim committee.

Unaccepted Committee Recommendations

The following report recommendations were made by the Committee on State and Federal Government, but were deleted from the report by the Legislative Council at its meeting in Bismarck on November 20, 1978. They are printed here pursuant to Rule 5 of the Supplementary Rules of Operation and Procedure of the Legislative Council:

(1) 5. Give the board policymaking authority upon the affirmative votes of at least six out of eight members.

(2) The committee, in order to better conduct a detailed study of the complex workings of the Milk Stabilization Board, commissioned the University of North Dakota Bureau of Business and Economic Research to determine the original intent of milk-price stabilization statutes in North Dakota and whether such intent is being complied with presently; the present usefulness of the original legislative intent; the effect of milk-price stabilization, as currently practiced in North Dakota, on the consumers and dairy industry of this state; the effect of Milk Stabilization Board membership on the consumers and dairy industry of this state; the nature and effect of membership of similar boards in other states; and options for board membership in North Dakota. The committee reviewed the report and recommendations prepared by the bureau, received testimony from milk producers, processors, distributors, and retailers, members of the Milk Stabilization Board, and the North Dakota Dairy Commissioner. Based on the report and the testimony received, the committee recommends a bill to:

1. Maintain the present number of members but provide that board membership be based on a reasonable geographic balance instead of congressional districts.

2. Require the board to conduct a cost study on each level it regulates a minimum of once every five years.

3. Empower the board to obtain profit and loss information from its licensees with provision for confidentiality of such information.

4. Provide that retail discounts allowed by the board be the same per unit volume regardless of geographic area.

5. Provide for optional regulation of nonfluid milk product prices.

(3) 3. Provide that no legislator or legislative committee may introduce a bill or amend a bill to create or continue beyond its statutory termination date any statutory board, commission, committee, or council. The moratorium established by this bill does not apply to bills which are a result of Legislative Council studies; bills which terminate, dismember, or transfer or alter the functions of existing boards; or bills creating occupational or professional licensing boards.

TRANSPORTATION

The Committee on Transportation was assigned three study resolutions. Senate Concurrent Resolution No. 4071 directed a study of alternative methods of providing an equitable means of financing airline services for the citizens of the state. House Concurrent Resolution No. 3068 directed a study of driver licensing in North Dakota, emphasizing possible consolidation of the driver licensing functions in one state agency, and giving consideration to the testing requirements for the acquisition and renewal of driver licenses. House Concurrent Resolution No. 3107 directed a study on highway use restrictions in North Dakota, with special emphasis to be placed upon logistical impacts upon industry and commerce resulting from weight, size, speed, and other restrictions, and to any trade-offs that might be made between highway use restrictions and commercial and industrial benefits derived from free use of highways.

Committee members were Representatives Charles Mertens, Chairman, LeRoy Erickson, Oben Gunderson, Robert O'Shea, Larry Richter, Emil Riehl, Warren Schuett, Charles Scofield, and Mike Timm; and Senators Robert Albers, Charles Orange, I. E. Solberg, and Jens Tennefos.

The report of the Committee on Transportation was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-sixth Legislative Assembly by the Legislative Council in November 1978.

AIRPORT FINANCING STUDY

Senate Concurrent Resolution No. 4071 was passed because of the failure to pass 1977 House Bill No. 1404 and the indefinite postponement of 1977 Senate Bill No. 2465. House Bill No. 1404 would have appropriated $2 million from the general fund to the Aeronautics Commission for state aid to airports operated by a city or airport authority and served by at least one commercial airline. Fifty percent of the amount appropriated by the bill would have been distributed each year to eligible airports in the proportion that the number of passengers enplaning at the eligible airport bore to the number of enplaned passengers on commercial airlines at all eligible airports in North Dakota. Senate Bill No. 2465 would have mandated the creation of first- and second-class regional airport authorities and required each county in the state to be a member of one or the other type of authority. The bill would have provided for the appointment of a board of commissioners for the first-class regional airport authorities, and authorized cities or airport authorities operating first-class airports to lease the airports to the regional authority, to enter into agreements for the transfer of the airports to the regional authority, or to remain independent of the regional authority. The board of commissioners of each first-class regional airport authority was to assess a property tax levy of one mill on all property in the authority, provided that the mill levy would not apply in any city or county which levies an amount in excess of one mill to support a first-class airport.

North Dakota Law

North Dakota Century Code Section 2-02-01 authorizes the Aeronautics Commission, and all counties, cities, park districts, and townships, to acquire, construct, own, lease, equip, operate, regulate, and police airports. In addition, Chapter 2-06 authorizes the creation of municipal and regional airport authorities. Cities, park districts, and counties are all authorized to levy four mills for airport purposes by Sections 2-06-15, 57-15-36, and 57-15-37, respectively. An airport authority may also certify an amount of tax to be levied by each municipality participating in the creation of the airport authority, but that levy may not exceed the maximum levy permitted to that municipality by other laws of the state.

An airport authority may borrow money and issue bonds payable primarily from airport revenues. However, if a municipality involved in the authority has over 10,000 population and revenues are insufficient to pay principal and interest on the bonds when due, the municipality must levy a general tax for the payment of the deficiency.

In addition to bonding and local property taxation, North Dakota finances airports by means of a four percent use tax on jet fuel, a four percent use tax on other aviation fuel, unclaimed aviation fuel tax refunds, aircraft registration fees, and license fees for spray aircraft.

Federal Law

States and their political subdivisions are prohibited by 49 U.S.C. 1513 from levying or collecting a tax, fee, a head charge, or other charge, directly or indirectly, on persons traveling in air commerce, on the carriage of persons traveling in air commerce, on the sale of air transportation, or on the gross receipts derived therefrom.

Federal funding on a 90-10 matching basis for airport development projects to qualifying air carrier airports, until September 30, 1978, is provided under 49 U.S.C. 1717. Beginning October 1, 1978, the United States will fund airport development projects to qualifying air carrier airports on an 80-20 matching basis. Federal matching funds are

available to individual airports for airport projects according to a formula based on the number of enplaned passengers and to smaller, secondary airports from the Federal Aviation Administration (FAA) discretionary fund.

Funding Airport Improvements in Other States

According to a report by the Aeronautics Commission, forty-five states provide some sort of financial aid to public airports for improvements. Twenty-seven states have no net fuel taxes on aviation gasoline. Thirty-one states have no net tax on aviation jet motor fuels. All states but Idaho and Montana give refunds on aviation motor fuels to the United States government. Twenty-one states provide funds from the state general fund for airport grants to public airports.

Airport Improvement Costs

According to the State Airport System Plan, a technical report prepared for the Aeronautics Commission by R. Dixon Speas Associates of Minnesota, the seven airline airports in North Dakota need capital improvements costing $29,233,000 between 1977 and 1980. The airline airports are located in Bismarck, Devils Lake, Fargo, Grand Forks, Jamestown, Minot, and Williston.

North Dakota will receive about $499,526 of the $45 million available from the FAA discretionary fund for general aviation airport development for fiscal year 1978 (a sufficient amount of money for about one and one-half projects a year for the secondary airport system). Federal airport aid funds available from the FAA to North Dakota airline airports for fiscal year 1978 are $2,351,147, while North Dakota contributed $2,994,812 in federal ticket tax and weigh bill freight tax to the FAA aid fund. The amount of funds granted by the Aeronautics Commission for airport improvements to public airports in North Dakota for fiscal year 1977 totaled $258,103. The source of the Aeronautics Commission funds was a four percent special excise tax on jet motor fuel, a four percent special excise tax on aviation gasoline, aircraft registration fees, and aerial crop spraying license fees.

Five of the airline airports in North Dakota have bonded indebtedness. Each of these airports has pledged the four mills levied by the city to support the airport for payment of the bonds. Also, Williams County levies two mills for the support of its airport, and Devils Lake levies four mills and Ramsey County levies two mills for airport support.

Testimony

The Aeronautics Commission directed a questionnaire on airport financing to each of the airline airport managers in North Dakota. All seven managers responded and indicated that 1977 House Bill No. 1404 was favored over 1977 Senate Bill No. 2465 as a method of funding airport development. The survey also showed that other methods of financing airports should be investigated.

Airport managers and city officials testified that interim financing for needed airport improvements, because of increased traffic, would not be possible without state aid or a viable alternative method of providing tax revenues. The Aeronautics Commission recommended against an increase in the special excise tax on the sales price of aviation fuel and jet fuel because North Dakota presently levies the third highest special excise tax on jet fuel in the nation. Testimony indicated that over half the states do not have a fuel tax because modern jets can haul fuel long distances and will fly to a city where fuel is cheaper.

A report by the Aeronautics Commission revealed that the increase in 1976-77 airline passenger boardings in North Dakota was far greater than the national average. It was also pointed out that federal funds are not available for many projects including terminal buildings, roads, loading facilities, parking facilities, lights, signs, ramps, and fill-ins. In addition, negotiated landing fees have been on the increase and have been raised constantly. It was also pointed out that although users of airport facilities should probably be responsible for paying for airport development, problems arise in singling out, defining, and taxing an airport user.

The committee expressed concern about the lack of participation by East Grand Forks and Moorhead in the financing of the airports located in North Dakota. Minnesota allows airports located outside the state to be considered for state aid provided there is a joint agreement between the neighboring cities. Negotiations have been held with respect to Moorhead's participation in Fargo airport financing.

Recommendations

The committee passed a resolution urging Congress to amend the Airport and Airway Development Act of 1970 (49 U.S.C. 1717) before October 1, 1978, to restore to 90 percent the United States share of allowable project costs payable on account of any approved airport development project to qualified air carrier airports, for fiscal years 1979 and 1980. The resolution noted the increasing rate of passenger enplanements in North Dakota, the need for expansion and improvement of air carrier airports, the cost of improvement of air carrier airports, the unavailability of state and local funds for capital improvements, the surplus funds in the airport airway trust fund, and the need for 90 percent federal funding for small air carrier airports.

The committee recommends a bill to provide state assistance for state airports served by com-

mercial air carriers or formerly served by commercial air carriers (the seven airline airports and Dickinson). The bill, based on 1977 House Bill No. 1404, appropriates $2 million from the general fund for the purpose of annually making a 50 percent distribution of funds to eligible airports based on the number of enplaned passengers. Those airports not enplaning at least 20,000 passengers would receive $50,000 at each distribution. The bill also amends North Dakota Century Code Sections 57-56-01.1 and 57-56-03 to allow for the distribution of jet aviation motor fuel taxes and general aviation motor fuel taxes to airports not receiving general fund distributions.

The committee expressed concern that the formula for distributing funds under the bill is based on passenger enplanements and that passenger enplanements for some cities for 1978 have been affected by the Northwest Airlines' strike. Although the committee agreed the formula should be reconsidered, it was made aware of the total consequences of a strike on the formula for passenger enplanements only at its last meeting and could not arrive at a satisfactory alternative.

HIGHWAY USE RESTRICTIONS STUDY

House Concurrent Resolution No. 3107 was designed to deal with the differing state vehicle restrictions which hamper the free flow of commerce. The study sought a balance between unrestricted use of the highways and strict restrictions on highway use.

State and Local Restrictions

The State Highway Commissioner, and the State Highway Department acting through the commissioner, are custodians of the state highway system. The Highway Department has great flexibility in dealing with vehicle restrictions. North Dakota Century Code Chapter 39-12 specifies size, width, length, and height restrictions for motor vehicles. Section 39-12-01 authorizes the Highway Commissioner, boards of county commissioners, and other governing bodies having control of the roads, to classify public highways and roads under their jurisdictions and enforce limitations as to weights and loads. Section 39-12-02 authorizes the commissioner and local authorities to issue special written permits authorizing persons to operate vehicles exceeding the maximum size and weight limitations specified in Chapter 39-12. Section 39-12-03 authorizes the Highway Commissioner and local authorities to prohibit the operation of vehicles upon any highway or to impose restrictions whenever any highway will be seriously damaged or destroyed by reason of deterioration, rain, snow, or other climatic conditions. Section 39-12-23 authorizes the Governor to permit and prescribe excess limitations as to size and weight for the operation of motor vehicles in emergencies and to meet unusual conditions for the general welfare of the public.

The Highway Department issues special permits for oversize vehicles on a single-trip permit basis with good cause upon a showing of necessity. The department has a specific policy for large-scale operations requiring the moving of very heavy equipment that is nondivisible. The policy includes advance notice, determination of no alternative means of transport, axle weight limitations, insurance policies, and a schedule of fees.

The Highway Department does not dictate to counties and cities when to apply road restrictions, but there is generally a dialogue between the department and the counties and cities. The department does assist counties and cities in enforcing road restrictions.

Spring road restrictions, which are in effect during the frost period, are left to the judgment of the Highway Department's district officers. These restrictions generally do not last longer than two months. During this period trucks are further restricted as to the amount of weight allowed per axle on the vehicle.

Data collected by the Highway Department in 1974, in a publication entitled "The Economics and Engineering Analysis of Seasonal Road Restrictions on North Dakota Highways," indicates that no road restrictions would mean more costs for North Dakota highway maintenance.

All North Dakota highways, except the interstate system, are built utilizing the "staged construction" concept for new construction (a concept of gradually upgrading a highway's physical capabilities). The opposing concept of maximum capacity with the capability for unrestricted loads is not possible on all North Dakota roads because funding is geared to the availability of federal aid. There would be many less miles of highway in North Dakota if all highways were initially built for maximum capacity.

Federal Restrictions

Failure of a state to restrict interstate highway system use in accordance with the maximum weight and width limitations under 23 U.S.C. 127 may result in a loss of federal funds. Section 127 restricts the maximum one-axle weight to 20,000 pounds, or the maximum tandem axle weight to 34,000 pounds or the overall gross weight on a group of two or more consecutive axles produced by applying a formula specified by the section. The overall gross weight may not exceed 80,000 pounds, and the width may not exceed 96 inches, subject to greater limitations in effect in a state on July 1, 1956, or on the effective date of the Federal

Aid Highway Amendments of 1974, depending upon the type of vehicle.

Comparison of Surrounding States' Restrictions

Minnesota, Montana, North Dakota, and South Dakota utilize the same weight formula to determine the maximum gross weight limitations and axle weight limitations. However, the states differ on maximum gross weights permitted, vehicle length requirements, and pup trailer limitations.

Each of the four states apply seasonal road use restrictions in the spring to protect against road deterioration or damage. In each state the Director of Highways or Highway Commissioner has discretionary authority to prohibit or impose restrictions on the operation of vehicles if conditions warrant.

Studies on Pavement Performance

Selected studies on pavement performance indicate that pavement design procedures are adequate to provide for the "frost effect" without requiring special load restrictions below design weights. Although the studies make no reference to the costs of providing the required pavement, it is a general fact that a greater pavement thickness requirement accompanies greater design axle weights, but at a decreasing rate. The matter of relating costs to any specific axle load is a broad issue and could be approached only if actual numbers are considered.

An Illinois study suggests that many factors contribute to spring breakup on highways, including the number of axles, the axle distance, the inch width of the tire, speed and weight of the vehicle once a break has occurred, the soil texture, and the subgrade. The study showed, however, that when subgrade is properly constructed the surface cannot be broken because of weight or speed factors alone.

Testimony

Members of the trucking industry expressed support for legislation giving the Highway Department flexibility to allow normal movement of certain types of loads so that trucks can operate more efficiently during the spring road use restriction period. Testimony revealed that most of the problems concerning weight restrictions are experienced during the spring road restriction period. During that period the cost of transportation, which is passed on to the consumer, increases. The trucking industry proposed extending vehicle length which would allow more axles and maximize loads per square inch of tire. A need was expressed for allowing greater length year round, preferably from 75 to 85 feet for over-the-road haulers of a permanent nature. It was pointed out that advanced technology now requires heavier equipment, especially in the field of energy development.

The Highway Department had no particular objection to increased length but expressed concern about allowing increased weights of front-ends for the oil industry haulers during the frost law period. Because of administrative problems and the difficulty of determining damages to the roads that may be caused by increased frequency of heavier loads, the department suggested that a maximum weight limit be imposed and rigidly adhered to and that increased registration fees be applied on oversized vehicles. The department also said it would conduct a study to determine the impact of increased length for vehicles on North Dakota highways.

The Highway Department presented testimony on the safety aspects of increased truck length and expressed concern over the elements of safe passing sight distance when increased truck length is involved. Testimony by trucking industry members revealed no increase in accidents because of increased vehicle length by carriers using increased lengths on highways in other states and by special permit in North Dakota.

The committee considered the possibility of an annual permit system to replace the single permit system used by the Highway Department. The Federal Aid Highway Act of 1956 (23U.S.C. Section 127) prohibits any annual permits based on weight or width, but does not prohibit annual permits based on length. The committee considered drafting a resolution urging a waiver of the provisions of the Act. After the Department of Transportation's position, that it will strictly adhere to the provisions of the Federal Aid Highway Act of 1956, was made clear, the committee dropped consideration of the resolution.

Recommendations

The committee considered alternative bill drafts concerning vehicle limitations. Alternative 1 would have allowed for special permits for vehicles up to a limit of 85 feet on designated highways, issuance of special permits on a single trip basis, allowance of 75 foot combinations of either two or three units on designated highways with gross weight limitations of 80,000 and 105,500 pounds, and expanded registration fees. Alternative 2 would allow for increased length limitations of 75 feet on designated highways, and would allow for a truck to draw two trailers. Alternative 2 also would expand the registration fee schedule to accommodate larger trucks and raise gross weight limitations to 80,000 and 105,500 pounds. Alternative 2 would continue the present permit system allowing the Highway Department discretion for

issuing special permits beyond the vehicle limitations of Chapter 39-12.

The committee recommends Alternative 2. This alternative allows for more flexibility in issuing special permits than Alternative 1 and is also more specific about lengths allowed on nondesignated highways.

DRIVER LICENSING STUDY

The impetus behind House Concurrent Resolution No. 3068 was the use of "highly trained" Highway Patrol personnel to conduct driver tests, differences in sources of funding, and the maintenance of flexibility in driver testing. The scope of the resolution did not include motor vehicle licenses and did not relate to the functions of the motor vehicle registrar.

Statutory Background

The basic statutory authority for the licensing of motor vehicle drivers is contained in North Dakota Century Code Chapter 39-06. All persons, except those expressly exempted, are required to have a valid operator's license before they may drive any motor vehicle on a North Dakota highway.

The Highway Commissioner is authorized to issue operator's licenses and does so through the Drivers License Division of the Highway Department.

Section 39-06-14 authorizes the Highway Commissioner to charge a fee of $8 for an operator's license and requires that the license contain a color photograph of the licensee. An operator's license expires every four years, with certain exceptions, in accordance with the terms of Section 39-06-19.

The Department of Public Instruction, through its Driver Education Division, is also involved in the licensing process. This is because Section 39-06-17 authorizes the Highway Commissioner to issue a restricted operator's license or permit to a child who is at least 14 years old, if he has completed a course of classroom instruction and behind-the-wheel instruction acceptable to the commissioner, or alternatively, has successfully completed a commercial driver training school course.

Section 39-06-13 is the basic authority for the Highway Patrol to carry out driver's license examinations. An examination includes a test of the applicant's eyesight; his ability to read and understand highway signs regulating, warning, and directing traffic; and his knowledge of the traffic laws of this state. An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle is also required; but may be waived for those applicants who have successfully passed such a test in some other state, province, or territory.

Relevant Statutes in Surrounding States

The committee took notice of the driver licensing function in Minnesota, Montana, and South Dakota. In Minnesota, the issuance of driver licenses is handled by the Drivers License Division of the Department of Public Safety. Examination is also carried out by the Department of Public Safety. Upon renewal, the driver is required to have his eyesight "screened." Minnesota driver licenses expire every four years on the driver's birthdate.

In Montana, the Division of Motor Vehicles of the Department of Justice has assumed the functions of the Highway Patrol in providing for a driver's examination. The Highway Patrol, however, still provides examiners and clerical help necessary to administer the examinations, now supervised by the Division of Motor Vehicles. Montana requires a "test" of an applicant's eyesight both upon initial application for a license and upon renewal. An applicant may also have to demonstrate physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle upon renewal.

In South Dakota, responsibility for the issuance of driver licenses and examination of applicants is vested in the Department of Public Safety. The South Dakota license contains a picture of the licensee. The initial examination of an applicant includes an eyesight test and each applicant is required to be reexamined for renewal of a license, except that under ordinary circumstances the applicant does not need to take a driving test or a behind-the-wheel test.

Consolidation of Licensing Functions

Two publications by the Automotive Safety Foundation, one in 1954 entitled "Safer Highway Travel for North Dakota," and one in 1966 entitled "Guidelines for Highway Safety in North Dakota," offered recommendations for the consolidation of driver licensing into one state agency. The 1954 study recommended creation of a separate Department of Public Safety to include divisions of driver licensing, safety responsibility, unsatisfied judgment fund, public safety education, central accident records bureau, and official employee safety programs. The 1966 recommendation would have transferred the driver's license examination function from the Highway Patrol to the Highway Department, created within the Highway Department posts of driver's license examiner and driver improvement analyst, and provided facilities to house examination and driver improvement activities.

The committee received a report from the Highway Patrol entitled "Summary of Driver's License Activities" which showed the adequacy of local facilities and provided relevant information concerning frequency of exams, number of exams given, number of examiners, manhours required, mileage costs, and eye tests given. The report noted that the local Highway Patrol officer does 90 percent of the work involved in examinations.

The Highway Patrol also submitted a report entitled "North Dakota Driver's License Examination Function." In that report, the Highway Patrol found that examinations are a key and integral part of the licensing function; the Highway Patrol integrated the examination function as part of the total workload of the patrol at a cost of about eight percent of the total manhours of duty, which means that it represents the time of about 7.4 full-time patrol officers; examinations are conducted in 67 separate locations throughout the state; and the total cost for examiner time and mileage is approximately $120,000 per year.

In a report entitled "Driver License Examining," the Highway Patrol gave detailed information on patrol activities in driver's examinations and eye screening tests, statewide and by district; discussed alternative methods for handling examination responsibility; and drew conclusions substantiating continuance of the examination function within the North Dakota Highway Patrol. The Highway Patrol pointed out that if the driver's license examination function and eye screening testing program were transferred to another agency, it would be necessary to secure vehicles and office space, employ clerical help to manage the administrative burden of appointments, and hire between 18 and 22 new examiners. It also pointed out that a move of this type would require additional headquarter staffing to handle the administrative burden and concluded that with 12 additional examination specialists the patrol could continue an effective examination function and release patrol officers for additional police traffic services. The patrol emphasized that continuation of the driver's license examination function in the Highway Patrol would, among other things, maintain the flexibility now existing and provide for the continuation of use of existing facilities.

The Drivers License Division of the State Highway Department made a presentation concerning driver licensing, distributed materials concerning the 65 photograph sites operated by 23 photographic clerks of the Drivers License Division who work out of eight Highway Department district offices, and also explained information about facility ratings for photo purposes, average photos taken per month, photo site leases, and a state map of photo sites. The Drivers License Division concurred with the Highway Patrol's findings on manpower requirements for full-time driver's license examiners.

The Highway Patrol said patrolmen are specifically trained to give driver's license examinations and new examiners should be required to meet Highway Patrol standards.

The committee expressed encouragement for an increase in enforcement personnel on the highway either by increasing Highway Patrol personnel or relieving Highway Patrol trained enforcement personnel from the task of examinations.

Eye Examinations

House Bill No. 1081 (1977) would have amended North Dakota Century Code Section 39-06-19 (which deals with the expiration and renewal of licenses) to provide that upon application for a new license, and upon every application for renewal of a license, the driver must also submit a certificate of eye examination. The bill failed in the House.

The committee considered the kinds of eye examinations acceptable for licensing and the possible consolidation of the eye examination and picture taking for license renewal. Testimony indicated that the real problem with sufficiency of eye examinations lies with people between the ages of 30 and 70. It was suggested that a gradual change in age requirements could include those people in the class required to receive an eye examination upon the renewal of license. The Highway Patrol suggested it would not be practical under the present system to have an eye examination and photograph on the same day.

Recommendations

The committee considered no bill draft and makes no recommendation concerning driver licensing.

RELATED COMMITTEE BUSINESS

The committee considered and passed a resolution urging Montana, Nebraska, North Dakota, South Dakota, Wyoming, and other midwestern states, through their elected officials, to encourage uniform and restrictive rules on interstate harvesting equipment. This resolution was presented to the Five-State Legislative Conference and the matter was still under consideration at the time of the final committee meeting.

The State Water Commission and the Highway Department testified concerning action by the Federal Highway Administration for control of artificial drainage of wetlands in highway rights of

way constructed or maintained with federal financial aid.

The committee considered testimony about the vehicle turnaround at the weigh station on Interstate 29 near North Dakota Highway 13. A Highway Department study and survey of the situation revealed problems by both local and out-of-state vehicles in making the turnaround. As a result of the study and because of the availability of adequate roadway to make the turnaround, the Truck Regulatory Division of the Highway Department is allowing trucks to make the turnaround at the scales. No new construction of roadway or facilities is deemed necessary.

The committee received testimony concerning the problems of local enforcement of road restrictions on local roads. North Dakota Century Code Sections 39-12-02 and 39-12-03 provide the enforcement mechanisms available to local authorities for road restrictions. The testimony indicated that although local authorities are attempting to restrict road usage by requiring permits, the unavailability of enforcement personnel hinders effective enforcement, and the problem of local roads being damaged by late-night oil-rig haulers continues. Although the committee identified the problem as being basically an enforcement problem, it made no recommendations. The State Highway Department and the North Dakota Petroleum Council offered assistance in dealing with the problem.

EXPLANATION OF LEGISLATIVE COUNCIL BILLS AND RESOLUTIONS

SENATE

Senate Bill No. 2043 — Weather Modification Research and Development. This bill establishes a program of weather modification research and development under the coordination and supervision of the Weather Modification Board, requires biennial reports by the board to the Governor, and appropriates $100,000 in state general fund moneys and $2 million in federal moneys to carry out the program. (Committee on Agriculture)

Senate Bill No. 2044 — CETA Positions Must Be Approved By Budget Section. This bill provides that any state agency, board, commission, department, institution, or other unit of state government which receives funds appropriated by the Legislative Assembly may employ personnel under CETA only upon Budget Section approval. (Budget Section)

Senate Bill No. 2045 — Loans To General Fund Authorized. This bill increases the loan limit of the state from the Bank of North Dakota from $5 million to $15 million. (Budget Section)

Senate Bill No. 2046 — Changes Payment Date of Foundation Payments. This bill defers one-half of the March 1 foundation payment to May 1 of each year. (Budget Section)

Senate Bill No. 2047 — Changes Payment Date of Personal Property Tax Replacement Payment. This bill changes the payment date of the first personal property tax replacement payment from March 1 to June 1 of each year. (Budget Section)

Senate Bill No. 2048 — State Purchasing Practices. This bill clarifies purchasing practices and procedures to be followed by state agencies and institutions. The bill provides that the Department of Accounts and Purchases shall purchase or lease all materials, furniture, fixtures, printing, insurance, and other commodities for all state agencies and institutions in the executive branch of state government unless specifically exempted by law or delegated by the Department of Accounts and Purchases. The bill also provides that purchases are to be made according to specifications and rules and regulations promulgated by the Department of Accounts and Purchases. In addition, the bill extends merit system coverage to purchasing personnel employed by the Department of Accounts and Purchases and provides that the Department of Accounts and Purchases shall make its Purchasing Division available for use by political subdivisions. (Committee on Budget "B").

Senate Bill No. 2049 — Numbering and Arranging the State Constitution. This bill authorizes the Legislative Council, when it republishes Volume 13 of the Century Code containing the Constitution, to renumber and reorder the provisions where necessary to have the numbers in sequential order and the sections and articles in logical order. This measure does not authorize any changes in constitutional wording. (Committee on Constitutional Revision)

Senate Bill No. 2050 — Ballot Order of Constitutional Amendments Proposed by the Legislative Assembly. This bill amends Section 16-11-07 to allow the Legislative Assembly or the Legislative Council, by resolution, to determine the order in which the constitutional amendments proposed by the Legislative Assembly will appear on the ballots. The order is now the order in which the measures pass the Legislative Assembly. (Committee on Constitutional Revision)

Senate Bill No. 2051 — SIS, Penitentiary, and State Farm Sections Amended. This bill reduces the term of the SIS superintendent, changes the membership of the board which would consider removal of the SIS superintendent or prison warden, allows Penitentiary inmates to be employed in work projects for county and local subdivisions, changes the compensation of Penitentiary inmates, allows for the transfer of State Farm inmates to the Penitentiary for medical reasons, and repeals the chapter relating to the Penitentiary twine and cordage plant. (Committee on Corrections and Penology)

Senate Bill No. 2052 — Hashish and Marijuana Penalties. This bill establishes a Class C felony penalty for hashish possession and grades the penalty for marijuana possession based upon the amount possessed. (Committee on Criminal Justice System)

Senate Bill No. 2053 — State's Attorney Inquiry Authority Increased. This bill increases a state's attorney's authority to subpoena witnesses and inquire as to crimes from crimes involving death to any felony. (Committee on Criminal Justice System)

Senate Bill No. 2054 — Murder Penalty Increased. This bill increases the maximum penalty for murder from 20 years to life imprisonment. (Committee on Criminal Justice System)

Senate Bill No. 2055 — Change in "Child" Definition, Juvenile Waiver Age, and Disposition of Alcoholic or Drug-Addicted Children. This bill amends the definition of "child" under the Uniform Juvenile Court Act, lowers the age of waiver to adult court from 16 to 14 in some instances, and provides for the disposition of alcoholic or drug-addicted children. (Committee on Criminal Justice System)

Senate Bill No. 2056 — Multidistrict Special Education Programs. This bill allows two or more school districts to band together to provide special education and related services to handicapped children and repeals the present chapter dealing with county special education programs. (Committee on Education)

Senate Bill No. 2057 — Transportation at Grafton State School and San Haven. This bill provides for six round trips home per year for handicapped patients under the age of 21 at the San Haven State Hospital and the Grafton State School. (Committee on Education)

Senate Bill No. 2058 — Transportation at Schools for Blind and Deaf. This bill provides for six round trips home per year for handicapped students under the age of 21 at the School for the Blind and the School for the Deaf and also makes uniform the qualifications for admission to these institutions. (Committee on Education)

Senate Bill No. 2059 — Conflicts With Federal Law. This bill attempts to resolve conflicts between state and federal law by directing the heads of the state institutions to develop a plan for appointing surrogate parents and by prohibiting the Jamestown State Hospital from charging for education or related services to handicapped persons under the age of 21. (Committee on Education)

Senate Bill No. 2060 — Repeal of Advisory Council. This bill repeals the Advisory Council on Special Education. (Committee on Education)

Senate Bill No. 2061 — One Hundred Percent Assessment of Property. This bill requires that property be assessed at true and full value and makes the necessary adjustments in mill levies, bond limitations, and property tax exemptions which are tied to assessed valuations. (Committee on Finance and Taxation)

Senate Bill No. 2062 — Assessment of Property in 1979 and 1980. This bill provides that all property be assessed at 10 percent of true and full value in 1979 and 1980 and contains limitations on increased taxing authority of taxing districts during that time. (Committee on Finance and Taxation)

Senate Bill No. 2063 — Assessment of Agricultural Land Based on Cash Rent. This bill provides for the assessment of agricultural land using a formula based upon average cash rent. (Committee on Finance and Taxation)

Senate Bill No. 2064 — Best Management Practices. This bill requires the Garrison Diversion Conservancy District to allocate irrigation water in a manner consistent with the best management practices determined by the director of the agricultural experiment station. (Garrison Diversion Overview Committee)

Senate Bill No. 2065 — Mobile Unit Funding. This bill allows a multidistrict vocational education center using mobile units solely to assess the participating districts for the expenses of the mobile units. (Committee on Higher Education)

Senate Bill No. 2066 — Midwestern Education Compact. This bill adopts the Midwestern Education Compact. (Committee on Higher Education)

Senate Bill No. 2067 — Notice to Securities Commissioner of MIDA Bond Issuance. This bill requires the project lessee to furnish the securities commissioner with basic information concerning a project financed by bonds issued under the Municipal Industrial Development Act. (Committee on Industry, Business & Labor)

Senate Bill No. 2068 — Public Notice and Hearing on MIDA Bond Issuance. This bill requires the governing body of the municipality to publish notice and hold a public hearing on a proposed issue of bonds under the Municipal Industrial Development Act. (Committee on Industry, Business & Labor)

Senate Bill No. 2069 — MIDA Bond Issuance Restricted for Competing Enterprises. This bill requires the potential project lessee to notify potential competitors of the proposal for bond issuance under the Municipal Industrial Development Act. The governing body of the municipality could not approve the bond issue if its effect would be to the substantial detriment of existing enterprises. (Committee on Industry, Business & Labor)

Senate Bill No. 2070 — MIDA Bond Issuance Restricted for Retail Businesses. This bill restricts the issuance of bonds under the Municipal In-

dustrial Development Act to those enterprises which have less than 51 percent retail sales. (Committee on Industry, Business & Labor)

Senate Bill No. 2071 — Notification of Bank Sales. This bill requires persons who sell or purchase a bank to notify the State Banking Board, which may conduct a hearing to determine whether the new owners and management meet the same qualifications required of persons organizing a bank. (Committee on Industry, Business & Labor)

Senate Bill No. 2072 — Temporary Judges. This bill allows the Supreme Court to appoint any qualified person to serve as a temporary judge for a period of 30 days. The bill also provides for the transfer, challenge, disqualification, and supervision of the person appointed and sets compensation levels. (Committee on Judicial System)

Senate Bill No. 2073 — Unsatisfied Judgment Fund. This bill eliminates the $35,000 annual restriction on administrative expenditures of the Unsatisfied Judgment Fund. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2074 — Day Legislative Session Convenes. This bill provides that if the first Tuesday after the first Monday in January of the odd-numbered year falls on January 2, the Legislative Council would establish a date for the convening of the Legislative Assembly between January 2 and January 11. (Committee on Legislative Procedure and Arrangements)

Senate Bill No. 2075 — Screening of Interim Study Resolutions. This bill authorizes the Legislative Council to screen and prioritize study resolutions. (Committee on Legislative Procedure and Arrangements)

Senate Bill No. 2076 — State Building Code. This bill adopts the Uniform Building Code as the state code, provides for enforcement and amendment by local authorities, and exempts existing state codes and specified classes of buildings. (Committee on Natural Resources)

Senate Bill No. 2077 — PERS — Withdrawal From System by Political Subdivisions. This bill repeals those provisions of law allowing optional withdrawal from the Public Employees Retirement System by individual members and political subdivisions; the period within which the option must have been exercised has passed. (Committee on Retirement)

Senate Bill No. 2078 — Business and Industrial Development Commission — Membership Districts. This bill revises the membership districts of the Business and Industrial Development Commission along county lines. (Committee on State and Federal Government)

Senate Bill No. 2079 — State Board of Public School Education — Membership Districts. This bill revises the membership districts of the State Board of Public School Education along county lines. (Committee on State and Federal Government)

Senate Bill No. 2080 — Game and Fish Advisory Board — Membership Districts — Terms — Powers and Duties. This bill revises the membership districts of the Game and Fish Advisory Board, limits the length and number of terms, and provides that a copy of the board's recommendations shall be forwarded to the Governor. (Committee on State and Federal Government)

Senate Bill No. 2081 — Heritage Boards — Coordination. This bill provides for semiannual meetings between representatives of the Educational Broadcasting Council, State Library Commission, Council on the Arts and Humanities, Superintendent of the State Historical Board, and Heritage Commission. (Committee on State and Federal Government)

Senate Bill No. 2082 — Standardized Per Diem. This bill provides a standard $50 per diem for members of boards and commissions. (Committee on State and Federal Government)

Senate Bill No. 2083 — Legislative Council — Administrative Rule Oversight. This bill empowers the chairman of the Legislative Council to assign proposed and existing administrative rules to an appropriate interim subject matter committee for review and recommendation. (Committee on State and Federal Government)

Senate Bill No. 2084 — Educational Broadcasting Council — Senate Confirmation — Membership Revised. This bill provides for Senate confirmation of future appointments to the council, staggers members' terms, and reduces the number of members from 12 to nine. (Committee on State and Federal Government)

Senate Bill No. 2085 — Airport Improvement Assistance. This bill provides state general fund assistance for state airports served, or once served, by commercial air carriers, distributing funds based on a passenger enplanement formula. The bill also provides for distribution of all aviation motor fuel taxes to airports not receiving general fund distributions. (Committee on Transportation)

Senate Bill No. 2086 — Motor Vehicle Restric-

tion Limitations. This bill allows for increased length limitations of 75 feet on designated state highways, allows a truck to draw two trailers, allows for increased weight limitations on interstate and designated state highways, and provides an expanded registration fee schedule to accommodate larger vehicle limitations. (Committee on Transportation)

Senate Concurrent Resolution No. 4001 — Study of Executive Branch Reorganization. This resolution directs the Legislative Council during the 1979-81 biennium to conduct a study of the feasibility and benefits of reorganizing the executive branch of state government. (Committee on Budget "B")

Senate Concurrent Resolution No. 4002 — Repeal of Article 14 of the Amendments to the Constitution. This measure repeals Article 14 authorizing the state to construct and operate terminal grain elevators in Minnesota and Wisconsin. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4003 — Repeal of Section 177 of the Constitution and Article 24 of the Amendments to the Constitution. This measure repeals the constitutional provisions authorizing a mill levy and an acreage tax to fund a hail insurance program. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4004 — Security of Bonds Issued or Guaranteed by the State. This measure amends Section 182 of the Constitution to provide that all bonds in excess of $2 million issued or guaranteed by the state (usually the Bank of North Dakota) must be secured by first mortgages upon real estate in amounts not to exceed 65 percent of its value. The present requirement is 50 percent of its value. (Committee on Constitutional Revision)

Senate Concurrent Resolution No. 4005 — Recreation of the Garrison Diversion Overview Committee. This resolution recreates the Garrison Diversion Overview Committee to exist through April 30, 1981. (Garrison Diversion Overview Committee)

Senate Concurrent Resolution No. 4006 — Amend Section 173 and Repeal Subsection 6 of Section 69 of the Constitution of the State of North Dakota. This resolution amends Section 173 of the Constitution by removing the requirement that each county elect a county judge and repeals subsection 6 of Section 69 which prohibits the passage of special laws to regulate the jurisdiction of police magistrates, constables, and justices of the peace. (Committee on Judicial System)

Senate Concurrent Resolution No. 4007 — Study of Legislative Retirement. This concurrent resolution directs a study of legislative retirement programs. (Committee on Legislative Procedure and Arrangements)

HOUSE

House Bill No. 1002 — Environmental Assessment Program. This bill provides for the continued development and operation of an environmental assessment program administered by an interim Legislative Council committee, which would be the statutory successor to REAP and the Resources Research Committee. The bill also provides direct appointment of six committee members by the Governor, establishes a grants program for unanticipated state agency environmental research needs, defines the relationship between the proposed committee and the Central Data Processing Division, and provides an appropriation. (Resources Research Committee)

House Bill No. 1042 — Revisions to Classification and Compensation Plans. This bill provides that revisions to Central Personnel Division classification and compensation plans shall only be made on July 1 following the close of a regular legislative session and that such revisions shall only be made to the extent the legislature appropriates funds to implement such classification and compensation plans. (Committee on Budget "A")

House Bill No. 1043 — Time During Which Appropriations Become Available. This bill clarifies Sections 54-27-10 and 54-27-11 providing that 75 percent of the appropriations to the line item of salaries and wages, fees and services, and supplies and materials shall be available for expenditure during the first 18 months of a biennium. (Committee on Budget "A")

House Bill No. 1044 — New Chapter on Jails. This bill establishes a new chapter on jails, provides for grading jails as to length of confinement, sets forth jail standards, and provides for jail inspection, jail deficiency correction, variation from jail standards, and jail closure. (Committee on Corrections and Penology)

House Bill No. 1045 — Male-Female Penitentiary Inmate Communication Allowed. This bill eliminates the prohibition against all communication between male and female inmates in the Penitentiary. (Committee on Corrections and Penology)

House Bill No. 1046 — Annual Fire Inspection of State Institutions. This bill provides for annual fire inspection by the State Fire Marshal of all state institutions and buildings. (Committee on Corrections and Penology)

House Bill No. 1047 — Annual Health Inspection of State Institutions. This bill provides for annual inspection by the Health Department of the sanitary conditions, and food and medical services at all state institutions and buildings. (Committee on Corrections and Penology)

House Bill No. 1048 — Drug Enforcement Unit Established. This bill establishes a drug enforcement unit under the Attorney General to enforce all drug laws. Agents are given all peace officer powers conferred by law. The bill increases the drug "buy money" fund from $25,000 to $100,000. (Committee on Criminal Justice System)

House Bill No. 1049 — Drug Conveyance Forfeiture. This bill allows a state, county, or city law enforcement agency to seize a conveyance used for transporting drugs and allows the conveyance to be forfeited and sold with proceeds remaining after forfeiture expenses to go to the appropriate state, county, or city general fund. (Committee on Criminal Justice System)

House Bill No. 1050 — Marijuana Use in Medical Treatment. This bill establishes a research program for treating persons with marijuana who suffer from cancer chemotherapy effects and glaucoma. A patient qualification review board is established to review and certify applicants, physicians, and pharmacies. (Committee on Criminal Justice System)

House Bill No. 1051 — Reporting Alcohol and Drug-related Deaths. This bill requires the reporting of alcohol and drug-related deaths to the Registrar of Vital Statistics for statistical and public information purposes. (Committee on Criminal Justice System)

House Bill No. 1052 — Appellate Review of Felony and Misdemeanor Sentences. This bill allows a person convicted of a felony or misdemeanor to have the length of sentence reviewed by the Supreme Court. The court could impose any sentence, except probation or other conditional release, that the trial court could have originally imposed, including an increased sentence. (Committee on Criminal Justice System)

House Bill No. 1053 — Simple Assault Penalty Increased. This bill increases the maximum penalty for simple assault from a Class B misdemeanor to a Class A misdemeanor. (Committee on Criminal Justice System)

House Bill No. 1054 — Penalty for Removing Child From State in Violation of Custody Decree. This bill establishes a Class C felony penalty for the removal of a child from the state by a noncustodial parent in violation of a custody decree. (Committee on Criminal Justice System)

House Bill No. 1055—Sealing and Disposal of Juvenile Records. This bill provides for sealing juvenile records two years after final order of disposition or discharge, establishes an application procedure for destruction of juvenile records two years after final order of disposition or discharge, and provides for automatic destruction of juvenile records 10 years after final order of disposition and discharge. (Committee on Criminal Justice System)

House Bill No. 1056 — Direct Payment of State Foundation Aid. This bill makes the state foundation aid moneys payable directly to the school district rather than through the county equalization fund. (Committee on Education)

House Bill No. 1057 — Textbooks. This bill prevents local school districts from charging for textbooks necessary for participation in instructional courses. (Committee on Education)

House Bill No. 1058 — Interest on Income and Sales Tax Overpayments. This bill provides for the payment of interest on overpayments of income and sales and use taxes and designates as interest the statutory charge of one percent per month for failure to file or to pay on time any income, sales or use tax. (Committee on Finance and Taxation)

House Bill No. 1059 — Human Service Centers — Boards of Directors, Powers, Duties, and Certification. This bill provides for joint certification of human services provided by a human service center by the Health Department and the Social Service Board on or after July 1, 1981. This bill also defines the powers and duties of the human service centers more specifically, changes the membership of the board of directors from not less than 11 to not more than 13 members and makes the center employees state employees and makes all employment practices subject to the state central personnel system. A human service center is established by the majority vote of county commissioners within a multicounty area. The county commissioners can require state agencies and political subdivisions to delegate the responsiblity for the delivery of their services to human service centers. (Committee on Health Services)

House Bill No. 1060 — Mental Health and Retardation Service Units Under the Direction of the State Health Department. This bill provides that the Mental Health and Retardation Division of the State Health Department direct and supervise comprehensive mental health and retardation centers. It also provides that the Mental Health and Retardation Division shall collocate the service unit in each region with the area social service center in each region of the state by July 1, 1981, that the division continue to license mental health and retardation service units,and that the types of services provided by the units and the employment of the executive director and the medical director of the units are subject to the approval of the director of the division. (Committee on Health Services)

House Bill No. 1061 — Collocation of Mental Health and Retardation and Area Social Service Centers. This bill provides that all comprehensive mental health and retardation and area social service centers in each region of the state collocate by July 1, 1981. It also provides for joint client intake, identification of client needs, interagency referral, interprogram policy development, interprogram planning and coordination, and interprogram staff development and training in each collocated center. A fiscal incentive is provided to the county where the collocated center will be located to join in the collocation effort and Title XIX funding is provided for a defined medical component in each human service and mental health and retardation center. (Committee on Health Services)

House Bill No. 1062 — ABSE Appropriation. This bill provides an $80,000 appropriation for adult basic and secondary education for the next biennium. (Committee on Higher Education)

House Bill No. 1063 — ABSE Control. This bill places the responsibility for coordinating and administering adult basic and secondary education in North Dakota with the State Superintendent of Public Instruction. (Committee on Higher Education)

House Bill No. 1064 — Evening Schools. This bill revises Chapter 15-46 to change its applicability to adult education programs rather than evening schools and gives local school boards the power to establish the programs and to make an annual appropriation to support them. (Committee on Higher Education)

House Bill No. 1065 — MIDA Bond Issuance Restricted for Vocational Education Facilities. This bill requires electorate approval for a school district to use bonds issued under the Municipal Industrial Development Act for vocational education facilities if such approval would be required under other financing methods. (Committee on Industry, Business & Labor)

House Bill No. 1066 — Unified Judicial System. This bill establishes a unified judicial system, consisting of the Supreme Court, the district courts, and the municipal courts, and provides for probate

matters, magistrates, and other court officials. (Committee on Judicial System)

House Bill No. 1067 — Judicial Nominating Committee. This bill creates a nine-member committee which would submit a list of from two to seven nominees to the Governor when a vacancy exists in the office of Supreme Court justice or district court judge. The Governor would be required to either appoint one of the nominees to serve until the next general election or call a special election. (Committee on Judicial System)

House Bill No. 1068 — Temporary Assignment of Supreme Court Justices to the District Courts. This bill allows a Supreme Court justice, upon request, to be assigned to temporary duty in the district courts by the remaining justices. (Committee on Judicial System)

House Bill No. 1069 — Judicial Retirement — Alternative 1. This bill provides retirement benefits to qualified retired judges in the amount of 50 percent of the salary payable to active judges and requires each judge to contribute five percent of salary for the first 20 years of service. (Committee on Judicial System)

House Bill No. 1070 — Judicial Retirement — Alternative 2. This bill provides retirement benefits to qualified retired judges of from 25 to 60 percent of the salary payable to active judges, depending upon years of service, and requires each judge to contribute nine percent of salary and the state would be required to contribute 16 percent of each judge's salary. (Committee on Judicial System)

House Bill No. 1071 — Revision of the North Dakota Century Code. This bill amends all sections of the North Dakota Century Code which are affected by the unified judicial system bill. It removes references to county judges and county courts and replaces them with references to district judges and district courts, and provides for state financing of all court activities. (Committee on Judicial System)

House Bill No. 1072 — Calling Organizational Session to Order. This bill provides that the senior member of the majority party of the House calls that chamber to order at the organizational session. (Committee on Legislative Procedure and Arrangements)

House Bill No. 1073 — Statutory Revision. This bill eliminates obsolete name references throughout the entire North Dakota Century Code and eliminates obsolete statutory references in certain volumes. (Committee on Legislative Procedure and Arrangements)

House Bill No. 1074 — Water Commission Revenue Bonding Authority. This bill increases the authority of the Water Commission to issue revenue bonds from $3 million to $20 million and provides that issues in excess of that amount must be specifically authorized by the Legislative Assembly. (Committee on Natural Resources)

House Bill No. 1075 — North Dakota Products Liability Act. This bill regulates product liability actions by establishing a statute of limitations, granting some defenses to manufacturers and retailers, limiting the ad damnum clause, providing for the determination of defective products, and establishing certain rebuttable presumptions of freedom from defects. (Committee on Products Liability)

House Bill No. 1076 — Reporting of Products Liability Information By Insurers. This bill requires product liability insurers to report information concerning product liability claims and premiums to the Insurance Commissioner. (Committee on Products Liability)

House Bill No. 1077 — Licensing of Care Facilities for the Aged. This bill more specifically defines "boarding home for the aged and infirm," gives the Social Service Board power to enjoin operations without license, and provides for cooperation by the State Laboratories Department and the Social Service Board in determining which agency should license facilities which may be offering unauthorized care. (Committee on Social Services)

House Bill No. 1078 — Yellowstone — Missouri — Fort Union Commission — Repeal. This bill terminates the Yellowstone-Missouri-Fort Union Commission and transfers its functions to the State Historical Board. (Committee on State and Federal Government)

House Bill No. 1079 — Inactive Boards — Termination. This bill terminates the Federated Cooperative Agricultural Association, Agricultural Code Commission, Compulsory Sterilization Approval Board, and the Heritage Study Committee. (Committee on State and Federal Government)

House Bill No. 1080 — Trade Commission — Termination. This bill terminates the Trade Commission and transfers the commission's funds to the general fund. (Committee on State and Federal Government)

House Bill No. 1081 — Heritage Commission — Termination. This bill terminates the Heritage Commission and provides an effective date. (Committee on State and Federal Government)

House Bill No. 1082 — Student Financial Assistance Program Advisory Board — Termination. This bill terminates the Student Financial Assistance Program Advisory Board. (Committee on State and Federal Government)

House Bill No. 1083 — Minot District Fair — Board of Directors — Termination. This bill terminates the Board of Directors of the Minot District Fair and provides for a transfer of property and funds to the State Fair Association. (Committee on State and Federal Government)

House Bill No. 1084 — Council on the Arts. This bill changes the name of the North Dakota Council on the Arts and Humanities to the North Dakota Council on the Arts. (Committee on State and Federal Government)

House Bill No. 1085 — State Library. This bill changes the name of the State Library Commission to the State Library or State Librarian. (Committee on State and Federal Government)

House Bill No. 1086 — State Personnel Board — Employment Advertisement. This bill provides for the advertisement by the State Personnel Board of employment positions with state boards and commissions. (Committee on State and Federal Government)

House Bill No. 1087 — Boards and Commissions — Creation — Requirements. This bill requires a two-thirds affirmative vote of both houses of the Legislative Assembly to create new boards and commissions. (Committee on State and Federal Government)

House Bill No. 1088 — Sunset Review. This bill provides for the automatic termination of selected boards and commissions, performance reviews of the selected boards, and legislative consideration of the performance reviews. (Committee on State and Federal Government)

House Concurrent Resolution No. 3001 — New Legislative Branch Article. This measure provides for a new Legislative Branch Article in the Constitution and repeals all of the old legislative provisions except Section 25 (the new initiative and referendum measure passed by the voters in November 1978) and Section 45 (legislative salary and expense payments). Few substantive changes are made in legislative operations, but most legislative procedures would be left to state law and legislative rules. The measure requires the Legislative Assembly to reapportion itself after each decennial census and creates the position of Legislative Auditor. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3002 — Legislative Salary. This measure amends Section 45 of the Constitution to allow legislative salaries and expense allowances to be set by law. Legislative salary and session mileage allowances are currently fixed in the Constitution. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3003 — Constitutional Designation of the Location of the State's Higher Education Institutions. This measure amends various provisions of the Constitution to remove the specific designation of the locations of the state's colleges and universities. It does not address the operation of these institutions, but only their location. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3004 — Designation of the Locations of the State's Higher Education Institutions and Creation of New Boards for Public and Higher Education. This measure amends various portions of the Constitution to remove the specific designation of the locations of the state's colleges and universities, and creates two boards, one to deal with higher education and the other to handle elementary and secondary education. The Board of Higher Education would have an executive secretary, while the Superintendent of Public Instruction would serve in a similar capacity for the Board of Public Education. Most of the procedures for the two boards would be set by state law. The current provisions for the Board of Higher Education are repealed. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3005 — New Executive Branch Article. This measure creates a new Executive Branch Article for the Constitution that retains all the current elected state officials, but otherwise provides for more streamlined executive branch operations including the requirement that there be no more than 15 principal government departments. (Committee on Constitutional Revision)

House Concurrent Resolution No. 3006 — Interim Study of Community Corrections and the Penitentiary. This resolution directs an interim Legislative Council study of community corrections and the State Penitentiary. (Committee on Corrections and Penology)

House Concurrent Resolution No. 3007 — LC Study — State Retirement — Post Retirement Adjustment. This resolution provides for a study of the feasibility and desirability of providing post retirement adjustment programs for members of state-level public employee retirement programs. (Committee on Retirement)

SUPPLEMENTARY RULES OF OPERATION AND PROCEDURE OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

GENERAL

In addition to the provisions of Chapter 54-35 of the North Dakota Century Code, and in addition to present rules and policies heretofore established, the Council, its committees, and its staff shall be governed by the following rules:

1. **Rules of Order.** Meetings of the Legislative Council and its committees shall be conducted in accordance with the rules and customs of the Legislative Assembly in regard to standing legislative committees, so far as such rules and customs are applicable. In all instances where such rules and customs are not applicable, proceedings shall be governed by "Mason's Manual of Legislative Procedure."

2. **Expenditure of Council Funds.** The chairman of the Legislative Council shall approve and sign all vouchers for the expenditure of Council funds, except that with the consent of the chairman, the director may sign and approve vouchers in payment of salary to personnel employed by the Council and for routine expenses.

COMMITTEES

3. **Meetings of Committees.** Meetings of committees shall be held at such times and places as may be directed by the committee chairmen, except that no committee shall hold any meeting outside of the State of North Dakota without the permission of the chairman of the Legislative Council. No subcommittee of a committee shall hold hearings without the approval of the Legislative Council. Meetings of the Council and its committees shall be electronically recorded verbatim, to the extent technically possible, by the Council staff. The staff shall retain such recordings until adjournment of the Legislative Assembly which follows the biennial interim period in which the recordings were made, and may thereafter retain such recordings, or any part of them, at its discretion.

4. **Powers and Duties of Committees.**
   a. All committees of the Legislative Council shall have such power and authority as may reasonably be necessary to carry out the purposes contained in study resolutions or statutory studies assigned to such committees, except that all committees shall follow such policies, directives, or limitations as may be prescribed by the Legislative Council.

   b. All actions of committees involving the expenditure of funds for purposes other than the holding of meetings shall be approved by the chairman of the Legislative Council prior to proceeding with such action. No expenditure of funds for out-of-state travel for committee purposes by any member of any committee shall be authorized without prior approval by the chairman of the Legislative Council.

   c. No substantial expansion of committee work beyond that contemplated in the study resolution or contemplated by the Legislative Council in assigning such study resolution shall be made without prior approval by the chairman of the Legislative Council.

   d. No bill draft, other than one drafted by the Legislative Council staff, shall be approved by the committee for recommendation to the Legislative Council unless it shall have been considered by the committee recommending it on at least two meeting days. Such consideration may be of revised drafts of the bill.

   e. Secret ballots shall not be used in voting on any question before a committee.

   f. Every member of a committee who is present must vote for or against each question before the committee on every recorded roll call vote.

5. **Reports of Committees.** Each committee shall submit to the Legislative Council such progress reports as it may deem desirable or as requested from time to time by the Legislative Council. All committees shall submit their final reports and recommendations in writing to the Legislative Council not later than the 15th day of November of the year preceding the next session of the Legislative Assembly, or at such other times as the Council, or its designee, may direct. Final reports, when requested by the Legislative Council, shall be accompanied by drafts of suitable bills to carry out the recommendations of the committees. The Legislative Council shall be authorized to accept, reject, or amend the report of any committee, but the committee report, or any portion of it, as rejected or amended, shall be reflected in substance in the final report of the Legislative Council.

6. **Staff Assistance to Committees.** At the request of any committee or the chairman thereof, the director of the Legislative Council shall, subject to limitations of funds or personnel, provide such assistance from the staff of the Council as may be necessary to carry out the objectives of the study or studies, projects, or duties assigned to any committee. The director of the Council or a member or members of the staff designated by him shall attend all committee meetings and serve as secretary thereof.

COUNCIL STAFF

The director, with the approval of the chairman, shall be authorized to employ such persons, including technical advisors, as may be necessary to carry out the functions and duties of the Council. The director shall be charged with responsibility for the operation of the Council offices, the provision of such staff assistance to the Council and its committees as may be necessary, and for carrying out all policies and directives of the Council and its committees. The director shall have supervisory authority over all personnel employed by the Council.

FURTHER AMENDMENTS AND ADDITIONS TO RULES

8. Further amendments and additions to the rules of operation and procedure of the Legislative Council may be adopted by a majority vote of all members of the Council.