TABLE OF CONTENTS

PAGE

Summary of Committee Reports ..... A-G

North Dakota Legislative Council Committee Membership and Staff 2-7

Chairman's Letter 8

History and Functions of The Legislative Council

History of the Legislative Council 9
The Need for a Legislative Service Agency 9
Composition of the Council 9
Functions and Methods of Operation 9
Major Past Projects 10

Report and Recommendations

ADMINISTRATIVE RULES
Administrative Agency Rules Review 11
Review of Current Rulemaking Actions 11
Selected Agency Rules — Board of Barber Examiners 12
Selected Agency Rules — Game and Fish Department 12
Selected Agency Rules — Highway Department 12
Recommendations 12
Administrative Agencies Practice Act Study 13
Definition of Administrative Agency 13
Definition of Rule 13
Recommendations 13

AGRICULTURE
Noxious Weed Study 15
Present Statutes 15
Interim Study 15
Recommendation 16
Barge Traffic Study 17
Interim Study 17
Recommendation 18

BUDGET SECTION
Mental Health and Retardation Centers 20
Reductions of Positions by the State Social Service Board and the State Department of Health 20
Social Service Board 20
Social Work Programs 21
Social Service Board's Allocation of Administrative Costs 21
Weather Modification Board 21
Disaster Emergency Services 21
Capital Construction Fund 21
Federal Aid Coordinator 22
Effect of Energy Development on State and Local Governments 22
Study of General Fund Revenues and Cash Balance 22
General Fund Cash Flow 22
Estimates of Sales and Income Tax Revenues for the 1981-83 Biennium 23
State Auditor's Office 24
Irregularities Reported Pursuant to Section 54-14-03.1 24
Tour Groups 24
Grafton State School and San Haven 25
Other Budget Section Action 26

BUDGET "A"
Game and Fish Department Performance Review 27
Background 27
Compliance Review 27
Booz, Allen and Hamilton, Inc., Report 27
Natural Resource Overview Study 28
State Energy Resource Action Management Program 29
Monitoring Status of Appropriations 29
Background 29
Charitable and Penal Institutions and Institutions of Higher Education 30
Foundation Program 30
Economic Assistance and Medical Assistance Grants 31
Other Budget Problems 31
Higher Education Cost Information Systems 31
Miscellaneous 31

BUDGET "B"
Study on Deinstitutionalization 32
Background and Terminology 32
Proposals Considered 33
Community Services Plan For Developmentally Disabled Persons 34
Recommendations 35
Collocation of Area Social Service and Mental Health and Retardation Centers 36
Status of Collocation at Committee's Final Meeting 37
Study of State Employee Compensation and Fringe Benefits 37
Current State Employee Fringe Benefits 37
Testimony and Committee Considerations 38
Cost Information Relating to Increased State Employee Fringe Benefits 39
State Employee Salary Increases 39
Recommendations 40

DATA PROCESSING
Background 41
Booz, Allen and Hamilton, Inc., Review 41
CDP Concerns and User Concerns 42
Recommended Legislation for State Data Processing Services 43
Availability of Personal Records 43

EDUCATION
Special Education 44
Background 44
Testimony 44
Recommendation 45
Educational Reciprocity 45
Background 45
Testimony 46
Recommendation 47
Educational Finance 48
Background 48
Testimony 48
Conclusions and Recommendations 49

FINANCE AND TAXATION
Taxation of Financial Institutions 51
Background — State Taxation 51
Background — Federal Taxation 51
Testimony 52
Recommendation 53
Water Sales Tax 53
Background 53
Testimony 53
Recommendation 53
Energy Taxation 53

Coal Conversion and Coal Severance Taxes 53
Testimony 54
Oil and Gas Gross Production Tax 55
Recommendations 56
Property Taxation 56
Background 56
Testimony 56
Recommendations 57

GARRISON DIVERSION OVERVIEW 59

HEALTH CARE
Health Care Services Study 61
Previous Action 61
Interim Study 61
Cost Containment 61
Home Health Care 63
Health Maintenance Organizations 63
State Certificate of Need Law 64
Physician Extenders 64
Health Insurance Study 64
Previous Action 64
Interim Study 65
Catastrophic Illness Programs 65
Minimum Benefits Law 65
Uninsurable Pooled Risk Group Programs 65
Comprehensive Health Insurance Acts 65
Recommendations 65
Nonprofit Health Service Boards Membership Study 66
Present Statutes 66
Previous Action 66
Interim Study 66
Recommendation 67

JUDICIARY "A"
Comparative Negligence Study 68
Background 68
North Dakota Statutes 68
Committee Consideration and Testimony 68
Recommendations 69
Judicial System 69
Main Revision Bill 70
Municipal Courts 71
Uniform Accounting Procedures 71
Change of Judge — Postjudgment Divorce and Custody Matters 71
Study Resolution 71
Secondary Revision Bill 71
Bills Considered 71

JUDICIARY "B"
Eminent Domain Study 72
Background 72
Testimony 72
Eminent Domain Bill 72
Government Officer and Employee Liability Study 74
Background 74
Testimony 75
State Level Bills Considered 75
Political Subdivision Proposal 76
Severed Mineral Interest Study 76
Background 76
Testimony and Committee Activity 77

JUDICIARY "C"

Motor Vehicle Registration 79
Garnishment 79
Statutory Revision 80
Blank Firearms and Firecrackers 80
Nonrenewal and Discharge for Cause Hearings for Teachers 80
Commissioner of Deeds 80
Federal Aid Coordinator 80
Ten Commandments Display 81
Jury Fees in Eminent Domain Actions 81
Consent Required for Adoption 81
Juvenile Traffic Cases 81
Wage Assignment 81
State Tax Levy 81
County Officers 81
Election Laws 81
Technical Corrections Act 82
Grain Elevator Licensing and Bonding 82
Constitutional Revision 82
Political Subdivision Article 82
Board of County Commissioners 82
Leasing of State Lands 82
Obsolete Constitutional References 82
Special Sessions 82
Election of Governor and Lieutenant Governor 83
Uniform Acts 83

LEGISLATIVE AUDIT AND FISCAL REVIEW

State Accounting System Study 84
Selection of a Consultant 84
Final Report of Consultant 84
Other Considerations 85
Recommendations 85
Study of Special Funds and Cash Accounts 86
Purpose of Study 86
Special Funds and Cash Accounts Reviewed 86
Abandoned Motor Vehicle Disposal Fund 86
Vietnam Adjusted Compensation Fund 86
Central Microfilm Operating Fund 86
State Scholarship Revolving Loan Fund 86
Other Funds 87
State Auditor 87
Consolidated Financial Statements 87
Responses to Audits and Recommendations 88
Audit of the State Auditor's Office 88
Performance Reviews 88
Workmen's Compensation Bureau 88
Insurance Commissioner's Office 88
Federal Cash Management 89
Future Performance Review 89
Insurance Deductibles on State-Owned Motor Vehicles 89
Writeoff of Accounts Receivable 89
Other Action and Discussion 90
Insurance on New Construction 90
State Hospital — Transfers from County Jails 90
Health Department 90

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

Legislative Rules Study 91
Senate and House Rules Which Differ 91
Orders of Business 91
Duties of Secretary and Chief Clerk 92
Duties of Sergeants-at-Arms 92
Order and Decorum 92
Rules of Debate 92

Order of Motions 92
Order in Which Question Put 92
Stating of Questions and Verification 92
Nondebatable Motions 92
Previous Question 92
Division of Questions 92
Aye and Nay Vote 92
Procedure in Excusing Members from Voting 92
Introduction of Bills 92
Delayed Bills and Resolutions 92
Form and Style 92
Printing and Distribution of Bills 93
Social Services and Veterans Affairs Committee 93
Size of Employment Committee 93
Meetings of Chairmen 93
Notice of Hearings 93
Committee Reports 93
Setting Time Certain for Floor Debate 93
Second Reading 93
Exception for Conference Committee Reports 93
Recording Remarks in Journal 93
Clincher Motion 93
Electronic Recording Devices 93
Bill Introduction Privilege and Deadline for Agency Bills 93
Limitation on Reconsiderations 94
Private Telephones on the Floor 94
Votes Required for Certain Questions 94
Engrossing of Bills in Second House 94
Committee Reports to Amend and Do Not Pass 94
Lobbyists Listed in Journals 94
Titles of Majority and Minority Leaders 94
Employee Positions 95
Personal or Private Interest 95
Conference Committee Reports 95
Amending on Second Reading 95
Rules Book 95
Printing of Bills 95
Signing of Bills 95
Obsolete Provisions 96
Committee Workload 96
Census Data and Reapportionment 96
Displays in Memorial Hallway and Use of Chambers 96
Guidelines for Citizen Participation 97
Legislative Printing Penalties 97
State of the Judiciary Address 97
Miscellaneous Administrative Matters 97
Renovation of the Legislative Wing and Electronic Voting Machines 98
Background 98
Current Renovation Project 98
Legislative Wing Renovation 98
Ground Floor 98
First Floor 98
Balcony and Second Floor 99
Improved Space Utilization 99
Electronic Voting Machines and Bulletin Boards 99
Electrical Conduit Plan 99
Renovation Budget Request 99
Parallel Tables of Numbering of Rules 100
Senate Rules 100
House Rules 101
Joint Rules 102
Executive Branch Agency Bills Introduced in 1979 103
Bills and Resolutions Considered by Committees — 1979 104
House Committees 104
Senate Committees 104

MEDICAL EDUCATION
History of the University of North Dakota Medical School 105
Preliminary Committee Review 105
Selection of a Medical School Consultant 105
Final Report and Recommendations of the Consultant 105
Medical School Proposal 106
Support for Medical School Proposal 107
Recommendation 107
Other Considerations and Discussion 107

NATURAL RESOURCES
Surface Mining and Reclamation 108
Surface and Mineral Owners' Relative Rights 108
Water Pollution Control 109
Floodplain Management 110
Water Management 110

POLITICAL SUBDIVISIONS
Fire Insurance Tax Study 112
Residential Development Study 112
Incorporation 113
Alternatives to Incorporation 113
County Regulation of Rural Subdivision Development 114
Consolidation 114
Extraterritorial Zoning 114

RETIREMENT 115

SOCIAL SERVICES
Poor Relief Study 126
Background 126
Interim Study 126
Recommendations 127
Child Custody and Visitation Study 127
North Dakota Law Before 1979 Changes 127
1979 Legislative Action 127
North Dakota Case Law 127
Interim Study 128
Recommendations 128
Physically Handicapped Study 128
1979 Legislative Action 128
Statutory Authority 129
Impact of Federal Law 129
Vocational Rehabilitation Division 129
Interim Study 129
Recommendations 130
Related Committee Study 130
Recommendations 130

STATE AND FEDERAL GOVERNMENT "A"
Old West Regional Commission 131
Historical Background 131
Old West Regional Commission in North Dakota 132
Testimony 132
Conclusions and Recommendations 133
Indian Study 133
Historical Background 133
Civil and Criminal Jurisdiction 134
Reservations in North Dakota 135
Wahpeton Indian School 137
State Agency Services to Indians 137
Health Department 137
Social Service Board 138
Vocational Education 139
Department of Public Instruction 140

Federal Aid Coordinator Office — Economic Opportunity Programs 140
Job Service 140
State Water Commission 140
Law Enforcement Council 140
University of North Dakota 140
United Tribes Education Technical Center 141
Indian Affairs Commission 141
Employment and Reservation Industries 142
Fort Totten 142
Fort Berthold 142
Standing Rock 142
Conclusions and Recommendations 142

STATE AND FEDERAL GOVERNMENT "B"
Corrections Study 144
Background 144
Consultant Recommendations 144
Penitentiary, State Farm, and Satellite Appropriations 145
Jail Grant Program 145
Sentencing Alternatives Bill Draft 146
State-Owned Land Study 146
Background 146
North Dakota Constitution 146
Board of University and School Lands 147
Other State Entities 147
Legislative Transfers or Sale Authorizations 147
Remaining State Lands 147
Legislative Land Transfer Bill 147
Game and Fish Department Leases 148

EXPLANATION OF LEGISLATIVE COUNCIL BILLS AND RESOLUTIONS
Senate Bills 149
Senate Concurrent Resolutions 151
House Bills 152
House Concurrent Resolutions 154

SUPPLEMENTARY RULES OF OPERATION AND PROCEDURE OF THE NORTH DAKOTA LEGISLATIVE COUNCIL 155

SUMMARY
BRIEFLY — THIS REPORT SAYS

ADMINISTRATIVE RULES COMMITTEE

The Council reviewed all state administrative agency rulemaking actions between July 1, 1979, and November 1, 1980. The Council also reviewed all rules of the Board of Barber Examiners, Game and Fish Department, and Highway Department. The Council is recommending bills to authorize the interim Administrative Rules Committee to object formally to an agency rule and thus place upon the agency the burden of establishing that the rule is within the agency's authority; to prohibit the Attorney General from approving the legality of any rule duplicating statutory language; to clarify when rules become effective; and to repeal the random motor vehicle maintenance program operated by the Highway Patrol.

The Council studied the Administrative Agencies Practice Act with respect to rulemaking requirements and is recommending three bills. The bills redefine "administrative agency" to include all administrative units of the executive branch of state government with specifically listed exceptions; subject the Seed Commission, Laboratories Department, Highway Corridor Board, and hazardous materials regulations of the Motor Vehicle Department to the procedural requirements of the Act, and except interest rate determinations by the State Banking Board from the notice and hearing requirements of the Act; and redefine "rule" to include all statements of general application which implement, interpret, or prescribe law or policy, with exceptions specifically listed.

AGRICULTURE COMMITTEE

The Council studied alternative methods of providing equitable and efficient means of eradicating and controlling noxious weeds in the state. The Council recommends a bill which establishes county weed boards as the primary noxious weed control authorities in the state; requires the appointment, certification, and education of county weed control officers; and authorizes leafy spurge and cannabis control programs.

The Council studied navigation on the Missouri River above Sioux City, Iowa, utilizing barge traffic. The Council recommends continued support of a project proposal to promote an effective intermodal transportation system through the Missouri River Transportation Commission.

BUDGET SECTION

The Council approved Social Service Board requests for 10 social service projects, funded by Title XX funds, in the amount of $639,382. It also heard reports by the Social Service Board on the need for social work programs, the allocation of Social Service Board administrative costs, and the reduction of employees in the Social Service Board and the Department of Health.

The Council reviewed the status of the general fund and analyzed state general fund revenues during the 1979-81 interim. The Council contracted with the North Dakota State University Department of Agricultural Economics for forecasts of state income and sales tax revenues for the 1981-83 biennium. The Council approved transfers from the state's general fund to the capital construction fund which provided funds to build facilities at six state institutions. The Council heard reports on developments in the Federal Aid Coordinator Office and on conditions at Grafton State School and San Haven.

During the interim, Budget Section tour groups visited major state institutions and agencies to hear and evaluate requests for major improvements and structures and to hear problems the institutions might be encountering during the interim.

BUDGET "A" COMMITTEE

During the 1979-81 interim the Council monitored the status of major state agencies' and institutions' appropriations, and related budget problems. It recommends that state agencies and institutions request Emergency Commission authority to transfer funds within line items to fund any line item deficiency and that the next Legislative Assembly thoroughly analyze deficiency appropriation requests.

The Council conducted a performance review of the State Game and Fish Department and also made an overview study of state natural resource agencies. The Council recommends a bill appropriating $200,000 to the Emergency Commission for additional state regulatory duties during the next biennium.

The Council reviewed the accounting and cost information system currently being implemented at the institutions of higher education. The Council recommends that the next Legislative Assembly continue this review, and that the system be designed to provide the Legislative Assembly with access to information on it.

BUDGET "B" COMMITTEE

The Council studied the need for deinstitutionalization and additional community programs and services for developmentally disabled persons in North Dakota. The Council recommends a $13.2 million plan for community services during the 1981-83 biennium. Under the plan 100 beds will be converted to ICF/developmentally disabled beds, 100 new ICF/developmentally disabled beds will be developed including 16 for mentally ill persons. Persons receiving non-Title XIX eligible services and living in non-Title XIX group homes will continue to receive services. It is estimated that 84 Grafton State School residents will move to communities during the 1981-83 biennium under this plan.

The Council recommends a bill exempting counties from reimbursing the State Social Service Board for funds spent by intermediate care facilities for medical services for developmentally disabled persons. It recommends a bill clarifying the authority of the Division of Vocational Rehabilitation and the Mental Health and Retardation Division to license facilities for developmentally disabled persons. The Council also recommends a bill establishing a Bank of North Dakota loan program, including a general fund appropriation of $4 million, for the acquisition of intermediate care facilities for developmentally disabled persons.

The Council by resolution directs the North Dakota Social Service Board to amend the state Title XIX plan to provide coverage for medical services provided by intermediate care facilities for developmentally disabled persons. The Council also, in another recommended resolution, encourages state agencies, institutions, and service providers to take the action necessary to implement the plan for community services for developmentally disabled persons. The Council also recommends a resolution which directs a Legislative Council study to monitor the establishment of the intermediate care facilities for the developmentally disabled during the 1981-83 biennium.

The Council studied state employee compensation and fringe benefits. It recommends a bill providing the option for the state to self-insure its life insurance program. It recommends a bill allowing changes to the Central Personnel classification system during a biennium, including the addition of classifications to the compensation plan. The Council recommends a bill clarifying the status of the mental health and retardation service units and human service centers under the Central Personnel Division's classification and pay plan. It also recommends a bill providing for a totally state-funded public employee retirement system.

The Council also monitored collocation of area social service and comprehensive mental health and retardation centers, as mandated by House Bill No. 1061 passed by the 1979 Legislative Assembly and to be effected by July 1, 1981.

DATA PROCESSING COMMITTEE

The Council contracted with Booz, Allen and Hamilton, Inc., for an in-depth review of the state's Central Data Processing services. The Council recommends a bill providing for continued centralized control of agency data processing equipment acquisition and new systems development. However, the bill provides for user agencies to house and operate data processing equipment. It also provides procedures for data processing budgetary planning and sets up a Data Processing Advisory Committee.

Because of the increasing use of data processing systems to maintain information about individuals, the Council recommends two bills regulating the collection and disclosure of personal and confidential information maintained by state agencies, and businesses offering data processing services.

EDUCATION COMMITTEE

The Council studied the area of special education and recommends a bill providing for contracts between school districts and state-operated schools for services to students which are not provided for by the state-operated school under its normal budgetary provisions. The fiscal obligation for services provided in the contract are to be paid from funds appropriated by the Legislative Assembly to the Emergency Commission for special education. No appropriation was contained in this bill.

In the area of postsecondary vocational education reciprocity, the Council recommends a bill similar to 1979 Senate Bill No. 2342 which would allow reciprocity agreements between North Dakota and Minnesota. Responsibility for these agreements would be with the State Board for Vocational Education and no reciprocity would be allowed for programs instituted in Minnesota schools within 150 miles of an existing program in a North Dakota postsecondary vocational school.

As a result of its elementary and secondary education financing study, the Council recommends six bills. One bill would change the weighting factor from .9 to 1.0 for public elementary schools with an enrollment of 100 or more but less than 1,000. Another bill would appropriate $180,000 to reimburse school districts which receive an analysis of their school bus routes through the Engineering Experiment Station at

North Dakota State University. The third bill would appropriate $8 million for additional aid to isolated school districts in North Dakota which qualify. The fourth bill, which contains an emergency clause, authorizes the expenditure of $12 million in unexpended foundation aid appropriation to school districts based on school bus transportation mileage and average daily membership for the 1979-80 academic year.

The final two bills are alternative methods of amending the unemployment compensation law to limit the financial obligation of school districts for unemployment compensation benefits in certain circumstances.

FINANCE AND TAXATION COMMITTEE

The Council studied the taxation of financial institutions but did not recommend any changes. The Council also investigated the sales tax imposed on sales of water and recommends a bill which would exempt all sales of water, including sales of bottled water, from the three percent sales tax currently imposed.

The Council studied the area of energy taxation and recommends three bills changing the distribution of the oil and gas gross production tax. One of these bills would earmark 15 percent of the initial one percent of the oil and gas gross production tax going to the state general fund for appropriation to the Highway Commissioner for use by the Secondary Roads Division. The second bill would change the distribution brackets for the remaining four percent of the tax. The current brackets, which are in increments of $200,000, would be increased to increments of $400,000. Under the third bill, the 40 percent portion of moneys presently going to the county road and bridge fund would be divided equally between the county road and bridge fund and the county general fund.

In the area of property taxation, the Council recommends three alternatives. The first bill would assess all property at 10 percent of its true and full value and would repeal the 21-mill school levy, replacing those funds with a general fund appropriation. The second bill provides for the classification of property into four classes. Agricultural land would be assessed at 6.8 percent; residential property at 10.4 percent; business, commercial, and railroad property at 12.2 percent; and all property, except railroad property, which is assessed by the State Board of Equalization would be assessed at 18.4 percent. This bill also limits increases or reductions in taxes levied for the first two years.

The final property tax bill provides that all property except agricultural property be assessed at 10 percent of true and full value. Agricultural property would be assessed at 7.5 percent. This bill contains a limited homestead credit and also limits increases or reductions in taxes levied for the first two years. All three property tax bills would require statements of full consideration to be filed with deeds, subject to certain exemptions.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Council received the report of the Garrison Diversion Overview Committee. The committee received several briefings on the progress of the litigation surrounding the project, the status of the Garrison Diversion Mitigation and Enhancement Lands Commission, and the cost of utilizing a buried pipeline alternative as compared to the open canal system currently planned.

Committee members traveled to Winnipeg, Manitoba, for discussions concerning the project with officials of the Manitoban government. An invitation was also extended to Mr. A. Brian Ransom, Minister of Natural Resources, and other interested Manitoban officials to visit the Garrison Diversion Project.

The committee passed one resolution urging the director of the Fish and Wildlife Service and the director of the Water and Power Resources Service to appoint promptly their respective commissioners on the Garrison Diversion Mitigation and Enhancement Lands Commission. Copies of that resolution were forwarded to the appropriate federal agencies and North Dakota's Congressional Delegation.

HEALTH CARE COMMITTEE

The Council studied the provision of health care services in North Dakota and recommends two bills based on its study. One bill requires home health agencies to obtain licenses from the Health Department and provides for the payment of home health care services for indigents. The other bill removes statutory restrictions on the development of health maintenance organizations (HMOs) and authorizes the Public Employees Retirement Board to provide an HMO option for eligible employees.

The Council studied the desirability and necessity of implementing catastrophic illness programs, a minimum benefits law, and an uninsurable pooled risk group program in the state and recommends two bills based on its study. One bill establishes an intercarrier pool of insurance companies to offer six health insurance plans to medically uninsurable residents at premiums which are self-supporting and based on generally accepted actuarial principles. The other bill forbids cancellation of a guaran-

teed renewable accident and sickness insurance policy for any reason, other than failure to make timely payments, except after written notice of at least 24 months delivered or mailed to the insured.

The Council studied the adequacy and equity of present statutes as they relate to membership of the boards of directors of nonprofit hospital, medical, dental, and vision service corporations and makes no recommendation to amend those statutes.

JUDICIARY "A" COMMITTEE

The Council studied the state's comparative negligence statutes and recommends two bills. One bill creates the Revised Uniform Comparative Fault Act which contains provisions relating to the effect of contributory fault on the recovery of damages, the apportionment of damages, setoff restrictions, right to enforcement of contribution, and effect of a release. The second bill authorizes private rights of action against insurance companies for violation of the Unfair Insurance Practices Act.

The Council also studied the state's judicial system and the structural changes necessitated by the passage of the new Judicial Article, and is recommending a bill creating a new unified judicial system in North Dakota. The Council is also recommending several other bills concerning the judicial system.

The bill revising the entire judicial system would create a unified judicial system consisting of a Supreme Court, the district courts, the county courts, and the municipal courts, and provide for assumption of many district court expenses by the state.

The other bills recommended would clarify the rights of municipal judges when sentencing; provide that all fines collected under an appeal from a municipal court must be paid into that city's treasury; authorize the Supreme Court to establish uniform financial accounting procedures for courts; allow a request for a change of judge in postjudgment proceedings to modify an order for alimony, property division, child support, or child custody; and would amend all sections of the North Dakota Century Code which are affected by the unified judicial system bill. The Council also recommends a resolution directing an interim study of court jurisdiction over equitable cases, provisional remedies, and trusts, with emphasis on the appropriate jurisdiction of the new county courts.

JUDICIARY "B" COMMITTEE

The Council studied North Dakota's eminent domain laws and recommends a bill which (1) requires a condemnor to make a written offer to purchase prior to a condemnation action; (2) requires condemnors, upon request, to make disclosures concerning landowners affected by a project; (3) provides for the appointment of condemnation commissioners; (4) allows corporate condemnors to take earlier possession of land; (5) requires payment of litigation expenses to a landowner under stated circumstances; (6) prohibits a use or necessity challenge to the exercise of eminent domain under certain circumstances; and (7) provides for the preparation of pamphlets describing eminent domain to be presented to landowners prior to a condemnation action.

The Council also studied the personal liability of state and local officers and employees for acts, errors, or omissions within the scope of employment or office. The Council recommends a bill establishing a $500,000 special fund administered by the Attorney General for defending claims against state officers and employees. The fund could be used to provide a defense, pay reasonable attorney's fees and costs, pay attorney's fees awarded against a state official or employee, and pay other necessary expenses; but could not be used to pay money damages resulting from a judgment.

A second bill recommended by the Council requires that an action be brought directly against a political subdivision for injuries proximately caused by the alleged negligence, wrongful act, or omission of a political subdivision officer or employee occurring within the scope of office or employment.

The Council also studied problems caused by the severance of a mineral interest from the surface estate interest in real property, but makes no recommendations for legislative action.

JUDICIARY "C" COMMITTEE

The Council studied the motor vehicle titling and registration and garnishment statutes and recommends three bills. One bill provides for extensive amendment of the motor vehicle titling and registration statutes with emphasis on delineating the differences between the registration and titling processes. The second bill defines motor vehicle owner, for purposes of the no-fault insurance statutes, as a person, other than a lienholder, having the property in or title to a vehicle. The final bill repeals Chapters 32-09 and 33-05 and creates a new simplified garnishment procedure which is in compliance with federal law.

The Council also recommends 13 bills which are a result of the committee's statutory revision responsibility. These bills provide for repeal of a prohibition on

blank cartridge pistols and of the authority for a commissioner of deeds; that a teacher's spouse or one other family member may attend a hearing of the school board for a discharge for cause or nonrenewal of a teacher's contract; for the appointment of the Federal Aid Coordinator by the Governor; that the display of the Ten Commandments in classrooms will be permissive rather than mandatory, with the placards purchased through voluntary contributions; that an eminent domain plaintiff, other than a governmental entity, must pay jury costs; for removing distinctions between unwed parents with respect to consent before adoption of their child; that adult court will have jurisdiction over juveniles who commit misdemeanor traffic offenses; that North Dakota's laws on wage assignment for child support be consistent with federal limitations; and for technical corrections relating to state tax rates, county judges, compensation paid election officials, the ballot form, and obsolete name and statutory references.

The committee recommends nine resolutions calling for constitutional amendments. These resolutions would create a new Political Subdivisions Article; allow an increase in the size of the board of county commissioners in counties with larger populations; allow the Legislative Assembly to set the purposes, time periods, and conditions for the leasing of grant lands; allow the Legislative Assembly to convene in a limited special session upon the call of the Governor or upon written request of two-thirds of the members of each house; provide for the election of the Governor and Lt. Governor to a two-year term in 1984 and thereafter to four-year terms; eliminate obsolete references in three sections; and to repeal a duplicate section of the Constitution.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council reviewed 67 audit reports presented by the State Auditor's office. The action taken on those reports pursuant to various audit recommendations are included in the report of the Council's Legislative Audit and Fiscal Review Committee.

The Council recommends a bill which authorizes the director of the Department of Accounts and Purchases to revise the state's accounting and financial reporting system, and includes provision for an accrual accounting system. The bill includes a $1 million general fund appropriation to the Department of Accounts and Purchases to provide for the revision. The Council also recommends a resolution directing improvements to the state's accounting and financial reporting system.

The Council studied special funds and cash accounts maintained in the state treasury. The Council is recommending bills to provide that four funds be consolidated with other funds or be transferred to the general fund.

The Council also recommends a bill providing for a change in the annual statement filing and premium tax deadlines for insurance companies from April 1 to March 1.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Council studied legislative rules and recommends the Senate rules, House rules, and joint rules be renumbered and reorganized and that many of the differences between Senate and House rules be eliminated. Among the recommendations is one that the House rule be amended to limit introduction of bills after the 10th legislative day.

Both Senate and House rules are recommended for amendment to extend the agency introduction privilege to the judicial branch and to require the prefiling of all agency bills. Other recommended changes include a prohibition on private telephones on the floor, a limitation on reconsideration of a question to once per day, and committee reports to "amend and do not pass."

To prevent needless delay in the delivery of public printing documents, the Council recommends a bill to increase the penalty for failing to complete a public printing contract on time from one-fourth of one percent per day to a maximum of $250 per day as may be provided in the contract. Another bill recommended provides that the Legislative Council have jurisdiction over displays in Memorial Hallway and use of the Senate and House chambers.

The Council contracted with the Bureau of Governmental Affairs at the University of North Dakota to develop a computer-assisted reappportionment program. The Council also contracted with an architectural firm to coordinate the renovation authorized in the legislative wing by 1979 House Bill No. 1003 and to update the renovation plan for legislative space developed during the previous interim. The Council recommends funding for renovation of legislative space, new electronic voting machines, and electronic bulletin boards.

MEDICAL EDUCATION COMMITTEE

The Council studied the four-year medical program of the University of North

Dakota Medical School and the feasibility of establishing the third year of medical instruction in North Dakota.

The Council recommends a resolution urging the Board of Higher Education to provide that the third year of the Medical School curriculum be taught in North Dakota, beginning with the 1983-84 school year.

NATURAL RESOURCES COMMITTEE

The Council studied state implementation of the permitting program required under Section 404 of the Federal Water Pollution Control Act for the placing of dredged and fill materials in navigable waters. Because final regulations governing state implementation had not yet been promulgated, the Council encouraged the State Water Commission to pursue the matter and introduce legislation if deemed advisable.

The Council studied the relative rights of surface and mineral owners, particularly as those rights relate to mineral development. The Council does not recommend a bill because the effects of recent legislation in this area have yet to be determined. The Council does support the fostering of approved communications among surface and mineral owners, mineral developers, and regulatory agencies in the state.

The Council studied any amendments necessary to the state's surface mining and reclamation program to allow it to be fully approved under the Federal Surface Mining Control and Reclamation Act of 1977. Necessary amendments were not determined by the state's Public Service Commission and the Department of Interior's Office of Surface Mining in time for the Council to recommend any legislation.

The Council studied floodplain and floodplain management in an attempt to mitigate future flood disasters and ensure eligibility for federal insurance and recommends a bill providing for floodplain management by local ordinances based upon minimum statewide standards.

The Council studied the reorganization of water management districts and legal drain boards and recommends a bill eliminating both types of entities and establishing, instead, water resource districts with broad water management powers to be exercised along watershed boundaries.

POLITICAL SUBDIVISIONS COMMITTEE

The Council studied rural developments and the incorporation of cities and recommends bills providing new criteria for city incorporation, processes for the installation of improvements and provision of services in rural subdivisions, for county regulation of rural subdivision development, for permissive consolidation of existing cities, and for extraterritorial zoning along nonradial lines.

RETIREMENT COMMITTEE

The Council solicited and reviewed proposals affecting many aspects of various public employee retirement programs. The proposals were received from retirement programs, public employee organizations, Legislative Council committees, public officials, and individuals. The Council obtained actuarial and fiscal information on each proposal and reported this information to each proponent who is responsible for securing introduction of the proposal.

SOCIAL SERVICES COMMITTEE

The Council studied the residency provisions of the poor relief laws and examined the basis for allocating the local share of assistance costs. The Council recommends a bill to make the county of physical presence the county of legal residence for poor relief purposes and to provide fiscal relief to the counties by having the state assume 80 percent of county general assistance expenditures, reducing the county share of nonfederal AFDC costs to 15 percent, and reducing the county share of nonfederal medical assistance costs to 10 percent.

In a related study, the Council recommends a bill which provides for a comprehensive planning mechanism for delivery of social services and changes the formula for the state share of nonfederal funds for Title XX programs from 50 percent of the nonfederal share to 16 percent of the federal share.

The Council studied child custody, visitation, and other domestic relations issues. The committee considered and rejected a bill draft to create a domestic referee to handle custody and visitation disputes. The Council makes no recommendations on child custody and visitation.

The Council also studied problems facing physically handicapped young adults in North Dakota, including the lack of adequate facilities, services, and programs. The Council recommends a bill to make the nursing home revolving loan fund available for financing facilities constructed or used exclusively for the physically handicapped.

STATE AND FEDERAL GOVERNMENT "A" COMMITTEE

The Council studied the Old West Regional Commission and its impact on North Dakota and recommends that North Dakota's alternate delegate report personally to the Council each year on the activities and projects of the commission. The Council also recommends that North Dakota legislators be made aware of the fact that the Legislative Assembly is eligible to submit proposals to the commission for funding.

The Council also studied the relationship between the state of North Dakota, the federal government, and the tribal governments within North Dakota. As a result of this study, the Council recommends four resolutions. Two of these would be sent to Congress urging them to extend the rights conferred on Indian citizens to enrolled members of recognized tribes wherever they live and to provide for direct funding of services to the reservations rather than channeling federal moneys through state agencies. The third resolution directs a study of the feasibility of consolidating the Fort Berthold reservation into a single county and the final resolution directs the State Water Commission to work with the tribal governments in North Dakota to determine a policy on the allocation of water which will best serve the citizens of North Dakota, both on and off the reservation.

STATE AND FEDERAL GOVERNMENT "B" COMMITTEE

The Council, with the aid of an architectural and criminal justice planning consultant, studied all levels of the state's corrections system and developed a long-range corrections master plan.

The Council recommends a bill appropriating $20,789,080 for construction, renovation, and equipping of facilities at the State Penitentiary; $2,400,500 for constructing new facilities at the State Farm; and $2,232,150 for constructing a new satellite correctional facility. An additional $55,000 would be appropriated to the Director of Institutions for hiring an attorney to assist in monitoring the implementation of the correctional system plan.

The Council also recommends a bill appropriating $3,923,380 to the Combined Law Enforcement Council for a matching grant program for county and city jails. Moneys would be available for jail and juvenile detention facility construction and renovation and for programs which would enable local units of government to meet the jail standards and rules prescribed by the Attorney General. An additional $125,000 would be appropriated to the Combined Law Enforcement Council for administering the jail grant program.

A third bill recommended by the Council would provide that only males sentenced for Class A misdemeanors or felonies can be sent to the State Farm. No persons sentenced to federal corrections centers for felonies nor persons with a history of violent assaultive behavior which has resulted in physical injury or serious psychological harm to others could be sentenced to the State Farm. A court could sentence a person to a state correctional facility, a regional corrections center, a county jail, or the State Farm for a felony or a Class A misdemeanor, and to a county jail or regional corrections center for a Class B misdemeanor. A court could commit a female offender to the State Penitentiary or other suitable facility under the same minimum security restrictions and with the same privileges as State Farm inmates when the sentence is more than 30 days but not more than one year. A person convicted of a felony who is sentenced to imprisonment for not more than one year would be deemed to have been convicted of a misdemeanor upon successful completion of imprisonment.

The Council studied the sale, lease, exchange, and use of state-owned land and recommends legislation requiring every legislative bill which authorizes the sale, lease, or exchange of state-owned land to be prefiled by the first day of the legislative organizational session. The sale or lease of such land would be at public auction conducted by the State Land Department. A written report from the supervising agency controlling the land would accompany each legislative bill. The Commissioner of University and School Lands would review each legislative bill and written report and issue an opinion in which the highest and best use of the land would be considered.

REPORT
of the
NORTH DAKOTA LEGISLATIVE COUNCIL

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

FORTY-SEVENTH LEGISLATIVE ASSEMBLY
1981

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North Dakota Legislative Council

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

The Honorable Allen I. Olson
Governor of North Dakota

Members, Forty-seventh Legislative Assembly
of North Dakota

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

Major recommendations include: revision of state laws relating to courts in accordance with the new Judicial Article adopted in 1976; three versions of property tax classification formulas; funding for a substantial renovation of the legislative wing; funding for a substantial renovation of the State Penitentiary; revision of the statutes relating to the Central Data Processing Division; revision of the Political Subdivisions Article of the Constitution; provision for the handling of the potential liability of state officials and employees; authorization for creation of water resource districts along watershed boundaries; provision for state and local floodplain management activities; provision for intermediate care facilities for the developmentally disabled; revision of the weed control laws; provision for an insurance pool to provide health insurance for persons otherwise uninsurable; proposed new definitions of the terms "administrative agency" and "rule"; and a substantial revision and renumbering of the legislative rules.

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/gn
Enc.

HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

I. HISTORY OF THE LEGISLATIVE COUNCIL

The North Dakota Legislative Council was created in 1945 as the Legislative Research Committee (LRC). The LRC had a slow beginning during the first interim of its existence because, as reported in the first biennial report, the prevailing war conditions prevented the employment of a research director until April 1946.

After the hiring of a research director, the first LRC held monthly meetings prior to the 1947 Legislative Session and recommended a number of bills to that session. Even though the legislation creating the LRC permitted the appointment of subcommittees, all of the interim work was performed by the 11 statutory members until the 1953-55 interim, when other legislators participated in studies. Although "research" was its middle name, in its early years the LRC served primarily as a screening agency for proposed legislation submitted by state departments and organizations. This screening role is evidenced by the fact that as early as 1949, the LRC presented 100 proposals prepared or sponsored by the committee, which the biennial report indicated were not all necessarily endorsed by the committee and included were several alternative or conflicting proposals.

The name of the LRC was changed to the Legislative Council in 1969 to reflect more accurately the scope of its duties. Although research is still an integral part of the functioning of the Legislative Council, it has become a comprehensive legislative service agency with various duties in addition to research.

II. THE NEED FOR A LEGISLATIVE SERVICE AGENCY

The Legislative Council movement began in Kansas in 1933. At present, nearly all states have such a council or its equivalent, although a few states use varying numbers of special committees.

Legislative 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 which must be faced, and the need exists to provide legislators with the tools and resources which are essential if they are to fulfill the demands placed upon them.

In contrast to other branches of government, the Legislative Assembly in the past had to approach its deliberations without its own information sources, studies, or investigations. Some of the information relied upon was inadequate or slanted because of special interests of the sources.

To meet these demands, the Legislative Assembly established the North Dakota Legislative Council. The existence of the Council has made it possible for the Legislative Assembly to meet the demands of the last half of the 20th century while remaining a part-time citizen legislature which meets for a limited number of days every other year.

III. COMPOSITION OF THE COUNCIL

The Legislative Council by statute presently consists of 15 legislators, including the majority and minority leaders of both houses and the Speaker of the House. The speaker appoints five other representatives, two from the majority and three from the minority from a list of nine members recommended by each party. The Lieutenant Governor, as President of the Senate, appoints three senators from the majority and two from the minority from a list of seven members recommended by each party.

The Legislative Council is thus composed of eight majority party members and seven minority party members, and is served by a staff of attorneys, accountants, researchers, and auxiliary personnel who are hired and who serve on a strictly nonpartisan basis.

IV. FUNCTIONS AND METHODS OF OPERATION OF THE COUNCIL

Although the Legislative Council has the authority to initiate studies or other action deemed necessary between legislative sessions, much of the Council's work results from study resolutions passed by both houses. The usual procedure is for the Council to designate committees to carry out the studies, although a few Council committees, including the Budget Section, the Administrative Rules Committee, the Retirement Committee, and the Legislative Audit and Fiscal Review Committee, are statutory committees with duties imposed by state law.

Regardless of the source of authority of interim committees, the Council appoints the members with the exception of a few ex officio members named by statute. Nearly all committees consist entirely of legislators, although a few citizen members are selected to serve each interim when it is determined they can provide special expertise or insight for a study.

The Council committees hold meetings throughout the interim at which members hear testimony, review information and materials provided by staff, other state agencies, and interested persons and organizations, and consider alternatives. Occasionally it is necessary for the Council to contract with universities, consulting firms, or outside professionals on specialized studies and projects. However, the vast majority of studies are handled entirely by the Council staff.

Committees make their reports to the full Legislative Council, usually in November preceding a regular legislative session. The Council may accept, amend, or reject a committee's report. The Legislative Council then presents the recommendations it has accepted, together with bills and resolutions necessary to implement them, to the Legislative Assembly.

In addition to conducting studies, the Council and its staff provide a wide range of services to legislators, other state agencies, and the public. Attorneys on the staff provide legal advice and counsel on legislative matters to legislators and legislative committees. The Council supervises the publication of the Session Laws, the North Dakota Century Code, and the North Dakota Administrative Code. The Council has on its staff the Legislative Budget Analyst and Auditor and assistants who provide technical assistance to Council committees and legislators and who review audit reports for the Legislative Audit and Fiscal Review Committee. A data processing division provides computer services to the legislative branch, including research and bill drafting capabilities. The Legislative Council library contains a wide variety of materials and reference documents, many of which are not available from other sources.

V. MAJOR PAST PROJECTS OF THE COUNCIL

Nearly every facet of state government and statutes have been touched by one or more Council studies since 1945. Statutory revisions, including the rewriting of school laws, election laws, motor vehicle laws, and criminal laws have been among the major accomplishments of interim committees. Another project was the republication of the North Dakota Revised Code of 1943, the resulting product being the North Dakota Century Code.

Government reorganization has also occupied a considerable amount of attention. Included have been studies of human service centers, agriculturally related functions of state government, centralized state government computer and microfilm services, and organization of the state's charitable and penal institutions, as well as studies of the feasibility of consolidating functions in state government to create a Department of Motor Vehicles and a Department of Administration.

The review of uniform and model acts, such as the Uniform Probate Code, have also been included in past Council agendas. Constitutional revision has been studied several interims, as well as studies to implement constitutional measures which have been approved by the voters, such as soldiers' bonus financing.

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

Among the innovations of interim committees was the creation of the Regional Environmental Assessment Program (REAP) in 1975. This was a resource and information program designed to provide environmental, socioeconomic, and sociological data acquisition and monitoring. REAP was terminated with a gubernatorial veto in 1979, after four years as a joint legislative-executive program under the tutelage of the Legislative Council.

Perhaps of most value to citizen legislators are committees which permit members to keep up with rapidly changing developments in complex fields. Among these are the Budget Section, which receives the executive budget prior to each legislative session. The Administrative Rules Committee allows legislators to monitor executive branch department rules and regulations. Other subjects which have been regularly studied include school finance, property tax assessments, and legislative rules.

ADMINISTRATIVE RULES COMMITTEE

The Administrative Rules Committee is a statutory committee of the Legislative Council as a result of the 1979 enactment of North Dakota Century Code Sections 54-35-02.5 and 54-35-02.6. In addition to its statutory mandate to review administrative agency rules, the committee studied the Administrative Agencies Practice Act (Chapter 28-32) pursuant to Senate Concurrent Resolution No. 4035.

Committee members were Senators David Nething, Chairman, Chuck Goodman, George Rait, Ernest Sands, James Smykowski, and Jens Tennefos; and Representatives Alvin Hausauer, Serenus Hoffner, Carolyn Houmann, William Kretschmar, Glenn Pomeroy, Steven Swiontek, Janet Wentz, and Dean Winkjer.

The report of the Administrative Rules 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-seventh Legislative Assembly by the Legislative Council in November 1980.

ADMINISTRATIVE AGENCY RULES REVIEW

The committee is statutorily required to review administrative agency rules to determine whether:

1. Administrative agencies are properly implementing legislative purpose and intent.
2. There are court or agency expressions of dissatisfaction with state statutes or with rules of administrative agencies promulgated pursuant thereto.
3. The court opinions or rules indicate unclear or ambiguous statutes.

The committee approached this requirement through (1) an ongoing review of current rulemaking actions of administrative agencies and (2) an in-depth examination of all rules of selected administrative agencies. The committee's review authority is statutorily limited to rules assigned to the committee by the Legislative Council chairman. At the committee's request, the Legislative Council chairman assigned all rules published in the North Dakota Administrative Code effective after June 30, 1979, and the rules of three agencies: Board of Barber Examiners, Game and Fish Department, and Highway Department.

As rules were scheduled for review by the committee, the adopting agency was requested to provide information on:

1. Whether the rules resulted from statutory changes made by the 1979 Legislative Assembly.
2. Whether the rules resulted from federal programs or were related in subject matter to any federal statute or regulation.
3. The rulemaking procedure followed in adopting the rules.
4. Whether any person had filed any complaint concerning the rules.
5. The approximate cost of giving public notice and holding any hearing on the rules.
6. The subject matter of the rules and the reasons for adopting the rules.

Review of Current Rulemaking Actions

The committee reviewed 1,440 rule changes between July 1, 1979, and November 1, 1980. These rule changes ranged from simple amendments and repeals to hundreds of pages of complex material.

Of the 1,440 rule changes approximately 809 changes resulted from 1979 legislative action, 139 changes resulted from 1977 legislative action, and one change resulted from 1973 legislative action. The effect of federal

STATISTICAL SUMMARY OF RULEMAKING BY AGENCY

Agency	Amended	Created	Superseded	Repealed
Accounts and Purchases Department		26		
Attorney General		34		
Banking Department	13	56		
Dental Examiners Board		4		
Electrical Board	18			
Engineers and Land Surveyors Board	12			1
Game and Fish Department	4	9		
Health Department	22	31		
Highway Corridor Board	1	7		
Highway Patrol				93
Industrial Commission	3	3		
Insurance Commissioner		7		
Laboratories Commission		138	4	
Livestock Sanitary Board	2			
Motor Vehicle Department	2	56		
Nursing Board	13	17		
Nursing Home Administrators Board	2			
Plumbing Board	4	1	1	
Public Instruction Superintendent	8	1		1
Public Service Commission	11	385	202	1
Securities Commissioner	1			3
Seed Commission		22		
Social Service Board	14	87		
Tax Commissioner	58	8		3
Treasurer	1			
Water Conservation Commission	22	17		3
Wheat Commission	1			
Workmen's Compensation Bureau	5	2		
Total	217	911	207	105

programs or requirements on state agency rulemaking is illustrated by the fact that approximately 485 rule changes were related to federal programs or requirements. In some instances there is a relationship between state legislative action and federal programs or requirements, e.g., surface mine reclamation rules are related to 1979 legislative action and to federal requirements.

The following table summarizes the rule changes published in the Administrative Code and reviewed by the committee between July 1, 1979, and November 1, 1980. The statistical summary indicates the extent of rulemaking and the general workload of the committee. The summary depicts the number of rules amended, the number of rules created, the number of rules superseded by newly created rules, and the number of rules repealed. The most important qualification of the summary is that each rule is viewed as one unit, although rules differ greatly in length, complexity, nature, and importance. Thus, the sheer number of rules depicted by the summary may be misleading in some cases. For the purposes of the summary, the statutorily required organizational rule of the agency and any modified table or appendix were treated as rules.

The committee's authority is statutorily limited to making rule change recommendations to the adopting agency and to making recommendations to the Legislative Council for amendment or repeal of enabling legislation serving as authority for rules. As a result of this purely advisory authority, the committee followed an "after-the-fact" procedure in reviewing rules, i.e., rules were reviewed after they became effective.

Agencies generally cooperated with the committee and indicated that they would consider the committee's recommendations on or objections to a rule. However, any recommendation or objection stated was to a rule already having the force and effect of law.

With the limited scope of authority in mind, the committee placed importance on proper implementation of legislative purpose and intent. The committee's strongest recommendation for a rule change was made to the Attorney General with respect to the Attorney General's rules concerning treatment of the five percent gaming tax. The rules required the gaming tax to be taken out of the one-third share allowed operators, while legislative committee minutes indicated that the one-third share be after the five percent tax had been taken out of the adjusted gross proceeds. While the committee's concern was pointed out to the Attorney General's staff, the rules were not changed.

In another instance, the committee recommended to the Department of Health that a rule be adopted with respect to local issuance of death certificates. The concerns of committee members, as brought to their attention by persons affected by the lack of local issuance of death certificates, were expressed to the Director of Statistical Services for the Department of Health. The department responded by adopting a rule allowing local issuance of death certificates.

During the rules review process, committee members also considered the necessity of administrative agency rules. This consideration included unnecessary codification of common sense and unnecessary duplication of statutory language. In several instances rules duplicated statutory language. Although the Attorney General approves rules as to legality, there is no specific authority to reject rules due to duplication of statutory provisions.

Selected Agency Rules — Board of Barber Examiners

The State Board of Barber Examiners was the first agency to have all of its rules reviewed. The board was selected because it is an occupational licensing agency, all of its rules were recently adopted, and the board's 46 rules were reviewable at one meeting.

The major concerns expressed by committee members over the board's rules were possible overemphasis on prohibiting unsanitary practices and possible overregulation of barber college requirements.

Selected Agency Rules — Game and Fish Department

The Game and Fish Department was the second agency to have all of its rules reviewed. The department was selected due to concerns expressed to committee members by members of the public and the fact that the department's 118 rules could be reviewed at one meeting.

The major concern expressed by committee members over the department's rules was the duplication of statutory language. This concern was expressed by committee members throughout the entire rules review process.

Selected Agency Rules — Highway Department

The Highway Department was the final agency to have all of its rules reviewed. The department was selected because of the impact of the department's rules on the public. The department has 49 rules published in the Administrative Code.

The committee expressed no recommendations or objections on the department's rules.

Recommendations

The committee recommends a bill to authorize the committee to file a formal objection to a rule on the grounds that the rule is unreasonable, arbitrary, capricious, or beyond the authority delegated to the agency. The objection is to detail the precise reasons why the committee believes the rule to be unreasonable, arbitrary, capricious, or beyond delegated authority. Notice that an objection has been filed would be printed adjacent to the rule wherever it is published. An objection would shift to the agency the burden of establishing that the rule is within the procedural or substantive authority delegated to the adopting agency in any subsequent proceeding for judicial review or for enforcement of the rule. If the agency fails to meet this reversed burden of persuasion, the court would invalidate part or all of the rule. This bill is recommended as a means of exercising authority without resorting to legislative suspension or veto of rules. The reversed burden-of-persuasion mechanism is based on Iowa law and the Revised Model State Administrative Procedure Act (1980).

The committee recommends a bill to provide that the Attorney General may not approve any rule as to legality when the rule merely repeats or paraphrases the text of the statute purported to be implemented by the rule.

The committee recommends a bill to clarify when rules become effective. A rule would become effective the first day of the month after the month of publication in the Administrative Code supplement. The Administrative Code supplement would be published the month after the month the rule is submitted to the Legislative Council office for publication. This procedure statutorily enacts the current procedure followed in designating effective dates. The bill removes a conflicting provision that rules become effective upon filing with the Attorney General. The bill also removes obsolete statutory language reflecting the filing of administrative rules prior to the publication of the North Dakota Administrative Code and removes the requirement that copies of rules must be supplied by the Legislative Council.

The committee recommends a bill to repeal the random motor vehicle maintenance program operated by the Highway Patrol. The 1977 Legislative Assembly did not fund the program, the Highway Patrol does not conduct any motor vehicle inspections under the program, and the relevant rules have been repealed by the Highway Patrol.

ADMINISTRATIVE AGENCIES PRACTICE ACT STUDY

North Dakota enacted its Administrative Agencies Practice Act (Chapter 28-32) in 1941. Chapter 28-32 was based on an early tentative draft of what became the 1946 Model State Administrative Procedure Act approved by the Commissioners on Uniform State Laws. Chapter 28-32 is comprehensive in that it covers rulemaking, adjudication, and judicial review.

The study assigned to the committee directed consideration of the agencies subject to Chapter 28-32, the agencies not subject to the chapter, the various rulemaking procedures under current law, any public hearing requirements, the procedures and practices prior to and after such hearings, the appeals available, the desirability of standardizing administrative rulemaking authority, and the extent administrative rules should be published in the Administrative Code. The committee focused its study on the rulemaking requirements of Chapter 28-32 and did not delve into the adjudication or judicial review provisions of the chapter.

Definition of Administrative Agency

Section 28-32-01 defines administrative agency as including:

> (A)ny officer, board, commission, bureau, department, or tribunal other than a court, having statewide jurisdiction and authority to make any order, finding, determination, award, or assessment which has the force and effect of law and which by statute is subject to review in the courts of this state.

One of the requirements not readily understood is that an agency's decision is one "which by statute is subject to review in the courts of this state." In many instances laws administered by an agency do not provide for appeal or judicial review of administrative decisions. Under these circumstances, the agency is not an "administrative agency" and is not subject to the provisions of Chapter 28-32. Approximately 23 state agencies are not administrative agencies. However, six of those agencies voluntarily publish their rules in the Administrative Code and the committee reviewed changes to those rules as part of its ongoing review of rulemaking actions. At least five functions under three administrative agencies are not subject to the provisions of Chapter 28-32.

Of the 26 agencies referred to above the committee requested information from the agencies with rules, whether or not the rules were published in the Administrative Code. These agencies were the: Dairy Products Promotion Commission, Board of Higher Education, Highway Corridor Board, Director of Institutions, Laboratories Commission, Motor Vehicle Department, Parks and Recreation Department, Superintendent of Public Instruction, Seed Commission, Board of University and School Lands, and Administrative Committee on Veterans' Affairs.

The requested information concerned:

1. Whether there is a special reason the agency is not subject to Chapter 28-32.
2. Whether the agency is statutorily required to follow some type of rulemaking procedure.
3. The procedure followed by the agency in promulgating rules.
4. Whether any person has filed any complaint concerning the agency's rules.
5. The procedure followed by the agency in handling complaints.

The Dairy Products Promotion Commission, Highway Corridor Board, Laboratories Commission, Motor Vehicle Department, Parks and Recreation Department, Seed Commission, and Administrative Committee on Veterans' Affairs voluntarily publish their rules in the Administrative Code.

The Highway Corridor Board indicated that it would be less expensive to comply with the rulemaking procedures of Chapter 28-32 than with the current statutory procedure on rulemaking, and that no objection would be made to being subjected to Chapter 28-32. The Laboratories Commission reported that Chapter 28-32 is followed for all of its rulemaking procedures. The Motor Vehicle Department suggested that its rules with respect to the transportation of hazardous materials should be subjected to the provisions of Chapter 28-32. The Seed Commission had no objection to being subjected to Chapter 28-32 requirements. The Board of Higher Education and the Board of University and School Lands cited their constitutional authority as reasons for not being subjected to the procedural requirements of Chapter 28-32. The Dairy Products Promotion Commission, Director of Institutions, and Superintendent of Public Instruction urged continued exception from Chapter 28-32 requirements.

Committee members were concerned over the ramifications resulting from an agency not being subject to Chapter 28-32, particularly the lack of standardized rulemaking procedures and the lack of judicial review of agency decisions. Also of concern was the statutory definition of an administrative agency. Under the current definition it is difficult to determine whether an agency is an "administrative agency" without an Attorney General's opinion or a Supreme Court decision.

Definition of Rule

Section 28-32-01 defines rules and regulations as including rules, regulations, and orders of general application, interpreting, regulating the application of, or regulating the procedure under the statutes administered by an agency. The definition does not include rules, regulations, or orders relating solely to the internal operation of an agency, the management, admission, expulsion, or graduation of students from educational institutions, or the management, confinement, discipline, or release of inmates of any penal or charitable institution.

During the committee's ongoing review of rulemaking actions it was discovered that some agencies follow operating procedures which are not considered to be "rules." Terminology may differ from agency to agency, but normally these procedures are referred to as "policies" or "interpretative guidelines."

Committee members were concerned that statements interpreting or regulating the application or procedure under the statutes administered by an agency were not being treated as "rules" and thus were not being published in the Administrative Code. Committee members strongly supported the view that the Administrative Code should be as inclusive as possible with respect to agency interpretation and administration of statutes.

Recommendations

The committee recommends a bill to redefine "administrative agency" as used in Chapter 28-32. The bill

redefines administrative agency to include every administrative unit of the executive branch of state government. The new definition specifically excepts those agencies or functions currently excepted from the present definition due to an Attorney General's opinion or a Supreme Court decision. Thus, the bill does not change the present application of Chapter 28-32 to those agencies or functions (except for those agencies or functions subjected to Chapter 28-32 by the following bill).

The committee recommends a bill to subject the Seed Commission, Laboratories Department, and Highway Corridor Board, and the hazardous materials regulations of the Motor Vehicle Department to the procedural requirements of Chapter 28-32. The bill also excepts from the public notice and hearing requirements of Chapter 28-32 the interest rate determinations made by the State Banking Board. These interest rate determinations required seven emergency rule declarations during the committee's review of administrative rules. The exception was requested by the Commissioner of Banking and Financial Institutions as a means of avoiding conflicts with currently required procedures.

The committee recommends a bill to redefine "rule" as used in Chapter 28-32. The new definition is based on the definition contained in the Revised Model State Administrative Procedure Act (1980). The bill attempts to eliminate agency adoption of statements that implement, interpret, or prescribe law or policy without following the rulemaking procedures of Chapter 28-32. Exceptions to the definition are specifically listed as a means of not hindering day-to-day operations of an agency.

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned two studies. House Concurrent Resolution No. 3059 directed a study of alternative methods of providing equitable and efficient means of eradicating and controlling leafy spurge, Canada thistle, and other noxious weeds in the state. Senate Concurrent Resolution No. 4016 directed a study a navigation on the Missouri River above Sioux City, Iowa, utilizing barge traffic.

Committee members were Senators Kent Jones, Chairman, Robert Albers, Francis Barth, Harry Iszler, Adam Krauter, Kent Vosper, and Stanley Wright; and Representatives James Gerl, Byron Langley, Herman Larson, Clarence Martin, Gordon Matheny, Eugene Nicholas, Emil Riehl, Wilbur Vander Vorst, and Francis Weber.

The report of the Agriculture 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-seventh Legislative Assembly by the Legislative Council in November 1980.

The committee attended two symposiums and held five meetings at which it received extensive oral and written testimony from farmers, agricultural associations, transportation associations, private industry, educational institutions, local, state, and federal government agencies, and others. Based thereon, the committee recommended one bill and other action.

NOXIOUS WEED STUDY

House Concurrent Resolution No. 3059 directed a study of alternative methods of equitably and efficiently eradicating and controlling leafy spurge, Canada thistle, and other noxious weeds in the state, with specific emphasis on the economic costs of eradicating and controlling noxious weeds statewide and the economic costs of providing incentive programs or revenue sharing programs to provide funds to local political subdivisions to encourage local eradication and control and to encourage private landowners to eliminate noxious weeds. The study was further directed to consider long-range programs necessary to eradicate and control noxious weeds.

Present Statutes

Chapter 63-01.1, as amended by Senate Bill No. 2475 (1979), currently governs noxious weed control in the state, as follows:

Section 63-01.1-01 requires every person to eradicate or control the spread of noxious weeds on lands owned or controlled by him in the state.

Section 63-01.1-02 defines appropriate terms.

Section 63-01.1-03 requires the Commissioner of Agriculture to enforce the chapter, maintain a state list of noxious weeds, and perform other duties.

Section 63-01.1-04 designates the board of county commissioners, township supervisors, and city commissioners or council as the control authority for a county, township, and city, respectively; requires a county board to appoint a county weed control officer to be responsible for operation and enforcement within the county; permits a control authority to expend certain funds; permits a county board to compile a county list of noxious weeds (subject to removal by the Commissioner of Agriculture); and requires control authorities to cooperate.

Section 63-01.1-05 defines the duties of a weed control officer.

Section 63-01.1-06 permits a county board to fund noxious weed programs through general funds or a voter-approved tax levy; a township board to fund programs through a voter-approved tax levy; and a city commission or council to fund programs through general funds.

Section 63-01.1-08 permits the Commissioner of Agriculture, a control authority, a weed control officer, or other authorized people to enter all land under their jurisdiction to exercise their assigned powers and duties.

Section 63-01.1-09 requires county commissioners to eradicate or control noxious weeds along all county highways within their counties.

Section 63-01.1-10 requires the township supervisors or county commissioners in organized or unorganized townships, respectively, to eradicate or control noxious weeds along all township roads and highways.

Section 63-01.1-10.1 requires the city governing body to eradicate or control noxious weeds within or adjacent to their city.

Section 63-01.1-11 requires landowners or operators with land adjoining regularly traveled county and township highways to cut all weeds and grasses along the highways under the direction of the county or township board.

Section 63-01.1-12 requires operators of tillage, seeding, and harvesting equipment to clean the equipment to prevent the spread of noxious weeds by seeds or other propagating parts.

Section 63-01.1-13 requires the Commissioner of Agriculture and weed control officers to make every effort possible to arrange a satisfactory noxious weed control or eradication program with state and federal agencies and local entities, respectively; requires state agencies to eradicate or control noxious weeds on lands under their jurisdiction; and permits the Commissioner of Agriculture to hold public hearings to determine the reason state agencies are failing or refusing to do the same.

Section 63-01.1-13.1 permits a county control authority, with the Commissioner of Agriculture's approval, to enter land owned or leased by the Game and Fish Department to destroy, control, or prevent noxious weeds, if the department fails to do it.

Section 63-01.1-14 requires the State Highway Patrol, county sheriffs, and the Truck Regulatory Division to cooperate with weed control officers and the Commissioner of Agriculture and authorizes them to prevent the dissemination of noxious weeds on highways and roads.

Section 63-01.1-15 prescribes a Class B misdemeanor penalty for commercial operators who disseminate noxious weeds on highways and roads and a civil penalty not to exceed $500 for persons who fail to comply with other provisions of the chapter.

Section 63-01.1-16 permits any landowner or occupant to alert a weed control officer of noncompliance with the chapter and requires the officer to take necessary action.

Section 63-01.1-17 allows regulatory action taken, and civil penalties assessed, under the chapter to be appealed to a district court.

Interim Study

The committee received testimony on the extent of noxious weeds and programs, problems, alternatives, and bill drafts for their control.

Extent. Noxious weeds are a pervasive problem in North Dakota, other states, and Canada. Numerous surveys have found heavy infestations of leafy spurge, Canada thistle, perennial sow thistle, field bindweed, and other noxious weeds in this state, other states, and Canada. Leafy spurge, for example, reportedly infests 600,000 acres in North Dakota, 600,000 acres in Canada, and 2.5 million acres in the United States.

Programs. Various programs have been undertaken to combat the noxious weed problem in the state, in addition to Chapter 63-01.1.

Leafy Spurge Pilot Program. The U.S. Department of Agriculture, Cooperative Extension Service, and North Dakota State University (NDSU) Experiment Station have developed a leafy spurge pilot program and funded it at $200,000. The program involves research, information gathering, educational programs, and fund raising for leafy spurge control. The committee urged the Old West Regional Commission to provide funding for the pilot program and other projects designed to control or eradicate noxious weeds but the commission denied a funding request for the pilot program. Nonetheless, NDSU is continuing to develop a directory of agencies and individuals knowledgeable about leafy spurge, develop a "status of knowledge" publication on leafy spurge, coordinate research and management efforts with Canada and Europe, and request funding for an effective leafy spurge control program.

Game and Fish Department Program. The State Game and Fish Department is currently allowing research on field bindweed control on a test plot of its land and would consider expanding the program.

Problems. Noxious weed control programs face a variety of problems. Witnesses reported that these programs lack funding, organization, industry involvement, and cooperation between all of the involved people, agencies, states, and countries. Lack of funding, in particular, was emphasized since it may cost from $35 to $210 per acre to control noxious weeds. These problems hamper the physically difficult task of controlling the large and growing amount of noxious weed infestation.

Alternatives. Witnesses advocated a number of alternatives to improve control of noxious weeds, in general, and leafy spurge, in particular.

Inventory. A uniform inventory method should be instituted to permit economic evaluation of the impact of noxious weeds and to provide standards to discuss the problem on equal terms.

Research. An accelerated research program should be established to examine current methods, find new solutions, and foster a complete understanding of noxious weeds.

Control. A coordinated approach should be adopted to noxious weed control. Counties and individuals, for example, could share the costs of noxious weed control. Similarly, state agencies could control noxious weeds on federal land with federal reimbursement.

Education. Urban and rural educational programs should be established to advise people of the effects and economic impact of noxious weeds.

Planning. Immediate, short-range, and long-range planning is needed for all facets of noxious weed control.

Wyoming. Wyoming has integrated all of these facets in a leafy spurge control program. The Wyoming Agriculture Department, U.S. Bureau of Land management, and county weed and pest control districts systematically surveyed over three million acres and found 30,000 to 40,000 acres of leafy spurge infestation. The state is attempting to eradicate or control infestation on one-third of the acres per year. The program has cost approximately $7,449,000 or $210 per acre.

Bill Drafts. The committee considered two noxious weed bill drafts which incorporated concepts from Wyoming's Weed and Pest Control Act, in differing degrees, into North Dakota's noxious weed law (Chapter 63-01.1).

One bill draft would have established a certification authority for weed control officers; an authority to allocate weed control funds appropriated by the Legislative Assembly; procedures and penalties for remedial enforcement of weed control requirements; quarantine of infested lands; educational programs to comply with the requirements of certification; and a leafy spurge control program administered by the Commissioner of Agriculture and funded by a $1 million appropriation.

The second bill draft incorporates substantially more of Wyoming's noxious weed law and is recommended by the committee.

Recommendation

The committee recommends a bill establishing county weed boards as the primary noxious weed control authorities in the state. The bill:

1. Amends Section 63-01.1-01 to require every person in charge or possession of land in the state to eradicate or control the spread of noxious weeds on those lands.
2. Amends Section 63-01.1-02 to define appropriate terms.
3. Amends Section 63-01.1-03(4) to require the Commissioner of Agriculture to cooperate with county weed boards and control officers.
4. Creates a new section to Chapter 63-01.1 to place all federal, state, private, and municipally owned lands within the jurisdiction of county weed boards.
5. Amends Section 63-01.1-04 to establish the county weed board as the control authority for each county and a mechanism for the appointment, removal, and meetings of county weed board members.
6. Creates a new section to Chapter 63-01.1 to delineate the powers and duties of county weed boards, including a requirement that each board appoint a county weed control officer.
7. Amends Section 63-01.1-05 to delineate the duties of county weed control officers, including a requirement that an officer give notice to landowners, tenants, or operators of control activities on their lands.
8. Creates a new section to Chapter 63-01.1 to require the certification of county weed control officers and a program of educational instruction for certification of county weed control officers.
9. Amends Section 63-01.1-06 to authorize boards of county commissioners to fund noxious weed expenses through their general funds or by a two-mill tax levy, and authorizes the Commissioner of Agriculture to allocate legislative appropriations for noxious weed control to county weed boards pursuant to a formula.
10. Amends Section 63-01.1-08 to provide procedures and penalties for remedial enforcement of weed control requirements.
11. Amends Section 63-01.1-09 to require county weed

boards to eradicate or control noxious weeds along all public highways within their counties.

12. Amends Section 63-01.1-10.1 to allow cities to establish separate noxious weed control programs.
13. Amends Section 63-01.1-13.1 to permit county weed boards, with the Commissioner of Agriculture's approval, to enter land owned or leased by the Game and Fish Department to destroy, control, or prevent noxious weeds, if the department fails to do it.
14. Amends Section 63-01.1-16 to permit any land owner, lessee, renter, tenant, or operator to alert county weed control officers or boards of noncompliance with the chapter and require the officers or board to take the necessary action.
15. Creates a new section to Chapter 63-01.1 to authorize the Commissioner of Agriculture to establish and administer a leafy spurge control program.
16. Creates a new section to Chapter 63-01.1 to require landowners, county weed boards, and the state to fund the leafy spurge control program pursuant to a formula.
17. Creates a new section to Chapter 63-01.1 to permit boards of county commissioners to levy a one-mill tax to fund their contributions to the leafy spurge control program.
18. Creates a new section to Chapter 63-01.1 to grant the Commissioner of Agriculture power to declare quarantines for noxious weed control.
19. Creates a new section to Chapter 63-01.1 to authorize a cannabis control program.
20. Creates a new section to Chapter 63-01.1 to require landowners, county weed boards, and the state to fund the cannabis control program pursuant to a formula.
21. Creates Chapter 63-05 to require landowners or operators with land adjoining regularly traveled county and township highways to cut all weeds and grasses along the highway under the direction of the county or township board.
22. Repeals Sections 63-01.1-10 and 63-01.1-11.
23. Appropriates $1 million to the Commissioner of Agriculture to administer the leafy spurge control program.
24. Appropriates $7,500 to the Extension Division of North Dakota State University of Agriculture and Applied Science to establish a program of educational instruction for certification of county weed control officers.
25. Appropriates $50,000 to the Commissioner of Agriculture to administer the cannabis control program.

BARGE TRAFFIC STUDY

House Concurrent Resolution No. 4016 directed a study on navigation of the Missouri River above Sioux City, Iowa, utilizing barge traffic, with special emphasis on alternative means and economic and logistical effects of barge traffic navigation, and routes to be taken by extension of the Missouri River navigation project from its present head at Sioux City.

Interim Study

The committee reviewed the background of barge traffic and projects on the Missouri River, obtained regional support for its study, and initiated the Missouri River Transportation Commission.

Background. The committee reviewed the history, demands, studies, and alternatives relating to extension of Missouri River barge traffic.

History. Barge transportation on the Missouri River has been expanded but still faces significant obstacles. The Corps of Engineers extended operations from the mouth of the river to Sioux City in 1935. Similarly, the Corps of Engineers has now completed over 90 percent of the Missouri River Stabilization and Navigation Project (the navigation project) to expand the river to a nine foot depth and 300 foot width. Nonetheless, barge traffic is still restricted by six mainstem dams in Montana, North Dakota, and South Dakota. Commercial navigation tonnage on the Missouri River has grown at an average annual rate of 100,000 tons to a peak of 7,700,000 tons in 1977.

Demands. Numerous people have advocated extension of the navigation project beyond its present head at Sioux City. Project support was originally stimulated by the desire for low cost transportation of agricultural products. More recently, support has been intensified by the transportation crisis and coal reserves in the upper Midwest.

Studies. The Corps of Engineers has the responsibility for major federal water development activities. In response to congressional directives, the Corps of Engineers has conducted several feasibility studies on extension of the navigation project. In each study, the Corps of Engineers concluded that the costs of building locks to circumvent the dams made the projects unfeasible.

Alternatives. Alternative methods of circumventing dams are currently used elsewhere and these methods may make extension of the navigation project feasible. Alternative methods include a:

"Dump barge" plan with a barge terminal situated at each dam.

"Water slope" system where a moving wedge of water is used to transport barges from one level to another.

Circumtransporting barges and their cargo around dams by some form of railroad or other means.

Slurry pipeline or pneumatic chutes used with barges.

Conveyor system operating in both directions at the dam to load and unload barges.

Regional Support. The committee concluded that its study was a regional project and therefore sought and received regional support.

The Five-State Legislative Conference held in Helena, Montana, (1979) passed a resolution of support.

The Agriculture and Natural Resources Advisory Committee to the Old West Regional Commission passed a resolution of support.

The 1980 South Dakota Legislative Assembly passed a bill calling for a study of barge traffic on the Missouri River and urging support of the North Dakota study.

The Agriculture and Environment Committee of the Nebraska Legislature conducted a study on the feasibility of increasing the use of barges in Nebraska for grain shipments.

The South Dakota Water Congress discussed the possibility of barge transportation on the Missouri River at a meeting on water-related issues.

The Governor of South Dakota called for a regional meeting in Pierre to discuss the possibility of barge traffic on the Missouri River.

Missouri River Transportation Commission. The committee presented a project proposal calling for the establishment of a Missouri River Transportation Commission to the regional barge transportation meeting in Pierre. North Dakota, Montana, Nebraska, South

Dakota, and Wyoming subsequently amended the project proposal and submitted it to the Old West Regional Commission in May 1980.

Project Proposal. The project proposal calls for the establishment of the Missouri River Transportation Commission. The commission would have the following membership, goals, objectives, and methodology.

Membership. The commission would be composed of two representatives from each of the Old West Regional Commission states wishing to participate. The governor and legislative service agency of each state would appoint one technical and one legislative member, respectively, from their state.

Goals. The commission would have two goals.

1. Aid in the development of an effective intermodal transportation system that will maximize the use of existing facilities on the Missouri River and encourage the development of new facilities along navigable areas of the Missouri River.
2. Issue a comprehensive report discussing the project's objectives and making recommendations, based on various studies and evaluations completed, for continuation of a navigation project, including necessary construction, or for discontinuation.

Objectives. The commission would pursue the following objectives to accomplish its goals.

1. Review and evaluate the characteristics of the Missouri River, with special emphasis on the upper Missouri River from Fort Benton to Sioux City, to determine its physical capabilities for supporting a barge transportation system, including a determination of the cost of developing and maintaining the upper Missouri River system to make it compatible with the existing system below Sioux City.
2. Identify and evaluate alternative techniques for navigating the upper Missouri River and overcoming the obstacles of the six mainstem dams, including alternatives other than locks.
3. Determine the logistical effects of barge traffic navigation on the Missouri River, including an investigation of existing inland port facilities and planning for possible new facilities, transfer points, or depots which may be required by new systems for grain handling or movement of products.
4. Determine the economic effects of navigation on the Missouri River, including a cost-benefit analysis of extending navigation to various points, as far as Fort Benton, utilizing both primary and secondary benefits.
5. Review and evaluate the existing marketing scheme for the region for products which show potential for transportation by barge, identify new markets which may result because of further development of Missouri River transportation, especially the upper Missouri River, identifying marketing options which will maintain integrity of products throughout the transportation system, and seek the involvement of private industry and other sources of investment finance in marketing possibilities.
6. Identify and evaluate energy savings that may accrue because of the development and use of Missouri River transportation, and the resulting savings to other transportation systems.
7. Investigate the potential for an integrated transportation system which would couple existing transportation modes and an improved Missouri River transportation system into a workable intermodal transportation system which would meet the current needs of the upper Midwest, as well as provide new options for marketing and for the economic development of the nation.

Methodology. The commission would administer the project through a project coordinator; accomplish most of its work through consultant contracts; and consult with private industry, participating states' universities and land grant colleges, state agencies, the Corps of Engineers, and other sources. The project would have a two-year duration (January 1, 1981, to December 31, 1982) and an estimated total cost of $490,000.

Initial Grant. The Old West Regional Commission awarded an initial grant of $35,000 for the Missouri River Transportation Commission project on July 16, 1980. The award specified three objectives for the initial grant.

1. Delineate alternative sources of funding which may be available to continue the study.
2. Establish the Missouri River Transportation Commission to be responsible for project direction.
3. Report to the Old West Regional Commission on the commission's progress no later than January 1, 1981.

The initial grant has a duration of July 1, 1980, to December 31, 1980, and does not obligate the Old West Regional Commission to any of the project's future activity or funding beyond the termination date of the grant.

Commission Activities. The Missouri River Transportation Commission has been established through appointments from Nebraska, North Dakota, Montana, South Dakota, and Wyoming and is currently seeking additional funding pursuant to the initial grant. Additional funding has been sought from North Dakota's congressional delegation in the form of a line item, specifically for the commission project, in the budget of the Old West Regional Commission.

Recommendation

The committee recommends that the Legislative Council continue to seek additional funding for the Missouri River Transportation Commission project and continue to pursue the grant proposal for the project with the Old West Regional Commission.

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 discussed in this report.

Budget Section members were Senators Robert Melland, Chairman, Walter Erdman, Stella Fritzell, Donald Hanson, S. F. Hoffner, Evan Lips, L.L. Naaden, David Nething, Jack Olin, James Smykowski, Theron Strinden, Harvey Tallackson, Russell Thane, F. Kent Vosper Jerome Walsh, and Frank Wenstrom; and Representatives Richard Backes, Ralph Christensen, Aloha Eagles, Charles Fleming, Layton Freborg, William Gackle, Ronald Gunsch, Roy Hausauer, Robert Jacobsen, Harley Kingsbury, Tom Kuchera, Frank Larson, Lawrence Marsden, Charles Mertens, 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-seventh Legislative Assembly by the Legislative Council in November 1980.

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

1. House Bill No. 1010 directs that $1,159,431 of estimated income appropriated to three of the comprehensive mental health and retardation centers may be spent only upon approval of the Budget Section of the Legislative Council.
2. The 1979 Legislative Assembly stated its intent that the State Social Service Board and the State Department of Health mutually reduce the number of positions funded by 15 for the end of the 1979-81 biennium. House Bill No. 1010 directs the State Social Service Board and the State Department of Health to report to the Budget Section the progress the departments made in reducing the number of positions before June 30, 1980.
3. Section 3 of House Bill No. 1011 appropriates $1,590,000 in Title XX funds and $1,060,000 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 Budget Committee.
4. House Bill No. 1011 also directs the Social Service Board to submit information during the 1979-81 biennium regarding the need for continuing the funding of the University of North Dakota and Minot State College social work programs.
5. In addition, House Bill No. 1011 directs the Social Service Board to report to the Budget Section on the allocations of administration costs to programs in the state, regional, and county offices.
6. House Bill No. 1221 appropriated $2,640,000 out of moneys in the Vietnam bonus fund to the North Dakota Parks and Recreation Department for the acquisition of the Cross Ranch and the state land described in Section 2 of House Bill No. 1221 for its designation as a Veterans Memorial State Park. Prior to the Parks and Recreation Department purchasing the land the Budget Section was to approve the contents of the purchase contract.
7. Senate Bill No. 2003 appropriates $175,000 to Central Data Processing for developmental projects. Those funds are only to be expended for projects first approved by the Budget Section.
8. Senate Bill No. 2012 appropriates $189,000 to the State Library Commission to be used only in the event of a reduction in the receipt of federal funds by the commission. The Library Commission was not to spend those funds without the approval of the Budget Committee.
9. Senate Bill No. 2043 appropriates $2,050,000 to the Weather Modification Board for a program of weather modification research and development. The money is not to be expended until the Budget Section determines that adequate funds are available.
10. Senate Bill No. 2154 appropriates $22,365 to the Division of Disaster Emergency Services to close out the individual and family grant program that the division administered following the 1978 spring flood. The Division of Disaster Emergency Services will prepare a complete financial report on the individual and family grant program and present it to the Budget Committee.
11. Senate Bill No. 2487 provides that the Director of Accounts and Purchases, after certification by him that the general fund balance exceeds a certain sum on June 30, 1979, and 1980, shall, with Budget Section approval, direct the State Treasurer to transfer up to $10,730,000 from the state general fund to the state capital construction fund for the construction of facilities at state institutions.
12. Senate Bill No. 2460 directs the Federal Aid Coordinator to report to the Budget Section on developments in the Federal Aid Coordinator Office and the effect of the consolidation of the State Planning Division, Office of Energy Development, Division of Economic Opportunity, and the Office of the Special Projects Coordinator into the Federal Aid Coordinator Office.
13. House Concurrent Resolution No. 3071 directs the Legislative Council to study the effects of energy development on state and local government. As part of the study, the Budget Section, upon completion of the executive budget, is to review the impact of energy development on state government agencies.
14. Senate Concurrent Resolution No. 4072 authorizes a Legislative Council study of general fund revenues and expenditures during the next biennium. As a part of the study, the Budget Section is to review and analyze general fund revenues and cash balances.
15. 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.
16. The 1973 Legislative Assembly assigned the duties of the auditing board to the Executive Budget Office. Section 54-14-03.1 requires the Executive Budget Office to report to the Budget Section irregularities, discovered during the preaudit of claims, which point to the need for improved fiscal practices. The report must be in writing, documenting the irregularities.
17. Section 15-10-08 of the North Dakota Century Code requires institutions of higher education to charge

nonresident students tuition in amounts to be determined by the State Board of Higher Education with the approval of the Budget Section.

18. The Budget Section is to review and act upon State Board of Higher Education requests, pursuant to Section 15-10-12.1, for authority to construct buildings or campus improvements on land under the board's control which construction is financed by donations, gifts, grants, and bequests; and to act upon requests from the board for authority to sell any property or buildings which an institution of higher education has received by gift or bequest.
19. The Budget Section is to review, prior to the 1981 Legislative Session, the executive budget for the 1981-83 biennium prepared by the Executive Budget Office.

House Bill No. 1221, which appropriated $2,640,000 out of moneys in the Vietnam bonus fund for the acquisition of the Cross Ranch subject to prior approval of the contents of the purchase contract by the Budget Section, was referred and defeated at the September 2, 1980, primary. Consequently, no action was necessary by the Budget Section regarding the Cross Ranch purchase contract.

As of its last meeting, the Budget Section had not received any requests by Central Data Processing to expend money for developmental projects or any requests by the State Library Commission to expend general fund moneys in the event of a reduction in federal funds.

Also, the Budget Section had not received any requests from the Board of Higher Education regarding charges for nonresident tuition or requesting authority to sell property or buildings received by gift or bequest.

MENTAL HEALTH AND RETARDATION CENTERS

Pursuant to House Bill No. 1010, which requires certain mental health and retardation centers to request Budget Section approval to expend $1,159,431 of additional estimated income, the Budget Section approved the request of the Memorial Mental Health and Retardation Center, Mandan, to spend $110,083 of additional estimated income.

REDUCTIONS OF POSITIONS BY THE STATE SOCIAL SERVICE BOARD AND THE STATE DEPARTMENT OF HEALTH

House Bill No. 1010 also requires the Social Service Board and the Department of Health to report to the Budget Section on the progress made by the departments in mutually reducing the number of positions funded by 15 before the end of the 1979-81 biennium. The Budget Section approved a report made by the Social Service Board which said, due primarily to a reduction in federal funding, the two agencies, as of March 17, 1980, have 53 fewer positions than on February 1, 1979. The report listed training, the elimination of duplication of duties at the local level as a result of collocation, the use of computers, and purchasing of services (rather than hiring) as methods of reducing employee positions.

SOCIAL SERVICE BOARD

Under Section 3 of House Bill No. 1011, the 1979 Legislative Assembly appropriated $1,590,000 of Title XX funds to the Social Service Board for the 1979-81 biennium. In addition, the same section appropriated $1,060,000 to be contributed by individuals, organizations, governmental units, or other sources. Before these moneys can be spent, the Social Service Board must receive Budget Section approval.

The Social Service Board presented a plan, approved by the Budget Section, which would provide, during the 1979-81 biennium, $1 million of Title XX moneys for projects for the developmentally disabled, with any remaining Title XX moneys to be used for Section 3 projects.

In accordance with the plan, the Budget Section approved Title XX contracts for the biennium ending June 30, 1981, totaling $578,232 as follows:

Project Name and Location	Project Description	Title XX Funds Authorized
Bismarck Early Childhood Education Program, Bismarck	Day Care Project	$265,935
Nokomis Day Care Center, Fargo	Day Care Project	227,337
Small World Day Care Center, Rugby	Day Care Project	40,869
Second Story, Minot	Residential Training	17,500
F-M Activity Center, Fargo	Residential Training	26,591
Total		$578,232

At its last meeting the Budget Section was informed by the Social Service Board that Congress had not passed the 1981 Title XX funding appropriation bill but that an increase in the level of funding from $2.7 billion, the fiscal year 1980 spending level, to $2.9 billion is possible. The Budget Section approved the proposed Title XX funding of the following Section 3 projects for infant stimulation and residential training, contingent upon Congress increasing the Title XX funding level, totaling $61,150, for the period October 1, 1980, through June 30, 1981:

Project Name and Location	Title XX Funds Authorized
Southeast Mental Health and Retardation Center, Fargo	$12,235
Northwest Human Resources Center, Williston	8,644
South Central Mental Health and Retardation Center, Jamestown	12,180
Opportunities, Inc., Jamestown	10,215
Friendship Village, Fargo	17,876
Total	$61,150

SOCIAL WORK PROGRAMS

House Bill No. 1011 also requires the Social Service Board to submit information during the 1979-81 biennium on the need for continued funding of the social work programs at the University of North Dakota and Minot State College. The Social Service Board reported that it has training grants for social work programs with both schools which are funded with federal training funds on a 75:25 matching basis. In the past, the report said, the funding has been provided by an open-ended appropriation, which has made large grants available to the two schools to develop their social work curriculums. The report said the funds are provided by the Social Service Board because it is advantageous to the community services program for prospective social workers to have the best education possible.

Currently the University of North Dakota contract is for $245,455, and the Minot State College contract is for $225,925, of which 75 percent is federal funds and 25 percent is general fund moneys. The Budget Section was informed that a ceiling was placed on these federal training funds, which will result in less funds being available for training grants to the two schools. The ceiling on the federal funds will reduce North Dakota's share to $205,000, which is less than one-half of what was spent during the last fiscal year.

SOCIAL SERVICE BOARD'S ALLOCATION OF ADMINISTRATIVE COSTS

Pursuant to House Bill No. 1011, which requires the Social Service Board to report to the Budget Section on the allocations of administrative costs to programs, the social Service Board reported that administrative costs of the department consist of direct costs which are charged to the programs when paid and indirect costs which are charged to the programs by various methods, including actual time and estimated time by the use of time studies.

The Social Service Board explained that it was necessary to charge all programs for administrative and financial services provided by the Social Service Board, pursuant to a cost allocation plan, in order to receive reimbursement under several federal programs.

The Social Service Board reported its administrative budget for the 1979-81 biennium is $17.7 million consisting of the following services and related costs:

Executive director and board members	$ 310,000
Legal, office, and personnel services	1,010,000
Management services, internal audit, and data processing services	1,240,000
Finance services	850,000
County administrative cost reimbursement	12,800,000
Other costs	1,490,000
Total administrative budget available for indirect cost allocation	$17,700,000

The Social Service Board projects programs to be charged as follows:

1. Community services program	$1,600,000
2. Economic assistance program	300,000
3. Medical assistance program	400,000
4. Vocational rehabilitation program	900,000
5. County reimbursements	12,800,000
6. State general fund	1,700,000
Total	$17,700,000

WEATHER MODIFICATION BOARD

Senate Bill No. 2043 appropriates $2,050,000 to the Weather Modification Board, for a program of weather modification research and development. This appropriation is to be expended only after the Budget Section determines that adequate funds are available. The Budget Section approved the receipt and expenditure of $254,028 in federal funds for research and development.

DISASTER EMERGENCY SERVICES

Pursuant to Senate Bill No. 2154, the Budget Section received and accepted a financial report by Disaster Emergency Services on the individual and family grant program relating to the spring flood of 1978. The Disaster Emergency Services reported the total cost of the program was $89,460 of which $22,365 was the state portion. It was also reported that the cost of the individual and family grant program for the 1979 flood was $970,475 of which the state's share is $242,619.

CAPITAL CONSTRUCTION FUND

Senate Bill No. 2487 provides that from the adjusted general fund balance in the state treasury on June 30, 1979, $10,730,000 or the amount in excess of $148,600,000, whichever is lesser, be transferred by the Director of Accounts and Purchases, after Budget Section approval to the state capital construction fund.

Senate Bill No. 2487 also provides that in the event the cash balance on June 30, 1980, exceeds $110,550,000, the director of the Department of Accounts and Purchases, after approval by the Budget Section, is to direct a transfer of the funds in excess of $110,550,000, or so much thereof as may be necessary, to provide an aggregate transfer of $10,730,000 to the capital construction fund for the biennium.

Senate Bill No. 2487 appropriates the $10,730,000 referred to above for the following projects in the priority listed:

Name of Agency, Department, or Institution	Type of Facility	State Funds
North Dakota State University	Music education building	$ 3,000,000
Industrial School	Vocational education and maintenance shop	635,000
University of North Dakota	Library addition	4,500,000
San Haven	Food service, laundry, and commissary building	1,320,000
State School of Science	Maintenance storage building and site	930,000
School for the Deaf	Three residential cottages	345,000
Total		$10,730,000

The director of the Department of Accounts and Purchases, at the September 1979 Budget Section meeting, certified the general fund cash balance, less financial obligations, as of June 30, 1979, to be $151,014,660.64, which made available $2,414,660.64 to be transferred to the capital construction fund. The committee approved the transfer of $2,414,660.64.

The Emergency Commission, at its February 1980 meeting, approved the transfer of $585,339.36 from the Main Experiment Station fund to the NDSU-music building fund which, with the previous transfer to the capital construction fund, provided the $3 million necessary to build the music education building at NDSU.

The director of the Department of Accounts and Purchases at the July 1980 Budget Section meeting, certified the general fund cash balance on June 30, 1980, to be $157,000,281.16. This balance was sufficient to transfer $7,730,000 to the capital construction fund, and to complete the transfers authorized by law. The Budget Section approved the transfer.

North Dakota State University reported that the anticipated cost of the music education building is $5,320,000, which is approximately $788,000 more than originally projected. NDSU reported that the cost will be reduced by $188,000 as a result of a reduction in the size of the building and that a deficiency appropriation of $600,000 will be requested from the 1981 Legislative Assembly.

FEDERAL AID COORDINATOR

Senate Bill No. 2460 establishes the office of Federal Aid Coordinator and transfers the functions of the State Planning Division, Office of Energy Management, Division of Economic Opportunity, and Special Projects Coordinator to the Federal Aid Coordinator Office.

The bill as passed by the Legislative Assembly provided that the Lieutenant Governor would serve as the Federal Aid Coordinator; however, the Governor vetoed this provision. The Attorney General's opinion dated June 29, 1979, determined the Governor's veto of this provision to be invalid. The Supreme Court decision in Link v. Olson, said the Governor's veto was invalid because the section vetoed was not separate and distinct from the remainder of the bill. The decision also said that only the Governor has the power to assign duties to the Lieutenant Governor.

Pursuant to Senate Bill No. 2460, the Federal Aid Coordinator Office reported that the consolidation of the agencies has resulted in the office having a budget of $19.97 million, of which $19.5 million is federal moneys. It was reported that additional funding of $9.4 million has been approved by the Emergency Commission, resulting in a total budget of $29.4 million, of which $28.9 million is federal funds.

The Federal Aid Coordinator Office reported it has 46 authorized positions to date, of which 31.5 were filled as of March 1980.

The Federal Aid Coordinator Office reported its major functions as follows:

1. To act as a state intergovernmental clearinghouse to receive, review, and submit applications on projects proposed for federal funding to appropriate state agencies.
2. To provide technical and financial assistance to local, regional, state, and federal agencies and to coordinate local, regional, state, and federal planning through a statewide planning process and structure.
3. To assist, advise, and coordinate energy and energy-related activities between all levels of the public and private sectors.
4. To coordinate state activities relating to the Economic Opportunity programs and provide technical assistance to community action agencies and other low income organizations to aid in the development of poverty programs in the state.

The Federal Aid Coordinator Office listed conducting solar energy conferences, alcohol fuels workshops, energy audit workshops, and administering a $2.5 million fuel assistance program as accomplishments of the office.

EFFECT OF ENERGY DEVELOPMENT ON STATE AND LOCAL GOVERNMENTS

House Concurrent Resolution No. 3071 requires the Budget Section to review, upon completion of the executive budget, the impact of energy development on state governmental agencies. Pursuant to this resolution, the Budget Section asked the Executive Budget Office to include, with the 1981-83 budget request forms, special forms to identify the amounts requested for the 1981-83 biennium because of energy development activity. The Budget Section also asked that the Executive Budget Office identify the amounts related to energy development approved by the Governor in the 1981-83 executive budget. This will be reported to the Budget Section at its December meeting.

STUDY OF GENERAL FUND REVENUES AND CASH BALANCE

General Fund Cash Flow

Senate Concurrent Resolution No. 4072 directs the Budget Section to review and analyze general fund revenues and cash balances. The Budget Section studied reports made by the Executive Budget Office on monthly actual general fund revenues, expenditures, and cash balances compared to estimates for the 1979-81 biennium.

The Budget Section found the general fund balance to be higher than estimated. The September 30, 1980, report indicates an actual general fund cash balance of $136.5 million or $13.1 million more than the $123.4 million estimated for that date. The reason the actual general

fund cash balance was higher on that date is because (1) actual revenues through September 30, 1980, were $367.6 million or $12.1 million more than estimated; (2) actual expenditures were $391.1 million or $970,000 less than estimated; and (3) the June 30, 1979, general fund cash balance was $10.6 million more than estimated. The report projects June 30, 1981, general fund unappropriated resources of $128,715,000.

The following schedule details the revenue variance:

Revenue Category	Actual to September 30	Trend Projection to September 30	Variance Over/(Under) Estimate
Sales tax	$152,717,000	$158,446,000	$(5,729,000)
Income tax	96,707,000	83,988,000	12,719,000
Oil production tax	32,420,000	26,477,000	5,943,000
Interest income	22,735,000	21,699,000	1,036,000
Business privilege tax	12,060,000	13,559,000	(1,499,000)
Departmental fees and collections	6,030,000	5,166,000	864,000
Profits transfer — Mill and Elevator	-0-	3,000,000	(3,000,000)
Mineral leasing fees	2,339,000	1,094,000	1,245,000
Other	42,612,000	42,049,000	563,000
Total	$367,620,000	$355,478,000	$ 12,142,000

The revenue estimate for the 1979-81 biennium was adjusted by the Executive Budget Office as follows:

Original revenue estimate	$554.9 million
Oil and gas gross production tax	34.6 million
Interest income	24.5 million
Income tax (FY 80 only)	12.1 million
Business privilege tax (FY 80 only)	(2.0) million
Adjusted revenue estimate	$624.1 million

Revisions for fiscal year 1981 revenue projections, including an update on oil production tax and interest income, will be reported to the Budget Section in December along with income tax changes for the last year of the biennium. The $12.1 million increase is only for the first year of the biennium.

Estimates of Sales and Income Tax Revenues for the 1981-83 Biennium

At its organizational meeting, the Budget Section asked the Agricultural Economics Department, North Dakota State University, to prepare forecasts of state sales and income tax collections for the 1981-83 biennium. The Budget Section contracted for this information to assist the Legislative Assembly to analyze and develop income estimates for the next biennium. The following is a comparison of estimates of the 1979-81 sales, use, and income tax revenues, made during the 1979 Legislative Assembly, with the NDSU Agricultural Economics Department projected tax revenues for the 1981-83 biennium (in millions):

	Estimates During 1979 Legislative Assembly	Projected 1981-83 Biennium		
		High	Expected	Low
Sales and use tax	$263.19	$337.93	$277.22	$217.42
Income tax	143.81	328.42	236.41	160.80
Total	$407.00	$666.35	$513.63	$378.22

Dr. Hertsgaard's highest projection of sales and use taxes and income taxes for the 1979-81 biennium is $19.97 million less than the $407 million estimated during the 1979 Legislative Assembly. However, the Executive Budget Office believes that the projections of the $407 million will be met. The income tax estimates were made prior to the passage of the initiated measure providing for the oil extraction tax which includes a reduction in income taxes.

Estimates of sales and income tax revenues are made based on the following assumptions regarding crop prices and production: (1) high price and high production; (2) expected price and high production; (3) low price and high production; (4) expected price and expected production; (5) low price and expected production; and (6) low price and low production. Prices assumed for 1981 and 1982 are as follows:

	1981			1982		
	High	Expected	Low	High	Expected	Low
Wheat (per bushel)	$ 4.25	$ 3.75	$ 3.00	$ 4.68	$ 4.13	$ 3.30
Durum (per bushel)	$ 5.00	$ 4.25	$ 3.00	$ 5.50	$ 4.68	$ 3.30
Barley (per bushel)	$ 3.00	$ 2.50	$ 1.85	$ 3.30	$ 2.75	$ 2.04
Sunflowers (per cwt)	$14.00	$12.00	$10.00	$15.40	$13.20	$11.00

The following is a comparison of actual gross receipts from crops marketing and livestock marketing for the years 1978 and 1979 with estimated gross receipts, based upon the assumption of expected price and expected production, for the years 1980, 1981, and 1982 (in millions):

	Actual		Estimated		
	1978	1979	1980	1981	1982
Crops marketing	$1,615.2	$1,668.7	$1,463	$2,100	$2,409
Livestock marketing	529.4	612.5	615	650	675
Total	$2,144.6	$2,281.2	$2,078	$2,750	$3,084

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 1979 and 1980. The reports are on file in the Legislative Council office.

IRREGULARITIES REPORTED PURSUANT TO SECTION 54-14-03.1

Section 54-14-03.1 directs the Department of Accounts and Purchases to report any irregularities in state agencies' fiscal practices to the Budget Section. The Department of Accounts and Purchases reported irregularities by three state departments. It reported the Department of Public Instruction had two persons employed as permanent part-time when legislative intent had allowed temporary positions. The Department of Accounts and Purchases allowed the positions because the individuals have been employed by the department for several years and supporting documentation indicates their proper classifications are as part-time employees.

The department reported that the Supreme Court had hired an additional secretary that was not specifically included in the budget approved by the 1979 Legislative Assembly. The Department of Accounts and Purchases said it will continue to report any additional employees hired by agencies in excess of those authorized by the Legislative Assembly to the Budget Section.

The Department of Accounts and Purchases also reported that the Board of Nursing expenditures from the nurses' scholarship loan fund had exceeded its appropriation. North Dakota Century Code Section 43-12-35 creates a nurses' scholarship loan fund and allows the Board of Nursing to make scholarship loans to students enrolled in a school of nursing, subject to biennial legislative appropriations. The Department of Accounts and Purchases reported that appropriations have included only general fund supplements to the permanent loan fund, while loans have been made from the permanent fund also.

TOUR GROUPS

During September 1980, Budget Section members visited major state institutions and agencies to hear and evaluate requests for major improvements and structures, and to hear any problems institutions might be encountering during the interim. An indexed copy of the tour groups' minutes, with comments, observations, and recommendations, is available in the Legislative Council office and will be submitted to the Appropriations Committees during the 1981 Legislative Assembly. The members of each tour group, and the institutions they visited were as follows:

Tour Group No. 1 — Representative Vernon Wagner, Chairman.

Membership	Institutions Assigned
Representative Vernon Wagner	Bismarck Junior College
Representative Layton Freborg	State Penitentiary
Representative Harley Kingsbury	State Farm
Representative Olaf Opedahl	State Industrial School
Representative Earl Strinden	Memorial Mental Health and Retardation Center
Senator Donald Hanson	Jamestown State Hospital
Senator S. F. Hoffner	South Central Mental Health and Retardation Center
Senator Jack Olin	Valley City State College
Senator Kent Vosper	North Dakota State School of Science
Senator Frank Wenstrom	Soldiers' Home

Tour Group No. 2 — Senator Robert Melland, Chairman

Membership	Institutions Assigned
Senator Robert Melland	Dickinson State College
Senator Stella Fritzell	Badlands Human Service Center
Senator David Nething	Experiment Station-Dickinson Branch
Senator Harvey Tallackson	Northwest Human Resource Center
Representative Aloha Eagles	UND-Williston Branch
Representative William Gackle	Experiment Station-Williston Branch
Representative Roy Hausauer	North Central Experiment Station
Representative Lawrence Marsden	State Fair Association
Representative Jim Peterson	Minot State College
Representative Oscar Solberg	North Central Mental Health and Retardation Center
Representative Michael Unhjem	

Tour Group No. 3 — Representative Charles Mertens, Chairman

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

Institutions Assigned
North Dakota State University
Cooperative Extension Service
Main Experiment Station
Southeast Mental Health and Retardation Center
Division of Independent Study
Mayville State College
University of North Dakota
Medical Center Rehabilitation Hospital
Medical School
School for the Blind
Center for Human Development
North Dakota Mill and Elevator

Tour Group No. 4 — Senator Evan Lips, Chairman

Membership
Senator Evan Lips
Senator James Smykowski
Senator Jerome Walsh
Representative Ralph Christensen
Representative Robert Jacobsen
Representative Tom Kuchera
Representative Frank Larson
Representative Corliss Mushik
Representative Malcolm Tweten

Institutions Assigned
School for the Deaf
Lake Region Junior College
Grafton State School
Combined Law Enforcement Center
Lake Region Human Service Center
San Haven
International Peace Garden
NDSU—Bottineau Branch
State Forest Service

GRAFTON STATE SCHOOL AND SAN HAVEN

The Budget Section considered several reports relative to conditions at the Grafton State School and San Haven. An observation report of the Grafton State School and San Haven by Dr. Steven J. Taylor, Assistant Professor of Special Education and Rehabilitation at Syracuse University, stated that the two institutions have inadequate programming, have shortages of direct care and professional staff, are overcrowded, and use unrecommended restraining devices. Dr. Taylor recommended that North Dakota undertake an aggressive program of returning the residents of the two institutions to local communities. Dr. Taylor also recommended that the Grafton State School be phased out gradually as services are developed in the communities and that San Haven be closed as soon as possible.

Representatives of the two institutions and the Director of Institutions' office responded to Dr. Taylor's report by saying the report did a disservice to the state of North Dakota, institution employees, and parents of students at the institutions. The committee heard testimony from parents and citizens which stressed the need for additional funding for the institutions to help upgrade the services provided and the need for more group homes and activity centers in the local communities.

The Budget Section received a report on the Grafton State School and San Haven from the North Dakota Medical Association which said the following problems exist at the two institutions:

1. Overcrowding of patients
2. Inadequate physical plant
3. Lack of staff education programs
4. Shortage of skilled personnel
5. Lack of patient programming

The report recommended the following:

1. Compliance with safety requirements for all buildings.
2. The phasing out of San Haven and the consolidation of all programs in one geographic site.
3. The promotion of normalization of patient programming to allow for the education and progressive deinstitutionalization of the population.
4. The development of vocational programs for residents.
5. The development of an advocacy program, independent of the Director of Institutions, to represent the residents properly.
6. The recruitment of adequate numbers of qualified professional personnel to institute the necessary programs.

The Budget Section also received a survey report compiled by the State Health Department, State Fire Marshal, and State Electrical Board, based on compliance with federal standards for intermediate care facilities for the mentally retarded. The report details the deficiencies existing at the two institutions that would need to be corrected to obtain federal financing under the Title XIX program. United Cerebral Palsy and the Association for Retarded Citizens called for a comprehensive study of the institutions that would specifically identify all existing strengths and deficiencies and would recommend solutions to the identified deficiencies.

Grafton State School proposed a unit team approach concept for compliance with Public Law 94-142, Joint Commission Standards, and Section 504 of the Rehabilitation Act of 1973. The proposed unit team approach concept would have eight units with approximately 100 residents per unit for a total of 800 residents, the projected population for 1990 for both institutions. Presently, there are 859 residents at the Grafton State School and 265 at San Haven.

According to school officials, presently 620 positions are authorized at the school and a total of 1,228 positions will be needed to meet the standards. The additional 608 positions will be requested over the next two bienniums. Total compliance is expected during the 1987-89 biennium.

The school expects that the additional 608 positions will affect programs as follows:

Program	Number of Additional Employees 1981-83	1983-85	Total
Medical services	18	43	61
Auxiliary services	10	15	25
Administration	1	0	1
Resident living	166	265	431
Resident education	37	29	66
Resident services	24	0	24
Total	256	352	608

The 1981-83 budget request of $50,683,902, including $48,257,527 of general fund moneys, includes $7.54 million to fund the 256 additional positions and $16.25 million for land, structures, and major improvements. This compares with a 1979-81 biennium appropriation of $20,520,059, of which $17,985,621 is general fund moneys.

San Haven's 1981-83 budget request of $13,394,928, including $12,131,098 of general fund moneys, includes 27 new positions at an anticipated cost of $946,539, affecting programs as follows:

Program	Number of Employees
Administration	1
Resident living	12
Education	14
Total	27

This compares with San Haven's 1979-81 total appropriation of $7,728,509, of which $7,155,561 is general fund moneys, which provided 235 permanent employees.

The Budget Section also heard reports from the chairman of the Legislative Council's Education, Social Services, and Budget "B" Committees on their committees' work relating to developmentally disabled persons.

The Budget Section plans to make the budget proposal of Grafton State School and San Haven top priority items at its December meeting.

OTHER BUDGET SECTION ACTION

The Budget Section passed a motion authorizing the Executive Budget Office to change the form and style of appropriation bills for the 1981 Legislative Assembly to reflect combining of the fees and services line item with the supplies and materials line item to form an operating expense line item.

The Budget Section requested Chase Econometrics to make a presentation regarding economic projections for the 1981-83 biennium at the December meeting.

The State Hospital informed the Budget Section that the cost of the coal conversion project at the hospital has increased to an estimated $2,593,000 compared to the $1.9 million appropriated by the 1979 Legislative Assembly. The Budget Section recommended the State Hospital proceed with the project to the extent that funds are available.

The North Dakota National Guard informed the Budget Section that the original plans for the building of an armory and a storage building at Camp Grafton included the use of oil heat in the building. It reported that steam heat would be more economical, saving approximately $100,000 per year, but would require a generating plant costing approximately $800,000, of which the state's share would be $180,000. The Budget Section supported the inclusion of plans for steam heat in the design of the buildings.

At the request of the Office of the Budget, the Budget Section allowed the reduction in the number of complete budget documents to be made available to legislators to one document for every two legislators on each Appropriations Committee.

During the Budget Section meeting at the Grafton State School in March 1980, Grafton State School employees and representatives of the North Dakota Public Employees Association expressed their concern on the need for additional salary increases during the 1981-83 biennium. The Budget Section, by motion, recognized the salary problems of the Grafton State School employees and recommends the Forty-seventh Legislative Assembly give early attention to salary increases for all state employees.

The director of Central Personnel asked the Budget Section for its interpretation of North Dakota Century Code Section 54-44.3-12.1, which states that revisions to classification and compensation plans shall only be made on July 1, following the close of a regular legislative session. The Budget Section supports an interpretation of Section 54-44.3-12.1 that would allow necessary changes in classification plans, but not revisions in compensation plans during a biennium.

Legislative Council staff presented a report on the financing of construction of state buildings, which gives a history of legislative action regarding financing of capital construction projects, and outlines alternatives available for the financing of state buildings. A copy of the report is on file in the Legislative Council office.

The Budget Section heard a report by Hay Associates on the advantages and techniques of midpoint budgeting. Hay Associates reported that midpoint budgeting provides controls over salary expenditures and simplifies the forecasting of salary costs.

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 Budget Section until after December 1, a supplement to this report on the final phases of the Budget Section activities will be submitted for distribution at a later date.

BUDGET "A" COMMITTEE

The Budget "A" Committee was assigned two study resolutions and the responsibility for conducting performance reviews. Senate Concurrent Resolution No. 4072 directed the committee to monitor the status of 1979-81 biennial appropriations of major state agencies and institutions. Senate Concurrent Resolution No. 4065 directed a study of cost information systems being designed at the institutions of higher education. Senate Bill No. 2040 directed a performance review of the Game and Fish Department. The committee was also assigned the responsibility for other performance reviews or similar studies of agencies that it might select.

Committee members were Representatives Vernon Wagner, Chairman, Gordon Berg, Layton Freborg, Lawrence Marsden, Arthur Melby, and Burness Reed; and Senators Walter Erdman, Stella Fritzell, Charles Orange, Ernest Sands, and James Smykowski.

The report of the Budget "A" 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-seventh Legislative Assembly by the Legislative Council in November 1980.

GAME AND FISH DEPARTMENT PERFORMANCE REVIEW

Background

The committee was assigned the responsibility of conducting a performance review of the North Dakota Game and Fish Department pursuant to Senate Bill No. 2040.

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 review. Since the Game and Fish Department has specialized programs, Senate Bill No. 2040 appropriated $50,000 to the Legislative Council to contract with a management consulting firm to assist in the review. The committee contracted, for $40,000, with Booz, Allen and Hamilton, Inc., (BAH) for the review of economy and efficiency and effectiveness of the department's programs. The BAH firm also engaged the services of Dr. Mason Lawrence, former Deputy Director for Natural Resources of the New York State Department of Environmental Conservation, and Mr. Richard Kerr, former Wildlife Biologist with the Colorado Game and Fish Department and U.S. Bureau of Land Management. The reviews began in September 1979, and progress reports to the committee were made periodically. Copies of the Legislative Council staff report and BAH report are available in the Legislative Council office.

Compliance Review

The Legislative Council staff report states that a comparison of the department's actual expenditures with budgets approved by the Legislative Assembly for the 1975-77 and 1977-79 bienniums indicates areas of material variances. The report also states that the department's budget request and Emergency Commission requests in several areas do not provide sufficient information about how requested funds will be used. The report recommends that the department's budgeting procedures be improved to better reflect future department expenditure plans and that future budget requests provide more detailed information to explain the basis used for estimating expenditures. The report further recommends that the department improve its cost accounting records and consider implementing a project accounting system. Other major recommendations are that the department not make payments from one biennium's appropriation for services that will be received in the following biennium, and that the department more closely monitor its appropriation.

The Game and Fish Department accepted the findings and recommendations included in the Legislative Council staff report. It said the department's future budget requests will provide more detailed information about planned programs and acquisitions. Also, the department plans to have a cost accounting system in effect by the 1981-83 biennium, thus allowing monitoring of its work efforts.

Booz, Allen and Hamilton, Inc., Report

The BAH report states that the Game and Fish Department is producing high quality products, the staff is overloaded with work, and the department's administrative and management functions need to be strengthened. The report describes the staff as highly motivated, dedicated, and for the most part well-qualified to perform their functions. The report recommends training management personnel and improving data processing resources and equipment.

The report recommends the department give top priority to developing a comprehensive strategic plan describing how the department will plan, organize, control, and manage the state's fisheries and wildlife resources.

The report recommends the commissioner and deputy commissioner roles be more adequately defined. The report says the commissioner should be the principal policymaker and spokesman for the department. The deputy commissioner should direct activities of the division chiefs and be more involved in the department's financial and administrative activities.

The report recommends that division chiefs should receive personnel management, financial analysis, and data processing training. The report says the department's finance and accounting operations are understaffed resulting in little financial planning. The report recommends improved accounting records, better financial analysis procedures, and more top management involvement in budget preparation.

The report states that the department's licensing operation should be better managed. It recommends that the department consider designing a master license with supplemental issuance of special permits and automatic license renewals. Other options discussed are increased use of county auditors and others for sale of permits, and modification of lottery procedures.

According to the report, department salaries are generally comparable with the United States average for state game and fish agencies. However, there is a trend, the report states, for the department's salaries to be better for junior-level positions and somewhat worse for senior-level positions, such as division chiefs. The report recommends that commendable performance and

achievements be recognized through merit increases.

The report states that the Bismarck central office facilities are crowded and will require major renovation if more staff is added. The report also recommends that the department establish four regional coordination offices in the state.

The report recommends that the existing fish hatchery at Spiritwood Lake be phased out within two to four years. Options to consider for fish hatchery services include a cooperative agreement with the U.S. Fish and Wildlife Service for joint use of the Garrison hatchery, buying stock from other state hatcheries, or construction of a new fish hatchery facility.

Other recommendations in the BAH report are to upgrade the department's information and education division; designate warden supervisors; and strengthen training programs. The report recommends 15 additional full-time equivalent positions. These positions are a chief of the administration division, an accountant, a personnel/ training officer, a data processing specialist, two additional secretaries in the Bismarck office, two half-time secretaries for two regional coordination offices, two professionals for the game management division, two professionals for the fisheries division, and four game wardens to fill positions created by designating warden supervisors.

The Game and Fish Department said the performance review was thorough and accurate but not as detailed as expected by some of the department staff. The department said it considers the highest priority recommendations included in the BAH report to be comprehensive planning, licensing improvements, fish hatchery improvements, and additional staff. The department is concerned about the recommendation to assign regional coordinators from existing staff since most of the staff is already overworked and underpaid. The department estimates a 1981-83 biennial cost of $1,638,184 to implement the BAH recommendations. The department projects a license fee increase for the 1981-83 biennium just to maintain its present operation not including the cost of implementing the BAH recommendations.

The committee accepted the BAH performance review report and recommends that the next Legislative Assembly review the report recommendations when considering the 1981-83 budget request of the Game and Fish Department.

As a result of the report findings and recommendations, the Game and Fish Department requested the Emergency Commission to authorize expenditures of $97,325 of federal funds to develop a comprehensive plan, to implement a planning evaluation and budgeting system, and to hire a data processing coordinator. Also, the Emergency Commission authorized the department to transfer $24,500 from its land, structures, and major improvements line item to its salaries and wages line item to hire an assistant license clerk.

During the course of the performance review, the Game and Fish Department expressed concern that Section 6 of Senate Bill No. 2040 is hampering the department's land acquisition efforts. Section 6 states that "Lands acquired by the game and fish department shall qualify as mitigated acres required by the federal fish and wildlife department in regard to the Garrison Diversion Project." Seventy-five percent of the funds used for Game and Fish Department land acquisitions are federal funds. Because the federal government will not reimburse Game and Fish Department expenditures for land acquisitions due to Section 6, the department said it has been unable to acquire land as planned. The committee reviewed the provisions of the Pittman-Robertson Act from which Game and Fish Department land acquisition funds are provided by the federal government. It was reported that the U.S. Fish and Wildlife Service has taken the position that federal funds may not be used to mitigate habitat losses resulting from a project or program of another agency or department. The committee took no action on this issue.

Other areas reviewed during the performance review included trespassing laws and fur-bearer licensing procedures of other states.

NATURAL RESOURCE OVERVIEW STUDY

During the past and present interim, the Legislative Council has concentrated its performance reviews on natural resource agencies including the State Water Commission, State Geological Survey, Environmental Control Division of the State Health Department, and Game and Fish Department. Because Booz, Allen and Hamilton, Inc., assisted in all of these reviews, the committee engaged the firm to conduct a brief overview study of the integrated operations of the state's natural resource agencies. The BAH natural resource overview report states that North Dakota is undergoing a transition from an agriculture-based economy toward an energy-based one. The Geological Survey, Public Service Commission, Health Department, Water Commission, Land Department, and Attorney General's office will be most significantly impacted by energy development, the report notes. There is no need, the report indicates, for the development of an unbrella natural resources department since it would compromise the effectiveness of many other agencies which are working together reasonably well at the present time. The report recommends that the Natural Resources Council be strengthened to coordinate better the activities of natural resource agencies. The report states that agencies have not been able to react quickly to the rapid increase in oil and gas development in the state. There is high professional staff turnover in the natural resource agencies because of lack of competitive salary scales. The report states that no statewide energy plan exists and no comprehensive assessment is being made of revenues that can and will be derived from energy development. The report recommends that an energy resources management action program be developed to provide this information. An appropriation to the Emergency Commission is recommended in the report to provide funds for agencies impacted by unanticipated energy development. Also, it recommends that the state consider establishing an office in the western part of the state to coordinate management of energy-related activities.

The chairman of the Natural Resources Council reported that the council basically agrees with the BAH report. However, the council is concerned that the report does not indicate that energy development is having a high impact on the Game and Fish Department, Parks and Recreation Department, and Historical Society. The council believes the next Legislative Assembly should cautiously review the recommendation for a regional office because of major expenses to maintain such an office. The council has recently completed a natural resource plan which will be available for review by the next Legislative Assembly.

As a result of the natural resource overview study, the committee recommends a bill appropriating $200,000 to the Emergency Commission for the 1981-83 biennium to make grants to state agencies to conduct additional regulatory duties resulting from increased energy resource exploration and development not anticipated by the 1981 Legislative Assembly.

STATE ENERGY RESOURCE ACTION MANAGEMENT PROGRAM

As a result of its performance reviews of natural resource agencies and its natural resource overview study, Booz, Allen and Hamilton, Inc., presented a proposal for development of a state energy resource management action program. The firm said its studies indicate that the state is on the verge of becoming a major energy resource exporting state which has the potential for significant adverse impact from natural resource and energy development. Fragmentation of energy-involved agencies, BAH said, has resulted in a lack of comprehensive management and of an integrated state energy strategy. The firm said the state is in a reactive mode to energy development, especially in the area of oil and gas development.

The firm believes the state should prepare an action program designed to provide forward planning, track energy resource development, and provide the mechanisms for management of energy development. The firm recommends developing a four-step program over one to two years to provide the state with a method of evaluating energy development and to provide the technical, economic, institutional, and legal programs to manage this development. The elements of this recommended program include (1) obtaining cumulative estimates of energy development considering various producing levels; (2) estimating impacts to the state from economic development changes, natural resource implications, environmental enhancement or degradation, and quality of life changes; (3) developing the institutional capabilities of agencies and academic entities to manage energy development growth; and (4) considering state options for managing this growth. It recommends that the program be placed in an agency which has a broad view of all natural resource and energy development issues rather than in an existing natural resource agency. It said funds for the program could be obtained from energy development revenues.

The committee said a review of the BAH proposal for an energy resource action management program should be included in its report to the Legislative Council. However, the committee takes no action on the BAH proposal.

MONITORING STATUS OF APPROPRIATIONS

Background

Because of the continuing impact of inflation on state expenditures, the committee monitored the status of major agency and institution appropriations for the 1979-81 biennium. This process is designed to provide the Legislative Assembly with early information on problems requiring interim legislative consideration and action, or to provide the basis for legislation to be introduced to the 1981 Legislative Assembly. In addition, the monitoring process provides the necessary analysis needed to recommend overall expenditure levels for the 1981-83 biennium.

Prior interim committees of the Legislative Council have reviewed the status of major agency and institution expenditures during the 1975-77 and 1977-79 bienniums. The Budget "A" Committee focused its review on expenditures of the institutions of higher education, the charitable and penal institutions, the foundation program appropriation, and the appropriations to the Social Service Board for medical assistance and economic assistance grants. Each agency and institution forecasted expenditures on a quarterly basis for the biennium. After the end of each quarter, the Legislative Council staff prepared reports for committee review comparing actual expenditures to estimates. Special reports were also made in key budget areas including energy and food costs.

The committee received reports from the Executive Budget Office on the status of the state general fund. It also reviewed economic forecasts prepared by Chase Econometrics, Inc.

Charitable and Penal Institutions and Institutions of Higher Education

The committee monitored 1979-81 appropriations for the institutions of higher education totaling $197,224,329 of which $61,721,392 is institutional income and $135,502,937 is from the general fund. The charitable and penal institution appropriations monitored by the committee total $75,851,512 of which $17,001,383 is institutional income and $58,850,129 is from the general fund.

Several charitable and penal institutions and institutions of higher education are planning to request deficiency appropriations for the 1979-81 biennium. The largest requested amounts included in these deficiencies are for utilities and medical fees and supplies. it is anticipated that the institutions' requests for deficiency appropriations, based on the most recent information available, will be as follows:

Higher Education:		
North Dakota State University	$336,995	
University of North Dakota	531,080	
Valley City State College	24,450	
NDSU-Bottineau	27,839	
Mayville State College	132,968	
Minot State College	62,693	
Total Higher Education		$1,116,025
Less: Amount available from Board of Higher Education contingency fund		519,155
Total General Fund		$ 596,870
Charitable and Penal Institutions:		
Grafton State School	$647,363	
Less estimated income	400,000	
General fund	$247,363	
San Haven	$142,000	
Less estimated income	40,000	
General fund	$102,000	

School for the Blind	$ 21,000	
Less estimated income	21,000	
General fund	$ 0	
Soldiers' Home	$ 75,200	
Less estimated income	0	
General fund	$ 75,200	
Total Charitable and Penal Institutions		$ 885,563
Less estimated income		461,000
Total General Fund		$ 424,563
Total Institutions of Higher Education and Charitable and Penal Institutions		$2,001,588
Less: Board of Higher Education contingency fund	$519,155	
Estimated income	461,000	$ 980,155
Total General Fund		$1,021,433

The committee recommends, wherever possible, that state agencies and institutions request Emergency Commission authority to transfer funds within line items of their 1979-81 appropriations to fund any line item deficiencies. The committee also recommends that the next Legislative Assembly thoroughly analyze deficiency appropriation requests prior to approval of such requests.

The committee compared amounts allocated in the 1979-81 appropriations for food and utilities at the charitable and penal institutions and institutions of higher education to amounts included in the institution estimates filed with the committee. This comparison showed that the biennial estimates varied only 1.5 percent from the amounts allocated in the institution appropriations for these categories.

The committee reviewed per-unit utility costs being paid by the institutions. The average natural gas rate for the institutions under the supervision of the Director of Institutions' office will increase at these institutions by 60 cents per MCF for 1981, 1982, and 1983. Presently, the institutions pay approximately $2.50 per MCF. An increase of 60 cents per MCF represents a 24 percent increase in the cost of natural gas for the second year of the 1979-81 biennium.

State agencies and institutions in the Bismarck-Mandan area presently pay $.015 per kilowatt hour of electricity purchased from Montana-Dakota Utilities, compared to the general purpose rate of $.0443 per KWH. Montana-Dakota Utilities plans to increase the rate charged these agencies and institutions over a five-year period so the institution rates will equal the general purpose rates.

Increased freight costs on coal shipments have resulted in large increases in the cost of coal for state institutions. For example, an institution paying $17 per ton of coal on June 1, 1980, is paying approximately $22 per ton as of September 1, 1980, because of freight rate increases raising the freight costs per ton from $7.44 on June 1, 1980, to $12.32 on September 1, 1980. Institutions using coal as their major heating fuel are the University of North Dakota, North Dakota State University, State School of Science, Valley City State College, and San Haven. The State Hospital is converting to coal.

Actual full-time equivalent (FTE) enrollments at the institutions of higher education were close to or greater than projected enrollments used as a basis for the 1979-81 budget requests of these institutions, except at Mayville State College and NDSU-Bottineau. At Mayville State College, the actual fall FTE enrollment for the first year of the biennium was 697 which is 85 less than the 783 projected. During the second year of the biennium, the fall FTE enrollment at Mayville State College is 605 which is 200 less than the 805 projected. Actual fall FTE enrollment at NDSU-Bottineau for the first year of the biennium was 367 or 76 less than estimated and for the second year of the biennium it is 345 or 98 less than estimated.

During the first year of the biennium, actual populations at the charitable and penal institutions were close to estimates except at the Industrial School where the actual average population for the first year of the biennium was 77 compared to an estimated population of 104.

In conjunction with its analysis of food costs at the charitable and penal institutions, the committee reviewed the institutions' food service programs. A number of institutions follow written guidelines such as the National School Lunch Program Guidelines. Menus are prepared by the dietitian or other food supervisor. Most institutions indicate funds are adequate to provide good balanced meals; however, the State Penitentiary, Soldiers' Home, and State Hospital indicate that because of inflation, they have not always been able to prepare the types of meals the food supervisors believe should be served. Basically, the food cost per resident at the institutions varies due to the type of resident (adult or child), the special diets required at several institutions, and whether or not the institution has a garden, dairy, or livestock operation.

Foundation Program

The committee review of the 1979-81 biennial foundation program appropriation indicates actual general fund foundation program expenditures will be approximately $29.3 million less than the general fund appropriation. This resulted primarily because distributions to school districts of oil and gas bonus payments are greater than were projected in determining the 1979-81 general fund appropriation. The 1979 Legislative Assembly, in Senate Bill No. 2439, provided that 50 percent of oil and gas bonus payments on common school lands received by the Land Department are to be distributed to school districts and that these payments are to be deducted from the general fund foundation program payment. The estimates of the oil and gas bonus payments to be distributed under this formula for the 1979-81 biennium used in calculating the general fund foundation program appropriation was $5.3 million. However, because of increased oil prices and increased production in the state, the oil lease bonuses being received by the Land Department on state lands have increased significantly during the biennium. The distributions to school districts from the oil and gas bonus payments for the 1979-81 biennium are now projected at $30 million. In addition, there will be less expenditures from the general fund appropriation because actual enrollments were lower than projected.

Also, the amounts deducted from the general fund appropriation for the 21-mill county levy and 20-mill local levy are greater than estimated because of increased property valuations.

The following schedule presents an analysis of the projected 1979-81 general fund foundation program expenditures compared to the final legislative appropriation:

	Analysis of Final Legislative Appropriation	Analysis of Projected [1] Expenditures	Variance
	(Millions of Dollars)		
Per-pupil payments	$256.4	$249.1	$ 7.3
Transportation payments	22.0	21.5	.5
Kindergarten	1.0	1.0	0
Less: 21-mill county levy and 20-mill local levy	(63.6)	(67.4)	3.8
½ of oil and gas bonus funds	(5.3)	(30.0)	24.7
874 reduction	(1.1)	(1.2)	.1
Total line item including kindergarten	$209.4	$173.0	$ 36.4
Less: Federal revenue sharing funds	(12.4)	(9.7)	(2.7)
Vietnam bonus sinking funds	(4.4)	0	(4.4)
Total General Fund	$192.6	$163.3	$29.3

[1] Includes actual expenditures for the first fiscal year of the biennium.

Distributions from the state tuition fund to school districts from interest and miscellaneous income on the permanent common school fund for the first year of the biennium totaled $10.2 million. The total 1979-81 estimated appropriation of these amounts is $16.5 million.

Economic Assistance and Medical Assistance Grants

The 1979-81 appropriation for economic assistance and medical assistance grants is $148.3 million. Expenditures for aid to families with dependent children (AFDC) will total $29,814,184 which is only $52,216 less than estimated. The number of AFDC cases has recently been increasing. For example, the number of AFDC cases in August 1980 was 4,804 and in September 1980 was 4,747 which is approximately 100 to 150 more than estimated for these months. Intermediate care expenditures for the biennium will total $21.6 million which is $2 million more than estimated primarily because the cost per case is more than estimated. For the first year of the biennium, the average monthly intermediate cost per case was $548 compared to an estimated $537. Other medical assistance expenditures will be less than estimated. Hospital payments will be $21.1 million which is approximately $6.2 million less than estimated; skilled nursing care expenditures will be $33.5 million which is $1.7 million less than estimated; and payments for physician services will be $7.3 million which is $900,000 less than estimated. Even though expenditures for some categories will be more than estimated, the total appropriation for economic assistance and medical assistance is expected to be sufficient because expenditures in other categories will be less than estimated.

Other Budget Problems

The Director of Institutions' office is projecting a deficiency appropriation from the general fund of $93,425 for the statewide communications budget because of increased costs for local service, CATS and WATS service, and data processing.

HIGHER EDUCATION COST INFORMATION SYSTEMS

Senate Concurrent Resolution No. 4065 states that a study should be made of cost information systems at the institutions of higher education because the institutions are presently installing a new comprehensive accounting system. The resolution directed the committee to review past pilot cost information systems at the institutions, and the cost information available to the Legislative Assembly from the new accounting system which will assist in evaluating budget requests of the institutions.

The committee reviewed the higher education statewide measures inventory developed by the National Center for Higher Education Management Systems (NCHEMS). This inventory provides cost and other statistical information in a form which can be used for statewide higher education planning. In the early 1970's, the State School of Science, Valley City State College, University of North Dakota, and North Dakota State University implemented pilot cost information projects based on the systems developed by NCHEMS. The State School of Science is the only institution that continues to use systems recommended by NCHEMS. The Board of Higher Education reported that the new accounting system being implemented at the institutions of higher education will provide similar types of information to those included in the NCHEMS.

The committee received progress reports on the implementation of the higher education accounting system and reviewed examples of information that will be generated on the system. The accounting system is being designed to provide information on per-student costs; however, this part of the system will not be completed in time for the 1981 Legislative Assembly. The system will provide information on per-student costs for the 1983 Legislative Assembly.

The Board of Higher Education will share information from the accounting system with the Legislative Assembly so the Legislative Assembly can make higher education financial analyses and projections. Computer terminal installations are necessary for the Legislative Assembly to retrieve and analyze data from the higher education accounting system.

The committee recommends that the Legislative Assembly during the 1981-83 biennium continue to review the implementation of the higher education accounting system and the types of information generated on this system. The committee further recommends that the higher education accounting system be designed to provide the Legislative Assembly with access to this information for analysis and forecasting of higher education finances.

MISCELLANEOUS

The committee was informed that political subdivisions are no longer able to purchase items through the central supply unit of the Department of Accounts and Purchases. The committee took no action on this subject since the committee was of the opinion that the Department of Accounts and Purchases had the authority and sufficient basis for making this administrative decision.

BUDGET "B" COMMITTEE

House Concurrent Resolution No. 3061 directed the Legislative Council to study deinstitutionalization programs for residents of the State Hospital, Grafton State School, and San Haven. House Concurrent Resolution No. 3048 directed the Legislative Council to monitor the collocation of comprehensive mental health and retardation and area social service centers. Senate Concurrent Resolution No. 4074 directed the Legislative Council to conduct a study of the compensation and fringe benefits currently made available to state employees.

These studies were assigned to the Budget "B" Committee whose members were Senators Evan Lips, Chairman, Hal Christensen, Walter Erdman, L. L. Naaden, Theron Strinden, and Harvey Tallackson; and Representatives Ralph Christensen, Brynhild Haugland, Jean Herman, Serenus Hoffner, Ruth Meiers, Elmer Retzer, Earl Strinden, Enoch Thorsgard, and Michael Unhjem.

The report of the Budget "B" 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-seventh Legislative Assembly by the Legislative Council in November 1980.

STUDY ON DEINSTITUTIONALIZATION

Background and Terminology

At the committee's organizational meeting it was pointed out that House Concurrent Resolution No. 3061 was adopted since North Dakota lacks a complete and coordinated system of institutional and community services for developmentally disabled persons. As directed by House Concurrent Resolution No. 3061, the study was to include:

1. A study of present programs intended to return institution residents to the community after the residents have been prepared through programs of rehabilitation and training to function adequately in appropriate local settings.
2. A review of available facilities, any requirements of licensure, and problems related to federal requirements.
3. The need for group homes and other facilities, the ramification of deinstitutionalization on residents, and the impact of the lack of or provision for deinstitutionalizaion on the State Department of Health, Director of Institutions, and State Social Service Board.

The Budget "B" Committee heard from various state agencies, groups, and individuals regarding a need for deinstitutionalization and additional community programs for developmentally disabled persons in North Dakota. The committee heard testimony from the State Department of Health that there are an estimated 3.4 million persons in the United States and 8,310 persons in North Dakota who are developmentally disabled. The committee also heard testimony in regard to the need for deinstitutionalization programs for mentally ill persons. The superintendent of the State Hospital said most patients at the State Hospital are chronically ill patients for whom a cure is not available at this time. He said optimally 135 patients who are over 65 years of age could be released to nursing homes. He said 85 mentally ill patients could be moved to the community if adequate facilities were available. He said North Dakota needs additional group homes for the mentally ill.

The committee received information on the legal questions involved and the federal requirements relating to deinstitutionalization. The information related to the rights of the developmentally disabled to care, habilitation, education, and deinstitutionalization. Federal and state law, regulations, and court decisions were discussed relating to the requirements which must be met for the care, treatment, education, and deinstitutionalization of residents at the Grafton State School, San Haven, and State Hospital.

Committee members expressed concern that adequate programs and services be available in the community prior to return of mentally ill and developmentally disabled persons to the community. The committee was concerned that not all persons at the Grafton State School could function in the community and that whatever level of community programs for developmentally disabled persons is adopted must be adequate, but must also be implemented with care and with the assurance that programs are in the best interest of the individual. The committee also said the legislature should take a more active part in determining the services to be provided to the developmentally disabled.

Committee members said North Dakota must move in the direction of deinstitutionalizing the residents at the state institutions but that the programs must be phased in gradually to ensure the establishment of excellent programs and services. Committee members also acknowledged that if the legislature mandates that the residents at state institutions be returned to the community, the average community would have difficulty funding programs to care for the developmentally disabled. The consensus was that state financial aid will be needed to help fund deinstitutionalization programs.

At the September 26, 1979, committee meeting members toured Pride Industries, a nonprofit vocational rehabilitation facility for developmentally disabled persons located in Bismarck. At the March 17, 1980, meeting, the committee met at the Grafton State School and received a comprehensive tour of the institution.

Terminology relevant to the deinstitutionalization study and which is used in this report follows:

1. **Deinstitutionalization** — refers to the return to the community of all developmentally disabled persons who have been prepared through programs of habilitation and training to function in appropriate local settings. It also means the prevention of institutional admission by finding and developing alternative community methods of care and training and it means the improvement of institutional care including the protection of human and civil rights. To achieve deinstitutionalization, readiness must exist within the institution, the developmentally disabled person, and the community.
2. **Developmental disability** — means a severe, chronic disability of a person which:
   a. Is attributable to a mental or physical impairment or combination of mental and physical impairments.
   b. Is manifested before the person attains the age of 22.
   c. Is likely to continue indefinitely.
   d. Results in substantial functional limitations in three or more of the following areas of major life activity:
      (1) Self-care
      (2) Receptive and expressive language
      (3) Learning
      (4) Mobility

(5) Self-direction
(6) Capacity for independent living
(7) Economic self-sufficiency

e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are individually planned or coordinated.

3. **Habilitation system** — activities aimed at training to reduce effects of handicapping conditions, insofar as possible, in terms of ability to function independently.
4. **Day activity center** — a physically separate department or entity having an identified program and separate supervision and records in which very basic functional skills are developed through repetitive instruction.
5. **Work activity center** — a workshop, or a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Full-time supervision is required and some productivity is demonstrated. Exit competencies of work activity are entrance competencies of vocational development or extended employment.
6. **Vocational development program** — a program which applies vocational services including evaluation, training, transitional or interim employment, to resolve the problem of unemployment and to enable the person served to obtain competitive employment or further education or training, or both, leading to employment.
7. **Extended employment** — means a work situation with separate records in a supervised environment which provides remunerative employment opportunities for indefinite periods of time. Special minimum wages for handicapped workers in sheltered workshops (extended employment) are lower than a minimum wage, but not less than 50 percent of such wage.
8. **Competitive employment** — requires the ability to work a standard workday and perform tasks at a competitive rate. The individual works in the community with periodic monitoring via a case manager for prevention of recidivism.
9. **Minimally supervised living** — consists of a community complex where the individual rents a self-contained unit with an available client advisor under contract who lives in the complex.
10. **Independent living** — client lives in and is responsible for independent apartment maintenance. The client plans, shops for, and cooks all meals and is periodically monitored via a case manager to prevent recidivism.

Proposals Considered

After receiving much background information on deinstitutionalization of developmentally disabled persons, the committee asked the North Dakota State Council on Developmental Disabilities to develop a recommendation for the establishment of a complete and comprehensive system of community based services and facilities for the developmentally disabled in North Dakota, including detailed cost information, and that such recommendation be submitted to the Budget "B" Committee. Also, the committee asked the State Department of Health to develop a plan of deinstitutionalization for the mentally ill in North Dakota.

At the March 17, 1980, meeting, the committee heard the council's plan for a comprehensive system of community services for developmentally disabled persons estimated to cost $26,679,402 of which $13,655,213 would be federal funds and $13,024,189 would be state funds. The plan called for 52 additional group homes serving approximately seven to eight persons each, 16 additional day service centers each serving about 30 individuals, and case management services in each county of the state.

After hearing much testimony on the proposed plan, the committee requested that the Developmental Disabilities Council, State Department of Health, Social Service Board, Director of Institutions, and Grafton State School jointly develop a plan and budget for 200 developmentally disabled persons during the 1981-83 biennium, including intermediate care facilities for the developmentally disabled, group homes, and transitional living facilities, with at least one facility for the mentally ill. The plan was to identify the 100 beds available for conversion in the community to intermediate care facilities for mentally retarded and the proposed location for 100 new beds in group homes, transitional living facilities, or intermediate care facilities for developmentally disabled persons.

The committee requested that the plan be a demonstration project to determine to what extent and what areas of the state, including rural communities, community services and facilities for the developmentally disabled are feasible. A committee representing state agencies, institutions, and the Developmental Disabilities Council received criteria from the Budget "B" Committee to be used as guidelines in developing the plan for community services for the developmentally disabled during the 1981-83 biennium. These criteria are as follows:

1. Accommodate to the extent possible, transfers of eligible persons from the Grafton State School and San Haven to community facilities.
2. Provide services to persons having the kinds of disabilities — both moderate and severe — that are expected to eventually become group home residents, and at least one home shall be for the mentally ill.
3. Demonstrate the capability of delivering services in rural areas.
4. Be established in areas which have appropriate medical, educational, and other necessary services needed by the developmentally disabled.
5. Demonstrate the capability of using joint staff and facilities for residents of group homes in different geographical areas.
6. Be organized for maximum utilization of additional personnel required in the state and local agencies.
7. Be organized so that the facilities delivering services and the state departments involved are supportive of the proposed project and believe it is organized to ensure a desirable and sound use of resources during the next biennium.
8. Be located in areas where the pilot project is compatible with present long-range planning for both program and facilities development.
9. Be developed to accommodate monitoring during the next biennium.

The committee developing the plan used these criteria along with the profiles developed of Grafton State School residents to determine where the community facilities should be placed.

At the June 9, 1980, meeting, the State Department of Health presented its proposal for a community support system to serve the adult chronically mentally ill. For the

first year of the 1981-83 biennium the proposal called for the 13 existing housing slots for the mentally ill to be maintained and adequately funded and the development of 16 additional slots in those areas of the state where none presently exist. For the second year of the biennium, the proposal includes the development and establishment of 24 new housing slots in order that each region of the state will have residential living facilities for the mentally ill. The department said the total cost for the biennium would be $1,115,257 and that these facilities would be under the supervision of the mental health and retardation and human service centers in the state.

Community Services Plan For Developmentally Disabled Persons

At the October 8, 1980, meeting, the Budget "B" Committee received from the committee representing state agencies, institutions, and the Developmental Disabilities Council a plan for community services for developmentally disabled and mentally ill persons costing $13.2 million. Title XIX eligible services in the plan for 200 developmentally disabled persons in the community are estimated to cost $9.6 million and services for 192 developmentally disabled persons in non-Title XIX eligible programs are estimated to cost $3.6 million. Following is a schedule showing the costs of and the types of services, the number of individuals served, and additional staff included in the $13.2 million program for developmentally disabled persons during the 1981-83 biennium.

ESTIMATED COSTS OF THE COMMUNITY
ALTERNATIVE FOR DEVELOPMENTALLY DISABLED PERSONS
1981-83 BIENNIUM

	Source of Funds	Number of Beds	Description	Total	Funding Federal	State
Community facilities (Intermediate care facilities for developmentally disabled persons)	Title XIX	200[1]	Independent living training Prevocational development program Psychological services Occupational and physical therapy Speech, language, and hearing services Mental illness treatment Behavioral therapy Average cost—$56.78/day	$ 8,289,804	$5,222,577	$3,067,227
Medical services	Title XIX		Hospital, physician, drugs, etc.	288,000	181,440	106,560
Case management	Title XIX		Four case managers at local level	205,852	129,687	76,165
Social Service Board	Title XIX		MMIS modification Medical staff — 3.5 FTE Auditor — 1 FTE	206,994	130,406	76,588
Health Department	Title XIX		Facility licensure, case management Training, accounting — 6 FTE Computer program for evaluation	580,817	365,915	214,902
Subtotal		200		$ 9,571,467	$6,030,525	$3,541,442
Transitional VR living and residential training		150	Transitional living and maintenance; participate in vocational development program	$ 2,123,808	$ 481,289	$1,642,519
Social Service Board	Title XX	18	Adult group homes	447,603	191,842	255,761
Health Department	General fund	24	Non-Title XIX eligible group homes —providing self-help skills including day/work activity, extended employment	1,105,680		1,105,680
Total	Non-Title XIX	192		$ 3,677,091	$ 673,131	$3,003,960
Grand Total		392		$13,248,558	$6,703,656	$6,545,402

[1] Of these 200 beds, 100 beds are currently in the communities which will be converted to ICF-DD beds and 100 beds will be new ICF-DD beds of which 16 will be for the mentally ill. The assumptions used in calculating the funding needed for the 200 Title XIX eligible beds are as follows:

1. All events begin July 1, 1981.
2. Title XIX is matched at the state level only. The ratio used is 63:37. Actual ratios will vary depending on the activity.
3. New construction is based on $25,000 per bed financed at a nine percent interest rate. Estimated financed amount on construction is $3.76 million.

Under this plan for community services, 100 beds currently in the community will be converted to intermediate care facilities — developmentally disabled beds and 100 new intermediate care facilities — developmentally disabled beds will be developed of which 16 will be for the mentally ill. Persons currently receiving non-Title XIX eligible services and living in non-Title XIX group homes will continue to receive services. It is estimated that approximately 84 persons from the Grafton State School will be moved to the community during the 1981-83 biennium under this plan. Following is a schedule showing the location, number of beds, and facilities included under the plan to be implemented during the 1981-83 biennium.

PROPOSAL FOR COMMUNITY SERVICES FOR DEVELOPMENTALLY DISABLED PERSONS 1981-83 BIENNIUM

Location	Current and Recommended Facilities	Total Present Units	ICF-DD Conversion Units	ICF-DD New Units	Transitional Living (Vocational Development)	Adult Group Homes	Minimally Supervised	Total 1981-83
Region I — Williston	UMARC			8				8
Region II — Minot	Vocational Adj. Workshop	72	36		20		16	72
Region III — Devils Lake		0						0
Region IV — Grand Forks	Agassiz Enterprises	32	13	6	36			55
	Grand Forks Hostel	10					10	10
	Center for Human Development			8(MI)				8
Region V — Fargo	Svee Home	24			24			24
	Fraser Hall	65	27		40			67
	Friendship Village	15	15					15
Region VI — Fessenden		0		8				8
New Rockford				8				8
Carrington				8				8
Jamestown	Opportunities, Inc.	8		8		8		16
Valley City	Open Door, Inc.	0	9	7				16
Region VII — Bismarck	Pride Industries	18		15	30			45
Mandan	Memorial Mental Health and Retardation Center	0		16,8(MI)				8
Region VIII — Dickinson	Dickinson Hostel	8					8	8
Total		252	100	100	150	8	34	392

The committee received testimony that if a facility not included in the 200-bed proposal would meet requirements, such a facility would be eligible for Title XIX funds made available under the demonstration project. Committee members, therefore, said realistically the demonstration project could not be limited to a certain number of beds. It was noted that if additional facilities including more than a 200-bed proposal would meet certificate of need and Section 1122 of the Social Security Act requirements, all facilities would have to share equally in any reductions in levels of reimbursement available under Title XIX and state general funds.

Recommendations

The committee recommended that the proposal as presented by the State Department of Health, Social Service Board, Director of Institutions, Grafton State School, and Developmental Disabilities Council for additional community facilities and services for developmentally disabled and mentally ill persons, costing $13.2 million, be funded and implemented during the 1981-83 biennium.

Other matters of concern relating to the deinstitutionalization study were brought to the committee's attention. They related to statutory and other changes necessary for the developmental disabilities plan to be implemented more efficiently.

The committee recommends a resolution which directs the North Dakota Social Service Board to amend the state Title XIX plan to provide coverage for medical services provided by the intermediate care facilities for developmentally disabled persons.

The committee recommends a bill amending Section 50-24.1-03 of the North Dakota Century Code exempting counties from reimbursing the State Social Service Board for funds spent for medical services by intermediate care facilities for developmentally disabled persons. This bill draft would ease the pressure on financially burdened counties.

The committee recommends a bill amending various sections in Chapter 25 to clarify the authority of the Division of Vocational Rehabilitation and the Mental Health and Retardation Division to license facilities for developmentally disabled persons.

The committee recommends a bill to establish a loan fund at the Bank of North Dakota allowing a preferable interest rate of two percent below the Bank of North Dakota's prime interest rate and including an appropriation of $4 million in general fund moneys for the remodeling, construction, or acquisition of intermediate care facilities for the developmentally disabled in accordance with the plan approved for additional community services and facilities during the 1981-83 biennium for developmentally disabled persons.

The committee recommends a resolution encouraging state agencies, institutions, and service providers at the community level to take such action as may be necessary to encourage the implementation of the plan for com-

munity services for developmentally disabled persons during the 1981-83 biennium. Also, the committee recommends a resolution directing a Legislative Council study to monitor the efforts of the State Department of Health, Social Service Board, Director of Institutions, and various providers of services at the community level as they establish intermediate care facilities and provide additional services to developmentally disabled persons during the 1981-83 biennium.

The Legislative Council's Social Services Committee studied the needs of physically handicapped individuals for community facilities. The Social Services Committee asked the Budget "B" Committee at its last meeting to include facilities for the physically handicapped in the plan for developmentally disabled for the 1981-83 biennium. Since the Budget "B" Committee did not have adequate time to study the needs of the physically handicapped, the committee, by motion, asked the Health Department and Social Service Board to survey the need, and develop a plan in response to that need, for community facilities for physically handicapped persons in North Dakota. The committee also asked that the departments develop information relating to the costs of the plan and present it, along with necessary departmental budget adjustments, to the 1981 Legislative Assembly.

COLLOCATION OF AREA SOCIAL SERVICE AND MENTAL HEALTH AND RETARDATION CENTERS

Pursuant to House Concurrent Resolution No. 3048, the Legislative Council's Budget "B" Committee monitored the collocation of area social service and comprehensive mental health and retardation centers during the 1979-81 biennium. House Bill No. 1061 passed by the 1979 Legislative Assembly mandated that area social service and comprehensive mental health and retardation centers in all regions of the state be collocated by July 1, 1981. House Bill No. 1061 also provided a fiscal incentive for county social service boards to locate their offices within the collocated facility in the region. To assist in the implementation of House Bill No. 1061, the 1979 Legislative Assembly appropriated $42,858 in general fund dollars to encourage county social service boards to collocate and $58,366 to defray any additional cost which may be incurred by area social service centers in collocating.

The collocation directive affected five regions of the state — Minot (Region II), Grand Forks (Region IV), Fargo (Region V), Jamestown (Region VI), and Bismarck (Region VII). In the other three regions of the state — Williston (Region I), Devils Lake (Region III), and Dickinson (Region VIII) — collocation has been effected through the creation of human service centers.

The committee heard a progress report on collocation at each meeting from the State Department of Health and State Social Service Board. The two departments noted that they view collocation, not in the narrow sense of placing offices side by side, but rather in the broader sense of establishing those vital functions which the legislature identified as being important under any service delivery model, i.e., joint client intake, identification of client needs, interagency referral, interprogram policy development, interprogram planning and coordination, and interprogram staff development and training. In each region of the state an interagency coordinating council was established to plan and coordinate the collocation of human services.

The interagency coordinating councils' first mission was to identify required space needs and to develop the specifications for locating a site suitable for collocation in each region. Also, the councils were to identify major client needs within each region, to establish priorities of identified client needs, to facilitate joint program planning for meeting client needs, and to facilitate agreements establishing which agency should provide the necessary services in an effort to avoid duplication of services.

Major objectives of collocation were to reduce public confusion as to the availability of services, to increase the client's convenience with respect to the accessibility of services, to ensure greater coordination and consolidation of services, and to eliminate duplication of services while ensuring that the quality of available services is improved.

The departments attempted to involve county social services, vocational rehabilitation services, and other public and private human service agencies in the collocation planning process.

At the time of the Budget "B" Committee's June 27, 1979, organizational meeting, the State Department of Health and Social Service Board reported the status of collocation in each region of the state.

In Bismarck, area social services, vocational rehabilitation services, and county social services were collocated. The mental health and retardation center for this region is located in Mandan. In Jamestown, Stutsman County social services, mental health and retardation services, and vocational rehabilitation services are all housed separately. In Fargo, the area social service center is collocated with the vocational rehabilitation service center. County social services and mental health and retardation services are housed separately. In Grand Forks, the area social service center and vocational rehabilitation services are collocated in a newly constructed building. The county social services and mental health and retardation center are housed separately. In Minot, the area social service center, vocational rehabilitation services, mental health and retardation services, and county social services are all housed separately.

Throughout the reporting process the State Department of Health and State Social Service Board pointed out the major problems they encountered in the collocation process. The greatest problem encountered by collocating agencies was the inability to locate existing facilities which were adequate to meet the space, parking, and client accessibility needs of those agencies collocating. It was reported that in all but one of the five regions the months of planning had unavoidably resulted in the need for new construction. Another major problem encountered was that many of the units currently had very favorable space rental rates and that these rates would increase substantially at any new location chosen for collocation.

Committee members expressed concern about what type of disciplines had been used by the departments in determining the size of the collocated unit, as well as the specifications needed for the units. Also, committee members asked what was being done on the state level to bring about the delineation of duties and elimination of duplication, competition, and overlap between the agencies. Committee members also commented that they were aware that rental cost for agencies will increase at a new collocated facility.

The departments indicated that no criteria were established for all regions since each region had its own unique set of circumstances and opportunities. However, the departments indicated that the regions were at a point where comparisons can be made and that the philosophy of the planning committees was to keep the costs down. Also, the Social Service Board and Health Department

said they had agreed to delineate the responsibilities of each agency.

Status of Collocation at Committee's Final Meeting

The departments reported progress had been made toward collocation in each region of the state at the time of the Budget "B" Committee's last meeting, October 8-9, 1980.

In Bismarck, a private nonprofit foundation has agreed to undertake development of a facility near downtown Bismarck to house vocational rehabilitation, area social services, mental health and retardation services, Burleigh County social services, and the Social Security Administration. Neither Burleigh County social services nor the Social Security Administration had yet committed to the collocation plan. Nonetheless, the foundation received approval from the Bismarck City Commission to issue MIDA bonds to finance construction of a new facility. If construction can begin in the fall of 1980, the anticipated date of occupancy is prior to January 1982. In this region, it was reported that although the date of common location, July 1981, will not be met, the goals of reducing and/or eliminating duplication and overlap will be accomplished.

In Jamestown, the site and a developer have been selected for the proposed collocation of the South Central Mental Health and Retardation Center, vocational rehabilitation services, and the Jamestown area social service center. If proposed plans meet with the approval of the agencies, the developers indicate that collocation may take effect as early as July 1, 1981.

In Fargo, the Red River Mental Health and Retardation Foundation is in the process of purchasing the First National Bank and Trust Building located in downtown Fargo. Through the cooperative efforts of seven lending institutions in Fargo, they agreed to form a lending consortium to buy the MIDA bonds necessary to finance the purchase of the building. Presently, Southeast Mental Health and Retardation Center, the area social service center, and the Fargo Regional Office of Vocational Rehabilitation are committed to collocating within the facility. Occupancy within the building depends upon the period of construction for the new First National Bank and Trust Building. It is expected that this construction should be completed in order that the agencies can collocate in April or May 1982.

In Minot, construction of the addition to the Oppen facility is to be completed in mid-June 1981. The Ward County Social Service Board, the area social service center, the North Central Mental Health and Retardation Center, and the regional vocational rehabilitation office have agreed to collocate.

In the Grand Forks region, the collocation committee selected the Hemmp Center site in Grand Forks as the future site for collocation. The agencies planned for collocation are the area social service center, the Center for Human Development, vocational rehabilitation services, and Lutheran Social Services. Although the board of county commissioners in Grand Forks County voted not to immediately collocate its offices within the center, the board continues to be involved in the planning of collocated services in the Grand Forks region. The facility should be ready for occupancy on or about July 1, 1981.

STUDY OF STATE EMPLOYEE COMPENSATION AND FRINGE BENEFITS

This study, directed by Senate Concurrent Resolution No. 4074, was to determine if any changes or adjustments to compensation levels or fringe benefits are necessary or desirable to continue to make employment with the state of North Dakota more attractive to persons who might otherwise seek employment with other states or in the private sector.

Current State Employee Fringe Benefits

At the organizational meeting the Budget "B" Committee reviewed the major fringe benefits provided to North Dakota state employees. They are as follows:

1. Annual leave is a part of permanent employees' compensation in accordance with Section 54-06-14 of the North Dakota Century Code. An employee is entitled to annual leave within the range of a minimum of one working day per month of employment to a maximum of two working days per month of employment, based on the tenure of employment, to be fixed by rules and regulations adopted by the employing unit. Employees terminating their employment are paid for all earned and unused annual leave.
2. Sick leave is a statutory privilege granted to all permanent employees in accordance with Section 54-06-14. It is not a benefit considered to be earned by the employees as is annual leave. An employee is entitled to sick leave within a range of a minimum of one working day per month of employment to a maximum of 1.5 working days per month of employment, based on the tenure of employment, to be fixed by rules and regulations adopted by the employing unit. Sick leave may be used for illnesses where the employee is unable to work and for medical and dental appointments.
3. State employees currently receive nine paid holidays which include New Year's Day, Washington's Birthday, Good Friday, Memorial Day, July Fourth, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.
4. Permanent employees are eligible to enroll in the hospital group insurance program under the state contract. The 1979 Legislative Assembly provided that the state pay the full family medical premium under the alternate plan. The state pays the total cost for the single premium.
5. Permanent employees are eligible to enroll in the group life insurance program under a contract carried by the state. This plan provides a basic group life insurance of $1,000 and a basic accidental death and dismemberment policy of $1,000. Additional group life insurance and accidental death and dismemberment can be purchased by an employee in additional amounts equal to the employee's annual earnings rounded to the next highest $1,000.
6. An employee who is at least 18 years of age, is a permanent employee of a governmental unit which participates in the plan is eligible to participate in the state public employee retirement plan. If the member retires at age 65 (or older), regardless of the number of years credited service, the member is entitled to 1.04 percent of the member's final average earnings multiplied by the years of credited service. A member is eligible for early retirement if he is at least age 55 (but not yet 65) and has 10 years of credited service. The amount of his benefit is calculated as above for normal retirement benefits, then reduced one-half of one percent for each month (six percent per year) that the member is younger than age 65 when the member retires. If a member becomes totally and permanently disabled before age 65 and after the member has earned 10 or more years of credited

service, the member will be eligible to receive a disability benefit which is calculated in the same way as the normal retirement benefit. A member is considered totally and permanently disabled if the member is entitled to a Social Security disability benefit.

7. State employees receive time and one-half for overtime for nonexempt positions for hours worked in excess of a 40-hour week. Compensatory time off on a time and one-half basis may be granted where appropriate.
8. All employees are protected by workmen's compensation against accidental injury in the performance of their official duties.
9. State employees are also eligible for unemployment compensation upon involuntary termination of their employment.

Testimony and Committee Considerations

The Central Personnel Division provided information on the state's current classification system, the compensation plan, fringe benefits, the merit system, grievance and appeal procedures, and personnel policies. The division presentation outlined some of the problems in these areas and set out ideas on what could reasonably be accomplished in the future. The division reported that the greatest concern about the existing classification system has been the limited degree of normal maintenance it has been able to do because of a small staff. The division said the greatest concern of state employees is the need for a uniform salary administration plan.

The Central Personnel Division also discussed Section 54-44.3-12 of the North Dakota Century Code which prevents the division from making any type of changes to the personnel classification system during a biennium. The committee recommends a bill to amend this section to allow certain changes to the personnel classification system including the addition of new classifications during the biennium. Also, following some testimony, the committee recommended a bill amending Section 54-44.3-19 to include the mental health and retardation center personnel under the Central Personnel Division classification system.

The committee heard a report on mid-point budgeting from a representative of Hay Associates. Mid-point budgeting, it was reported, is an approach to controlling public sector salary expenditures. An important concept in mid-point budgeting is that the administration must determine that there is a best employee and a least productive employee and distribute salary moneys accordingly. A mid-point budgeting system provides control over salary expenditures, simplifies forecasting of salary costs, eliminates individual salary increases based on in-range longevity, and increases the opportunity for productivity incentives.

Throughout the interim various groups, agencies, and individuals testified on the need for higher state employee salaries and increased fringe benefits.

The Central Personnel Division commented on the salary survey conducted by the division. The division said as a result of this survey, the State Personnel Board recommends a 15 percent catch-up salary increase as of January 1, 1981, for all state employees. Also, the board recommended a nine percent salary increase as of July 1, 1981, and a 10 percent increase for July 1, 1982, for all state employees. The board also recommended that two percent of salary be provided for merit increases.

The division's survey, regarding fringe benefits, showed that fringe benefits offered by the labor market and the state of North Dakota are comparable.

The committee reviewed the possibility of the state paying the employee share of Social Security. The committee found that the main problem involved is that a reduction in Social Security contributions made to the employee's account can result in reductions in future Social Security benefits payable to the employee and family. Also, the Internal Revenue Service has ruled that the state's payment of the employee's share of Social Security is taxable income to the employee for federal income tax purposes.

The executive director of the Public Employees Retirement System (PERS) discussed state employee fringe benefits. The director said the actuary for PERS has recommended that the state become a self-insurer for the life insurance program since there could be substantial savings for the state and duplicative administrative duties could be eliminated by the PERS office administering the entire program. The director said the loss experience of the life insurance program has been very good and that claims have never exceeded premiums. He reported that usually when self-insuring a program, approximately 30 percent of premiums should be held in a reserve fund. He said the retirement fund currently has a reserve of approximately $300,000 which would basically meet the life insurance reserve needed. The committee reacted favorably to this report and recommends a bill to make the state a self-insurer of its employee life insurance program.

The director also discussed potential changes to the state employee retirement plan, including conversion of the plan to a noncontributory plan whereby the employer pays the total contribution. Under a noncontributory plan, the director reported, the state's total contribution could be reduced from 9.12 percent to 8.52 percent, or that the benefit factor used to calculate an employee retirement benefit could be increased from 1.04 percent to 1.10 percent if the total contribution of 9.12 percent would continue.

The committee heard testimony from an ad hoc group made up of personnel directors of several state agencies which surveyed state employees asking them to prioritize their fringe benefit needs. This survey showed that payback of unused sick leave was the fringe benefit chosen as the number one priority, dental insurance was chosen as a second priority, and a totally state-funded retirement plan was the fringe benefit chosen as the third priority. The ad hoc committee said that after analyzing the survey results the survey committee's first recommendation is that an employee's accumulated unused sick leave hours be converted to months of service when computing the employee's overall retirement benefits. The committee's second recommendation was that the state implement a totally state-funded retirement system. The ad hoc committee said this would directly meet the need expressed by the majority of state employees for some immediate cash benefit.

The North Dakota Public Employees Association (NDPEA) presented its view on state employee compensation and fringe benefit needs. The association reported that the number one priority of virtually everyone polled was that cost-of-living adjustments be tied to salary increases by an escalator tied to the consumer price index. The association said that the fringe benefits rated highest by employees were:

1. Dental/optical insurance
2. Payment of unused sick leave upon termination
3. Increases in the state contribution to employee retirement plans
4. Disability insurance

The association also discussed its concern about the need for increases in salaries for state employees. The association is recommending a 19 percent catch-up salary increase as of January 1, 1981, and annual salary increases of 15 percent with a minimum of two percent designated for merit increases during the 1981-83 biennium. The three primary needs of state employees, as supported by the Public Employees Association and to which the association hoped the legislature would give prime consideration, are as follows:

1. An emergency salary cost-of-living increase as of January 1, 1981.
2. Adequate annual salary increases.
3. A totally state-funded retirement system.

The Board of Higher Education presented an analysis to the committee illustrating the lag in faculty salary increases relative to increases in the consumer price index since January 1, 1975. The illustration shows that by the end of the 1979-81 biennium it would take an increase in average salaries of 21 percent to restore faculty purchasing power to its 1975 level. The Board of Higher Education said the number one fringe benefit requested by the Board of Higher Education is that the total retirement contribution be paid by the employer. The board said the fringe benefit chosen as the second priority is the expansion of the health care program to include dental coverage.

The committee also heard testimony from individuals supporting the Governor's budget guidelines which provide a 10 percent salary increase and two percent increases for merit for all state employees for each year of the 1981-83 biennium. Also, individuals urged a catch-up salary increase as of January 1, 1981, that state employees' salaries be acted upon during the early part of the 1981 Legislative Session, and that any salary plan adopted by the legislature be funded adequately.

Following the testimony from various groups requesting additional fringe benefits, the committee requested information on what it would cost for the state to implement various increased fringe benefit programs. The committee requested information specifically on what it would cost to fund:

1. Reimbursement of unused sick leave
2. Dental insurance
3. A totally state-funded retirement plan
4. An increase in the benefit multiplier of the state retirement plan

Cost Information Relating to Increased State Employee Fringe Benefits

The information on costs presented by Legislative Council staff, in summary, is as follows. State employees had accumulated 3,568,815 hours of sick leave at an estimated value of $23,732,620. Based on the average hourly state employee rate of $6.65 per hour and a 60 percent rate of sick leave used, the value of sick leave accumulated on a biennial basis amounts to $4,600,000.

Based on an average dental care plan and assuming that persons currently participating in the state medical care plan would also participate in the dental care plan, the state's cost for the 1981-83 biennium at current rates for 4,885 single policies and 6,106 family policies would be $2,759,452.

If the state adopted a totally state-funded retirement plan for all state employees with the state contributing an additional four percent of salaries, or a total of 9.12 percent of salaries, the additional cost to the state for the 1981-83 biennium would be approximately $13,700,000. The bill recommended by the committee for a totally state-funded retirement system relates only to PERS and therefore the cost for implementation of this bill would be less than the $13,700,000. The additional cost to the state to provide a fully funded retirement plan to state employees for the period January 1, 1981, through June 30, 1981, would be $3,400,000.

State Employee Salary Increases

The committee requested information relating to the costs of various salary increase proposals submitted to it by various groups during the interim.

At the committee's final meeting on October 9, 1980, the Executive Budget Analyst presented the information, which the committee requested be included in its final report. Included is information on salary increases requested by the North Dakota Public Employees Association, Board of Higher Education, and State Personnel Board. The information as provided by Mr. Ohlhauser is as follows:

PROPOSAL I — N.D. PUBLIC EMPLOYEES ASSOCIATION
January 1, 1981 — 19% across-the-board "catch-up"
FY 82 & FY 83 — 15% per year
Retirement — state assumption of employee contribution (4%)

Additional cost (millions of dollars):

FY 81	1981-83	Total
$18.9	$198.4	$217.3
General Fund (63.3%)		$137.6
Special (36.7%)		79.7

PROPOSAL II — BOARD OF HIGHER EDUCATION
January 1, 1981 — 18% across-the-board "catch-up"
FY 82 & FY 83 — 12% per year
Retirement — state assumption of employee contribution (4%)

Additional cost (millions of dollars):

FY 81	1981-83	Total
$17.9	$171.0	$188.9
General Fund (62.0%)		$117.2
Special (38.0%)		71.7

PROPOSAL III — STATE PERSONNEL BOARD

January 1, 1981 — 15% across the board
FY 82 — 11% (9% in recognition of salary range increase and inflation — 2% performance/merit)
FY 83 — 12% (10% in recognition of salary range increase and inflation — 2% performance/merit)
Retirement — state assumption of employee contribution (4%)

Additional cost (millions of dollars):

FY 81	1981-83	Total
$14.9	$151.8	$166.7
General Fund (60.5%)		$100.9
Special (39.5%)		65.8

At the last committee meeting a representative of the "Personnel Legislative Coordinating Committee," a committee comprised of personnel officers in various state agencies, discussed that committee's role in the study of state employee salaries and fringe benefits. The representative explained that the committee wishes to become an available resource to legislative committees involved with personnel related bills. The representative explained that this committee could report to legislative committees the position taken by member agencies, thus not requiring each agency to individually testify before the legislative committees. The Budget "B" Committee, by motion, indicated it had no opposition to the existence of the committee during the 1981 Legislative Session.

Recommendations

The committee took the following action which related to the state employee compensation and fringe benefit study directed by Senate Concurrent Resolution No. 4074.

The committee recommends a bill creating a new section to Chapter 54-52.1 of the North Dakota Century Code providing that the state become a self-insurer of its life insurance program.

The committee recommends a bill amending Section 54-44.3-12.1 which allows changes to the Central Personnel classification system during the biennium, including the addition of classifications to the compensation plan during a biennium.

The committee recommends a bill to amend Section 54-44.3-19 which clarifies the status of the mental health and retardation service units and human service centers under the Central Personnel Division classification and pay plan. During the 1979 Legislative Assembly, House Bill No. 1061 provided that human service centers and mental health and retardation service units must come under the Central Personnel Division classification and pay plan. However, Section 54-44.3-19 conflicted with House Bill No. 1061 because it provided an option to the unit to come under the Central Personnel Division. This bill recommended by the committee would remove the conflict and all mental health and retardation service units and human service centers will be required to come under the Central Personnel Division classification and pay plan.

The committee recommends a bill providing for a totally state-funded retirement system. Under this bill draft the members employed by a county, city, or school district would continue to be assessed the monthly four percent of salary and employers of county, city, or school district employees would continue to pay the 5.12 percent of salary assessments. For state employees, the state would pay 9.12 percent of the employee's monthly salary. With the 9.12 percent contribution by the state the benefit factor used to calculate retirement benefits would be increased from 1.04 percent to 1.1 percent. This bill would make the necessary statutory changes to implement, for PERS members, the Governor's guidelines which provide that state employees will no longer pay the four percent retirement contribution as of January 1, 1981. Also, since taxes have already been paid on the total salary, employees would receive an immediate four percent increase in take home pay.

DATA PROCESSING COMMITTEE

House Concurrent Resolution No. 3043 directed the Data Processing Committee to study the effectiveness of the state's central data processing services and the laws providing for these services. Committee members were Senators Rolland Redlin, Chairman, Donald Hanson, Robert Melland, Jack Olin, Theron Strinden, and Russell Thane; and Representatives Dayle Dietz, Harley Kingsbury, Roger Koski, William Lardy, Wayne Stenehjem, and Malcolm Tweten.

The report of the Data Processing 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-seventh Legislative Assembly by the Legislative Council in November 1980.

Background

This study was directed because of increasing appropriations for the Central Data Processing Department (CDP) and because of rapidly changing distributed data processing technology causing increased personnel and communications costs and reduced hardware costs. Because of these factors, the committee specifically reviewed the adequacy of the present centralized organization to provide distributed data processing services to state agencies.

The Central Data Processing Department was created in 1969 as a result of a Legislative Research Committee review of the state's very decentralized data processing efforts at that time. The Legislative Assembly enacted the major recommendation of the 1967-69 interim study to create a Central Data Processing Division within the Department of Accounts and Purchases. The present statutes state that CDP owns or leases and operates all data processing equipment and provides services to all agencies in lieu of small computer installations in several agencies. The institutions of higher education, Job Service North Dakota, and Adjutant General are exceptions to this centralized control requirement. Current statutes provide that the director of the Department of Accounts and Purchases is the ex officio director of CDP who appoints a CDP supervisor (director). Also, the statutes provide that each agency using CDP services is to appoint a data processing coordinator to assist CDP in determining that agency's data processing needs.

The CDP operations are funded from fees charged to users of its services. The 1979-81 biennium appropriation for CDP is $8,001,559 from user fees, plus $175,000 from the general fund for developmental projects. The department is authorized 92 employment positions.

There are three divisions within CDP. The applications systems development division designs and develops computer systems. The operations division creates the computer's input and operates the computer system. The technical computer systems division designs computer models and graphics applications.

Central Data Processing's main computer center is located in the State Highway Building. The committee toured this center. Other computer installations of various sizes, operated by CDP, are in the Social Service Board, Tax Department, Motor Vehicle Department, Bank of North Dakota, and Radio Communications Department. CDP also operates the computer formerly operated by the Regional Environmental Assessment Program staff. That computer is located in the Provident Life Building in Bismarck. Even though current law provides that CDP personnel are to operate all data processing equipment, approximately 40 remote terminals connected to CDP's main computer are located and operated in other state agencies. The department provides data processing services to 40 agencies on approximately 150 major systems with 2,500 programs. A nonstatutory data processing advisory committee with executive, legislative, and judicial branch representation assists in evaluating CDP services.

Since the 1967-69 study did not make an in-depth review of higher education data processing needs, the 1969 Legislative Assembly directed the Legislative Council to make such a review. The 1969-71 interim study recommended establishing an office of higher education computer services and that all higher education data processing efforts be centralized. In 1973 the Legislative Assembly appropriated funds for a higher education computer network at Valley City State College, Dickinson State College, and University of North Dakota. Since then, the higher education computer network has been extended to all institutions of higher education under the Board of Higher Education. The network is directed by the Board of Higher Education staff and each institution has a staff responsible for its data processing services. Under the network, two distinct computer centers are operated. The University of North Dakota computer center maintains all higher education administrative applications including accounting, uniform payroll, and student records. Also, the UND center provides academic batch data processing services to UND and the state colleges. The North Dakota State University computer center provides academic and instructional time sharing services to all institutions.

At its first meeting, the committee accepted an offer by the IBM Corporation to present an informational program on data processing technology. In July 1979 committee members attended a two-day educational training session, conducted by IBM in Bismarck, on computer concepts and current and future alternative data processing systems.

Since House Concurrent Resolution No. 3043 directed the committee to contract for professional services, the committee met jointly with the Legislative Audit and Fiscal Review Committee to review proposals from several firms to review the state's central data processing services and also the state's accounting system. The Data Processing Committee selected Booz, Allen and Hamilton, Inc., (BAH) to conduct the data processing review.

Booz, Allen and Hamilton, Inc., Review

The BAH review began in September 1979 and periodic progress reports were made to the committee. Representatives of CDP, the Board of Higher Education, and other state agencies commented on the progress of the study and the final report.

The BAH study focuses on the efficient and effective use of CDP resources and the adequacy of CDP's centralized operation to respond to new distributed data processing communications and information management technologies. The BAH study team surveyed 170 applications systems and interviewed 25 CDP user agencies to determine current use and future demands of CDP. Specific areas of review include CDP's organizational structure, operating procedures, and user system maintenance and development.

The BAH report states that because of rapid technological advances, CDP now faces new challenges and problems necessitating new solutions if it is to continue to serve users effectively. The report says CDP's style of

operation is typical of a late 1960's/early 1970's highly centralized data processing unit which is a cause of several recurring operating problems. Commenting on current data processing functions, the report says state government data processing is migrating from a highly centralized to a more distributed data processing environment. The report goes on to state that there is high CDP staff turnover; CDP needs additional employment positions; the equivalent power of CDP's current mainframe computer is sufficient for three years; present security measures are adequate; CDP has no backup capability; CDP should improve its planning and control systems; many agency data processing coordinators lack data processing knowledge; the informal nature of the CDP Advisory Committee is ineffective; and most CDP users do not effectively plan their use of electronic data processing resources.

The report states that state government's electronic data processing strategy for the 1980's should be to capture the greatest possible benefits from exploitation of new technologies while avoiding waste and misuse of public resources. The Legislative Assembly should promote improved effectiveness, efficiency, and productivity by encouraging use of state of the art electronic data processing resources throughout all branches of state government, the report states. The report recommends that this strategy include five elements: a statement of position on further development of electronic data processing resources; a statement of position on security of CDP control files and data banks; a statement of responsibilities and authorities concerning data processing development and operations; a planning and control system; and appropriate checks and balances. The report states that the user agency is ultimately accountable for how effectively it uses data processing resources.

The BAH report recommends that new or amended legislation:

1. Define electronic data processing resources.
2. Provide that the director of CDP have more direct responsibility for agency use of data processing resources, thus no longer requiring the director of the Department of Accounts and Purchases to be the ex officio director of CDP. (However, the Department of Accounts and Purchases' director would still appoint the CDP director.)
3. Have the CDP director control all executive branch electronic data processing resources, including equipment acquisition, except those of Job Service, the Adjutant General, and the institutions of higher education.
4. Allow agencies to house and operate electronic data processing equipment even though ownership remains with CDP.
5. Require executive branch agencies to provide written justification for new or expanded data processing resources.
6. Require the CDP director to review new higher education data processing resource requests and retain the authority of the director of the Department of Accounts and Purchases to approve higher education data processing equipment purchases or leases.
7. Allow nonexecutive branch users the explicit right to obtain data processing services from CDP or other sources.
8. Require agency budget requests to include plans for use of CDP resources.
9. Require CDP to submit a master plan for two bienniums to the Executive Budget Office and the Legislative Assembly.
10. Strengthen the CDP Advisory Committee to help resolve conflicts on use of CDP resources.
11. Require the State Auditor to review the efficiency and effectiveness of agency use of electronic data processing resources.
12. Require CDP to review and comment on all agency word processing equipment acquisitions.

The report recommends seven new positions to strengthen CDP and to respond to user needs and advanced technologies. These positions are one planner, two programmers, two programmer/analysts, one data base design specialist, and one communications specialist. The planner position is the only unfilled position since the Emergency Commission approved five of these positions during the current interim and one position was filled with approved funds in CDP's 1979-81 appropriation. The positions will appear as new positions in CDP's 1981-83 biennium budget request.

The report recommends that the Bank of North Dakota have in-house data entry capability; the Board of Higher Education and CDP jointly develop computer backup procedures; and that the qualifications of agency data processing coordinators be upgraded.

The BAH report reviews several user data processing systems. It identifies current systems that can either be deleted or which will be modified. The report categorizes current CDP users as highly aggressive, moderately aggressive, and passive. This categorization, the report states, is useful in determining how well these users can justify their requests for future distributed data processing systems.

The estimated 1981-83 biennium cost of the BAH recommendations for the seven additional CDP positions, for three additional positions in the State Auditor's office to conduct efficiency and effectiveness reviews of agency data processing resources, and for equipment to accommodate the migration from a highly centralized to a more distributed data processing environment is $758,562 to $1,044,162.

CDP Concerns and User Concerns

A primary CDP concern expressed to the committee is a high rate of staff turnover. This turnover is occurring primarily because of highly competitive salary levels and career opportunities for data processing personnel. According to CDP, salaries for personnel with two or more years of experience are not competitive with industry salaries. Eleven of 14 employees leaving the department over a 17-month period had three or more years of experience while 14 of 18 recently hired employees are trainees.

Another CDP concern is the backlog of work because of increasing user requests resulting from Emergency Commission approval of federal funds for user agencies to develop new or expanded data processing systems.

Another concern of CDP is its space needs. Presently, CDP occupies 11,785 square feet of space in three separate buildings. According to CDP, 20,000 square feet is necessary. The CDP director told the committee that space allocated to CDP in the new Judicial Wing-State Office Building is insufficient for all of CDP's needs. Alternatives discussed by CDP to provide adequate space are to allocate a total of 20,000 square feet in the State Capitol complex or to lease space off the Capitol grounds to meet all or some portion of its needs.

Finally, CDP said it is receiving requests from political subdivisions for data processing services. They said they did not know how to respond to these requests since present statutes are silent on this subject.

The committee heard comments from several major users of CDP's services. Overall, the users expressed satisfaction with CDP services; however, they expressed concern about excessive systems development lead time, CDP staff turnover, and CDP scheduling practices.

The Board of Higher Education said it may be unconstitutional for the director of the Department of Accounts and Purchases to approve or disapprove the purchase of data processing equipment by the institutions of higher education. They encouraged the committee not to enact legislation providing for a bureaucratic manner of acquiring data processing resources for the higher education institutions.

Recommended Legislation for State Data Processing Services

The committee recommends a bill which defines the terms "data processing," "data processing equipment," and "word processing." The definition of "data processing equipment" excludes calculators and stand-alone noncommunicating word processors. Since the bill provides that the director of CDP has more direct responsibility for agency use of data processing resources, it deletes current statutory language making the director of the Department of Accounts and Purchases the ex officio director of CDP; however, the director of the Department of Accounts and Purchases will still appoint the director of CDP.

The bill authorizes the CDP director to supervise all executive branch agency data processing activities and to approve their data processing equipment acquisitions. Job Service North Dakota, the Adjutant General, and the institutions of higher education would be exempted from this provision. The bill provides that the equipment acquired will become the property of CDP; however, it can be located at another agency and operated by the agency's personnel. The bill states that the director of CDP must approve all new executive branch data processing applications and modifications to existing data processing applications which increase the cost of operating such applications by more than 15 percent. The bill states that CDP shall provide services to the legislative and judicial branches of government; however, if CDP is unable to fulfill a request for service from the legislative or judicial branches, the service may be procured by the legislative or judicial branches within the limits of legislative appropriations. The bill provides that CDP shall make comments and recommendations on all agency acquisitions of word processing equipment; however, neither the director of CDP nor the director of the Department of Accounts and Purchases has authority to disapprove agency word processing equipment acquisitions.

The bill states that all state agencies using CDP services must include a data processing plan in their biennial budget request including justification for proposed development or acquisition of new or additional data processing services or equipment. Because agencies will include these plans in their budget requests, the bill amends present law to provide that the Executive Budget Office may extend the budget filing date for an agency if there is some circumstance which makes it advantageous to authorize such extension. Present law states that the filing date may be extended for not more than 45 days beyond July 15, prior to the legislative session. The bill also provides that beginning with the 1983-85 biennium, the director of CDP shall submit to the Executive Budget Office and the Legislative Assembly a CDP development master plan for the succeeding two bienniums.

The bill statutorily creates a Data Processing Committee of which the CDP director is chairman. The bill states that the committee shall be comprised of one member of the House of Representatives, one member of the Senate, one representative from the judicial branch, one representative of the Board of Higher Education, and such other user representatives as may be selected by the CDP director. The total size of the committee cannot exceed 11 members, and committee member terms cannot exceed three years. The bill provides for the committee to have advisory powers only.

Availability of Personal Records

Because electronic data processing systems are being used by the state to maintain an increasing number of personal records, the committee expresses concern about the availability of these records. The committee reviewed the type and volume of personal information made available to individuals by major state agencies. It also reviewed other state statutes and model legislation on this subject.

As a result of this review, the committee recommends a bill to regulate the collection, maintenance, and dissemination of information about individuals by state agencies. The bill provides that each state agency maintaining a system of records containing personal or confidential information must file a yearly report with the Secretary of State describing that system. Also, each agency is to designate an employee to be responsible for ensuring that the agency complies with the bill's provisions.

The bill limits collection and dissemination of personal or confidential information on individuals to that which is necessary only for the administration and management of programs authorized by state or federal law. The bill permits disclosure of personal or confidential information upon written consent or request by the individual to whom the information pertains; for law enforcement or judicial purposes; and to another government agency when required by state or federal law. The bill does not repeal or limit any right of privacy or confidentiality requirements otherwise specifically provided by law. The bill provides that information may not be disclosed if prohibited by federal law.

The bill provides that individuals may review confidential or personal information about them that is on file with the agency and that they may contest the accuracy or completeness of the information. Any agency which violates any of the provisions is liable for damages, and an individual may bring an action against the state to recover any damages sustained, plus costs incurred and reasonable attorney fees. Also, any agency employee who willfully violates the bill's provisions is liable for exemplary damages of not less than $100 nor more than $1,000.

The committee is also concerned about the availability of information from business entities offering data processing services. The committee recommends a bill prohibiting disclosure, by any business entity offering data processing services for a fee, of the information it is processing, except upon written consent of the individual or business entity for which the data processing service is being performed. The bill does not apply to disclosure of this information for law enforcement purposes or to a taxing agency for purposes of tax administration. It provides that a person may initiate a civil action against a business entity when the provisions are violated.

EDUCATION COMMITTEE

Senate Concurrent Resolution No. 4075 directed, with the assistance of the Superintendent of Public Instruction, a study of the organization and financing of special education in North Dakota, including the requirements of Public Law No. 94-142, the long-range impacts of special education legislation on general fund appropriations as well as on the school districts and institutions in this state, and the relationships for delivery of special education services between various state and local government entities.

Senate Concurrent Resolution No. 4068 directed a study regarding the feasibility of reciprocity arrangements for North Dakota students enrolled in postsecondary vocational education programs in other states, and to review the existing contract programs for veterinary medicine, optometry, and dentistry.

House Concurrent Resolution No. 3058 directed, with the assistance of the Superintendent of Public Instruction, a study of financing of elementary and secondary schools in North Dakota with emphasis on the foundation program, the costs and distribution formulas for education and transportation, the effect of various tax sources on school districts, school construction costs and debt capacities, and the problems of financing special and vocational education.

Committee members were Senators Theron Strinden, Chairman, Phillip Berube, James Cussons, Raymon Holmberg, Gary Nelson, Curtis Peterson, and Gilman Strand; and Representatives L. E. Berger, Lawrence Dick, LeRoy Erickson, Irven Jacobson, Kenneth Knudson, Gordon Larson, Herman Larson, Joe Leibhan, Douglas Mattson, Walter Meyer, Alice Olson, Orville Schindler, Steven Swiontek, and Larry Tinjum.

The report of the Education 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-seventh Legislative Assembly by the Legislative Council in November 1980.

SPECIAL EDUCATION

Background

On November 29, 1975, the 94th Congress enacted Public Law No. 94-142, the "Education for All Handicapped Children Act of 1975." This Act affects state special education programs in various ways. Subchapter II of the Act provides a program of assistance to states for the education of handicapped children. The terms of the Act apply to each of the states and trust territories of the United States. To qualify for grants under the Act, each state must meet certain eligibility requirements outlined in the Act. Any state meeting the eligibility requirements of the Act and desiring to participate in the programs under the Act is required to submit a state plan to the U.S. Commissioner of Education.

The purpose behind Public Law No. 94-142 is to assure that all handicapped children have available, within the statutory time, free appropriate public education which emphasizes special education and related services designed to meet unique needs; to assure that rights of handicapped children, parents, and guardians are protected; to assist states to provide education; and to assess and assure effectiveness of educational efforts. In practical terms, these concepts require states and their localities to seek out children who may be handicapped, to diagnose their special education needs, to establish a written plan for the education of each handicapped child, to review that plan at least once a year, to educate handicapped children in regular classrooms to the degree it is consistent with their personal welfare, to spend at least as much on handicapped children as on those who are not handicapped, to involve parents of handicapped children actively in the process of planning their education, to ensure that parents will bear no responsibility for the cost of special education services prescribed by the state or its localities, and to give parents recourse to an impartial hearings and appeals process in the event they are dissatisfied with the school's decisions or practices affecting their handicapped children.

At the recommendation of the interim Education Committee, the 1979 Legislative Assembly passed several bills in an effort to bring North Dakota into compliance with federal law 94-142. Senate Bill No. 2056 repealed Chapter 15-59.1 of the North Dakota Century Code which dealt with county special education programs and replaced it with legislation allowing multidistrict special education programs. Along with this, the maximum school district levy for special education was increased from three mills to five mills and made discretionary with the school board. State support for education and transportation of special education students was also increased. Funds for reimbursement to schools 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 for transportation, equipment, and residential care were raised to two and four times the relevant state average per-pupil costs, respectively. Senate Bill Nos. 2057 and 2058 provided for state reimbursement for at least 80 percent of the cost of not more than six round trips home per year for handicapped patients at state institutions at a rate not to exceed that paid to state officials.

The cost of educating handicapped children is being paid with federal, state, and local moneys. Handicapped students are included in the regular foundation aid payments. However, the cost of educating the handicapped has always been greater than the cost of educating nonhandicapped students. This extra cost is paid by local levies and by state and federal reimbursement programs. The 1979 Legislative Assembly appropriated $12,739,351 for special education for the 1979-81 biennium.

Testimony

The Department of Public Instruction testified that the cost of the two Senate bills passed by the 1979 Legislative Assembly which allowed six round trips home per year for handicapped students at state institutions would be somewhat under $200,000 for the 1979-81 biennium. It was also reported that some parents have applied for daily transportation costs and those have been provided. With respect to the legislation dealing with multidistrict special education cooperatives, 12 multidistrict special education plans have been submitted to the Department of Public Instruction as of January 1980. About half of these contain the same geographical areas as previous special education programs. The department anticipates approximately 30 plans by the time the law is fully implemented. The effective date for the bill from the 1979 Session was July 1, 1980, which permitted school districts one full year after the passage of the bill to comply. The department testified that the cooperatives must submit an original organizational plan and then must submit yearly operational plans which provide for funding requests. Pursuant to the mandates of Section 15-59-05.2,

the department reported on interagency cooperation and agreements. As of January 1980, an agreement had been reached between the North Dakota Department of Public Instruction and the North Dakota Director of Institutions' office. Also, it was reported that an agreement is being worked on between the Department of Public Instruction and the Board of Vocational Education.

Mr. David Niss, formerly of the Attorney General's office, listed several areas of concern which still face the state. First, he pointed out that the Department of Public Instruction is the state educational agency designated by federal legislation to "ensure" that Public Law 94-142 is carried out. However, the state superintendent is given no authority over the state institutions or over the school districts in ensuring this compliance. The second area of concern is the Public Law 94-142 mandate for the "least restrictive alternative" placement of handicapped students. The final concern is the responsibility for funding of special education. Of these three problem areas, the most all-inclusive is funding. This problem occurs at all levels from the local special education programs to the state-run institutions. Another problem addressed by school officials was the apparent encouragement by state law for placing handicapped children out of state rather than in state-run institutions, a result of more liberal state reimbursement provisions for out-of-state placements. This directly conflicts with most parents' desire to keep their children as close to home as possible.

In dealing with funding problems at the state institution level, the committee members decided to tour some of the institutions to view firsthand the problems there. Over the course of the interim, they visited the School for the Deaf at Devils Lake, School for the Blind at Grand Forks, and Grafton State School. At each of these institutions, the committee was able to tour the facilities, observe various classrooms while in operation, and visit with teachers and staff about their concerns. The general consensus was that, although the people working at these schools were very dedicated, there was a tendency for these individuals to "burn out" after a period of time. Also, there is a definite shortage of special education teachers and it is difficult to attract these people to North Dakota schools.

Compounding the problem at each of the institutions visited is the increasing number of multiply handicapped students. When the schools were first established, they generally handled students with a single handicap. However, with multiply handicapped, the school must either hire special teachers or give its own teachers additional training in these new areas. The multiply handicapped also have a need for more constant supervision. All of these services require additional funding.

In addition, judicial action around the nation is constantly expanding the requirements for services to handicapped individuals. One example is the Pennsylvania case in which individuals are trying to acquire educational services for a handicapped child on a 12-month basis rather than the traditional nine-month school year. At the present time, the School for the Blind in Grand Forks is run on a year-round basis. However, the School for the Deaf in Devils Lake is in session only nine months of the year. This was only one example of the increasing demands being made in the area of special education.

Recommendation

The committee recommends one bill in the area of special education. This bill provides for contracts between school districts and North Dakota-operated schools for services to students enrolled in the state-operated school after June 30, 1981, which are not provided for by the state school under its normal budgetary provisions. The contract is to specify the type and extent of services required by the student and is to be approved by the school district of residence, the superintendent of the state-operated school, and the Department of Public Instruction. The fiscal obligation for services provided in the contract shall be paid from funds appropriated by the Legislative Assembly to the Emergency Commission for special education. The bill contains no specific appropriation.

EDUCATIONAL RECIPROCITY

Background

The State Board of Higher Education has authority to make agreements with institutions of higher learning in other states and to make expenditures, subject to legislative appropriations, necessary to utilize the educational facilities of those institutions for teaching North Dakota students. The state board is also authorized to make agreements with other states to accept their students in North Dakota institutions of higher learning. At the present time, North Dakota has entered into what is known as the "Minnesota-North Dakota Public Higher Education Reciprocity Agreement." The stated purposes of this agreement are "to continue to improve the postsecondary education advantages of residents of Minnesota and North Dakota through greater availability and accessibility of postsecondary education opportunities and to achieve improved effectiveness and economy in meeting the postsecondary education needs of Minnesota and North Dakota residents through cooperative planning and effort by two neighboring states." This agreement covers institutions governed and operated by the State Board of Higher Education in North Dakota and the Board of Regents, the State University Board, and the State Board of Community Colleges in Minnesota.

Under the umbrella of authority granted the Board of Higher Education by Sections 15-10-18 and 15-10-28 and Chapter 15-10.1, the board has also entered into contracts with schools of veterinary medicine, dentistry, and optometry throughout the country to provide spaces for North Dakota residents interested in entering those professions. In the three professional areas, the Board of Higher Education is to obtain a note signed by each student "in an amount equal to the sum by which the tuition is reduced at the institution attended by such student pursuant to a contract between the institution and the Board of Higher Education." (Section 15-10-28.1, NDCC). Students are granted the option by that section of either repaying the loan upon completion of their studies or returning to North Dakota and setting up practice for a number of years to relieve the obligation.

The State Board of Vocational Education is established, among other reasons, as the controlling agency for postsecondary vocational educational programs at institutions in North Dakota which are not controlled by the Board of Higher Education. Currently, the designated postsecondary area vocational technical schools in North Dakota are the three community colleges located at Devils Lake, Bismarck, and Williston. The board is empowered to "negotiate and enter into interstate reciprocity agreements with similar agencies in other states, . . ., provided, however, that nothing contained in any such reciprocity agreement shall be construed as limiting the board's powers, duties, and responsibilities." (Section

15-20.4-03, NDCC). At the present time, no such reciprocity agreements have been entered into.

During the last interim, the North Dakota Legislative Procedure and Arrangements Committee met with the legislative members of the Minnesota Interstate Cooperation Commission to discuss matters of concern between the two states. One of the items on the agenda was vocational education reciprocity. It was pointed out at that meeting that the present agreement between North Dakota and Minnesota higher education associations does not include the vocational technical institutes in Minnesota and the three community colleges in North Dakota which are the designated postsecondary area vocational technical schools. Minnesota does have reciprocity agreements for vocational education with Wisconsin and certain portions of Iowa. They are also in the process of discussing such an agreement with South Dakota.

The 1979 Legislative Assembly defeated Senate Bill No. 2342 which would have authorized the State Board of Higher Education to enter into agreements with the Minnesota Higher Education Coordinating Board to enable, on a reciprocal basis, any resident of North Dakota to attend an approved vocational education program in Minnesota and to permit any resident of Minnesota to attend an approved vocational education program in North Dakota without being required to pay nonresident tuition fees. The intent of the Legislative Assembly was that the State Board of Higher Education investigate the feasibility of postsecondary vocational education reciprocity with Minnesota and, if feasible, enter into one or more agreements with the appropriate Minnesota entities. The bill also would have appropriated from the general fund the sum of $400,000 to the State Board of Higher Education to defray the costs of reciprocal vocational education tuition agreements with Minnesota for the biennium beginning July 1, 1979, and ending June 30, 1981.

During committee hearings on Senate Bill No. 2342, proponents testified that the reciprocity agreement would aid North Dakota by doing away with unnecessary duplication of programs between the two states. Some of the opponents believed that the reciprocity agreement would initiate an exodus of vocational education students from North Dakota. It was also pointed out that the State Board of Vocational Education or the Postsecondary Education Commission might be better able to study the problem of reciprocity in this area than the board of Higher Education.

Testimony

The Board of Higher Education explained that the Minnesota-North Dakota reciprocity agreement which currently exists started with the 1975-76 academic year. At that time, there were approximately 1,500 Minnesota students studying in North Dakota and 600 North Dakota students studying in Minnesota. These students were all required to pay out-of-state tuition. As of 1978, under this agreement, there are the equivalent of 3,100 Minnesota students studying full time in North Dakota schools and 1,850 North Dakota students studying full time in Minnesota schools. Based on these numbers of students, it is estimated that North Dakota loses approximately $1.9 million per year in out-of-state tuition. Minnesota accordingly loses $1 million in out-of-state tuition. Under the agreement, Minnesota must pay the difference in these two amounts to North Dakota after each academic year. In the first year of the agreement, Minnesota paid approximately $600,000 to North Dakota. For the 1977-78 academic year, Minnesota paid approximately $798,000 to North Dakota. The board testified that they have no authority to obligate North Dakota vocational educational schools and also have no desire to deal with individual school districts in Minnesota in the area of vocational education reciprocity. Also, this reciprocity agreement does not cover the programs which are separate agreements between the two states such as the veterinary medicine, dentistry, and optometry school slots for which North Dakota contracts.

In the area of professional school contracts with schools from around the country, North Dakota currently contracts for 12 slots in veterinary medicine schools, 18 slots in dentistry schools, and six slots in optometry schools. In veterinary medicine, 44 percent of the graduates to date are practicing in North Dakota. In optometry, the first graduates completed their programs in May 1979. Four of the five graduates receiving funds have returned to North Dakota to practice. In dentistry, of the 15 dental contract students who were first to graduate under the program in 1979, 10 are practicing in North Dakota, one is in Minnesota, two are pursuing postgraduate work in dentistry, and two have not responded to the board's inquiry. All spaces in optometry have been filled each year until this year when two of the six spaces went unfilled. All spaces in veterinary medicine have been filled in recent years. During each of the last two years, only one of the four spaces at the University of Minnesota has been filled although offers of admission were extended to North Dakota students who chose to go elsewhere. In dental schools, 16 spaces were filled in 1975, 12 spaces in 1976 and 1977, 17 spaces in 1978, and 13 spaces in 1979. Since 1975, there have been a total of 28 optometry students and 70 dentistry students under this program. Since 1959, there have been a total of 135 veterinary medicine students. The board speculated that the reasons for graduates not returning to North Dakota might be because they have family in other states or perhaps the job opportunities and financial prospects are better elsewhere.

In response to committee questions, the board commented that there still is some life in the regional veterinary medicine school concept. The idea was begun by the Old West Regional Commission which funded VESP, Inc., to study the feasibility of such a plan. In the last session, North Dakota passed permissive legislation to allow the Board of Higher Education to explore it further. South Dakota did not pass any legislation concerning the regional school but Montana officials stated that legislation already passed in their state enabled them to study the concept further. It was pointed out that Montana does have agreements with two other regional associations concerning veterinary medicine and does not want to jeopardize those contracts.

In the area of postsecondary vocational education reciprocity, the committee heard from Dr. Clyde Ingle, Minnesota Higher Education Coordinating Board, who stated that he is charged by the Minnesota Educational Board to work with North Dakota in expanding reciprocity agreements. He said there were four factors which the state should consider in deciding whether or not these agreements would be expanded. First, the chance to widen educational opportunities for students in both states; second, the costs to students, not only of education but also of transportation; third, the economies of scale which are probably greatest in vocational education; and fourth, the concern on the part of some in Minnesota that the current agreement between Minnesota and the Board of Higher Education in North Dakota allows Minnesota

students into vocational programs at the State School of Science in Wahpeton but does not allow any North Dakota students into Minnesota vocational programs at the reduced tuition rate. Dr. Ingle pointed out that the area vocational technical institutes (AVTI) in Moorhead and East Grand Forks are full at the present time. There are approximately 250 North Dakota students in the Moorhead program and just over 200 North Dakota students in the East Grand Forks facility. Dr. Ingle encouraged the committee to endorse legislation encouraging expansion of reciprocity agreements which would assist North Dakota in elimination of duplicative programs and would be of benefit to the taxpayers in both states.

During the March committee meeting in Grand Forks following the biennial summit conference at the University of North Dakota, the committee toured the East Grand Forks Area Vocational Technical Institute. At that time, the committee received testimony from North Dakota students attending that facility. These students encouraged the legislators to consider favorably the concept of vocational education reciprocity so that they could receive the same benefits which students in higher education facilities within the two states are currently receiving.

The committee also received extensive testimony from North Dakota officials concerned with postsecondary vocational education reciprocity. The state director of vocational education testified that the Board of Vocational Education has adopted a position opposing reciprocity at this time because they think the North Dakota schools are able to provide all the programs necessary. However, the board offered their assistance in the committee's study.

Dr. Kermit Lidstrom, President of Bismarck Junior College, testified only one of the 764 students currently enrolled at Bismarck Junior College is from Minnesota. Ninety percent of their students are from within 50 miles of Bismarck, with 50 percent of the students from Burleigh County and 25 percent from Morton County. He believes that a reciprocity agreement with Minnesota would probably have little or no impact on Bismarck Junior College. He did say that there are two unique programs available at BJC. These are the power plant technology program which is the only one of its kind in North America and the linemen program which is the only one available in North Dakota.

Mr. Garvin Stevens, President of UND-Williston, stated that his institution went to a nonresident/resident fee system approximately three years ago. However, he pointed out that the definition of nonresident for purposes of tuition involved people from outside the "trade area." At the present time, 78 students are paying the nonresident fees. Of these, most are from Montana with a few being from South Dakota. He believes that reciprocity with Minnesota would probably affect his institution very little since they have not traditionally had an out-of-state tuition rate and are so far from Minnesota.

Dr. Dennis Michaelis, President of Lake Region Junior College, Devils Lake, stated that reciprocity would probably have a greater effect on the Devils Lake school than on any of the other institutions offering postsecondary vocational education in North Dakota. He stated that under ideal conditions an institution should be able to stand on its programs either with or without reciprocity. However, at the present time, Lake Region Junior College is having difficulty both financially and with its enrollment. It currently has approximately 450 students enrolled, although he believes the Devils Lake area can supply as many as 750 students to the facility. He questioned the wisdom of taking any chance of hurting that institution's enrollment and emphasized the need the school has for whatever advantage it can get at the present time. He does believe that, in a few years, after programs are upgraded and stabilized, the school will be able to compete with out-of-state schools if reciprocity is instituted. A survey conducted by the postsecondary commission several years ago determined that Lake Region Junior College had the potential to handle up to 1,000 students. He pointed out that the state has invested millions of dollars in developing the postsecondary vocational facilities throughout the state. He believes that reciprocity would hurt not only Lake Region Junior College but the entire state vocational education system because of the increased competition in recruitment for a limited number of students.

In December 1979 the committee toured the Lake Region Junior College facility at Devils Lake. After this tour, the committee met with some of the school administrators to discuss the problems facing them and potential solutions. Dr. Michaelis stated that the facilities are excellent although they are in need of some minor repair. As to programs, he said he would need to look at each program individually before cutting any programs. They are organizing their efforts with the School for the Deaf and the local multidistrict vocational education center in Devils Lake to eliminate duplication. One of their goals is to provide a smooth transition from secondary vocational education programs to postsecondary vocational education programs. The school is also looking at open-ended programs in which students are able to enroll at any time during the academic year and, in certain areas, instituting a solid eleven-month program in place of the two typical nine-month school years divided by three months of summer vacation.

The committee was informed of an employment survey done in May 1978 at which time 100 percent of the graduates from four programs in Lake Region Junior College had been placed in jobs in their fields. In two other programs, 90 percent of the graduates had been placed and in the rest of the programs, 70 to 80 percent of the graduates had employment. Overall, approximately 75 percent of the students graduating from lake Region Junior College were placed in positions following graduation.

Mr. Robert C. Hadlich, President of Aaker's Business College, Grand Forks, testified on the effects of postsecondary vocational education reciprocity on private proprietary schools in North Dakota. There are currently about 51 proprietary institutions in the state including business colleges, barber colleges, hair design schools, flight schools, and nursing or medically related programs. He believes that reciprocity would be the end of many if not all of these private schools. He said the primary push behind reciprocity appears to be an attempt to resolve the problems students have funding their educational endeavors. However, he pointed out that there are a number of federal and state programs available for students to assist them in the payment of college costs. Because of these, he believes that any student who wishes to attend an out-of-state school would be financially able to do so. He also pointed out that many students who attend school out of state do not return to the state. In Minnesota, private schools are having a difficult time competing with the area vocational technical institutes there.

Recommendation

The committee recommends one bill on the vocational

education study. This bill is based on 1979 Senate Bill No. 2342 with several amendments. The responsibility for reciprocity agreements is placed with the State Board for Vocational Education rather than with the Board of Higher Education as was done with the previous bill. Also, reciprocity would not be allowed for programs instituted in Minnesota schools within 150 miles of an existing program in a North Dakota vocational school. This provision was inserted in an attempt to dissuade Minnesota schools from instituting new programs which would specifically compete with those existing at Lake Region Junior College in Devils Lake.

EDUCATIONAL FINANCE

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 upon 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 the 1973 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.

The 1979 Legislative Assembly passed legislation providing that the state foundation aid payments be made directly to school districts rather than through the county equalization fund and that the final quarter payment of this program be divided in half with the first one-eighth payment due on or before March 1 and the last one-eighth payment due on or before May 1. The foundation aid program appropriation for the 1979-81 biennium is $208,349,000. The base level per-pupil payments were increased to $903 for the first year of the biennium and $970 for the second year. Other provisions increased the transportation payments to 20 cents for smaller buses and 40 cents for larger buses and provided that a three-year average enrollment figure could be used for the first year of the biennium in determining the amount of foundation aid due each school district. The Legislative Assembly also appropriated $1 million for kindergarten programs for the second year of the biennium and enacted legislation prohibiting public elementary and secondary schools from charging for necessary textbooks.

Testimony

Dr. Richard Hill, University of North Dakota, testified on the study which he conducted entitled, "The Financing of Elementary and Secondary Education in North Dakota." This study was the result of a congressional mandate and was financed by a $100,000 federal grant. Dr. Hill testified that the most important issues which the committee and the Legislative Assembly must face are the issues of property taxation, increased funding for education, distribution of coal severance tax money, foundation program adjustments, and special education. Many of the requirements which have increased the cost of education are mandated either by the people or by the federal government and are not necessarily independent decisions of the school district. Although there might be an excessive number of course offerings in some North Dakota high schools, there seems to be a great deal of support from local communities for a rich variety of course offerings at the high school level. He emphasized the importance of hiring the best teachers available to teach the youth of the state. This means making more money available for salaries since there is always competition for these people from outside of the teaching profession.

The State Superintendent of Public Instruction testified that schools are facing a triple threat today consisting of inflation, declining enrollments, and reduced state tax collections. He said that during the second year of the biennium, school districts will not receive as much from the foundation aid program as had been anticipated. This would result in a surplus in the foundation aid program for this biennium. Some additional moneys will be paid to school districts from the oil and gas bonus fund payments but the primary reason for reduced foundation aid payments is declining enrollments. The committee studied projections from the Department of Public Instruction for enrollment in public schools through the year 1985. These projections seem to indicate that school enrollments will bottom out in the 1982-83 academic year and then increase slightly.

The Department of Public Instruction is investigating the development of a new accounting system to be used by school districts throughout the state. This system is basically a revision of the system currently in use. The primary changes are from a single to a double entry system and the switch from a cash to an accrual method of accounting. With this new system, the department and the individual school districts should be better able to pinpoint the costs of education. This would help districts which are trying to eliminate unnecessary costs.

The state superintendent indicated that the State Constitution requires uniform public education and that it is his position that this cannot be achieved if the rich districts receive the same amount of money as the poor districts. One problem is with the basic weighing factors which were originally formulated in 1973. Although these factors were relevant at that time, they need to be adjusted now. The difference in costs of education between grade schools and high schools is not as great as it used to be. Also, the weighting factor for seventh and eighth grades is the same regardless of the size of the school. Although he suggested that these weighting factors be investigated, the superintendent pointed out that there was concern on the part of many smaller school districts to keep the balance somewhat in their favor so they could continue operation.

The committee spent several meetings studying the possibility of funding a "basic" education curriculum statewide with state funds. They also investigated the option of funding a certain percentage of basic education with declining amounts of support for increased academic offerings. The Department of Public Instruction provided the committee with information on possible methods of implementing such a program and the problems involved in completely converting to a different type of educational funding system. A number of local school administrators pointed out that they were satisfied with the foundation aid program and thought that the problems they faced could be solved by simply increasing the amount of money placed in that system for disbursement to local school districts. The committee concluded that, although funding of basic education might be a viable alternative, the committee would need a great deal of additional time to study the concept before making any such recommendation.

A representative of the North Dakota Association of School Administrators testified on the problems facing school administrators. These include inflation, the

energy crisis, the cost of compliance with federal and state mandates, the burden of state and federal paperwork, the bargaining process between teachers and administrators, competency pressures, and declining enrollments, among others. A number of these problems are causing smaller school districts to experience extreme financial difficulties already. This viewpoint was reinforced by the results of a survey entitled "Summary of North Dakota School Financial Crises Survey" conducted by the Department of Public Instruction.

Another problem facing one local superintendent involved unemployment compensation. In that instance, a teacher in a public school district had been offered a renewed contract in that district for the coming academic year, refused it and accepted another job which was subsequently terminated. The original school district was now responsible for a portion of the unemployment compensation paid that teacher. In addition, the position originally offered the teacher by the first school district was still vacant. At a regional meeting of school personnel, at least 50 percent of the administrators had similar complaints concerning unemployment benefits. It was noted that certain employers in the private sector also face this problem.

The director of the Job Insurance Division, Job Service North Dakota, explained the fundamentals of the unemployment compensation system and why the original school district was liable for the unemployment compensation benefits. Under the current system, it was noted that the same situation might arise again and that declining enrollments could be construed to be "attributable to the employer" and, therefore, teachers who lose their jobs because of declining enrollments would be eligible for unemployment compensation benefits also.

The executive director of the North Dakota School Boards Association testified on the creation of a new unemployment benefits group account by his organization which is available to school districts throughout the state. He noted that the state association is working to control the costs by training people on the local level to prevent additional bases for claims from employees who are leaving, to follow up on people who are receiving benefits to make certain that they are holding themselves open for employment, and to contest some claims on behalf of schools. The cost of an appeal would be borne by the fund and not by the local school district. This program began in January 1979 and currently has 145 school districts participating.

In addressing the problems of smaller school districts which seemed to experience constant financial difficulty, the committee heard testimony from Dr. Randall Johnson, Department of Education, Minnesota. Dr. Johnson briefly explained the sparsity aid bill which Minnesota has adopted in an effort to assist small isolated school districts. He stated that 109 of the 435 school districts in Minnesota received aid last year, or approximately 25 percent. However, he pointed out that the Minnesota legislature is still trying to define which school districts were "necessary." The annual state budget in Minnesota is approximately $2 billion with some 50 percent going for education. The committee expressed interest in the plan but decided that, because of the differences between Minnesota and North Dakota, it would not be practical simply to adopt the Minnesota plan for North Dakota.

At the request of the chairman, additional alternatives were drafted for committee discussion. One of these drafts was prepared by Mr. August Keller, former West Fargo School Superintendent, with assistance from individuals in the Department of Public Instruction. This plan dealt only with students in grades nine through 12 and included no requirement for decline in enrollment before a school district would be eligible to receive sparsity aid. Mr. Keller pointed out that the sparsity aid formula was in no way established to penalize the school districts and that all school districts would continue to receive their foundation aid. Any sparsity aid would simply be an additional payment over and above the foundation program. The second alternative was prepared by Dr. Gerald Bass of the Department of Public Instruction and presented by Dr. Ron Torgeson of the department. This plan dealt with grades seven through 12 and eliminated payments for schools with more than 150 students. Committee members expressed interest in portions of each of these plans and decided to try combining them for one single recommendation.

Mr. Rudy Wagner, North Dakota State University, testified on the school bus route analysis program conducted by the Engineering Experiment Station at NDSU. The initial funding for this project came from a Department of Energy grant and the North Dakota school districts involved were charged nothing. The cost for an equivalent analysis for a school district not funded under this grant would be approximately $1,800. The study was geared to reduce the number of miles traveled and the buses used in school districts because each of these items costs money to the district. The grant from the Department of Energy was made on an annual basis, and NDSU will be submitting a new proposal for the next year. At the present time, they are doing approximately 20 districts per year but could do as many as 40 or 50 if they had additional office help. Once the analysis is conducted, the school district would not need an update for four or five years if the district remains stable in population. However, whenever a drastic population change or shift occurs in a district, the plan would have to be updated. Since this computer program was primarily established for analyzing rural bus routes, it is not as effective in analyzing city routes.

Conclusions and Recommendations

After listening to testimony, and reviewing and discussing various alternatives, the committee came to two general conclusions. First, that there was insufficient time in the present interim, considering the workload of the committee, to offer any comprehensive alternatives to the foundation aid program as a method of financing elementary and secondary education. Several individuals testifying before the committee did suggest that such a comprehensive study might be appropriate during the next interim.

The second conclusion was that alternatives should be offered to the Legislative Council which would address not only the immediate financial concerns of school districts, but also alternatives which would address the more long-range problems of these districts. Consequently, the Education Committee recommends six bills in the area of educational finance.

The first bill contains an emergency clause and authorizes the Department of Accounts and Purchases to disburse $12 million of unexpended funds in the "grants-foundation aid" line item in Senate Bill No. 2002 as passed by the 1979 Legislative Assembly. School districts would receive funds equal to 18 cents per mile for school bus transportation based on the number of miles traveled in the 1979-80 school term. This payment would be over and above the transportation aid already provided for in Section 15-40.1-16. The remainder of the money would be distributed to schools based upon their

prorated share of the average daily membership for the 1979-80 school term. It was estimated that the transportation payment under this bill would take between $4.2 and $4.5 million of the $12 million.

The second bill would change the weighting factor for elementary schools having 100 or more pupils in average daily membership but less than 1,000 pupils. At the present time this weighting factor is .9 and the bill draft would increase this to 1.0. The estimated cost for this per biennium would be approximately $8,071,818.

The third bill consists of an appropriation of $180,000 for the 1981-83 biennium to reimburse school districts for analyses of their school bus routes, to be conducted by the Engineering Experiment Station at North Dakota State University in Fargo. The state moneys are to be utilized only after federal funds are depleted and no more than 50 analyses may be completed using federal or state funds, or both, in any single year of the biennium. In addition, if more than 50 school districts apply each year, those funded by state moneys are to be determined by the department by lot.

The fourth bill appropriates $8 million for additional financial aid to isolated school districts. This plan is actually a combination of those proposed by Mr. August Keller and Dr. Bass. To qualify for aid under this bill, a school district must rank in the upper 50th percentile by size in square miles and have no more than one public high school in the year for which aid is to be paid. Also, if the high school is less than eight miles from any other public high school in another district, it is ineligible for aid. The schools which otherwise qualify may be eligible for a fractional payment depending upon the distance from a public high school in another district. If they are between eight and 10 miles from such a high school, they would receive a one-third payment and if they are over 10 but not over 12 miles from a public school in another district, they would receive a two-thirds payment. Committee testimony pointed out that comptuer runs should be made on this formula to determine the cost. Adjustments may be necessary to remain within the $8 million appropriation. The Legislative Council did authorize payment of funds to the Department of Public Instruction to make these computer runs before the session.

The final two bills consist of alternatives for amendments to the unemployment compensation law to correct the problem presented to the committee by local school superintendents. The first bill amends Section 52-06-04 and provides that wages earned in insured work by an individual who leaves a base period employment, either voluntarily or through misconduct connected with the employment, are not to be included in the base period for the purpose of determining that individual's monetary eligibility to receive unemployment compensation. However, compensation cannot be totally denied to any otherwise eligible individual by reason of this bill.

The second alternative amends Section 52-06-02 and provides that an individual is to be disqualified for benefits if he has left his last or any base period of employment voluntarily without good cause attributable to the employer, or for misconduct, unless he can demonstrate that he has earned remuneration for personal services in employment equivalent to at least 10 times his weekly benefit amount and has not left his last work under disqualifying circumstances.

FINANCE AND TAXATION COMMITTEE

House Concurrent Resolution No. 3028 directed the Legislative Council to study the tax laws of North Dakota as they apply to financial institutions, including banks and trust companies, building and loan associations, insurance companies, and credit unions. House Concurrent Resolution No. 3054 directed the Legislative Council to study taxation, and the effects of taxation, on sales of water, including the question of whether any particular exemptions are appropriate.

House Concurrent Resolution No. 3068 directed the Legislative Council to study the energy tax structure of North Dakota, including the effect of certain taxes on new industries and new technologies, the proper methods of allocating revenues derived from energy taxes, the long-range impacts of energy taxation on energy production and on state and local units of government. House Concurrent Resolution No. 3071 directed the Legislative Council to study the impact of energy-related revenues on state and local government, the needs of local government resulting from energy development, a method to project revenue needs of local government, and the distribution of energy development taxes during the 1979-81 biennium. A portion of this study was conducted by the Budget Section.

In addition to these studies, the Finance and Taxation Committee studied the area of property taxation after requesting and receiving authority to do so from the Legislative Council. This study need arose after the North Dakota Supreme Court's decision in the case of Soo Line Railroad Company v. The State of North Dakota, et al.

Committee members were Senators Chuck Goodman, Chairman, Shirley Lee, Evan Lips, Bonnie Miller Heinrich, Frank Shablow, and Stanley Wright; and Representatives Dayle Dietz, Ralph Dotzenrod, William Gackle, Alvin Hausauer, James Kennelly, Roger Koski, Peter Lipsiea, Gordon Matheny, Alice Olson, Emil Riehl, and Mike Timm.

The report of the Finance and Taxation 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-seventh Legislative Assembly by the Legislative Council in November 1980.

TAXATION OF FINANCIAL INSTITUTIONS

Background — State Taxation

The primary tax currently levied against banks and trust companies is established under Chapter 57-35 of the North Dakota Century Code and is in lieu of most other taxes imposed by the state. The tax is based upon the measure of net income of each bank or trust company for the preceding year and is set at five percent of that net income or a minimum of $50. The tax is paid to the county treasurer who apportions it to the state, county, and political subdivisions in which the bank or trust company is located on the same basis on which the general real estate tax levy is apportioned and distributed. An additional privilege tax on the net income of these institutions was approved by the 1969 Legislative Assembly. This tax, in the amount of two percent, is deposited entirely in the state general fund.

A privilege tax similar to that established for banks and trust companies under Chapter 57-35 is also imposed upon building and loan associations under Chapter 57-35.1. This "in lieu" tax is also five percent of net income, or a minimum of $50, and is distributed in a manner similar to the tax on banks and trust companies.

Additionally, a two percent privilege tax is imposed on banks and savings and loan associations by Chapter 57-35.2. The receipts of this tax go to the state general fund.

The Commissioner of Insurance is authorized to collect the following taxes annually from insurance companies doing business within the state:

"1. From every insurance company doing business in this state except stock and mutual companies organized under the laws of this state, a tax equal in amount to two and one-half percent of the gross amount of premiums, membership fees, and policy fees received in this state during the preceding year, such tax to be payable at the time when the annual statement of business required by law is filed; provided, however, that this tax shall not apply to considerations for annuities.

2. From every domestic fire insurance company, whether mutual, stock, or otherwise, a tax upon its fire insurance premiums or assessments, or both, equal to one-half of one percent of the gross premiums and assessments, less return premiums on all direct business received by it, or by its agent for it, in cash or otherwise in this state. Such tax shall be collected for the purpose of assisting in the maintenance of the fire marshal's department and shall be payable on or before April first in each year." (Section 26-01-11, NDCC).

This statute does not preclude the application of other taxes mandated by the state. Therefore, the insurance companies are still subject to taxes such as the property tax and, except for insurance companies paying a tax upon the gross amount of premiums received in the state, income tax.

Credit unions organized under the laws of North Dakota or under the Federal Credit Union Act are "exempt from all taxation now or hereafter imposed by the state or any municipality within the state or any local taxing authority." (Section 6-06-29, NDCC). However, this exemption does not apply to any taxes on real property or tangible personal property owned by the credit union, whether organized under North Dakota or federal law.

Section 57-38-09 exempts certain organizations from application of the income tax provided for by Chapter 57-38. These organizations include mutual savings banks which do not have capital stock represented by shares; banking associations organized under either North Dakota or federal law, which have their principal place of business in this state; trust companies organized under North Dakota law and which have their principal place of business in the state and pay a tax upon the gross amount of premiums received in the state; as well as insurance companies doing business in the state and paying a tax upon the gross amount of premiums received in the state.

Background — Federal Taxation

For the purpose of taxation by any state, a national bank "shall be treated as a bank organized and existing under the laws of the state or other jurisdiction within which its principal office is located." (12 U.S.C. 548).

With respect to federal savings and loan associations, no state, county, municipal, or local taxing authority can "impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than

that imposed by such authority on other similar local mutual or cooperative thrift and home financing insitutions." (12 U.S.C. 1464h).

Federal credit unions, their property, franchises, capital, reserves, surpluses, and other funds, and their income are exempt from all taxation by federal and state taxing authorities; except that any real or any tangible personal property is subject to federal, state, and local taxation to the same extent as other similar property is taxed. (12 U.S.C. 1768). This section does not preclude any holdings in a federal credit union from being included in the valuation of the personal property of the owners when taxed by the state or local authorities; the duty to collect such tax cannot be imposed on the credit union and the tax may not exceed the rate imposed upon holdings in domestic credit unions.

Insurance companies are taxed federally on taxable income. There are no federal requirements for state taxation of insurance companies.

Testimony

The sponsor of the study resolution testified that it was his intent that the committee study the different treatments given to various financial institutions and determine whether changes should be recommended through legislation. Also, he hoped to make legislators better informed on this subject.

A representative from the Tax Department testified that the state received, in 1977, $1,823,589.76 from the five percent tax on banks and $490,229.16 from the five percent tax on savings and loan associations. It was pointed out that this money was allocated to local subdivisions and not to the state government. However, the additional two percent tax on these institutions which was not broken out by dollar amount does go to the state general fund. It was also pointed out that the financial institutions are obligated to pay real estate taxes.

Testimony from the Tax Department indicated that previous studies have shown that the state would lose revenue if financial institutions were taxed in the same way as other corporations. New legislation generally creates three concerns by financial institutions: (1) that legislative intent be made clear; (2) that various types of institutions receive equal treatment; and (3) that they are not being discriminated against compared with treatment given out-of-state competitors.

Testimony from the North Dakota Bankers Association based on a survey undertaken by that association's legislative committee showed that a group of 17 banks paid approximately 27 percent more under the current law, and another group of banks paid 31 percent more, than they would have paid under the corporation tax rates. The organization testified that they were not lobbying for a change to private corporation status but would oppose paying more than the cumulative seven percent privilege tax currently levied. Any change in the allocation of those taxes would be a matter to be considered by the Legislative Assembly. Also, with regard to taxation of credit unions, the association stated that if the credit union operations are expanded to include areas traditionally reserved to banks and savings and loans, they should be taxed in the same manner.

Testimony from representatives of the North Dakota Savings and Loan League indicated that there are 11 savings and loan associations in the state with assets of about $2 billion as of 1979. These associations make more than 80 percent of the home loans in the state and federal law requires that 80 percent of their loan volume be for homes. The savings and loan associations are mutual associations as opposed to stock companies; profits go either to (1) a required federal insurance reserve or (2) a surplus account for costs of overhead, building programs, or potential money shortages. It was pointed out that the effective federal tax rate is now higher for savings and loan associations than for banks. According to a Chicago accounting firm study, federal income taxes paid by savings and loans for 1978 were nearly the same as paid by banks, even though savings and loans have only about one-half the net income of banks.

The league also pointed out that 37 states, including North Dakota, tax financial institutions on the basis of income. Account holders are taxed by 39 states on interest received from savings. The volume on savings is now quite low throughout the country and Congress is considering legislation to allow some portion of savings interest to be excempt from taxation. The league urged the legislature to federalize North Dakota law accordingly if such a change were made by Congress.

The North Dakota Credit Union League testified that it represents 70 state-chartered and 29 federally chartered credit unions domiciled in North Dakota. As of December 31, 1978, these credit unions represent approximately 126,000 members and have assets of approximately $208,000,000. Credit unions in North Dakota are subject to real estate, payroll, and use taxes where applicable. State-chartered and federally chartered credit unions in North Dakota are exempt from income tax, privilege tax, and sales tax. The league testified that there are a number of reasons for exempting credit unions from these taxes. Credit unions are organized and operated on a nonprofit basis. The members own and control the credit union and they share in its distributed income as well as in retained reserves at dissolution. Also, virtually all income after expenses and required reserves is returned to members in the form of dividends. These dividends are fully taxable as interest, and there are no exemptions or exclusions such as the exclusion allowed stock dividends under the Internal Revenue Code. This tax-exempt status is based on the structure of credit unions and not on the types of services they offer.

The league also pointed out that there are a number of powers which are not available to credit unions which are available to other financial institutions. Access to federal funds through the Federal Reserve is one of these. In times of low liquidity, credit unions do not have access to funds in the Bank of North Dakota, since they are not empowered by statute to borrow from that bank. Finally, if credit unions were to have their tax exemption removed, the most probable outcome of that would be for state-chartered credit unions to convert to federal charters to retain their tax-exempt status. The state would then lose a great deal of its regulatory power over these institutions. In addition, since credit unions usually do not build up large reserves, a tax on undivided earnings would yield a very small amount of revenue to the state.

A representative of a number of insurance companies testified that, although the 2.5 percent tax on gross premiums paid by companies chartered outside this state has not changed, the amount of tax collected by the state has increased greatly in recent years due to the large increase in the volume of business by these insurance companies. The cost to the state of administering the tax has not risen substantially. He also testified that the tax on fire insurance premiums in the amount of one-half of one percent is an example of double taxation for those insurance companies.

The Insurance Department testified that North

Dakota received approximately $8 million from premium taxes in fiscal year 1978. The out-of-state insurance companies pay a premium tax ranging from 2.5 to four percent in lieu of the state income tax. Only companies selling fire insurance paid the special Fire Marshal tax on those premiums. Although the premium tax applies to all kinds of insurance, the Fire Marshal tax is applied only to fire insurance premiums of domestic companies. All revenue from the insurance premium tax goes to the state general fund. The appropriation for the Fire Marshal's department exceeds the revenue raised by that tax. It was pointed out that county mutuals do not pay income tax because they are "assessment" companies. Originally, members were assessed to pay for any loss suffered and the theory was that the company had no earnings. Now, the fee or premium is assessed in advance but it is small compared to other companies.

Recommendation

The committee concluded from testimony that there was little opposition to the present methods of taxing financial institutions and that, in large part, the taxation of a number of these institutions is directly controlled by federal legislation. Therefore, the committee agreed to table this study with the provision that any single member of the committee could ask that it be placed back on the agenda at a subsequent meeting should some further study be necessary.

WATER SALES TAX

Background

At the present time, a tax of three percent is levied upon the gross receipts from all sales at retail within North Dakota for the "furnishing or service of steam, gas, water, or communication services." (Section 57-39.2-02.1, NDCC). There are no statutory provisions which would exempt any sales of water from the provisions of the state sales tax. Bottled water is specifically excluded from the definition of "food" for purposes of the sales and use tax exemption on food and food products. (Sections 57-39.2-04.1 and 57-40.2-04.1, NDCC).

Testimony

The North Dakota Rural Water Systems Association testified that rural water systems began development with the Grand Forks-Traill Water Users in 1972. At the present time, systems around the state are serving approximately 5,500 users representing about 50,000 people. These systems depend almost entirely on the Farmers Home Administration for loan and grant funds although the Bank of North Dakota has assisted to some degree. The objectives of a rural water system are to locate the most reliable water source with the best water quality in the community, provide minimum treatment to meet North Dakota health standards, then pipe it to users who desire to become members of a community water system. Two of the most important factors in establishing district lines are user interest and engineering feasibility. Each potential user pays an initial signup fee of $50. Another $200 fee, paid before the system begins operation, is set aside in a reserve fund.

The North Dakota Rural Water Systems Association testified that it is not necessarily advocating complete removal of the sales tax on water. However, they thought it unfair for the sales tax to be charged on the entire rural water bill because it includes principal and interest payments on the delivery system. Rural water systems must include debt retirement in billings to their customers since they do not have the capability to levy assessments. In the cities, water rates are based on operation and maintenance cost since the pipelines are usually paid for by special assessments. The association estimated that as much as 70 percent of the rural water systems' billing represented debt retirement. They had met with the Tax Department but had been unable through administrative or regulatory methods to exempt this portion from application of the sales tax.

Recommendation

The committee requested that three bills be drafted in this area. The first bill exempted all sales of water, including bottled water, from sales tax. The second bill exempted from sales tax that portion of the rural and city water bills representing debt retirement. The third bill exempted from sales tax the portion of the rural water system charges representing debt retirement. The Tax Department testified that the fiscal effect of the first bill which would exempt all sales of water from sales tax would be a loss of revenue of approximately $882,000 per biennium. It was pointed out that this fiscal note did not build in rate increases or make projections for future revenue. Both of these would be taken into account in a fiscal note presented to the Legislative Assembly if the bill is introduced.

Although fiscal notes were not available for the other two alternative bill drafts, the committee generally agreed that these figures would be considerably lower. There was some discussion about the possibility of other rural service groups requesting similar debt retirement exemptions if this route were followed.

The North Dakota League of Cities testified that the sales tax on water should not be removed. However, the committee considered the relatively light fiscal note for removing the sales tax entirely on water and voted to approve the bill totally exempting water sales.

ENERGY TAXATION

Coal Conversion and Coal Severance Taxes

Chapter 57-60 which provides for a privilege tax on coal conversion facilities has remained essentially intact since initial enactment by the 1975 Legislative Assembly. This chapter imposes an annual tax on each coal conversion facility for the privilege of producing the products of the facility. For all coal conversion facilities other than electrical generating plants and coal gasification plants, the tax is measured by the gross receipts derived from such facilities for the preceding calendar year and is in the amount of 2.5 percent of such gross receipts. For electrical generating plants, the tax is .25 of one mill on each kilowatt hour of electricity produced for the purpose of sale. For coal gasification plants, the tax is either the amount provided for coal conversion facilities or 10 cents on each 1,000 cubic feet of synthetic natural gas produced for the purpose of sale, whichever is greater. (Section 57-60-02).

The taxes imposed by this chapter are in lieu of ad valorem taxes on the property so classified as personal property. Each coal conversion facility shall be classified as personal property and is exempt from all ad valorem taxes except for taxes on the land on which such facility is located. The taxes under this chapter are also in lieu of taxes imposed by Chapters 57-33 and 57-33.1 on cooperative electrical generating plants that qualify as coal conversion facilities.

The present allocation formula which was enacted by the 1977 Legislative Assembly distributes 35 percent of the revenues collected to the counties from which they

were collected and 65 percent to the state general fund. The county revenue distribution formula allocates 30 percent to the cities in the county based upon population, 40 percent to the county general fund, and 30 percent to school districts based on average daily membership. According to Tax Department testimony, the coal conversion facilities tax collections for fiscal year 1978 totaled $1,917,997.09. Of this amount, $398,439.06 went to Mercer County; $272,859.86 went to Oliver County; and $1,246,698.17 went to the state general fund. For fiscal year 1979, the total collections were $2,237,396.33. Of this amount, $418,372.76 went to Mercer County; $364,715.92 went to Oliver County; and $1,454,307.65 went to the state general fund. The Tax Department has estimated that the receipts from the coal conversion facility privilege tax for the 1979-81 biennium will total $6,319,250 with $2,212,250 going to the counties and $4,107,000 going to the state general fund.

The coal severance tax was initially enacted by the 1975 Legislative Assembly pursuant to recommendations of the 1973-75 interim Committee on Finance and Taxation. Changes to this law were made in 1977 and 1979. The 1979 Legislative Assembly passed House Bill No. 1257 which essentially reenacted provisions of the coal severance tax and the impact aid program. However, the coal severance base tax was set at 85 cents per ton with an escalator provision to increase semiannually the rate of tax by one cent per ton for every four-point increase in the index of wholesale prices for all commodities.

The moneys collected by the State Tax Commissioner under this Act are to be paid to the State Treasurer and credited to a special fund in the state treasury to be known as the Coal Development Fund. Each quarter, the State Treasurer is to apportion funds in the coal development fund as follows: 35 percent is to be credited to a special fund in the state treasury, subject to legislative appropriation, for distribution through the Coal Development Impact Office to impacted cities, counties, school districts, and other taxing districts; 15 percent is to be held in trust to be administered by the Board of University and School Lands for loans to impacted counties, cities, and school districts; 30 percent is to be deposited in the state general fund; and the final 20 percent is to be allocated to the coal-producing counties to be divided between cities, school districts, and the county general fund.

House Bill No. 1402 was also passed by the 1975 Legislative Assembly and provided further changes in the disposition of the final 20 percent depending on whether the tipple of any currently active mining operation is within 15 miles of another county in which no coal is mined. If not, the revenue goes entirely to the coal-producing county. If it is within 15 miles of a non-coal-producing county, the revenue from that mine is shared with the adjacent county. The trust fund with the 15 percent allocation is to be perpetual and used as a replacement for depleted natural resources.

Testimony

The Tax Department testified that for fiscal year 1978, $7,856,061.66 was collected from the coal severance tax. This tax payment came from coal mined in Adams, Bowman, Burke, Grant, McLean, Mercer, Oliver, Stark, and Ward Counties. Under the statutory distribution formula, the counties received $1,571,121.31; the Impact Office received $2,749,621.59; the Land Board received $1,178,409.26; and the state general fund received $2,356,818.50. For fiscal year 1979, the total tax collections for the same counties came to $11,970,224.68. The counties' portion amounted to $2,394,044.92; the Impact Office received $4,189,578.65; the trust fund received $1,795,533.70; and the state general fund received $3,591,067.41. On October 5, 1979, the Tax Department estimated that receipts under the coal severance tax for the 1979-81 biennium would total $29,284,000. Of this amount, the state general fund would receive $8,785,000; the Coal Development Impact Office would be entitled to $10,249,000; the trust fund would receive $4,393,000; and the appropriate counties would receive $5,857,000.

The committee heard testimony from Mr. August Keller, Director of the Coal Impact Office, who pointed out that the appropriation for the 1979-81 biennium to the Coal Impact Office was $8,229,509. Although the 35 percent allocated by the statutory distribution formula might raise more than this amount, he is limited in his grants to the legislative appropriation. He also noted that he cannot award any money until it has actually been received from the severance tax collections. As of September 1980, Mr. Keller said that he had reviewed 177 applications. Complete or partial approval was granted to 109 and 68 were denied. The total amount approved was $5 million.

In assessing requests for funds, the Coal Impact Office uses the following guidelines:

1. Is the applicant receiving any other money as a result of the development activity?
2. Is the applicant situated in the current development area?
3. Can the degree of impact be considered negative?

The primary factor in determining the award of a grant is whether or not the proposed project will alleviate a negative impact and to what degree. Although the law gives no specific definition to primary impact, it does require that the funds be used for that purpose only. Mr. Keller did note that as the impact of coal development accumulates, it tends to spread into a wider geographic area.

The committee discussed the possibility of changing the relative emphasis on coal severance and coal conversion taxes. Concern was expressed about the effect a shift in the levels of tax would have on counties in the impact areas. It was pointed out that if the conversion tax were raised and the severance tax lowered accordingly to produce the same amount of revenue, the counties with the conversion plants would receive more money but coal-producing counties would lose money. Also, construction causes a great deal of impact and no conversion tax revenue is received until the plant is complete.

The committee did investigate the fiscal effects of increasing the mill rate from .25 to .40 and, using the base figures from 1979, lowering the severance tax so that the same amount of revenue would be produced as under current formulas. Using the fiscal year 1979 figures, the Tax Department testified that the actual coal severance tax collections had been $11,970,224.68 and the coal conversion tax collections had been $2,237,396.33. By increasing the coal conversion tax to .40 mills and lowering the severance tax proportionately, the severance tax would bring in $10,597,188.17 and the coal conversion tax would bring in $3,579,834.12. The net effect of this would be to increase the portion going to the counties by $195,245.97. However, the only two counties showing any actual increase in dollar amounts would be Mercer and Oliver, the two counties with coal conversion facilities. All of the other coal-producing counties would lose money under this proposal. The Impact Office would lose $480,562.79; the Land Board would lose $205,955.47;

and the state general fund would have a net gain of $460,673.57.

The committee received a letter from the McLean County Commission indicating its satisfaction with the current distribution of the coal severance and coal conversion taxes. After discussion of the matter, the committee decided at its January 1980 meeting to spend its future meetings concentrating on the oil and gas gross production tax rate and distribution formula.

Oil and Gas Gross Production Tax

The oil and gas gross production tax was first enacted by the 1953 Legislative Assembly as the result of an interim study. At the present time, Chapter 57-51 of the North Dakota Century Code provides for a gross production tax of five percent of the gross value at the well on all oil and gas produced in North Dakota, less the value of any exempt portions. This gross production tax is in lieu of all ad valorem taxes levied by the state, counties, cities, townships, school districts, and other municipalities, "upon any property rights attached to or inherent in the right to producing oil or gas." (Section 57-51-03, NDCC). However, this tax is not in lieu of income taxes or excise taxes upon the sale of oil and gas products at retail. Only the equipment, machinery, tools, materials, or property actually necessary and being used at the site of a producing well are exempt. Real property is subject to property tax except to the extent that the oil and gas gross production tax is in lieu of the tax on the mineral interest.

When the State Tax Commissioner has collected the taxes under this chapter (Chapter 57-51), they are to be forwarded to the State Treasurer who, quarterly, is to pay the county treasurers their share. Of the total amount, one percent of the gross value at the well is to be credited to the state general fund. Of the first $200,000 of tax revenue over and above the initial one percent just mentioned, 75 percent is to be distributed to the county where the oil or gas was produced, and 25 percent is to go to the state general fund. Of the next $200,000 of tax revenue, 50 percent goes to the county and 50 percent to the state general fund. Of all additional funds collected, 25 percent goes to the county and 75 percent to the state. Of the money credited to the county, 40 percent is to be deposited in the county road and bridge fund, 45 percent is allocated to the school districts of the county on an average daily attendance distribution basis, and the final 15 percent is divided among incorporated cities of the county based on their populations at the last official decennial federal census.

The Tax Department testified that oil and gas gross production tax revenues for fiscal year 1978 totaled $10,711,028. Of this amount, $7,106,250.55 went to the state general fund and $3,604,777.45 was distributed to the producing counties. For fiscal year 1979, the total tax collected was $13,423,905.97. Of this amount, $9,287,552 went to the state general fund and $4,136,353.97 went to the producing counties.

Testimony from the Tax Department and the North Dakota Petroleum Council indicated some of the problems in predicting revenues for the coming biennium. At the present time, North Dakota oil is divided into three tiers for purposes of fixing the price per barrel. The difference between these classes is gradually decreasing until total decontrol takes place in October 1981. Therefore, because production levels are often determined by the price which oil can command, and because the present price is determined by the world market, estimates of both production and revenue for the future vary widely depending on who is making the predictions. It was generally agreed that because of increased prices and production, the oil and gas gross production tax revenues will be significantly higher in the future than they have been in the past.

The Tax Department had made some preliminary estimations of the revenue which would be generated by the 6.5 percent tax on oil extraction as proposed by the Initiated Measure No. 6, approved at the general election on November 4, 1980. According to its figures, approximately $241,000,000 would be raised between January 1, 1981, and June 30, 1983, a collection period of nine quarters. The department's forecasting method took into consideration such factors as the federal price decontrol program, production projections of the Department of Energy and the North Dakota Geological Survey, life expectancy of oil wells, and potential market forces. It was pointed out that the initiated measure is a straight percentage of taxable value with no increments and that it applies only to crude oil. The Tax Department went on to testify that they have not made an official projection of the revenue to be generated by the five percent production tax for the next biennium. However, an unofficial calculation would be approximately $180 million to $200 million. If the current distribution formula is still in effect, there would be a percentage split of 75-25 between the state general fund and the producing counties.

The bulk of the testimony on the oil and gas tax came from local county officials. Generally speaking, they had no problem with the level of oil and gas tax presently imposed. However, they had serious misgivings about the present distribution formula for that tax. Their primary concern seemed to be that, as the oil and gas gross production tax revenues increased, a smaller percentage was going to the counties and a greater percentage to the state general fund.

In addition to the problem of the amount of money going to the counties, local officials expressed some concern over the disposition of that money within the counties. This money is currently divided between the county road and bridge fund, school districts, and cities within the county. There seemed to be no question that schools and roads in the oil-producing areas were being affected severely. The superintendent of schools from Williston testified that some of the impacts on school districts, in part due to oil development, are (1) the need for bond issues for new facilities and (2) the high rate of student transfers. Although schools receive 45 percent of the portion allotted to the county, this amounts to only four percent of the total budget for the Williston school district. The superintendent from Tioga stated that their student population expanded from less than 200 to nearly 900 students during the oil boom and currently numbers about 600 students. Although their student population has stabilized somewhat, he pointed out that surrounding areas are currently experiencing the same type of fluctuating student enrollment that Tioga had in the past.

There was also a great deal of discussion by local officials on the problems relating to maintenance of roads in local areas. It was pointed out by the oil-producing counties that many of these roads were built by oil companies and lead to wells. These roads would not have been necessary if there had been no oil development. However, now that they are in existence, the county is obligated to maintain them. This problem even extends to roads in the eastern part of the state.

It was pointed out that the eastern part of the state is experiencing secondary impact of energy development with the construction of pipelines and powerlines. The

traffic increases the cost of road maintenance but townships in those areas do not receive any impact money or tax revenues.

Another problem faced by the oil-producing areas were salaries of local governmental officials which had to be increased in order to compete with the salaries offered by energy companies for the few employees available in those counties. Also, there was a need for increased law enforcement capability and other local services such as health and social services. Compounding these problems is the fact that many workers in the oil areas do not always live in those areas. Therefore, there is not necessarily a corresponding growth in the tax base.

Although some of the local officials advocated increasing the oil and gas gross production tax level, most of their suggestions centered around the disposition of the revenues generated by that tax to provide a more equitable balance between the state and county shares of the tax revenue. Several of these officials proposed a change in the monetary brackets used to divide money between state and county. These proposals would have increased the current $200,000 brackets to either $400,000, $500,000, or $800,000 each.

Another proposal would have divided the first one percent of the tax which currently goes to the state general fund and allocated a portion of it to the general fund and the remainder to the State Highway Department to use as matching funds for construction and maintenance of secondary roads. A third proposal would take the money currently deposited in the county road and bridge fund and divide it equally between the road and bridge fund and the county general fund, allowing counties more flexibility to address other areas of impact.

Recommendations

The committee recommended four bills in the area of energy taxation. The first bill would have added an additional tax on oil and gas gross production of three percent. The proceeds of this tax would have been deposited in the state general fund. However, the Legislative Council voted not to accept this bill.

The other three bills deal with the allocation of the present five percent oil and gas gross production tax. One of these would change the distribution of the original one percent which currently goes to the state general fund. Under this bill, the moneys would still go to the state general fund but 15 percent of this original one percent would be earmarked for the State Highway Department for use by the Secondary Roads Division to assist in constructing and maintaining local roads. Another bill approved by the committee would change the distribution brackets for the remaining four percent of the tax. The current brackets are in increments of $200,000. Under this bill, these brackets would be raised to increments of $400,000. The final bill would change the distribution of a portion of the moneys going to the counties. Under current law, 40 percent of this money is deposited in the county road and bridge fund. Under this bill, this 40 percent would be divided equally between the county road and bridge fund and the county general fund.

PROPERTY TAXATION

Background

The property tax in North Dakota is the principal revenue source for political subdivisions and it now raises approximately $190 million a year. Although state law requires that property be assessed at its true and full value, it is common knowledge that property is assessed at a statewide average of approximately 10 percent of its true and full value. Inflation has, in recent years, 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.

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 5, Article X, of the Constitution (formerly Section 176) 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 farmland — 10.5 percent; residential property — 15.1 percent; commercial property — 16.8 percent; and property assessed by the State Board of Equalization — approximately 24 percent. The figures used during the 1979 Legislative Session were farmland — 6.8 percent; residential property — 10.4 percent; commercial property — 12.2 percent; and property assessed by the State Board of Equalization — 18.4 percent. These figures were recently updated by the Tax Department in a report to the interim Finance and Taxation Committee. The more recent figures show that agricultural land assessment is at 5.6 percent; residential property at nine percent; commercial property at 10 percent; and property assessed by the State Board of Equalization at 15.5 percent.

The most important development in the area of property tax since the 1979 Session is the decision in the case of Soo Line Railroad Company v. The State of North Dakota, et al. In this case, the Soo Line Railroad challenged the assessments made by the State Board of Equalization for the years 1974, 1975, and 1976. The district court ruling in favor of the State Board of Equalization was reversed by the North Dakota Supreme Court on December 5, 1979. Among other things, the Supreme Court held that the State Board of Equalization must redetermine the Soo Line's assessments for the years 1974, 1975, and 1976, in accordance with Chapter 28-32 of the North Dakota Century Code. Also, the court said the use of a higher percentage of assessed value for centrally assessed property than that used for locally assessed property is impermissible under state law; and that the court would "no longer countenance de facto classification of property in North Dakota for purposes of taxation." The court did not address the question of whether all property must be assessed at 100 percent of its true and full value because parties to the case did not raise that issue. The original court opinion held that all assessments must be uniform beginning in 1980. However, on a petition for rehearing, the court delayed the effective date of the opinion until 1981. As a result of this decision, the interim Finance and Taxation Committee requested and received authority from the Legislative Council to study the topic of property taxation.

Testimony.

During committee testimony on the effects of the Soo Line case and the supplemental decision, it was noted that the property tax year begins on February 1 and that passage of a bill with emergency clause by that date might solve the problem. Also, the committee heard testimony that other utilities would not be able to file similar suits for the same years because of the time limitation for such action has expired. Also, the Supreme Court decision did not speak specifically to utility property but referred to

all property in stating that de facto classification will no longer be tolerated.

The decision, the committee heard, mandated that property assessed by the State Board of Equalization no longer be assessed at a rate higher than that used for local property assessments. The testimony noted that the State Board of Equalization made the railroad assessment under the authority of an Attorney General's opinion which was requested concerning the Federal Railroad Revitalization and Reorganization Act. A suit was brought under this Act, which provides that the state cannot assess railroad property at a higher rate than commercial property, and a recent decision by the Federal District Court upheld the railroad's position.

The committee received graphic data illustrating the shift in tax burden which would occur if all types of property were uniformly assessed at 10 and 100 percent of value. If property had been assessed at 100 percent of full and true value in 1978 without a corresponding change in the mill levy rate, the tax paid by farm property would have increased 199 percent. For commercial property, the increase would have been 57 percent; for residential property, the increase would have been 77 percent; and for utility property, the increase would have been 93 percent. Statistics were applied to 1978 property tax receipts and showed that, at 10 percent of value and adjusting mill rates for most levies to raise the same dollar amount of revenue, in one year the tax burden on farm property would increase 24 percent statewide. The property tax burden on residential, commercial, and utility property would decrease by the respective amounts of five percent, 17 percent, and 46 percent. The net effect would be about a two percent increase in statewide property tax collections.

It was pointed out to the committee that two problems with administering the property tax system are the difficulty in identifying the tax base and the fact that assessors are not adequately trained or equipped with the proper tools. The goal of the State Supervisor of Assessments is for all counties to use the same method of assessment, but it is unrealistic, he said, to expect complete uniformity. Not all counties have access to the same information and local boards have substantial control in determining assessment methods. The Tax Department does teach uniform methods of assessment to county directors of assessment and many are becoming qualified to conduct schools at the local level.

The Tax Commissioner suggested that although local assessors are important, the North Dakota system was outdated with too many assessment districts and the problem of unequal assessment will not be solved without countywide assessors who are trained and given the necessary information. In relation to this, several individuals spoke of the need of a full disclosure provision for reporting sales of property. Groups advocating this type of legislation included the Stockmen's Association and the North Dakota Association of Realtors.

The Stockmen's Association testified that it had reached a general agreement with the North Dakota Farm Bureau and the North Dakota Farmers Union on a proposed approach to property assessment and taxation. The approach calls for all property to be assessed at 10 percent of its value with the value of each class to be based on an earned capitalization rate. This rate would be determined by the State Board of Equalization on the basis of actual or potential earnings. Although the assessment rate would have to be constant for all types of property, the capitalization rate could vary. North Dakota Farmers Union testified that the farmers consulted on this approach so far seem to believe that assessment based on capitalization would improve the system. The North Dakota Farm Bureau testified that the income approach which is generally used to assess agricultural property is also applicable to city rental property. They believe it is important for all classes of property to be assessed uniformly according to their value and that the value be determined by an earned capitalization rate established by the State Board of Equalization.

Testimony indicated that a task force led by Dr. Jerome Johnson of North Dakota State University is studying the capitalization by income approach to agricultural assessment and is considering whether the same approach could apply to commercial and residential property. At the September 1980 committee meeting, Professor Glenn Pederson, a representative of this study group, described the income capitalization approach which is being explored as an alternative approach to the valuation of land. He said the method is widely used for establishing the value of rural property where an income flow exists. A number of problems still must be solved to develop data which is complete, consistent, and meaningful. However, he noted that the results of this study might not be available until April 1981. (Note: Additional funding has been authorized by the Legislative Council under a contract providing that the results of this study will be received early in the next legislative session.)

Committee discussion on the property tax question revealed that there would be no single consensus among committee members on the best method of solving the problem. The chairman suggested that the committee look at several different approaches and offer alternative bill drafts to the Legislative Council for their approval.

Recommendations

The committee recommends three bills to the Legislative Council in the area of property taxation. The first bill would require all property to be assessed at 10 percent of its true and full value. Under this alternative, all property would be assessed uniformly with no differences between the classes of property. The 21-mill levy for schools would be repealed and replaced by an appropriation from the state general fund. In addition, this measure provides that statements of full consideration be filed with the State Board of Equalization or the register of deeds whenever a deed is filed. The purpose of this provision is to make sales information available to assessing officials. The appropriation attached to this bill is $33,000,000 for the 1981-83 biennium. However, testimony during committee meetings indicated that an additional sum might be necessary to replace fully the 21-mill levy. The committee decided that information on this would be more accurate during the session and a change could be made at that time. This bill was based on Senate Bill No. 2062 from the 1979 Session with the full disclosure clause from House Bill No. 1550 added. Also, this bill contains a repeal of the 21-mill levy and replacement of those funds with a state appropriation.

The second proposal would provide for the classification of property in four statutory classes. These classes would be agricultural land; residential real property; business, commercial, and railroad property; and all property assessed by the State Board of Equalization except railroad property. The levels of assessment would be established by law at 6.8 percent for agricultural land; 10.4 percent for residential real property; 12.2 percent for business, commercial, and railroad property; and 18.4 percent for property assessed by the State Board of Equalization, except railroad property. Assessments on

each of these classes could vary by an amount not to exceed 10 percent of the percentage amount provided for that class of property. This bill was based on House bill No. 1550 from the 1979 Session except that it included a short legislative intent section and listed specific assessment levels for the different classes of property rather than allowing the State Board of Equalization to set those levels.

Other provisions in the second alternative include a section which would place limitations on increases or forced reductions in property taxes levied by taxing districts for the first two years after the measure would be effective. The intent of this section would be to prevent taxing districts from being hurt by or enjoying a windfall from the changes in assessment statutes. Statements of full consideration on deeds are also required by this proposal.

The third alternative bill draft would require all property to be assessed at 10 percent of its true and full value except for farmland which would be assessed at 7.5 percent of true and full value. Real property used as the residence of the owner, other than a farmstead, would be entitled to an exemption on the first 12 percent, up to a maximum of $600, of its assessed valuation. This alternative also includes limitations on increases or forced reductions in property taxes for two years and would require statements of full consideration to be filed with deeds.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Garrison Diversion Overview Committee is a special committee originally created in 1977 by House Concurrent Resolution No. 3032 and recreated in 1979 by Senate Concurrent Resolution No. 4005. The committee is charged with the responsibility of legislative oversight of the Garrison Diversion Project and representation of the people of North Dakota and the legislative branch of government in all activities concerning the project.

In addition to the duty of general legislative overview imposed by Senate Concurrent Resolution No. 4005, Senate Concurrent Resolution No. 4085 directs the committee to study the entire project and its present and future effects in North Dakota with emphasis placed on the problems of mitigation and enhancement acreage acquisition and the feasibility of an underground pipeline alternative to the open canal system.

Senate Concurrent Resolution No. 4005 directed that the committee consist of the floor leaders and their assistants from the House and Senate of the 1979 Legislative Assembly. Those committee members were Senators Russell Thane, Chairman, S. F. Hoffner, David Nething, and Rolland Redlin; 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-seventh Legislative Assembly by the Legislative Council in November 1980.

In discharge of its responsibility of legislative overview, the committee was briefed on several occasions. Mr. Murray Sagsveen, Legal Counsel for the Garrison Diversion Conservancy District, continued to inform the committee of the progress of the litigation surrounding the project. The lawsuits discussed include the following:

1. National Audubon Society, Inc., v. Andrus, ~~et al.~~, Civil No. 76-0943, United States District Court for the District of Columbia (Judge Richey).
   a. In the amended complaint, the National Audubon Society is challenging the Secretary of the Interior's decision to proceed with the Garrison Diversion Unit (GDU) construction for two reasons:
      (1) That further construction would violate the "substantive" provisions of the National Environmental Policy Act (NEPA); and
      (2) That further construction would violate the Interior Secretary's trust responsibilities concerning national wildlife refuges.
   b. Motions for summary judgment have been filed and the briefs submitted. Oral arguments have been scheduled for 9:30 a.m., December 5, 1980, in Washington, D.C.
2. National Audubon Society, Inc., v. Andrus, et al., Nos. 79-1229 and 78-1452, United States Court of Appeals for the District of Columbia.
   a. This is an appeal from the district court's denial of Audubon's motion for an injunction to enforce the terms of the May 1977 stipulation between the United States and Audubon. The stipulation was designed by Audubon to suspend construction until Congress would again reauthorize the GDU at some indefinite time.
   b. The briefs have been filed and oral arguments were held on January 14, 1980.
3. Barnes County v. Garrison Diversion Conservancy District, North Dakota District Court, Southeast Judicial District (Barnes County).
   a. The county filed a notice of appeal on the Garrison Diversion Conservancy District (GDCD) Board's decision denying the county's petition for exclusion from the district.
   b. The notice of appeal was filed November 21, 1979. A trial was held before Judge Fredricks on August 19-21, 1980.
   c. Judge Fredricks issued his decision on October 24 in Valley City. He ruled that the GDCD Board of Directors was arbitrary and capricious in denying the petition of Barnes County. Therefore, he ordered that the county be excluded from the district. A notice of appeal to the North Dakota Supreme Court has been filed and the district court decision is stayed pending the outcome of that appeal.
4. United States of America v. State of North Dakota, Civil No. A1-79-62, United States District Court for the District of North Dakota, Southwestern Division (Judge Van Sickle).
   a. The United States, at the request of the Department of the Interior, challenged the 1977 law governing the acquisition of wetland easements by the Fish and Wildlife Service until, among other things, mitigation and enhancement problems for the GDU are resolved.
   b. The state filed a counterclaim alleging that the challenge to state law has invalidated state consent to additional federal acquisitions for national wildlife refuges.
   c. The United States District Court ruled in June that the state laws were invalid to the extent they conflicted with the Small Wetlands Acquisition Program, that the counterclaim was dismissed, and the Governor's consent is not necessary for the fee and easement acquisition of waterfowl production areas.
   d. The case has been appealed. Initial briefs have been filed (including an amicus brief by the North Dakota and National Wildlife Federation).
5. Board of Directors, Garrison Diversion Conservancy District, et al. v. Andrus, United States District Court for the District of North Dakota, Northeastern Division (Judge Benson).
   a. This lawsuit is designed to settle, among other things, the following disputes:
      (1) Is the 1965 mitigation and enhancement plan the presently authorized plan for the GDU?
      (2) Must the Department of the Interior give mitigation and enhancement credit for 15,910 acres of land conveyed by the GDCD to the United States in 1971?
      (3) Must modification of the mitigation and enhancement plan be in compliance with Section 1 of the 1944 Flood Control Act (a procedure requiring state involvement) and must such modification require bilateral modification of the master contract?
   b. The North Dakota Farm Bureau has intervened on certain issues listed above.
   c. On June 26 the district court denied a federal motion to dismiss.

d. A motion for partial summary judgment concerning the West Bay issues was filed on September 18. The court has been requested by the GDCD to postpone consideration of the other issues. Oral argument has not yet been scheduled. However, the United States has moved for a stay on all issues.

Mr. Sagsveen also informed the committee of the status of the Garrison Diversion Mitigation and Enhancement Lands Commission, a commission created by the 1979 Legislative Assembly to assist in the resolution of differences between the state and federal government in the determination and establishment of recreation and fish and wildlife mitigation and enhancement areas. Mr. Sagsveen told the committee that commissioners had been appointed by the Governor, the Garrison Diversion Conservancy District, and the North Dakota Commissioner of Agriculture, but that the director of the United States Fish and Wildlife Service and the director of the United States Water and Power Resources Service had refused to appoint the respective commissioners as a matter of policy.

The committee also received briefings from Mr. Bill Bosse, Chairman of the Board of Directors of the Garrison Diversion Conservancy District, and Mr. Homer Engelhorn, Manager of the Garrison Diversion Conservancy District. Mr. Bosse clarified that the board of directors had never approved the updated plan for mitigation and enhancement lands which is being advanced by the Fish and Wildlife Service. Rather, he told the committee, the board had agreed only to a concept which would include the following: the acquisition of smaller parcels in 25 counties because of lower operation, maintenance, and repair costs; acquisition only from willing sellers; no acquisition of productive farmland; granting of credit for McClusky Canal acreage; and identification of acreage to be acquired on a county-by-county basis.

Major General C. Emerson Murry, addressing the status of negotiations with Canada, told the committee that negotiations would not take place until a new plan is authorized by Congress or the President and Department of the Interior decide to proceed with the currently authorized plan. He also described the phased construction concept, which is the approach advocated by North Dakota officials. Briefly, that concept, which is only a timetable for proceeding with construction of authorized features, calls for construction of project features and irrigation of farmland in two phases and would require consultations with Canada prior to placing irrigation waters in Canadian drainage basins.

In regard to the possibility of utilizing a buried pipeline alternative to the open canal system currently used, Mr. Darrell Krull, Project Manager for the Water and Power Resources Service, told the committee about several feasibility studies which have been conducted. Mr. Krull reported that the total cost of a buried pipeline system to replace the New Rockford Canal would be $561,020,000 while the cost of the canal system is $25,040,000. Additionally, annual operation, maintenance, and repair costs for the pipeline would be substantially higher than those for the open canal system, primarily due to energy costs for pumping. This information was in accordance with background data presented to the committee by the Legislative Council staff concerning other studies of a pipeline alternative, all of which forecast substantially higher construction and maintenance costs for pipeline systems than for canal systems.

Mr. Krull also reported on plans for the use of recently appropriated moneys for the Garrison Diversion Project. He said that the supplemental appropriation was for $9.7 million and that an additional $3 million remains from an earlier appropriation. Mr. Krull told the committee that between $2 and $3 million would be available for construction contracts in fiscal year 1981 (commencing October 1, 1980) and although the construction schedule has not been approved yet there are several areas of activity possible. He said construction could begin soon on a test area of about 5,000 acres to be located near Oakes. Probable features to be contained in development of the test area are the Oakes pumping plant, reaches 1-A and 1-B of the New Rockford Canal and Lonetree Dam and dikes. Work on Lonetree Dam depends on consultations with Canadian officials.

Following receipt of this information, the committee took several courses of action. In November 1979 the committee passed a resolution urging the director of the Fish and Wildlife Service and the director of the Water and Power Resources Service to appoint promptly their respective commissioners on the Garrison Diversion Mitigation and Enhancement Lands Commission. Copies of that resolution were forwarded to the appropriate federal agencies and North Dakota's Congressional Delegation. The federal agencies, however, continued to refuse to appoint their respective commissioners.

The members of the committee also traveled to Winnipeg, Manitoba, for discussions concerning the project with officials of the Manitoban government. The committee presented the phased construction concept to the Manitobans, as North Dakota's official policy regarding the Garrison Diversion Project. The Manitobans were receptive to the discussions but continued to maintain their opposition to construction of any project features which could place water in Canadian drainage basins.

In July 1980 the committee extended an invitation to Mr. A. Brian Ransom, Minister of Natural Resources, Manitoba, and other interested Manitoban officials to tour the Garrison Diversion Project. Minister Ransom expressed appreciation for the invitation but was unable to fit the tour into his schedule.

HEALTH CARE COMMITTEE

The Health Care Committee was assigned three studies. House Concurrent Resolution No. 3021 directed a study of the provision of health care services in North Dakota. House Concurrent Resolution No. 3045 directed a study of the desirability and necessity of implementing catastrophic illness programs, a minimum benefits law, and an uninsurable pooled risk program in the state. House Concurrent Resolution No. 3055 directed a study of the adequacy and equity of present statutes as they relate to membership of the boards of directors of nonprofit hospital service corporations, nonprofit medical services corporations, nonprofit dental service corporations, and nonprofit vision service corporations.

Committee members were Senators S. F. Hoffner, Chairman, Shirley Lee, Curtis Peterson, Chester Reiten, James Smykowski, and Frank Wenstrom; and Representatives Pauline Benedict, Pat Conmy, Charles Fleming, William Gorder, Alvin Hausauer, Marjorie Kermott, Joe Peltier, Royden Rued, Wayne Stenehjem, Michael Unhjem, and J. Mikel Walsh.

The report of the Health Care 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-seventh Legislative Assembly by the Legislative Council in November 1980.

The committee held six meetings at which it received extensive oral and written testimony from health care providers and associations; insurance companies and associations; consumer groups; and state, federal, and Canadian government agencies. Based thereon, the committee recommended four bills and other action.

HEALTH CARE SERVICES STUDY

House Concurrent Resolution No. 3021 directed a study of the provision of health care services in North Dakota. In particular, the study was directed to include consideration of the following:

1. Development of incentives for the medical industry which allow it flexibility in the delivery of quality medical care and effectively address total cost containment.
2. Maximization of local control within health care facilities in a cost conscious atmosphere.
3. Continuation and expansion of capital expenditures and service controls through the state's certificate of need law.
4. Continuation and possible expansion of medical care facilities cost and quality assurance reviews.
5. "Medicare" and "Medicaid" reimbursement mechanisms as they relate to hospital and long-term care facilities.
6. Uniform accounting and reporting principles.
7. Prospective budget and rate review.
8. Collection of appropriate utilization statistics.

Previous Action

The provision of health care services has been recently addressed by the people, Governor, and Legislative Assembly of North Dakota.

1. **Initiated Measure No. 4** — In November 1978 the North Dakota electorate disapproved Initiated Measure No. 4 which, among other things, would have granted the Insurance Commissioner authority to investigate the present state of health care in North Dakota and formulate a plan, to be submitted to the voters, to deal with health care cost.
2. **Governor's Task Force** — In November 1978 the Governor released the report of a special task force which he created to assist in exploring alternatives for controlling health care costs.
3. **1979 Legislative Action** — The 1979 Legislative Assembly considered and rejected two bills which concerned health care services.
   a. House Bill No. 1270 would have required a certificate of need before the establishment or expansion of beds or services of existing boarding homes for the aged and infirm.
   b. House Bill No. 1653 would have required that nursing homes and intermediate care facilities charge similar rates for nonmedical and medical assistance recipients to be eligible for medical assistance payments after July 1, 1981.

Interim Study

The committee's study of the provision of health care services in North Dakota, under House Concurrent Resolution No. 3021, led it to examine cost containment, home health care, health maintenance organizations (HMOs), the state certificate of need law, and physician extenders.

Cost Containment

The rapid escalation of health care cost in North Dakota and the rest of the United States, especially in the 1970's, has been well documented. Since this affects the provision of health care services in the state, the committee received extensive testimony on the causes, programs, and alternatives for health care cost increases.

Causes. The rise in health care costs was variously attributed to the following factors:

1. "Third party" payments by insurance companies and government have increased consumer demand and created provider incentives to compete with a full range of services rather than lower prices.
2. Providers are reimbursed for whatever they spend under the "fee-for-service" principle.
3. Patients have assumed a "passive participant role" which eliminates them as a significant factor in determining the type and expense of services furnished.
4. Medical malpractice suits have increased and caused the practice of defensive medicine.
5. Government regulations impose compliance costs, reduce competition, and pose the threat of fixed/negotiated levels of service.
6. Consumer demand for health care services has increased, in part, due to "third party" payments and the increased number of people over age 65.
7. Health care providers are in relatively short supply and do not engage in price competition.
8. Inflation has increased the capital and labor costs of all facets of the health care industry.
9. Physical limitations, such as geographic and demographic spread, may restrict the use of less expensive health care alternatives.
10. Preventive programs, such as alcohol and drug education, immunization, accident prevention, and safety regulation, are underutilized.

Programs. The committee was informed of a wide variety of mandatory and voluntary cost containment programs undertaken by government and the health care industry in the state. In addition to home health care,

HMOs, the certificate of need law, and physician extenders, addressed below, witnesses described the following programs.

1. **State Health Plan** In conformance with national health priorities established by Congress, the State Health Department has analyzed state health policy and adopted a state health plan with the primary goals of access to primary care and cost containment.
2. **Professional Standards Review Organization (PSRO)** Federal law requires that each state establish a PSRO, composed of physicians but not a medical society, which must review all care given in hospitals under Medicare/Medicaid for length of stay, appropriateness of care, and medical necessity. A PSRO may limit the length of a patient's stay or Medicare/Medicaid reimbursement for inappropriate/unnecessary care. North Dakota's PSRO, North Dakota Health Care Review, is based in Minot and operates with federal funds.
3. **Screening Teams** Federal law also requires that each state establish screening teams which are to determine the eligibility of Medicaid recipients for admission to acute and intermediate care nursing home facilities and must annually visit each facility.
4. **Medicaid Management Information System (MMIS)** — The Social Service Board has instituted a new claims processing system, MMIS, which integrates all aspects of claims processing.
5. **Hospital Programs** Hospitals reported that they are reducing costs by sharing services and purchases of large volumes of equipment and supplies; reducing the length of hospital stays and cost-of-living increases; employing management consultants; cooperating with the state PSRO; and instituting energy savings, quality assurance, "swing bed," and public education programs.
6. **Insurance Programs** — Insurance companies reported that they are reducing health care costs by coordinating with other insurers to avoid duplication of benefits; utilizing reviews to assess the validity of claims; paying benefits according to "usual, customary, and reasonable" fee guidelines; encouraging the performance of certain surgical procedures in medical offices rather than hospitals; and offering other cost containment programs and publications to providers and consumers.
7. **Educational Programs** — Educational institutions reported that they have promoted health care cost containment by establishing cost accounting programs for students and practitioners, conducting cost containment conferences, and developing books on the subject.

The committee received reports that these programs have been effective in limiting health care cost increases in the state. North Dakota, for example, has one of the lowest hospital day rates in the country. In 1978 the average hospital cost per patient was $147.85 in North Dakota, $161.03 in this region, and $194.34 in the nation. Similarly, hospitals reported that their annual cost increases have been reduced from 15 percent to 12 percent since their voluntary cost containment efforts began in 1977.

Alternatives. The committee reviewed a number of options which might further contain health care cost increases in the state.

1. **North Dakota**. Witnesses variously advocated that the state:
   a. Increase the supply of providers by upgrading the University of North Dakota Medical School to a four-year school located entirely within the state; increasing its enrollment and funding; and providing financial incentives for medical students to practice in the state after graduation.
   b. Encourage competition among providers by increasing the number of nonhealth care professionals on the State Health Council and other regulatory bodies; consolidating the many health care licensing boards into one board; and reducing the anticompetitive aspects, if any, of Blue Cross/Blue Shield of North Dakota.
   c. Establish a division of Medicaid and Medicare fraud enforcement under the Attorney General's office.
   d. Expand PSRO review to all patients and services.
   e. Replace screening teams with PSRO/physician review.
   f. Establish more nursing homes and rural clinics and staff them with physician extenders.
   g. Institute mandatory budget review for hospitals.
   h. Encourage HMOs, the "swing bed" concept, and preventive care.
2. **Other States**. Currently, 15 states have legislated hospital cost containment programs with mandatory participation for all nongovernmental hospitals.
   a. Five states have rate setting commissions with full authority to review and approve hospital budgets/rates.
   b. Two states have created a state governmental entity with authority to review and comment publicly on the reasonabless of a hospital's cost and charges or to designate a voluntary review organization to control reviews.
   c. One state has a commission with authority only to require disclosure of hospital financial data.
   d. Seven states have based their cost containment programs in existing state agencies.
3. **Saskatchewan, Canada.** Saskatchewan has implemented a comprehensive hospital services and medical care plan. The province pays the full cost of all medically required inpatient and outpatient hospital services provided for all nonfederal Saskatchewan residents anywhere in Canada and receives 50 percent federal reimbursement. In addition, all hospital budgets must be approved by the province. Finally, the province pays the cost of all physician services, at rates prescribed by a commission, and allows physicians to charge higher rates than will be reimbursed by the government.
4. **Model Acts**. Model acts have also been developed to affect health care cost containment. The National Association of Insurance Commissioners (NAIC), for example, has proposed a model act creating a state health care commission to implement programs designed to provide health care cost and quality controls. Similarly, the Council of State Governments (Committee on Suggested State Legislation) has proposed a variety of model acts which govern HMOs, home health care, state health manpower pilot projects, and state health services cost review commissions.

Recommendation. The committee makes no recommendation concerning mandatory health care cost containment programs, such as budget and rate review, uniform accounting and reporting principles, or expansion of quality assurance reviews. Alternatively, the committee recommends that health care organizations and government agencies in North Dakota continue their cost

containment programs and operate in a cost conscious atmosphere. The committee relies on these existing programs and its other health care recommendations to provide the health care cost containment required for North Dakota.

Home Health Care

The committee heard testimony on home health care agencies, homemaker services, home health aide services, and other home health care programs.

Home Health Care Agencies. Home health care agencies provide posthospital care through a variety of services. For example, agencies might provide diabetic education and support, assist terminally ill patients and their families, serve as a patient advocate, or train patients in posthospital self-care. Home health agencies are subject to certificate of need and licensing requirements by Health Department rule. Fourteen home health care agencies are currently operating in the state. Several counties have expressed an interest in developing or expanding home health care agencies.

Homemaker Services. The homemaker services program is one in which a homemaker is sent into a home to assist in a variety of housekeeping tasks needed by the individual/family. The program was established in 1967. Homemaker services are currently available in 53 counties, but some counties have indicated they might reduce services in response to federal funding limitations.

Home Health Aide Services. The home health aide services program is one in which a home health aide performs all the tasks of a homemaker and provides personal and supportive health care under the direction of a qualified nurse. The program was established in 1972 and is currently available in 38 counties.

Other Programs. Home health care is also provided under various other programs. The Social Service Board, for example, offers meals to the elderly at senior centers or in their homes, provides various social services in connection with senior centers, and operates the senior centers. Similarly, adult day care centers have been established to provide services for the elderly who are not in skilled nursing home facilities.

Alternatives. A home health care agency advocated various measures to improve the provision of health care in the state.

1. The possibility of home health care should be explored before admitting patients to hospitals/nursing homes.
2. Information concerning alternative forms of care should be more readily available to patients.
3. The state should improve screening to determine needed services.
4. Health insurance providers should offer a package including payment for home health care services.
5. The state should more actively promote alternatives to institutionalization.

Bill Drafts. The committee considered two bill drafts relating to home health care.

1. One bill draft would have provided for a two-year experimental program of grants to qualified agencies providing home health care to disabled and elderly people but was rejected.
2. The other bill draft is recommended by the committee.

Recommendation. The committee recommends a bill regulating home health agencies for introduction by the North Dakota Legislative Council during the 1981 Legislative Assembly. The bill:

1. Defines appropriate terms.
2. Requires home health agencies (agencies) to obtain a license from the State Department of Health (the department).
3. Requires agencies to obtain a certificate of need from the department.
4. Requires the department to evaluate and, if minimum standards are met, issue a license.
5. Prescribes minimum standards of licensure for agencies.
6. Requires the department to provide assistance to agencies.
7. Permits the department to deny, suspend, or revoke a license for noncompliance, after an administrative hearing.
8. Requires the department to adopt rules regulating agencies.
9. Requires the Social Service Board (the board) to adopt rules relating to the reimbursement of agencies.
10. Permits the department to inspect agencies and requires agencies to provide certain information.
11. Provides for the payment of home health care services for indigents on a sliding income scale basis.
12. Appropriates $1 million for home health care services for indigents.

Health Maintenance Organizations

Health maintenance organizations (HMOs) are basically prepaid health care services plans. Many HMOs have been developed through federal funding but all HMOs are required to become operationally self-supporting. Federally funded HMOs are also required to meet certain other requirements. Similarly, HMOs are regulated by Chapter 26-38 in North Dakota.

Problems. The majority of witnesses agreed that HMOs can provide a sound alternative for North Dakotans to receive high quality health care and recommended continued governmental support of HMO programs. Nonetheless, the following problems were raised:

1. State law requires a certificate of need for HMOs despite the fact that they are subject to two other similar reviews.
2. State law refers to a single insurance carrier, in provisions governing state employee benefits, which may preclude offering an HMO option.
3. State law requires open enrollment after a two-year closed period, which may not give an HMO sufficient time to develop. Restricted enrollment, under federal law, has been changed to five years.
4. Recent congressional investigations have found instances of HMO fraud and leadership failure.
5. The use of federal funds to establish HMOs necessarily imposes federal regulation and control.

Recommendations. The committee approves a bill regulating HMOs as follows:

1. Amends Section 23-17.2-03 to exempt an HMO/other entity from a certificate of need requirement when it is engaged in certain feasibility, planning, or development activities for HMOs.
2. Amends Section 26-38-03(4) to exempt certain contracts from any filing requirements with the Insurance Commissioner in an application for an HMO certificate of authority.
3. Amends Section 26-38-06 to require the Insurance Commissioner to issue/deny an HMO certificate of authority within 90 days.

4. Amends Section 26-38-10(2)(d) to require insurers to inform enrollees of whether a plan is contributory with respect to group contracts (versus certificates).
5. Amends Section 26-38-16 to expand the closed enrollment period for HMOs from two to five years.
6. Amends Section 26-38-17(3) to require HMOs to report all malpractice complaints filed against (versus settled by) them to the Insurance Commissioner.
7. Amends Section 26-38-20 to expand the criteria for cancellation/nonrenewal of HMO enrollees to include actual/constructive fraud or flagrant abuse of the health care plan or inability to maintain a therapeutic relationship with any of the HMOs primary care physicians.
8. Amends Section 26-38-24 to permit the Insurance Commissioner/State Department of Health to accept HMO examinations made by the federal government or an approved independent accrediting organization.
9. Creates a new section to Chapter 54-52.1 to authorize the Public Employees Retirement Board to contract with one/more HMOs to provide eligible employees the option of membership in an HMO under the uniform group insurance program.
10. Creates a new subsection to Section 54-52.1-01 to define an HMO for purposes of the uniform group insurance program.

The committee took notice of an agreement, based on testimony before the committee, by North Dakota Blue Cross and Blue Shield to develop a statewide HMO plan with/without federal funding.

State Certificate of Need Law

The state certificate of need law is designed to prevent unneeded hospital expenditures through preparatory planning processes. In North Dakota, the State Health Council makes the final decision on granting certificates of need. Certificate of need laws are now mandated as a condition for receipt of some federal funds and cover approximately five percent of health services throughout the country.

Problems. Witnesses raised the following problems with the state certificate of need law:

1. Recent changes in the federal certificate of need law (Public Law 96-79, October 1979) and regulations may require amendment of North Dakota's certificate of need law and regulations. The federal changes are intended to clarify definitions, extend coverage, and authorize alteration of dollar triggering amounts. North Dakota must conform its law and regulation to these federal changes within one year after the opening of its next legislative session to be eligible for continued federal funding. The committee could not recommend necessary changes because the final federal rules were not published at the time of its final meeting. Therefore, the State Health Department agreed to draft and propose the necessary legislation.
2. The state certificate of need law is eliminating competition and causing provider monopolies.

Recommendations. The committee recommends that the State Health Department prepare legislation for the 1981 Legislative Assembly and necessary rules regarding certificate of need which are no more stringent than is required by the changes in federal law (Public Law 96-79) and the federal rules implementing that law.

Physician Extenders

"Physician extenders" are physician assistants/nurse practitioners who are used to extend medical care by handling many nonprescriptive duties normally performed by a physician. Physician assistants may have various types of training/background, which may not necessarily include college graduation, and must pass an examination to practice. Nurse practitioners are graduate nurses with at least one year of additional training and must pass the physician assistant examination to practice. The University of North Dakota has established an approved nurse practitioner program under the School of Medicine. Currently, 70 physician extenders are practicing in the state and 39 states regulate physician extenders.

Problems. The majority of witnesses agreed that physician extenders can contribute to cost containment and supply needed services. Nonetheless, witnesses variously argued that physician extenders:

1. Are underutilized because of an on-site supervision requirement and lack of insurance reimbursement for services.
2. Lack clear regulatory authority.
3. Perform tasks beyond their training and capability.
4. Receive uneven degrees of supervision.

Alternatives. Witnesses variously argued that the state should:

1. Permit off-site/remote supervision.
2. Encourage third-party reimbursement for physician extender services.
3. Develop scholarships for residents who wish to become physician extenders.
4. Authorize physician extenders to write prescriptions under clearly defined circumstances.
5. Encourage certification of rural health clinics.
6. Increase state support of the University of North Dakota Medical School, Department of Community Medicine, and family nurse practitioner program.

Bill Drafts. The committee considered and rejected two bill drafts relating to physician extenders.

1. One bill draft would have regulated nurse clinicians, nurse practitioners, and clinical nurse specialists by providing for review of their extended medical functions, prohibiting them from issuing drugs, and authorizing the Board of Nursing to adopt rules governing their conduct and supervision.
2. Another bill draft would have regulated physician's trained assistants by requiring employment contracts to specify their tasks, placing supervision responsibility and liability with the licensed physician, limiting their practices and functions, and authorizing further regulation by the Board of Medical Examiners.

Several groups argued that the bill drafts were unnecessary because the current rulemaking process is providing adequate regulation of physician extenders.

Recommendation. The committee makes no recommendation with regard to physician extenders.

HEALTH INSURANCE STUDY

House Concurrent Resolution No. 3045 directed a study of the desirability and necessity of implementing catastrophic illness programs, a minimum benefits law, and an uninsurable pooled risk group program in the state.

Previous Action

The 1977 Legislative Assembly considered and rejected Senate Bill No. 2504 which would have provided medical expense payments for the catastrophic illnesses of certain qualified children through a fund administered by the Social Service Board.

Interim Study

The committee received extensive testimony on catastrophic illness programs, a minimum benefits law, and uninsurable pooled risks group programs.

Catastrophic Illness Programs

Catastrophic illness programs are those in which a state/insurance company pays a certain percentage of "qualified" medical expenses above a certain figure. The programs are designed to protect households from being bankrupted by large medical expenses. In 1974, for example, 2.5 million people reportedly accounted for $21.94 billion in health care expenses for an average of $8,600 per person. In response, five states and numerous insurance companies have implemented catastrophic illness programs. North Dakota Blue Cross and Blue Shield, for example, reportedly insure 60 percent of the state's insured population and provide major medical/catastrophic protection to 97.8 percent of their subscribers.

Minimum Benefits Law

A minimum benefits law is one which provides a "qualified" plan of insurance at a percentage of the cost of covered expenses in excess of annual deductibles. The law is intended to limit premium costs and fly-by-night insurance companies who do not pay out a very large percentage of collected premiums. Currently, 16 states have enacted some type of minimum benefits law.

Uninsurable Pooled Risk Group Programs

Uninsurable pooled risk group programs are ones in which health insurance companies underwrite health insurance for people who are unable to obtain any other type of insurance coverage. Currently, North Dakota reportedly has 6,500 medically uninsurable people among its 23,000 uninsured residents. The committee heard that this problem has been compounded by certain insurance companies which cancel guaranteed renewable policies when they terminate that type of coverage.

Alternatives. Witnesses variously advocated a notice requirement for nonrenewal of guaranteed renewable policies and the following two options for an uninsurable pooled risk group program.

1. **Assigned Risk.** Individuals would apply to an agency for health insurance coverage which would assign them to one of the insurance carriers doing business in the state.
2. **Intercarrier Pool.** North Dakota Blue Cross/Blue Shield and the 20 health insurance companies doing the most business in the state would form a pool with financial responsibility for losses/gains proportionate to the amount of business done by each in the state. Blue Cross/Blue Shield would act as the lead carrier and clearinghouse. Other companies would refer applicants and participate in the financial partnership.

Bill Drafts. The committee considered three bill drafts relating to uninsurable pooled risk group programs.

1. **Assigned Risk.** One bill draft would have required all carriers of health and accident insurance in the state to submit plans for coverage of medically uninsurable people to the Insurance Commissioner who would determine whether the plans qualified and assign eligible persons to insurers on the basis of their premium volume in the state. The committee rejected the bill draft.
2. **Intercarrier Pool.** The second bill draft would establish an intercarrier pool for medically uninsurable residents, as described in the committee's recommendations.
3. **Cancellation Notice.** The third bill draft would require notice for the cancellation of guaranteed renewable policies, as described in the committee's recommendations.

Comprehensive Health Insurance Acts

The committee considered two comprehensive health insurance acts combining all three aspects of its health insurance study.

1. **Minnesota.** Minnesota has enacted a comprehensive health insurance act which includes catastrophic health expenses protection, minimum benefits for health insurance coverage, a comprehensive insurance plan for the uninsurable, and hospital rate review. The state operates the plan through an association which administers a state insurance pool.
2. **National Association of Insurance Commissioners (NAIC).** NAIC has adopted a uniform Act which provides the following types of coverages: minimum standards for benefits and basic hospital expense; basic medical-surgical expense; hospital confinement indemnity; major medical expense, disability income protection; accident only, specified disease/accident; and limited benefit health.

Recommendations

Intercarrier Pool. The committee recommends a bill establishing an intercarrier pool for medically uninsurable residents for introduction by the North Dakota Legislative Council into the 1981 Legislative Assembly. The bill:

1. Defines appropriate terms.
2. Requires the Insurance Commissioner to determine whether a health coverage plan is a number one, number two, or number three "qualified"plan A or B or is "unqualified," within 90 days of receiving an application.
3. Establishes criteria for the classification of a plan as a number one, two, or three "qualified" plan A.
4. Establishes criteria for the classification of a plan as a number one, two, or three "qualified" plan B.
5. Requires the schedule of premiums to be self-supporting and based on generally accepted actuarial principles.
6. Requires the Insurance Commissioner to supervise the implementation and administration of the Act.
7. Establishes a compehensive health association consisting of all insurers with an annual premium volume of accident and insurance contracts of at least $100,000.
8. Permits an eligible person to enroll in the plan by paying the premium to the lead carrier and regulates the use of plan income and distribution of plan losses.
9. Requires the association to offer policies which provide at least the benefits of a number one, two, and three "qualified" plan A and B.
10. Requires the association to select a comprehensive health insurance plan; designates the member with the highest premium volume as the lead carrier; and specifies the administrative duties of the lead carrier.
11. Provides that a person is eligible to enroll in the plan if two/more insurers have, within six months of enrollment, rejected the person's insurance application or included restrictive riders/limitations.
12. Requires the association to publicize the plan.
13. Provides an effective date of January 1, 1982.

Cancellation Notice. The committee recommends a bill requiring notice for cancellation of guaranteed renewable accident and sickness insurance policies for introduction by the North Dakota Legislative Council during the 1981 Legislative Assembly. The bill forbids cancellation of a guaranteed renewable accident and sickness insurance policy for any reason, other than failure to make timely payments, except after written notice of at least 24 months delivered/mailed to the insured and defines "accident and sickness insurance policy" and "guaranteed renewable accident and sickness insurance policy."

NONPROFIT HEALTH SERVICE BOARDS MEMBERSHIP STUDY

House Concurrent Resolution No. 3055 directed a study of the adequacy and equity of present statutes as they relate to membership of the boards of directors of nonprofit hospital service corporations, nonprofit medical service corporations, nonprofit dental service corprations, and nonprofit vision service corporations. The resolution further directed Blue Cross and Blue Shield of North Dakota to provide aid, information, and assistance in conducting the study.

Present Statutes

The membership of boards of directors of nonprofit hospital, medical, dental, and vision service corporations are governed by statutes applying to all nonprofit corporations and each specific type of corporation:

1. **Nonprofit Corporations.** The membership of the board of directors of all nonprofit corporations are governed by the North Dakota Nonprofit Corporation Act (Chapter 10-24).
   a. Section 10-24-17 requires nonprofit corporations to be managed by a board of directors, allows directors to not be residents or corporation members unless the articles of incorporation/bylaws so require, and allows articles of incorporation/bylaws to prescribe other qualifications for directors.
   b. Section 10-24-28 requires boards of directors of nonprofit corporations to have at least three members but places no maximum limit on the number of directors.
2. **Hospital Service Corporations.** Section 26-26-04 requires that the majority of the directors of a hospital service corporation be either administrators, directors, trustees, or clinical staff members of hospitals which have contracted/may contract with the corporation to render hospital services to its subscribers. The balance of the directors must be persons who are subscribers of the hospital service corporation who have no direct affiliation with any hospital. The board of directors must have at least nine members and not more than one shall be from any one hospital.
3. **Nonprofit Medical Service Corporations.** Section 26-27-05 requires that the board of directors of a nonprofit medical service corporation consist of at least nine members, a majority of whom must be licensed doctors of medicine and oral surgeons, who have contracted with the corporation to provide medical service to its subscribers. The balance of the directors must be nonmedical persons who have no direct affiliation with any physician/clinic.
4. **Nonprofit Dental Service Corporations.** Section 26-27.1-05 requires that the board of directors of a nonprofit dental service corporation consist of at least nine members, a majority of whom must be licensed dentists who have contracted or may contract with a corporation to provide dental services to its subscribers. The balance of the directors must be persons who have no direct affiliation with any dentists/dental clinic.
5. **Nonprofit Vision Service Corporations.** Section 26-27.2-05 require that the board of directors of a nonprofit vision service corporation consist of at least nine members, two of whom must be licensed physicians, elected by the participating licensed optometrist. The majority of the board of directors must be licensed optometrists who have contracted or may contract with the corporation to provide optometric services to its subscribers.

Previous Action

The Legislative Assembly has considered three bills relating to the membership of boards of directors of nonprofit service corporations.

1. House Bill No. 1317 (1973) amended Section 26-26-04 and Section 26-27-05 to their current language. Bill amendments which were rejected would have required that the board of directors of nonprofit hospital and medical service corporations have no more than 15 members of which health care members could not outnumber nonhealth care members by more than five.
2. House Bill No. 1566 (1977) would have required that not more than a simple majority of the directors of nonprofit hospital and medical service corporations be administrators, directors, trustees, or clerical staff members of contracting hospitals, doctors, or surgeons. The balance of directors were required to be subscribers with no direct affiliation with any hospital, physician, or clinic who would be selected by corporate management with the approval of the Insurance Commissioner. The bill failed to pass.
3. House Bill No. 1658 (1979) would have originally required that the board of directors of nonprofit hospital, medical, dental, and vision service corporations have a majority of nonhealth care subscribers; at least one teacher, farmer, and laborer in the majority; and the balance made up of health care professionals. The bill was amended to require that the boards have no more than a simple majority of health care professionals, no more than 15 members, and an odd number of members. The bill failed to pass the House.

Interim Study

The committee heard testimony on the structure, problems, and alternatives for the boards of directors of nonprofit service corporations, in general, and Blue Cross/Blue Shield in particular.

Structure. The structure of Blue Cross/Blue Shield boards of directors has been subject to a Federal Trade Commission (FTC) lawsuit, FTC report, and voluntary changes.

1. **FTC Lawsuit.** A recent FTC lawsuit has resulted in the Ohio Medical Association being divested of its sole ownership of Ohio Blue Shield. The company will now be controlled by policy owners and medical influence will be greatly reduced/eliminated on decisionmaking boards. North Dakota Blue Shield argued that the divested plan was different in its organization and methods of operation from standard Blue Shield plans and should not have held the Blue Shield name.

2. **FTC Report.** A recent FTC staff report found that physicians dominate some Blue Shield plans and set their own fee structure and recommended that FTC prohibit physician and medical society control of prepaid health care and insurance plans. North Dakota Blue Shield said the FTC has rejected the staff recommendation and that the report is incomplete and misleading.
3. **Voluntary Changes.** North Dakota Blue Cross and Blue Shield reported that they have taken a number of steps to increase consumer representation on their boards of directors.
   a. Blue Shield has increased the number of consumer representatives to 10 and will decrease its board from 34 to 30 members over a three-year period.
   b. Blue Shield has changed its selection procedures so that consumer representatives will be selected by subscriber committees rather than by Blue Shield and the medical profession.
   c. Blue Cross has reduced its board from 53 to 15 members.
   d. Blue Cross and Blue Shield have established a subscribers committee, composed of subscribers from a broad cross section of all group plans in the state, to provide input into the development of programs and policies.

Problems. Witnesses variously argued that health care boards, licensing, and advertising pose the following problems:

1. The boards of directors of North Dakota Blue Cross/Blue Shield have inadequate consumer representation and more directors than many large corporations.
2. Health care licensing boards are dominated by and do not adequately discipline their own members.
3. Anticompetitive statutes and regulations continue to prohibit advertising for health care providers despite the fact that courts have struck down similar statutes and permit any advertising with a factual basis.

Alternatives. Witnesses variously advocated the following alternatives to rectify these alleged problems.

1. Subscriber representatives of North Dakota Blue Cross Blue Shield should be selected by consumer members. The Attorney General's office, however, stated that facts are not available to warrant a recommendation for divesture of North Dakota Blue Cross Blue Shield.
2. Licensed occupational/professional trade associations should not be required to make recommendations to the Governor for appointments to licensing boards.
3. Anticompetitive regulations and statutes prohibiting advertising for health care providers should be updated to conform to recent court cases. The committee suggested that the Consumer Fraud Division of the Attorney General's office consider drafting legislation regarding advertising of health care providers for submission to the 1981 Legislative Assembly.

Bill Drafts. The committee considered and rejected a motion to have the staff prepare a bill draft which would have reduced the number of Blue Shield directors to a maximum of 15 with at least seven to be nonmedical persons having no affiliation with any clinic/other medical facility. It was argued that the bill might undermine physician support for the board and that Blue Cross Blue Shield should be allowed to continue their voluntary efforts to increase consumer representation on their boards.

Recommendation

The committee makes no recommendation to amend present statutes relating to boards of directors of nonprofit service corporations.

JUDICIARY "A" COMMITTEE

House Concurrent Resolution No. 3052 directed the Legislative Council to conduct a study of the doctrine of comparative negligence as adopted by the 1973 Legislative Assembly to include the effect the doctrine has had in its application by the courts, and the possibility of modifying or repealing the doctrine.

Senate Concurrent Resolution No. 4089 directed the Legislative Council to conduct a study of the entire judicial system to determine what, if any, structural changes might be necessitated by the passage of the new Judicial Article, and what timetable such changes, if made, should follow.

These studies were assigned to the Legislative Council's interim Judiciary "A" Committee. Committee members were Representatives Dean Winkjer, Chairman, Don Berge, Kelley Boyum, William Kretschmar, Arthur Melby, Craig Richie, and Wayne Stenehjem; and Senators Raymon Holmberg, Herschel Lashkowitz, Lester Schirado, and Marvin Sorum.

The report of the Judiciary "A" 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-seventh Legislative Assembly by the Legislative Council in November 1980.

COMPARATIVE NEGLIGENCE STUDY

Background

Until recent years North Dakota followed the rule of contributory negligence under which a negligent act of a plaintiff which contributed to an injury as a proximate cause completely barred recovery of damages by that plaintiff. In the past 10 years a number of states, including North Dakota, have joined the federal government and other common law countries in adopting comparative negligence.

There are several different forms of comparative negligence:

1. Slight-gross form. Under this form of comparative negligence, recovery is allowed only if the plaintiff's negligence is "slight" in comparison with that of the defendant. The slight-gross form has been adopted only in South Dakota and Nebraska and has not been adopted in any jurisdiction since 1941.
2. Even division form. The even division form would divide the damages pro rata among the parties. This rule was formerly followed in American admiralty cases, but the United States Supreme Court changed to the pure form of comparative negligence for admiralty cases in 1975. No jurisdiction follows the even division form today.
3. Modified form. One version of the modified form allows recovery only if the plaintiff's negligence was "not as great" as the defendant's, while the other version allows recovery if the plaintiff's negligence was "not greater than" the defendant's. The primary difference between the two is demonstrated in cases where the jury finds both parties equally at fault. No recovery would be allowed under the "not as great" version, while recovery would be allowed under the "not greater than" version. Under either modified form the recovery is diminished in proportion to the amount of negligence attributed to the person recovering. The "not as great" version is followed in 10 states, including North Dakota, while the "not greater than" version is followed in 13 states, including Minnesota, Wisconsin, and Montana.
4. Pure form. Recovery is based on the party's relative fault. Diminished recovery is allowed even when the plaintiff's negligence is greater than the defendant's. This form has been adopted by 10 states, federal statutes, and most other common law countries.

North Dakota Statutes

Certain portions of the North Dakota's comparative negligence statutes were recognized by the committee as potential areas for legislative action. These include:

1. Form of negligence. Contributory negligence or modified pure comparative negligence.
2. Type of conduct. Section 9-10-07 does not address the comparison of liability based on negligence with liability based on Restatement (Second) of Torts Section 402A strict liability. Although the statute mentions only comparison of fault based on negligence, both Minnesota and Wisconsin have construed statutes similar to those upon which Section 9-10-07 is based to apply to strict liability. Wisconsin has held that Section 402A strict liability is negligence per se and therefore comparable under the statute, Dippel v. Sciano, 155 N.W.2d 55 (1967), while Minnesota has held that strict liability actions are not based on negligence per se but that the comparative negligence statute is actually a comparative cause statute which applies to strict liability, Bush v. Bush Construction, Inc., 262 N.W.2d 377 (1977).
3. Contribution. Questions of contribution arise where more than one party is alleged to have caused the plaintiff's injury. Section 9-10-07, the comparative negligence statute, requires that contribution be made in proportion to the percentage of negligence attributed to the tort-feasor.In direct conflict to Section 9-10-07, Chapter 32-38 provides the contribution must be on a pro rata basis and that relative degree of fault cannot be considered (Section 32-38-02).
4. Setoff. Should parties be allowed to set off their awards against each other? Section 9-10-07 does not specifically address this issue, but Section 28-20-33 allows for setoff of mutual final judgments by the court on proper application and notice.
5. Release. Section 32-38-04 requires that when a release is given, the claim against any remaining tort-feasor be reduced to the extent of the amount stipulated in the release or the amount paid, whichever is greater. The North Dakota Supreme Court held in Bartels v. City of Williston, 276 N.W.2d 113 (1979), that the above language is in conflict with the comparative negligence statute. They held that under the circumstances of that case, Section 32-38-04 has been impliedly amended and the claim must be reduced by the percentage of negligence attributable to a released party rather than by the amount of the release.
6. Interpretations of the comparative negligence statute. There was concern expressed over the interpretations given the comparative negligence statutes by some insurance companies. Possible misuse involved adjusters using assigned percentages for various types of accidents without investigation and lack of full payment of some claims.

Committee Consideration and Testimony

In response to the problems perceived in the compara-

tive negligence statute, the committee considered three alternative bill drafts which amended Section 9-10-07 of the North Dakota Century Code. The first draft made Section 9-10-07 a pure comparative negligence statute by removing the provision that the plaintiff must be less negligent than the defendant in order to collect damages. The second draft extended comparative fault principles to actions based on theories other than negligence. The third draft contained provisions creating the revised Uniform Comparative Fault Act. Provisions of this Act include:

1. Form. The Act is a pure comparative fault statute.
2. Type of Conduct. The Act covers both negligent and strict liability actions.
3. Contribution. The rule of joint and several liability for joint tort-feasors still applies. Contribution is based not on pro rata shares but on the percentage of fault of each party. Reallocation of the equitable share of the obligation of a party takes place when his share is uncollectible. Reallocation takes place among all parties at fault, including the claimant.
4. Setoff. A claim and counterclaim cannot be set off against each other, except by consent of both parties. On motion, however, the court, if it finds that the obligation of either party is likely to be uncollectible, may order that both parties make payment into court for distribution.
5. Release. A release discharges the person receiving it from all liability for contribution. The claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation.

The committee had requested assistance in gathering information for this study from the North Dakota Bar Association and the North Dakota Trial Lawyers Association. Mr. John McCabe, Legislative Director of the National Conference of Commissioners on Uniform State Laws (the body which drafted the Uniform Comparative Fault Act), and representatives of the insurance industry were also invited to testify.

All those testifying agreed that the present comparative negligence law is more satisfactory than the former system of contributory negligence. Several members of the Bar Association were opposed to any bill adopting a "pure" form of comparative fault. The Trial Lawyers Association representative recommended the adoption of the pure comparative negligence concept in North Dakota. As an alternative, the adoption of the "not greater than" form as opposed to the current "not as great as" form was recommended.

A representative of several domestic insurance companies indicated that the insurance companies he represents oppose the pure form of comparative negligence, but only one has expressed a desire to return to the concept of contributory negligence.

Mr. John McCabe, Legislative Director of the National Conference of Commissioners on Uniform State Laws (NCCUSL), made a presentation supporting the Uniform Comparative Fault Act. Mr. McCabe pointed out that the Uniform Comparative Fault Act is very new, having been first promulgated in 1977 but not officially adopted until 1979. He said the fundamental principle of the Uniform Comparative Fault Act is a fair allocation of damages. Mr. McCabe said in his opinion the insurance industry opposes the pure fault concept because the modified contribution concept reduces payments of claims and any new concept makes it difficult to assess costs which might be involved in issuing policies. He said he knows of no evidence to show that higher insurance rates have resulted after the adoption of a pure comparative negligence statute.

The committee also invited testimony on the possible abuse of the comparative negligence statute by some insurance companies and on a bill draft authorizing private rights of action against insurance companies for violation of the Unfair Insurance Practices Act. The bill draft would allow anyone who claims to be damaged by any act or practice prohibited by the Unfair Insurance Practices Act to bring a civil action for recovery of all actual or consequential damages suffered, including reasonable attorney fees. In addition to the actual damages, the court or jury may award exemplary damages for the sake of example and to punish the defendant.

Representatives of the State Insurance Department testified there has been abuse of the comparative negligence doctrine by insurance companies and the Insurance Department receives an average of one or two complaints each week. They also noted that the Insurance Department's authority to revoke licenses is limited and the department has severe budget restrictions.

A representative of Domestic Insurance Companies said the bill draft to allow anyone to file a civil suit for damages caused by a violation of the Unfair Insurance Practices Act was extremely broad and would allow lawsuits to be filed against anyone associated with the insurance business. Concern was also expressed about the possibility of lawsuits by one individual against the liability insurance carrier of another individual which is not allowed under current law. The Alliance of American Insurers representative also testified in opposition to the bill draft, as did representatives of Allstate Insurance Company and the National Association of Independent Insurers.

Recommendations

The committee recommends bills which (1) create the Revised Uniform Comparative Fault Act, and (2) authorize private rights of action against insurance companies for violations of the Unfair Insurance Practices Act.

JUDICIAL SYSTEM

At the 1976 primary election, the voters of North Dakota approved a new Judicial Article to the State Constitution. Article IV provides that the judicial power will be in a unified judicial system consisting of a Supreme Court, district court, and such other courts as may be provided by law.

The meaning of the unified judicial system appears to involve five basic components — consolidation and simplification of court structures; centralized rulemaking; centralized management; centralized budgeting; and state financing of the judicial system. House Bill No. 1066, introduced in the 1979 Legislative Assembly by the Legislative Council, which would have provided for a unified judicial system to consist of the Supreme Court, the district court, and the municipal court, failed to pass.

As a starting point for its work this interim, the committee considered two alternative bill drafts. The first draft called for a unified judicial system composed of four levels — the Supreme Court, district court, county court, and the municipal court. The second draft, based on recommendations of Judge William Engelter, Mandan, president of the organization representing county judges of increased jurisdiction, would have retained the six level court system we now have, the Supreme Court, district courts, county justice courts, county court of increased jurisdiction, county courts, and municipal courts, except that the jurisdiction of the county justice

would have been increased to make that court almost identical with the county court of increased jurisdiction. A draft was also considered that provided for assumption by the state of the expenses of the district courts.

The bill drafts providing for the four level court system and state assumption for certain district court expenses were consolidated and after considering seven drafts of the main revision bill, the committee recommends it to the Legislative Council.

The main revision bill creates 35 sections which provide for a new county court system. It creates or amends 14 sections providing for the assumption of most of the expenses of the district court by the state. It also provides for the repeal of 15 chapters of the North Dakota Century Code which relate to the present county courts, the county courts of increased jurisdiction, and the county justice courts.

Because of the length of the main revision bill it is not discussed on a section-by-section basis in this report. Instead the main features of the bill are summarized with emphasis on those sections considered new law.

Main Revision Bill

The bill provides for the establishment of a single county court in each county. The new "county courts" will be the equivalent of the present "county courts of increased jurisdiction," but since the statutory provisions relating to all present county courts will be repealed, there is no need to distinguish the courts with increased jurisdiction. Many sections in the North Dakota Century Code pertaining to the present county courts of increased jurisdiction are reenacted in this bill draft to apply to the new county courts. These include sections pertaining to custody of court records; duties and salaries of the clerk of court; fees to be charged by the clerk; the duty of the clerk to keep the fee book; the responsibility of the judge of the county court for acts of the clerk; the requirement that a clerk give the county judge a bond; the appointment, terms, powers, and compensation of the bailiffs of a county court; the general powers of the judge of county court; change of venue; demand for a change of judge; continuing education of the judge of the county court; and to civil and criminal procedures.

At the 1982 general election and every four years thereafter, each county will elect a judge of the county court. The board of county commissioners of any two or more counties may enter into an agreement to provide for the election of a single judge or any number of judges to serve the county courts of the counties entering into the agreement. Any county entering into such an agreement will retain its own county court with the shared county judge traveling to each. The agreement between the counties should specify the number of judges to be elected, the manner in which the salary and expenses of the judges and the court reporters will be divided between the counties, and the manner in which services will be provided. This provision was included by the committee to retain local autonomy and to allow agreements between counties to be made according to their needs and pursuant to their direction.

The bill requires that all judges of the county courts be attorneys and that they not act as an attorney while in the office. The bill continues the present procedure for filling a vacancy in the office by the vote of the county commissioners, but makes it clear that when a vacancy occurs in the office of a judge serving more than one county, each board of county commissioners involved must approve the appointment.

The salaries of the judges of the county courts will be determined as is presently done for the judges of the county courts of increased jurisdiction. The committee considered a separate bill draft to amend the county court bill to provide a single salary for all county judges and to eliminate the sliding scale based on population. Testimony presented to the committee, however, was against such change and the committee decided not to recommend the amendment.

In those counties that have entered into multicounty agreements, the county judge is required, upon confirmation by the board of county commissioners, to appoint a magistrate in those counties in which he does not reside. Duties to be performed by the magistrate are to be assigned by the county judge. The intent of this provision is to provide for a local judicial officer in each county to handle such matters as issuing warrants and setting bail. The Supreme Court is authorized to promulgate rules and regulations for the qualifications and conduct of the magistrates.

A county court of any county established under this bill would have jurisdiction in the following cases:

1. Civil cases with not more than $10,000 in controversy.
2. Criminal misdemeanor, infraction, and noncriminal traffic cases.
3. Small claims cases.
4. Probate, guardianship, and other testamentary cases, including trust and contested matters, pursuant to the Uniform Probate Code.
5. Preliminary hearings and arraignments in felony criminal cases.
6. Commitment proceedings pursuant to Chapter 25-03.1.
7. Any other cases, except juvenile proceedings pursuant to Chapter 27-20, that are assigned by the presiding judge of the judicial district in which the court is located. Any party, however, is entitled to have the matter so assigned heard by a district judge through a written request if filed with the presiding district judge within three days after receiving notice of the assignment. The trial of a criminal matter may not be assigned to a county judge who presided at a preliminary hearing, except where the preliminary hearing was waived.

The new county courts will have concurrent jurisdiction with the district courts in appeals from all final judgments entered in municipal courts. All such appeals will be for a trial de novo. The general laws and rules of practice and procedure of the district court will also govern practice in the new county courts. The bill allows juries to be called at the discretion of the judge and eliminates the concept of terms of court as specific periods of time.

This bill retains present law in that it allows the judge of the county court to appoint a court reporter but language has been added to authorize specifically the use of electronic court reporting systems. It also provides that in those counties which have entered into an agreement to share the services of a judge, the services of a court reporter appointed by the judge will also be shared.

The remaining sections in the bill require the state to pay all salary and expenses for the district courts, including the juvenile courts, and their employees except for the clerks of district courts and their deputies and employees, whose salaries and expenses must be paid by the counties. Each county must provide the district court in that county with adequate chambers, courtroom, law library quarters, and lights and fuel. The bill further provides that any equipment, furnishings, and law libraries in the

custody and control of the district court on January 1, 1980, and any such property acquired from that date until the effective date of the Act, will continue to be in the district court's custody and control until the State Court Administrator determines such items are no longer needed by the court. Upon that determination, custody and control of the property will revert back to the county. Detention center facilities and personnel will continue to be funded by the county. Salaries of court reporters, juvenile supervisors, and referees will no longer be specified in the law but will be within the limits of legislative appropriation. In a fiscal note done for the committee the total of the items recommended as state expenses is slightly over $4 million. [In a revised fiscal note completed subsequent to the final committee meeting, the total of the items recommended as state expenses is slightly under $8 million.]

Finally, the bill repeals those chapters which relate to the county courts, county courts of increased jurisdiction, and the county justice courts. It transfers all untried cases and the unfinished business on the calendars of those courts to the calendars of the new county courts.

The committee is also recommending five other bills and one concurrent resolution which are described below.

Municipal Courts

The committee is recommending two bills pertaining to municipal courts. The first bill clarifies the right of a municipal judge to impose a deferred or suspended sentence. It also gives the municipal courts specific authority to use sentencing alternatives other than fines and imprisonment. Testimony to the committee suggested that municipal judges may be legally prohibited from imposing the sentencing alternatives. That opinion was based on the theory that violations of municipal ordinances are not violations of the Criminal Code (Title 12.1, North Dakota Century Code) and since no analogous municipal court authority to Section 12.1-32-02 of the North Dakota Century Code exists, the municipal courts are by implication prohibited from using these alternatives.

The second bill adds language to Section 40-11-13 which makes it clear that fines, penalties, and forfeitures collected as a result of a judgment of a district court or county court of increased jurisdiction rendered pursuant to an appeal from the municipal court, are to be paid into the municipality's treasury.

Uniform Accounting Procedures

The committee recommends a bill which authorizes the Supreme Court to establish uniform court financial accounting procedures which do not conflict with the accounting procedures established by the State Auditor. Some committee members expressed the opinion that this provision would give the judiciary the same responsibility for administration as is now held by the executive and legislative branches and would retain the separation of powers among the various branches of government. A representative from the State Auditor's office said the State Auditor is responsible for providing a statewide uniform accounting system. Committee members, however, expressed some doubt that the courts would be subject to the authority of the State Auditor.

Change of Judge — Postjudgment Divorce and Custody Matters

The committee recommends a bill which would allow a request for a change of judge in postjudgment proceedings to modify an order for alimony, property division, child support, or child custody. The bill is in response to fears that a judge would adhere to an earlier ruling even though circumstances may have changed. Case law from other states indicate that requests for a change of judge in these circumstances may be permissible under present North Dakota statutes.

Study Resolution

The committee recommends a concurrent resolution directing the Legislative Council to study the subject of jurisdiction over equitable cases, provisional remedies, and trusts, with emphasis on the appropriate jurisdiction of the new county courts. The committee thought this subject warranted further study for two reasons. First, it is not clear whether the new county courts would have jurisdiction over equitable cases and provisional remedies. And second, under the new county court system, the county judges would all be law-trained and would be capable of deciding trust cases. Some committee members believe that settling such matters in county court would be more convenient and less expensive for people in sparsely populated counties.

Secondary Revision Bill

The committee recommends a secondary revision bill, consisting of 112 sections, which amends all sections of the North Dakota Century Code affected by the main revision bill. Most of the sections amend current law by removing references to county courts of increased jurisdiction, county judge with increased jurisdiction, county justices, and county justice courts and replacing them, where necessary, with references to county court and county judge. The bill also amends sections of the North Dakota Century Code relating to the payment of certain district court expenses.

Bills Considered

The committee considered but does not recommend the following bill drafts.

1. A draft that would have made extensive changes in the municipal court system.
2. A concurrent resolution to reduce the term of Supreme Court justices to four years.
3. A bill draft to amend the county courts bill to provide a single salary for all county judges and to eliminate the sliding scale based on population.

JUDICIARY "B" COMMITTEE

The Judiciary "B" Committee was assigned three study resolutions following the 1979 Session. Senate Concurrent Resolution No. 4078 directed that the committee study "eminent domain procedures in the condemnation of land that is to be acquired for public use by the state, any agency or political subdivision thereof, or any person or the person's agents, acquiring land for public use, including public and private utilities, the State Highway Department, and acquisitions of fish and wildlife mitigation acres. The study shall emphasize consideration of the feasibility of negotiations prior to condemnation proceedings or actions, appraisal of the property to be acquired by qualified and distinterested persons, replacement of acquired property, the consequences of capital gains tax on the sale of remaining property, the practice of transferring land acquired by eminent domain, and the adequacy of relocation assistance."

House Concurrent Resolution No. 3082 directed a study of "the personal liability of officers and members of boards and commissions at both the state and local level, including the costs of defending any actions brought against such persons for their official actions, and to determine what changes are necessary and desirable to reduce potential personal liability."

Senate Concurrent Resolution No. 4079 directed "a study of feasible methods for discovering and categorizing severed mineral interests, including a study of the legality of the state taking severed mineral interests not identified by the owners." The committee was also directed "to establish a pilot project to identify mineral interests in a particular township" designated by the committee.

Committee members were Senators Ernest Sands, Chairman, James Dotzenrod, J. Garvin Jacobson, Clayton Lodoen, George Rait, Marvin Sorum, and Russell Thane; and Representatives Kelley Boyum, Jim Brokaw, Carolyn Houmann, Clarence Martin, Ruth Meiers, Allen Richard, Orville Schindler, Elaine Vig, Francis Wald, and Janet Wentz.

The report of the Judiciary "B" 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-seventh Legislative Assembly by the Legislative Council in November 1980.

EMINENT DOMAIN STUDY

Background

"Eminent domain" is defined by Section 32-15-01 of the North Dakota Century Code as "the right to take private property for public use." Two basic eminent domain procedures are set forth by Section 16, Article I, of the North Dakota Constitution (formerly Section 14), one providing for taking possession of property prior to a determination of the amount of compensation due the owner, and one for taking possession after a determination of compensation.

The method usually used by the state and any of its departments, agencies, or political subdivisions in acquiring right of way is known as the "quick take" method, i.e., taking possession before compensation is determined. Section 16, Article I, provides that "when the state or any of its departments, agencies, or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages."

The second eminent domain procedure relates to corporations and requires a determination of compensation to be paid the owner and the payment of the amount prior to the corporation being able to take possession of the property. Section 16, Article I, of the North Dakota Constitution provides: "Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived ...." This portion of Section 16, Article I, has been expanded by Chapter 32-15, the general eminent domain chapter of the North Dakota Century Code.

Testimony

Testimony concerning the present North Dakota eminent domain law was received from various landowners, representatives of state agencies, attorneys, representatives of public utilities, and farm groups. The committee chose the Uniform Eminent Domain Code drafted by the National Conference of Commissioners on Uniform State Laws for initial comparison with North Dakota's present eminent domain law. Later comparison was made with portions of the Wisconsin and Minnesota eminent domain laws.

Concerns expressed dealt with the need for negotiation and a good faith effort to purchase the property at a reasonable price before condemnation proceedings are instituted, the need for a new method of appraising property, the complicated procedure of a court hearing, and the need for a method whereby the planning process for a necessary project can continue pending the outcome of a court action in cases where the landowner and condemnor cannot agree on compensation.

Eminent Domain Bill

As a result of its study, the committee recommends a bill which, in Section 1, would require a condemnor to establish an amount it believes to be just compensation for the desired property and to submit a written offer to the owner for the full amount. The amount is not to be less than the property appraisal approved by the condemnor. The condemnor is to provide the owner with a written statement showing how it determined the amount it considers just compensation. There is no present statutory requirement that a condemnor must negotiate or make an offer to a property owner prior to beginning eminent domain proceedings.

Section 2 would additionally require the condemnor, upon request, to make disclosures concerning its activities. The condemnor, when requested, would be required to provide the property owner with the names of at least 10 neighboring property owners to whom offers are being made or a list of all offerees if fewer than 10 owners are affected by a project. A map showing all property affected by a project would also be provided to the property owner. Upon request, the condemnor would be required to provide the names of any other property owners within the county and adjacent counties whose property may be taken for a project. The owner would

additionally have the right, upon request, to examine any maps in the possession of the condemnor showing property affected by the project. The owner could obtain copies of the maps by paying the condemnor the reasonable cost of preparing copies.

As a means of overcoming landowner concerns about the complicated eminent domain court proceedings and utility concerns about the time involved before a corporate condemnor can take possession of the property, Section 3 provides a method for appointing condemnation commissioners to appraise the property sought by a condemnor. This would exclude the state, its departments and agencies, and political subdivisions which have "quick take" authority. Under the proposal, whenever the condemnor and a property owner are unable to agree on a price for property, either party could petition the district court for appointment of condemnation commissioners. If such proceedings were initiated, the costs would be borne by the condemnor. The district court would then hear all competent evidence offered for or against granting the appointment of condemnation commissioners. Except where a determination as to public use and necessity is waived under Section 8, the court would appoint three disinterested condemnation commissioners who are residents of the county or counties wherein the property is located if the proposed taking of land appears to be necessary and authorized by law. The condemnation commissioners would then ascertain and report the amount of damages sustained because of the taking.

The district court would fix the time and place of the commissioner's first meeting and prescribe their compensation. The commissioners would meet as directed by the order of appointment and take oral testimony under oath. The commissioners would view the property, could subpoena witnesses, and could travel from place to place within the county or counties involved as necessary. The commissioners could require the condemnor or landowner to furnish maps, plats, and other information concerning the land and, in proper cases, could reserve to the owner a right of way or other privilege in or over the land taken or attach reasonable conditions to the taking in addition to damages. Upon request of an owner, the commissioners would specify in their report the amount of damages awarded in accordance with Section 32-15-22 which specifies the different types of damages which may be assessed in an eminent domain action.

The commissioners' report would be filed with the clerk of the district court within 10 days after the conclusion of the commissioners' proceedings. Any party to the proceedings could appeal to the district court from any award of damages or any omission to award damages within 30 days after the report is filed. An owner would retain the right to a jury trial upon appeal.

In addition, Section 32-15-29 would be amended by Section 6 to allow a corporate condemnor to take earlier possession of the land. At present, a corporate condemnor may apply to the district court for possession and use of property at any time after the court enters judgment and the condemnor pays the full amount of the judgment. The section would be amended to allow additionally application for possession at any time after a condemnation commissioner award is made and the amount of the award is paid.

Section 7 would amend Section 32-15-32 relating to the payment of costs in an eminent domain action. At present, the court in its discretion may award the landowner reasonable actual or statutory costs, or both, which may include interest from the time of taking, costs on appeal, and reasonable attorney fees for all judicial proceedings. If the landowner appeals and does not prevail, the costs on appeal may be taxed against him. In all cases when a new trial is granted upon application of the landowner and he has failed at the new trial to obtain greater compensation than awarded at the first trial, the costs of the new trial are taxed against the landowner.

Under the amendment, in lieu of the discretionary costs, the court would be required to award litigation expenses to the landowner under stated conditions:

1. If the court determines the condemnor does not have the right to condemn the property or there is no necessity for the taking.
2. A landowner prevails in an inverse condemnation action which is an action initiated by the property owner rather than the condemnor. An inverse condemnation action is available when private property has been actually taken for public use without formal condemnation proceedings and it appears there is no intention or willingness on the part of the taker to bring the action.
3. The condemnation commissioners' award exceeds the condemnor's written offer by at least $700 and at least 15 percent and neither party appeals the award to the district court.
4. The court or jury verdict exceeds the condemnor's written offer by at least $700 and at least 15 percent.
5. The landowner appeals the condemnation commissioners' award which exceeds the condemnor's written offer by at least $700 and at least 15 percent, and the court or jury verdict exceeds the condemnation commissioners' award by at least $700 and at least 15 percent.
6. The condemnor appeals the condemnation commissioners' award, and the court or jury verdict exceeds the condemnor's written offer by at least $700 and at least 15 percent.
7. The landowner appeals a condemnation commissioners' award which does not exceed the condemnor's written offer by 15 percent, and the court or jury verdict exceeds the condemnor's written offer by at least $700 and at least 15 percent.

The purpose of requiring that an award exceed both a dollar amount and a percentage amount is to discourage further court action when the likelihood of a significantly increased award is minimal but to guarantee payment of litigation expenses when there is a significant increase in the amount of the award. As an example of how the dollar and percentage requirement would work, if an original offer, award, or verdict was $5,000 and the amount obtained at a further proceeding as set forth was $5,700, the increased amount would meet the $700 requirement but would fail to meet the 15 percent increase requirement and payment of litigation expenses would not be mandatory. However, if the amount obtained at the second stage was $5,750, it would meet both the dollar requirement and the percentage requirement, thus making the payment of litigation expenses mandatory. In the former example, the court would still have the discretion to award costs but it would not be mandatory.

Section 8 relates to Public Service Commission proceedings for the granting of a route permit for a transmission facility or a certificate of site compatibility for an energy conversion facility. Section 49-22-07 provides that no utility can start construction of an energy conversion facility or transmission facility in North Dakota, or exercise the right of eminent domain in connection with that construction, without first obtaining a certificate of site

compatibility or a route permit from the Public Service Commission pursuant to Chapter 49-22. However, even after obtaining a certificate or route permit, a utility must still show in an eminent domain proceeding under Section 32-15-05 that the proposed property use is authorized by law, and that the taking is necessary to such use. The committee believes the additional required procedure can add unnecessary delay and cost to the construction of a facility which is ultimately paid by the consumers. The committee believes any challenge as to public use and necessity should be made soon after a route permit or certificate is granted. Therefore, Section 8 provides that no court challenge as to public use and necessity may be made pursuant to Section 32-15-05 more than 90 days after written notification by the condemnor to each known property owner affected by a commission decision granting a route permit or a certificate of site compatibility.

Additionally, the committee believes that landowners often are not aware of their rights under the North Dakota eminent domain laws when dealing with condemnors prior to the beginning of an eminent domain action. Section 9 would therefore provide that the Attorney General, with the cooperation of appropriate state agencies, is to prepare pamphlets in readable format describing the eminent domain laws of the state. The pamphlets would include the reasons for condemnation, the procedures followed by condemnors, how citizens may influence the condemnation process, and the rights of property owners and citizens affected by condemnation. The Attorney General would make copies of the pamphlets available to all condemnors for a price sufficient to cover the cost of production. A condemnor would be required to present a copy of the pamphlet to a property owner at the time of written notification concerning the granting of a route permit or a certificate of site compatibility under Section 8 and in all other cases prior to making an offer to purchase and the institution of a condemnation action.

GOVERNMENT OFFICER AND EMPLOYEE LIABILITY STUDY

Background

The concept of government officer immunity from personal liability in most instances has long been recognized in the United States and springs from the same considerations that generated the doctrine of sovereign immunity. The doctrine of sovereign immunity developed in England during the era of the monarchy when a king enjoyed immunity under the philosophical idea of the divine right of kings that "the king can do no wrong."

The concept of sovereign immunity was brought to the American colonies and when the states gained their independence, the doctrine of sovereign immunity was retained. Immunity was given not only to the federal and state governments but also to the different agencies in the governmental structure, such as school districts, counties, municipalities, and other political subdivisions of the state.

While the doctrine of governmental immunity did not protect all government officers from personal liability, the common law soon recognized the necessity of permitting officials to perform their official functions free from the threat of suits for personal liability. This official immunity apparently rested on two rationales: (1) the injustice, particularly in the absence of bad faith, of subjecting to liability an officer who is required by the legal obligations of high position to exercise discretion, and (2) the danger that the threat of such liability would deter his willingness to execute his office with the decisiveness and the judgment required by the public good.

The development of the law of immunity for public officials in this country has been the product of constitutional provision as well as legislative and judicial processes. The United States Constitution grants absolute immunity to members of both houses of the Congress with respect to any speech, debate, vote, report, or action done in session (U.S. Constitution, Article I, Section 6).

Section 20, Article IV of the North Dakota Constitution (formerly Section 42) likewise provides protection for members of the Legislative Assembly who in all cases except treason, felony, and breach of the peace are privileged from arrest during their attendance at the sessions of their respective houses, and in going to or returning from the same, and for "words used in any speech or debate in either house, they shall not be questioned in any other place."

The doctrine of sovereign immunity for the state has continued as a result of judicial interpretation and legislative action. Governmental immunity for political subdivisions has been abolished, however, as a result of the North Dakota Supreme Court decision in Kitto v. Minot Park District, 224 N.W.2d 795, decided December 5, 1974. The court held "that governmental bodies, other than the state government, are subject to suits for damages to individuals injured by the negligence or wrongful acts or omissions of their agents and employees." Concerning state immunity, the court said: "The matter of sovereign immunity of the state itself, which is untouched by this decision, is one on which we would solicit legislative action. The injustices of state immunity remain for one who is injured by the wrongful act of the state government."

Relating to political subdivisions, however, the court said: "While this case relates to a park district, the abolition of governmental immunity relates to all governmental bodies within the state: counties, townships, park districts, school districts, cities, and any other units of local government or political subdivisions."

The court concluded: "We do not contemplate that the essential acts of governmental decisionmaking be the subject of judicial second-guessing or harassment by the actual or potential threat of litigation. We hold that no tort action will lie against governmental units for those acts which may be termed discretionary in character. Included within this category are acts traditionally deemed legislative or quasi-legislative, or judicial or quasi-judicial, in nature. The exercise of discretion carries with it the right to be wrong. It is for torts committed in the execution of the activity decided upon that liability attaches, not for the decision itself."

As a result of the court decision, a temporary law was passed in 1975. Chapter 32-12.1 dealing with the liability of political subdivisions was then enacted by the 1979 Legislative Assembly.

That chapter provides that each political subdivision is liable for money damages for injuries proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of the employee's employment or office under circumstances where the employee would be personally liable to a claimant, or for injury caused from some condition or use of tangible property, real or personal, under circumstances where the political subdivision, if a private person, would be liable to the claimant.

The chapter provides that the sovereign immunity of the state is not waived in any manner, and the chapter is

not to be construed to abrogate the immunity of the state. However, Section 32-12.1-15 provides that the state or any state agency, bureau, or department is authorized to insure against liability for its own protection and for the protection of any state employee. If the state or any state agency, bureau, or department purchases insurance, the purchaser waives its immunity to suit only to the types of insurance coverage purchased and only to the extent of the policy limits of the coverage. The Attorney General is to appear and defend all actions and proceedings against any state employee for alleged negligence within the scope of employment in any court of the state or of the United States when the agency, bureau, or department for whom the employee works has not purchased liability insurance coverage pursuant to law.

Since 1961 a provision of the Federal Civil Rights Act, 42 U.S.C. 1983, has become the primary means of holding state officials personally and financially liable for acts or omissions in the performance of their official duties. The section reads as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

A state and state agencies are not liable under 42 U.S.C. 1983 for money damages as a result of actions taken by state officials in performing their duties. State immunity results from the 11th Amendment to the United States Constitution.

However, states have been found liable under 42 U.S.C. 1988 for attorney fee awards when their officials are sued in their official capacities. The states have not been exempted from the usual rule that a losing litigant's bad faith may justify an allowance of attorney's fees to the prevailing party.

In addition to the states and state agencies, some state officials have also been found to have immunity to financial liability. State legislators, judges, and prosecutors are among those state officials who have been found to have absolute immunity from liability for acts taken in the sphere of their authority.

A problem arises, however, with officials and employees of the executive branch who do not generally enjoy the absolute immunity of judges, legislators, and prosecutors. Even high level executive officials who must exercise considerable discretion in carrying out their duties can be held liable for money damages as a result of their official acts which violate individual civil rights. Executive officials are protected from Section 1983 liability only if they have acted reasonably and in good faith. A ministerial/discretionary distinction has also developed. In the case of a ministerial action, the duty is so explicit and leaves so little to the official's or employee's judgment that it is extremely difficult for the official or employee to show that his failure to perform it properly was in good faith and reasonable. Hence, an official's accountability for failure to perform a ministerial act approaches strict liability. On the other hand, the more discretion the official has and the more judgment he must exercise in carrying out his responsibility the more readily is it believable that mistaken actions were undertaken reasonably and in good faith.

In numerous recent civil rights cases the availability of official immunity has depended on the court's determination as to whether the action complained of violated a right clearly established at the time the action occurred.

Testimony

Testimony concerning the study of personal liability at the state level centered on the increasing number of lawsuits throughout the country seeking money damages against state officers and employees, as individuals, seeking money damages. The fear of such lawsuits is causing qualified people to refuse appointment or reappointment to boards and commissions. The vulnerability of state employees to legal actions for money damages in instances where state officials are exempt from liability is also a primary concern.

The high premium cost for liability and errors and omissions insurance which provides only limited coverage for state officers and employees is an additional concern. An example of the cost of limited coverage is the Social Service Board errors and omissions and liability insurance coverage which has a limit of $300,000 coverage at a yearly premium of $75,000. This amounts to coverage of only $4 for every $1 in premiums. Lawyers and accountants are covered only to $100,000 and there are deductibles of $10,000 for directors and officers liability coverage and $500 for errors and omissions coverage.

The fact that the state has immunity only within its own borders and may need to hire attorneys to defend lawsuits brought outside the state for injuries caused by interstate commerce activities conducted by state entities is also a concern. The Attorney General's office said the present appropriation for defending such lawsuits is inadequate. Another problem which may be faced is the possibility of the state being ordered to pay attorney's fees under the Federal Civil Rights Act, 42 U.S.C. 1988.

State Level Bills Considered

Two bills were considered relating to personal liability at the state level. One proposal was modeled after South Dakota law. The bill would have provided that a state agency could elect to indemnify a state officer or employee up to $10,000 from funds within its appropriation if an action were brought against that person and his agency had not purchased liability insurance. Such funds could be used to cover court costs, attorney fees, judgments, or sums to compromise or settle an action. If the agency did not have sufficient funds or the costs incurred were in excess of $10,000, the agency could request the funds from the Legislative Assembly by introduction of a bill appropriating them. Agencies would still be allowed to purchase liability insurance under the proposal.

The proposal was opposed by a group of assistant attorneys general on the grounds that even though it would have been entirely discretionary with the agency and the Legislative Assembly whether to indemnify a state officer or employee, the courts could interpret such a provision as a waiver of immunity to lawsuits. The assistant attorneys general believe the major problem presently facing state officers and employees is the cost of defending lawsuits. Although a number of suits have been brought against state boards, commissions, officers, and employees, none have yet resulted in substantial judgments. Rather, the assistant attorneys general believe the main danger lies in (1) the possibility of lawsuits against the state being brought in another state as a result of North Dakota interstate commerce requiring the hiring of out-of-state law firms; (2) the possibility of specialized lawsuits requiring legal counsel in addition to the Attorney General's office; and (3) the possibility of

the state being ordered to pay attorney's fees under the Federal Civil Rights Act.

As an alternative to the committee proposal, the assistant attorneys general proposed establishing a special fund to defend state officers and employees for alleged negligence, wrongful acts, errors or omissions while acting in their official capacities or within the scope of employment.

The committee adopted the group proposal. The bill would establish a special fund administered by the Attorney General for the defense of claims against state officers and employees.

The Attorney General would have the option of providing a defense through a staff attorney, through outside legal counsel, or by asserting the state's right under any insurance policy which requires the insurance company to provide the defense.

The fund could be used to provide a defense, to pay reasonable attorney's fees, costs, attorney's fees awarded against the state official or employee, and other expenses necessarily incurred in the defense of a claim. The fund could not be used, however, for the payment of any money damages resulting from a judgment against the officer or employee. A statement is additionally included that the intent is not to waive the state's sovereign immunity in any manner. The fund would not be subject to cancellation under Section 54-44.1-11 at the close of a biennium.

State agencies would still be authorized to insure against claims against the state or any state officer or employee. If insurance were purchased, the purchaser would waive immunity to suit only to the types of insurance coverage purchased and only to the extent of the policy limits of the coverage.

Section 32-12.1-15 which presently authorizes an agency to purchase liability insurance for protection of the agency and any state employee, and which provides for the defense of any uninsured agency by the Attorney General would be repealed. This is done to remove the provisions relating to state officers and employees from the Political Subdivisions Liability Act.

Political Subdivision Proposal

The North Dakota Supreme Court in the Kitto v. Minot Park District decision held "that governmental bodies, other than the state government, are subject to suit for damages to individuals injured by the negligent or wrongful acts or omissions of their agents and employees."

The temporary Political Subdivision Liability Act passed in the 1975 Legislative Session as a result of the Kitto decision provided for bringing a claim against the political subdivision directly for injuries proximately caused by the negligence or wrongful act or omission of an employee within the scope of his employment or office and additionally made the political subdivision liable for any money damages. When the permanent law (Chapter 32-12.1, NDCC) was passed in 1977, Section 32-12.1-04 provided instead that the governing body is to defend any claim against an employee where the political subdivision could otherwise be held liable. Section 32-12.1-03 provides that each political subdivision shall be liable for money damages for injuries when the injuries are proximately caused by the negligence or wrongful act or omission of any employee acting within the scope of employment or office. Section 32-12.1-04 additionally provides that a political subdivision shall indemnify an employee under such circumstances. An employee is personally liable for money damages when injuries are proximately caused by the negligence, wrongful act, or omission of the employee outside the scope of employment or office.

Testimony received by the committee concerned the reluctance of individuals to serve on political subdivision boards or to work for political subdivisions because of the fear of being named in a lawsuit for money damages resulting from acts or omissions within the scope of employment or office, even though eventual indemnity for any money judgment under such circumstances would be available to the officer or employee.

The North Dakota Association of Counties and the North Dakota League of Cities jointly recommended a bill to the committee to alleviate those concerns. The bill was adopted by the committee and amends Section 32-12.1-04 of the North Dakota Century Code to provide that an action for injuries proximately caused by the alleged negligence, wrongful act, or omission of a political subdivision official or employee occurring within the scope of employment or office is to be brought only against the political subdivision. If there is any question concerning whether the alleged negligence, wrongful act, or omission occurred within the scope of employment or office, the officer or employee could then be named as a party to the action and that issue could be tried separately. A political subdivision would be required to defend the employee until the court determines the employee was acting outside the scope of employment or office.

Additionally, an officer or employee would not be personally liable for money damages for injuries caused by his negligence, wrongful act, or omission while acting within the scope of employment or office.

Present law which provides that an officer or employee may be personally liable for money damages when the injuries are proximately caused by his negligence, wrongful act, or omission while acting outside the scope of employment or office would be retained.

SEVERED MINERAL INTEREST STUDY

Background

The Legislative Assembly has attempted to deal with problems caused by the severance of the mineral interest from the surface estate interest in real property on several occasions. However, all efforts to devise a means whereby severed mineral estates could be dealt with have failed. The North Dakota statutes presently contain several sections of law relating to severed mineral interests.

Section 57-02-04 defines "real property" for the purpose of taxation to include the land itself and "all rights and privileges thereto belonging or in anywise appertaining, and all mines, minerals, and quarries in and under the same."

Originating in 1907 and with only minor changes since, Section 57-02-24 of the North Dakota Century Code provides:

> "The assessor shall list for taxation all coal and other minerals underlying any lands the ownership of which has been severed from the ownership of the overlying strata, and shall assess such coal and other minerals to the owner in the county in which the same actually lie."

Section 57-02-25 provides:

> "The county auditor at the time of furnishing the assessors with books and blanks for their assessments, shall give each assessor an accurate description of any lands the title to the coal or minerals in which is not in the person holding the title or fee to the overlying strata or land. Such list shall describe

accurately the land in which such coal or mineral reservations lie, giving the name of the holder of the title to such land and of the holder of the reserved mineral rights thereunder. The said list also shall describe accurately, when known and when possible, the location of the coal or minerals lying in such land and shall disclose the name of the person in whom the title to such minerals is reserved as provided herein. The register of deeds shall furnish the county auditor with such information as is contained in his office and as will enable the said auditor to prepare the lists described in this section."

Section 57-24-30 provides that if any holder of the title to coal or minerals, reserved after a sale of the overlying strata or land, neglects or refuses to pay any taxes legally assessed and levied thereon, the title is to be sold in the manner provided by law for the sale of real property for delinquent taxes. The county auditor is to notify the owner of the surface concerning such sale. The surface owner then has the right to match the highest bid and purchase the severed mineral interest within 10 days after the tax sale. Procedurally, however, attempts to tax severed mineral interests have not worked in North Dakota.

An annual state tax of three cents on each severed mineral acre was levied under a 1923 Act. The revenue from the tax was to be paid into the state general fund. If any tax remained unpaid for three years after it became due, the State Auditor was to notify all persons who appeared to be the owners of the mineral interests upon which the taxes became delinquent. The owners were to be notified concerning the amount of the tax and that unless it was paid within 30 days from the date of notice, proceedings would be instituted to declare the title to the mineral interest forfeited to the state. The state would then obtain the absolute mineral interest in fee and the rights of the former owner would entirely cease and terminate.

The North Dakota Supreme Court held that the Act was an arbitrary application of the taxing power. The court held property taxes must be levied with regard to the property value to be uniform or based on some other characteristic of the property which justifies the classification. The court found it unreasonable to provide for a classification for tax purposes based upon the severance of the mineral interest from that of the surface interest.

The Legislative Assembly again attempted to enact constitutionally a tax upon severed mineral rights in 1947. The North Dakota Supreme Court termed the enactment an excise tax for the privilege of holding severed mineral rights in real property separate from the surface rights. Since the tax was applied to severed mineral interests that were undeveloped and created by express reservation only, the court held the tax was an improper classification and unconstitutional.

Another attempt to tax severed mineral interests was made by the 1953 Legislative Assembly. The bill passed both houses but was vetoed by the Governor.

A formal study of severed mineral interests was undertaken by the 1967-69 interim Finance and Taxation Committee which recommended adoption of an abandoned property act. Under the recommendation, severed mineral interests would be declared abandoned unless:

1. The mineral interests had been assessed for real property taxation purposes separate from the surface estate, and the taxes were not delinquent.
2. Within the last 30 years, part or all of the severed mineral interest had been conveyed, leased, mortgaged, devised, or had produced minerals in paying quantities.
3. An affidavit had been filed of record indicating that the owner wished to maintain his ownership in the interest. Each affidavit would be effective for 10 years.

The bill passed the Senate but was defeated in the House.

Other proposals relating to taxation, registration, or forfeiture of severed mineral interests have been introduced during each legislative session since 1969.

Testimony and Committee Activity

The committee reviewed two projects relating to the discovery of severed mineral interests -- one conducted in Foster County by the Foster County Commission and one project in Stark County conducted through the Tax Department.

The Foster County project involved one person working three months in which time one-third of the mineral interests in the county were identified at a cost of $1,200 to $1,500. The Stark County project consisted of investigating two townships, one within 20 miles on either side of the railroad where the mineral rights remain relatively intact, and the other township being outside that limit. Based on the Stark County investigation, the Tax Department estimates the cost of a statewide project for identifying mineral interests would cost between $3.6 million to $4 million.

The committee reviewed past North Dakota proposals relating to severed mineral interest taxation and registration and reviewed other states' laws relating to the same areas. The committee also investigated the possibility of imposing a mineral transfer tax.

Three bill drafts were also considered by the committee during the interim. One proposal would have prohibited the severance of mineral right ownership from surface ownership in real property in the state after the effective date of the Act. The bill was withdrawn from consideration because it seemed it would unconstitutionally interfere with a person's right to contract and to transfer property.

A second proposal would have required every owner of a fee simple severed mineral interest to file the instrument of conveyance or reservation with the register of deeds in the county in which the mineral interest is located. Additionally, the owner would be required to file a notarized statement for record setting forth information concerning the severed mineral interest.

The notarized statement of ownership would be required to be filed for record by July 1, 1982, for interests created or acquired on or before the effective date of the Act and, for interests created or acquired after the effective date, the statement would be required to be filed within one year. A filing fee of 10 cents per severed mineral acre would be required from each person filing a notarized statement of ownership with a minimum filing fee of $10. Failure to comply with the Act's requirements for three years would cause forfeiture of the mineral interest. When forfeiture of the interest was declared by the district court, the surface owner would be given first option to purchase for the amount of fees due.

The third bill draft was based on a 1977 legislative proposal and had similar recording and statement of ownership requirements. A filing fee of $5 plus an additional 50 cent fee for registering the first section of land and a 25 cent fee for registering each additional section of land would have been required. The county would be authorized to sell the severed mineral interest for any delinquent taxes due after notice and a hearing. Money from the forfeiture sales would be deposited in the state general fund.

A person claiming ownership of the severed mineral interest after the interest was sold and the proceeds turned over to the state would have the right to recover the fair market value of the severed mineral interest if an action were commenced within six years after the forfeiture.

Although the concept of severed mineral interest registration, forfeiture, and taxation was supported by the North Dakota Association of Soil Conservation Districts and various individuals, the proposals were opposed by various county officials, the North Dakota Register of Deeds Association, the North Dakota Association of Counties, and various oil and coal industry representatives.

The North Dakota Association of Counties and the Register of Deeds Association believe such a proposal would be too costly, complicated, and time consuming for any benefits derived. It was also believed that the register of deeds would in effect have to pass judgment on the validity of documents recorded and filed with their offices and would require judicial determinations. It was also pointed out that a county usually spends more money in a forfeiture sale than can be recovered from the actual sale of the property.

Oil and coal industry representatives believe that the only real purpose for such proposed legislation would be to tax the value of the severed mineral interests and it was asserted that it is impossible to determine the value of minerals without exploring into the ground.

Oil industry representatives additionally pointed out that the oil industry does not find identification of severed mineral interests to be a problem. They said such interests are mostly owned by individuals and not by corporations. One estimate was that only 20 percent of the severed mineral interests are owned by people in the oil profession and only two percent by the large corporations. It was said large corporations manage their developments through mineral interest leases rather than by mineral interest purchases.

Several committee members, however, testified that there is a general feeling among property owners that present property taxes unfairly reflect the value of subsurface minerals which in many cases the surface owner does not control or own. It is believed that the tax is the same whether the mineral rights are owned or not, and despite the fact that land with mineral rights intact usually brings a higher selling price.

The committee voted down all three proposals relating to severed mineral interests and makes no recommendations for legislative action.

JUDICIARY "C" COMMITTEE

The Judiciary "C" Committee was assigned two studies. Senate Concurrent Resolution No. 4055 directed a study of motor vehicle registration and motor vehicle title registration in the state. The resolution directs that special emphasis be placed on the process of applying for and receiving registration cards, plates, and tabs; specialized registration; refusal, rescission, and suspension of registration; penalties for altering or forging registration; content and display of number plates and tabs; registration of destroyed vehicles; the process of applying for and receiving certificates of title; specialized certificates of title; holders of security interests in motor vehicles; and the contents, delivery, and terms of certificates of title.

Senate Concurrent Resolution No. 4069 directed a study of the garnishment statutes for necessary revision. The committee was also assigned responsibility by the Legislative Council for statutory revision, constitutional revision, and uniform and model act monitoring.

Committee members were Representatives William Kretschmar, Chairman, Pat Conmy, LeRoy Erickson, Joe Leibhan, Burness Reed, and Charles Scofield; and Senators Raymon Holmberg, Bonnie Miller Heinrich, Duane Mutch, Lester Schirado, I. E. Solberg, and Jens Tennefos.

The report of the Judiciary "C" Committee was submitted to the Legislative Council at the beinnial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-seventh Legislative Assembly by the Legislative council in November 1980.

MOTOR VEHICLE REGISTRATION

Two bills, Senate Bill No. 2246 and Senate Bill No. 2248, which would have extensively amended motor vehicle titling and registration statutes, were introduced in the 1979 Legislative Assembly at the request of the Motor Vehicle Department. Because the Senate Transportation Committee did not have enough time to consider fully the provisions of those bills, the committee recommended passage of those provisions which the Motor Vehicle Department thought were necessary for the 1979-81 interim and urged an interim study of motor vehicle registration and titling. Both bills were substantially amended before passage.

As a starting point for its work, the committee considered bill drafts which contained those sections in Senate Bill Nos. 2246 and 2248 which were not approved by the 1979 Legislative Assembly. The committee received testimony from representatives of the Motor Vehicle Department, the Associated General Contractors, and from other interested persons.

The committee approved and recommends to the Legislative Council a bill which contains provisions relating to both motor vehicle titling and registration. This bill clearly delineates the differences between the registration and titling processes. All provisions which relate to registration are placed in Chapter 39-04 while all sections relating to certificates of title are placed in Chapter 39-05. All definitions found in Chapters 39-04 and 39-05 that are duplicative of those found in the general definition chapter, Chapter 39-01, were deleted from those chapters or transferred to Chapter 39-01 where appropriate.

The provisions in this bill relating to registration would require registered owners to notify the Motor Vehicle Department within 10 days of any address change, replace references to the registrar with references to the department, allow the department to issue registrations to certain interstate operations without issuing a certificate of title or demanding the surrender of an out-of-state registration, allow the department to use its discretion in the manner it keeps the records of registered vehicles, provide additional reasons for the rescission or suspension of registration, and remove the requirement that the sheriff of each county maintain a list of all special license plates. It also contains provisions which would require that the bottom of the license plate be placed at least 12 inches above the ground, allow vehicles to cross highways for the purpose of going from one property to another without being licensed, add special mobile equipment to the equipment which is exempt from registration, and allow license plates of vehicles to be transferred to any similar replacement vehicle upon payment of the proper fee. The owner of a destroyed vehicle is required to return the plates, registration, and title to receive a refund of a registration fee. A salvage certificate of title is provided which the owner may use to prove ownership.

The provisions of the bill relating to titling of motor vehicles state the general requirement that all vehicles should have a certificate of title and provide certain exemptions to that general rule. The bill also provides that employees of the department may administer oaths, and that a regular certificate of title will be issued when a vehicle for which a salvage certificate of title has been issued is reconstructed if all necessary requirements are met. The bill allows 15 days after the sale of a vehicle for the delivery of a certificate title, which must be made to the first lienholder if the vehicle is subject to any liens; sets out the procedure for obtaining a new certificate title when a security interest in a vehicle for which the certificate of title is in possession of a lienholder is released; and sets forth additional items required on an application for a certificate of title.

The committee also recommends a bill which defines motor vehicle owner for the purposes of the no-fault insurance statutes. The present no-fault insurance laws require every owner of a motor vehicle to maintain no-fault insurance coverage on the vehicle and define an owner in terms of motor vehicle registration. This may result in the seller of a motor vehicle being liable as a no-fault insurer if the buyer fails to transfer the title. This bill defines owner as a person, other than a lienholder, having the property in or title to a vehicle. This definition is identical to the definition for owner found in Title 39 — Motor Vehicles.

GARNISHMENT

Garnishment is a warning and order to a third party not to turn over property belonging to a debtor to that debtor until the matter is determined in the debtor's favor. Most of North Dakota's garnishment law is contained in Chapter 32-09 of the North Dakota Century Code. Chapter 33-05 also contains procedures to be used in garnishment actions in county justice court.

One major bill relating to garnishment was introduced in the 1979 Legislative Assembly. Senate Bill No. 2292 would have repealed Chapter 32-09 and provided for a new garnishment procedure. The bill was recommended for indefinite postponement by the Senate Judiciary Committee. It was not passed by the Senate.

The Judiciary "C" Committee decided to use Senate Bill No. 2292 as a working bill draft and to hold a number of hearings on that bill. The committee received testimony on the bill from Mr. Clifton Rodenburg, primary draftsman of the bill, attorneys who commonly represent debtors in garnishment proceedings, and representatives

from collection agencies. After consideration of the testimony received, the committee recommends to the Legislative Council a bill which creates a new chapter relating to garnishment proceedings in state courts and which repeals Chapters 32-09 and 33-05.

This bill requires a notice, warning the debtor of the possibility that a garnishment summons may be served on the debtor's employer and advising the debtor to consider a settlement with the creditor, to be served on the debtor either personally or by first-class mail at least 10 days before the summons is issued. Current law requires that at least two days before a garnishment summons is issued the creditor must serve on both the employer and the debtor a notice and demand for any disposable earnings. The current law then requires the employer to hold those earnings for five days.

A major change from current law relates to when garnishment is allowed. The bill provides that a garnishment summons may be issued at any time after judgment in any action in a court of record for the recovery of money. This eliminates the present practice of prejudgment garnishment in contract actions and the need to first obtain an execution in all actions other than contract actions. Several recent United States Supreme Court cases indicate that prejudgment garnishment procedures are unconstitutional because they do not provide for notice and a hearing before the defendant's use of his property is interfered with.

The bill also substantially changes the form of the garnishee summons and eliminates the need for an affidavit to accompany the summons. The summons requires the disclosure of a number of facts, including the requirement that property or money be retained, the possibility of having a judgment rendered against the garnishee for failure to disclose, and the fact that the defendant may not be discharged from employment because his earnings have been subjected to garnishment. In another change, the bill requires that a copy of the garnishment summons must be served personally upon the defendant within five days, rather than the 10 days allowed under present law, after serving it upon the garnishee.

Rather than following the present practice of having the garnishee submit an affidavit either admitting or denying liability, the bill requires the plaintiff to serve the garnishee with a disclosure form and the garnishee would merely fill in the blanks. The fee paid the garnishee for filling in the disclosure form would be $10. After receiving the disclosure form, the plaintiff would have 20 days in which to obtain an ex parte order requiring oral examination before the court, or if such an examination was not required, the facts disclosed would become conclusive.

The bill forbids the discharge of any employee because his wages were subjected to garnishment, and authorizes garnishees to release any property held if the amount required to be retained is less that $10. Garnishment on support orders is limited to 50 percent of the defendant's disposable earnings if the individual is supporting a spouse or child other than the one named in the support order, or 60 percent if the individual is not supporting such a spouse or child. These percentages are raised to 55 and 65 percent if there are delinquent payments more than 12 weeks past due. North Dakota statutes presently provide no limit on wage garnishments for support orders. The change was made to comply with federal law. The maximum amount of the aggregate disposable earnings which is subject to garnishment, except for support orders, bankruptcy orders, or debts for state or federal taxes, may not exceed the lesser of 25 percent of the disposable earnings or the amount by which the earnings exceed 40 times the federal minimum hourly wage.

The bill provides that no garnishment will be allowed if the judgment is for less than $25. The bill also provides for a 60-day continuing lien on wages and that the summons lapses and the garnishee is discharged 180 days after service unless otherwise agreed or ordered. Another major change is that the defendant would not be able to claim exemptions for homestead and other statutory exemptions, as under current law.

STATUTORY REVISION

Blank Firearms and Firecrackers

The committee recommends a bill which repeals Section 62-04-05 of the North Dakota Century Code. Pursuant to Section 62-04-05 any person manufacturing, using, selling, or keeping for sale in the state any blank cartridge pistol, blank cartridge revolver, or other blank cartridge firearm, or blank cartridge cap containing dynamite, or firecrackers exceeding more than three inches in length and one-half inch in diameter, is guilty of a misdemeanor. This section apparently prohibits the use of blank pistols at athletic events. State Fire Marshal Vance Arneson recommends the repeal of Section 62-04-05. He explained that Chapter 23-15 of the North Dakota Century Code would continue to regulate the use of blank firearms and firecrackers.

Nonrenewal and Discharge for Cause Hearings for Teachers

The committee recommends a bill to amend Section 15-47-38, which limits a teacher's representation at a hearing of the school board for discharge for cause and nonrenewal of a teacher's contract to two representatives of the teacher's choosing. In a recent Supreme Court case that limitation had the effect of excluding from the meeting the teacher's wife and one of his attorneys. The recommended bill would amend Section 15-47-38 to allow the teacher's spouse or one other family member of the teacher's choice, in addition to the present two representatives, to attend the meeting if the teacher so desired. The draft also adds language to the section to make it clear that the determination not to renew contract, if made in good faith, will be final and binding on all parties, but only if the procedural requirements of Section 15-47-38 are met.

Commissioner of Deeds

The committee recommends a bill which repeals Chapter 44-07. The purpose of Chapter 44-07 is to provide for an official to furnish notarial services outside the state. North Dakota has adopted the Uniform Recognition of Acknowledgments Act under which notarial acts performed by officials of other jurisdictions are recognized in North Dakota. A commissioner of deeds is no longer necessary and no one has been appointed to that position in recent years.

Federal Aid Coordinator

The committee recommends a bill to amend Section 54-27.1-01, which requires the Lieutenant Governor to be the Federal Aid Coordinator. The North Dakota Supreme Court in Link v. Olson declared that the legislative delegation of additional duties to the Lieutenant Governor was unconstitutional. Section 54-27.1-01 is amended to provide for appointment of the Federal Aid Coordinator by the Governor. It also requires the Gover-

nor to set the salary of the coordinator within the limits of legislative appropriation.

Ten Commandments Display

The committee recommends a bill to amend Section 15-47-10, which requires the school board of every school district and the president of all state-supported institutions of higher education to display a placard containing the Ten Commandments of the Christian religion in all classrooms. In Ring v. Grand Forks Public School District No. 1, the United States District Court for the district of North Dakota, Northeastern Division, found this section to be in violation of the First Amendment and the 14th Amendment to the United States Constitution. The basis of the court's ruling is that portion of the First Amendment which states "Congress shall make no law respecting any establishment of religion ...." The Establishment Clause has been made applicable to the states by the 14th Amendment.

The court held that to withstand an Establishment Clause challenge a statute must have a secular legislative purpose, its principal or primary effect must be one that neither advances nor inhibits religion, and it must not foster an excessive governmental entanglement with religion. Amendments to this statute make the display permissive rather than mandatory and provide that the placards will be purchased with funds available through voluntary contributions made to the school board or the president of the institution of higher education. The bill also contains a statement of purpose for the display which relates to the secular application of the Ten Commandments. [Subsequent to the final meeting of the committee, the United States Supreme Court found the Kentucky statute upon which this bill is based unconstitutional.]

Jury Fees in Eminent Domain Actions

The committee is recommending a bill to amend Section 32-15-14 which requires the plaintiff exercising eminent domain authority to submit a surety for jury costs but it does not give any authority to proceed on the basis of that surety. Mr. Tom Tuntland, Morton County State's Attorney, testified that considerable jury costs are incurred for eminent domain cases and the county has had to bear that cost. He said in many condemnation cases benefits of the project go out of state and jury costs should be paid by those who benefit. The draft recommended by the committee requires the plaintiff, other than a governmental entity, exercising eminent domain authority to pay jury costs before a final condemnation order will be issued.

Consent Required for Adoption

The committee recommends a bill to amend Sections 14-15-05, 14-15-06, and 14-15-11 which require the consent of a mother of an illegitimate child before it may be adopted but does not require similar consent from the father. Research done by the Legislative Research Service, Notre Dame Law School, for the committee suggested that Section 14-15-05 may be unconstitutional due to a United States Supreme Court decision, Caban v. Mohamed, which struck down a similar New York statute. The court held this type of statute treats unmarried parents differently according to their sex and such a gender-based distinction violates the Equal Protection Clause of the 14th Amendment because it bears no substantial relation to any important state interest. The draft amends the statutes to remove the distinction between an unwed mother and an unwed father. The bill also provides that consent to adoption by an unwed parent (mother or father) is not required if the failure of the parent to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent contrary to the best interests of the minor.

Juvenile Traffic Cases

The committee recommends a bill which amends Sections 12.1-04-01, 27-20-02, and 27-20-09, relating to the jurisdiction of adult court over misdemeanor traffic offenses committed by a juvenile. Presently no court has jurisdiction over misdemeanor traffic offenses committed by some juveniles because, except for negligent homicide and manslaughter, traffic offenses are excluded from juvenile court jurisdiction and Section 12.1-04-01 prohibits the prosecution in adult court of anyone under the age of 16 years. The bill provides that all Title 39 offenses (i.e., motor vehicle offenses) committed by juveniles 14 years and older will be handled in adult court.

Wage Assignment

The committee recommends a bill to amend Sections 14-09-09.1 and 14-09-09.2, which contain the provisions relating to wage assignments for child support. The present law contains no limitations on the amount that may be assigned. North Dakota statutes are based on Nebraska law which has been held subject to federal limits by the Nebraska Supreme Court. The committee found that wage assignments for child support are garnishments within the definition of the federal statute and that the state law is preempted in this area. The bill amends the North Dakota statutes relating to child support to make them consistent with federal limitations.

State Tax Levy

The committee recommends a bill relating to the determination of tax rates and the repeal of the state tax levy. The bill removes a reference to the state tax rate in Section 57-15-02 in response to the approval by the voters at the primary election of the amendment to Section 1, Article X, of the Constitution (formerly Section 174) to prohibit legislative imposition of property taxes. The bill also repeals two obsolete sections relating to the state four-mill property tax.

County Officers

The committee recommends a bill relating to the election of county judges and the duties of clerks of district court. This bill makes technical corrections to Sections 11-10-02 and 11-17-01 which are necessary due to the approval by the voters at the primary election of the amendment of Section 8, Article VII, of the Constitution (formerly Section 173) to remove the county judge as a constitutional office if the judicial revision bill submitted by the interim Judiciary "A" Committee is not approved by the 1981 Legislative Assembly.

Election Laws

The committee recommends a bill which resolves a conflict between duplicate sections relating to payment of election officials and ballot forms. House Bill No. 1138, which enacted major election law revision, was passed by the 1979 Legislative Assembly. All of the election law revision was referred except three sections relating to (1) the election duties of the Secretary of State; (2) compensation for election officials; and (3) the ballot form. Sections providing for the effective date for the new rotating ballot form and the repeal of the present sections relating

to compensation and the ballot form were referred. The referral was approved and the election law revision defeated at the 1980 general election. As a result conflicting sections pertaining to the compensation for election officials and to the ballot form now exist. This bill resolves the conflict by repealing the old section pertaining to the compensation of election officials and the new section pertaining to the rotating ballot form. The repeal of the new rotating ballot form was made on the basis of an Attorney General's opinion to Representative Earl Strinden on August 15, 1979. [On October 22, 1980, subsequent to the final meeting of the Judiciary "C" Committee, the United States court of Appeals for the Eighth Circuit, held in McLain v. Meier that Section 16-11-06, the ballot form statute, is unconstitutional.]

Technical Corrections Act

The committee recommends a bill which makes technical corrections to the North Dakota Century Code. This bill contains 64 sections which eliminate obsolete name and statutory references. This draft should complete the major update of the North Dakota Century Code begun last legislative session. Only minor corrections not made in bills passed in future legislative sessions should be required in the future.

Grain Elevator Licensing and Bonding

The committee was asked by the Public Service Commission to consider a bill draft to change the expiration date of public warehouse licenses from August 1 to July 1 of each year and to provide continuous bonding of public warehouses as part of its statutory revision responsibility. The PSC received many objections to the amendments and it withdrew its request that the committee consider the draft. The committee makes no recommendation concerning grain elevator licensing and bonding.

CONSTITUTIONAL REVISION

Political Subdivision Article

The committee recommends a concurrent resolution calling for a new Political Subdivisions Article to the State Constitution. The concurrent resolution calls for the repeal of the current constitutional provisions relating to municipal corporations, the election of the superintendent of schools for each county, and county and township organization.

Major changes which would result upon the adoption of the article would include:

1. A requirement that the Legislative Assembly provide for the extension of home rule to county government.
2. A provision that a political subdivision could transfer, or revoke the transfer, to the county in which it is located any of its powers or functions as provided by law or home rule charter.
3. A provision that county offices would no longer have constitutional status. The proposal retains the current elective county officials, but provides that any elected county office except that of county commissioner could be eliminated by adoption of a home rule charter, or an optional form of county government, or at a countywide referendum by a majority of the electors voting on the question. An elective office so eliminated may be reinstated at any time at countywide election by a two-thirds majority of the electors voting on the question. Questions on the form of government or elimination or reinstatement of elective county offices can be placed on the ballot by petition of the electors of the county equal to 25 percent of the votes cast in the county for the office of Governor at the preceding gubernatorial election.

Board of County Commissioners

The committee recommends a concurrent resolution calling for a constitutional amendment which allows any county with a population greater than 15,000 to increase the number of county commissioners to seven or nine. This draft would only place the question on the ballot in the general election in 1982 if the proposed Political Subdivision Article is not passed in the primary election in that year. The proposed Political Subdivision Article allows the size of a board of county commissioners to be provided by law.

Leasing of State Lands

The committee recommends a concurrent resolution calling for a constitutional amendment to Section 8, Article IX, of the Constitution (formerly Section 161), relating to the leasing of lands granted to the state for educational and charitable purposes. That section presently contains a five-year lease limitation and restricts the purposes for which the land may be leased. The draft, which would be effective July 1, 1983, provides that such land may be leased for purposes, time periods, and upon such terms and conditions as the Legislative Assembly may provide. Mr. Richard Lommen, Commissioner, State Land Department, requested the amendment as an aid to good land management. He explained that the Land Department would make a request to the 1983 Legislative Assembly to change the necessary statutes if this amendment is approved.

Obsolete Constitutional References

The committee is recommending four concurrent resolutions which call for amendments to the Constitution to deal with obsolete references:

1. A resolution calling for an amendment to Section 7, Article IX, of the Constitution (formerly Section 160) and Section 10, Article IX, of the Constitution (formerly Section 164) to delete references to Section 159 which has been repealed.
2. A resolution which amends Section 13, Article IX, of the Constitution (formerly Section 216) to eliminate obsolete references relating to the School for the Blind. This resolution would also transfer the power to determine the location of the School for the Blind from the Board of Administration to the Legislative Assembly.
3. A concurrent resolution to amend Section 9, Article X, of the Constitution (formerly Article 24) to remove a reference to the four-mill state tax which can no longer be levied due to approval by the voters of an amendment to Section 174 of the Constitution.
4. A concurrent resolution to repeal Section 12.1, Article VI, of the Constitution (formerly Article 94). This section relates to retirement, discipline, and removal of the Supreme Court and district court judges. The provisions of this section are duplicative of provisions found in Section 12 of Article VI of the Constitution.

Special Sessions

The committee recommends a concurrent resolution calling for a constitutional amendment relating to special sessions of the Legislative Assembly and powers of the Governor. Under the proposal the Legislative Assembly would convene in special session upon the call of the Governor or upon the written request of two-thirds of the

members of each house. The mechanics of the written request by the legislators would be provided by law, but any such request would designate the date and time at which the special session is to convene and could limit the purpose of the special session. The proposal also provides that any Act passed by a special session would take effect on the date provided in the Act or 30 days after the Governor approves the Act or allows it to become law without his signature if no effective date is provided.

Election of Governor and Lieutenant Governor

The committee recommends a concurrent resolution calling for a constitutional amendment to provide for the election of the Governor and Lieutenant Governor to a two-year term in 1984 and thereafter to four-year terms. Advantages suggested for the change include increased voter turnout in nonpresidential years, closer scrutiny of gubernatorial candidates, alleviation of some of the workload problems of parties in the presidential election years, and facilitation of fund raising for the gubernatorial race.

UNIFORM ACTS

The committee briefly considered the Uniform Condominium Act. The committee sees no need for the Act at this time and does not recommend it to the Legislative Council. The committee was also informed of Judiciary "A" approval of the Revised Uniform Comparative Fault Act.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Council by law appoints a Legislative Audit and Fiscal Review Committee as a division of its Budget Section. The committee was created "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." (Section 54-35-02.1, NDCC).

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." (Section 54-35-02.2, NDCC).

The Lieutenant Governor by law serves as chairman of the Legislative Audit and Fiscal Review Committee. In addition to Lieutenant Governor Sanstead, other members of the committee were Representatives Richard Kloubec, Theodore Lang, William Lardy, Lawrence Marsden, Douglas Mattson, and Royden Rued; and Senators Walter Erdman, Kent Jones, L. L. Naaden, Frank Shablow, and Jens Tennefos.

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-seventh Legislative Assembly by the Legislative Council in November 1980.

During the interim, the State Auditor presented 67 audit reports to the committee. A list of the audits is on file in the Legislative Council office. An additional 88 audit reports were filed with the committee but were not formally presented. The committee's policy is to hear only audits of major agencies and audit reports containing major recommendations; however, an audit not formally presented could be heard at the request of a committee member or members.

The committee was assigned two studies. House Bill No. 1611 directed a study of the state of North Dakota's accounting and financial reporting system, and provided an appropriation of $50,000 to be used for the study. Senate Concurrent Resolution No. 4050 directed a study of the use of special funds and cash accounts maintained in the state treasury.

STATE ACCOUNTING SYSTEM STUDY

Selection of a Consultant

The 1979 Legislative Assembly appropriated $50,000 in House Bill No. 1611 to conduct a study of the state's accounting system. Four consulting firms submitted proposals to conduct the study at a joint meeting of this committee and the Data Processing Committee. At that joint meeting, the committee decided to accept the proposal of Arthur Andersen & Co., a national accounting firm, for a study of the state's accounting and financial reporting system. The state accounting system was also a main topic of discussion of the Legislative Audit and Fiscal Review Committee during the previous interim.

Final Report of Consultant

Arthur Andersen & Co. was assisted in conducting its day-to-day project work by one representative from each of three agencies: Department of Accounts and Purchases, State Auditor's office, and Legislative Council. The firm also involved an Accounting System User Committee in the project to review ideas, conclusions, and recommendations. The user committee consisted of representatives from 13 state agencies, including major service agencies as well as agencies with statewide responsibilities. Representatives of agencies which use the accounting system to a great extent, such as the Department of Accounts and Purchases and the State Auditor's office, testified regarding the progress of the accounting study during the course of the interim.

Arthur Andersen & Co. presented its final report on the state accounting and financial reporting system at the February 1980 meeting of the committee. Conclusions and recommendations in the final report included the following:

1. The basis of accounting and financial reporting for the state of North Dakota should be accrual accounting and the preparation of comprehensive financial statements should be based on generally accepted accounting principles. It is critical that the state develop a financial reporting manual which defines the specific application of generally accepted accounting principles, and that there be training and followup of the use of these accounting methods.
2. The current computer system for general accounting does not handle the accounting records and reporting that makes up generally accepted accounting principles; however, the system can be modified to meet the needs of the state and these modifications can be made at less cost than developing and installing a new system. It is important for the state to emphasize training and the proper use of the system and the principles of accrual accounting and comprehensive financial reporting.
3. The following steps should be taken to extend the use of the current computer system:
   a. Design and implement system changes which will make the system easier to use.
   b. Create an accounting procedures manual aimed at the users of the system.
   c. Provide recurring training for those who will be using the system.
   d. After modifications are made and the users are trained to operate the system, provide personnel to answer questions on use of the system and to monitor compliance with procedures.
4. Develop and upgrade the state's transaction system in a careful, controlled manner. Some of the statewide transaction systems that are necessary to meet identified user needs are old and difficult to maintain. Also, some of the transactions systems which are under development are being developed for only one agency rather than for statewide use.

The firm said the project recommendations can be grouped into four activities:

1. Make changes to the computer system which does the statewide general accounting.
2. Write an accounting manual of why and how to use the accounting system. Also, train state personnel in the proper use of the computerized accounting system and monitor use of the system to assure compliance with standard procedures.
3. Write a financial reporting manual defining the reporting principles to be used. Also, train state personnel in the proper preparation and use of financial reports and monitor compliance with standard procedures.
4. Coordinate development of computer systems for accounting, financial reporting, and related areas.

The firm said the Department of Accounts and Purchases should have the responsibility to implement the project recommendations, and said that based on the project team's review, these recommendations cannot be accomplished with the current staffing in the Department of Accounts and Purchases. Therefore, Arthur Andersen & Co. concluded that seven additional people are required in the Department of Accounts and Purchases: one person as a financial systems coordinator to work with Central Data Processing to implement statewide systems; three people responsible for ongoing training and assistance to state accounting personnel in the use of the mechanized accounting system; and three additional people who would train accounting personnel in large agencies and assist smaller agencies in preparation of financial reports.

The firm summarized the economic considerations of the report, dealing with the costs and benefits of implementing the recommendations. Implementation costs and annual operating costs are addressed later in the report. Tangible benefits, which include time saved in the preparation of financial statements, quarterly revenue and expenditure statements, and agency budgets, were estimated to be an annual savings of $80,000.

Some of the intangible benefits listed in the report which could be realized upon implementation of the recommendations include:

1. Consistency, accuracy, reliability, and flexibility of financial statements.
2. The state will have a core of professional accounting personnel.
3. Agency and statewide management should have more and better information with which to make decisions.
4. The level of user confidence in the system should increase.
5. The modifications will establish a basis for eventually bringing the Highway Department's accounting system into the state central accounting system.
6. There is a potential for reducing some of the current agency manual records.
7. The current general accounting system, when modified, should be able to fulfill the state's needs for the next several years.
8. The systems developed by the state will be available for all potential users who have similar needs.

In an additional section of the Arthur Andersen & Co. report, the firm recommended that it should be a priority of the state to file a statewide cost allocation plan to assure that full advantage of federal program support is taken in the future. The firm also provided a report containing examples of general purpose financial statements for the state of North Dakota. The statements were compiled for information and discussion purposes only.

Other Considerations

A related functional area considered by the committee was the state's payroll system. A review of the payroll system was not included in the scope of the study done by Arthur Andersen & Co. The Department of Accounts and Purchases reported that, because a significant amount of financial management reporting is dependent upon the capability of the payroll system, it is necessary to assure that the payroll system will support the proposed upgrading of the accounting system. The department indicated that the most feasible alternative available to the state regarding the payroll system would be to replace the current system by purchasing a software package for payroll. It was estimated that a software package and the implementation would cost between $350,000 and $400,000, including conversion costs.

The Department of Accounts and Purchases is requesting $1 million in its 1981-83 budget request to be used for the revision of the accounting and payroll systems. This amount includes funds for seven additional people in the department, as recommended by the Arthur Andersen & Co. study. The total request of $1 million includes the following:

$465,000	Revision of accounting system (per Arthur Andersen & Co. report)
400,000	Revision and integration of a payroll/personnel reporting system (per estimate of the Department of Accounts and Purchases)
100,000	Inflationary costs and contingencies on project estimates (per estimate of the Department of Accounts and Purchases)
35,000	Clerical support, supplies, and equipment (per estimate of the Department of Accounts and Purchases)
$1,000,000	Total

The Arthur Andersen & Co. report also estimated that, following implementation of the system, the annual operating costs for the seven additional staff will be $203,000 or $406,000 per biennium.

Recommendations

The committee recommends a bill to amend Section 54-44-04(8) and to create three new subsections to Section 54-44-04 of the North Dakota Century Code, to provide for the revision of the state's accounting and financial reporting system by assigning the responsibility for such revision to the director of the Department of Accounts and Purchases. The bill provides that the director of the Department of Accounts and Purchases shall provide for an accrual accounting system; coordinate the development of an accounting system and other systems related to finance; create an accounting manual and provide sufficient training of current and potential users concerning the functions and use of a statewide accounting and reporting system; and prepare on an annual basis comprehensive financial statements of the state of North Dakota. The bill also includes a $1 million general fund appropriation to the Department of Accounts and Purchases to revise the state accounting system.

The committee also recommends a resolution directing improvements to the state of North Dakota's accounting and financial reporting system. The resolution directs the Department of Accounts and Purchases to develop an accrual accounting system; to coordinate and assist in improving and maintaining accounting systems for state agencies, departments, and institutions; and to the extent

possible prepare on an annual basis comprehensive financial statements of the state. The resolution also directs the Department of Accounts and Purchases to develop a cost allocation plan, within the limits of legislative appropriation, and directs state agencies and institutions to utilize such a plan.

The Department of Accounts and Purchases said to implement the provisions of the resolution, it would require the department to request an additional staff person to develop and implement a cost allocation plan.

STUDY OF SPECIAL FUNDS AND CASH ACCOUNTS

Purpose of Study

Senate Concurrent Resolution No. 4050 directed a study of the use of special funds and cash accounts maintained in the state treasury and of the state's accounting system. The accounting system study was also provided for in House Bill No. 1611, which was assigned to this committee. The accounting study was discussed earlier in the report. The committee identified the following as objectives of the study of special funds and cash accounts:

1. Determine which funds are inactive and could be closed with the balances in such funds transferred to the general fund.
2. Identify special funds which have been invested by various state agencies and are not reflected in the fund cash balances recorded by the State Treasurer.
3. Consider consolidating some funds with other funds or into the general fund.

Senate Concurrent Resolution No. 4050 stated that, in a period of declining state revenues, it may be necessary to use the proceeds of these special funds and cash accounts to supplement general fund revenues.

Special Funds and Cash Accounts Reviewed

The committee reviewed a list of securities held by the state in the custody of the State Treasurer, which totaled $333,148,847 as of June 30, 1979. The total of the fund cash balances as of June 30, 1979, including the general fund balance, was $216,524,395. The committee also reviewed and discussed numerous special funds and cash accounts, including the following:

1. Abandoned Motor Vehicle Disposal Fund
2. Surplus Property Fund
3. Vietnam Adjusted Compensation Fund
4. Seed Department Operating Fund
5. Central Microfilm Operating Fund
6. Vietnam Bond Sinking Fund
7. Snowmobile Fund
8. Land and Minerals Trust Fund
9. Operating funds of the institutions of higher education, the Extension Division, and the experiment stations
10. School Construction Fund
11. Nursing Home Loan Fund
12. Scholarship Revolving Loan Fund

The committee heard testimony from representatives of the agencies responsible for the funds listed above during which they commented on the retention or transfer of their respective funds. After consideration of testimony and other information, the committee took further action in four areas: the Abandoned Motor Vehicle Disposal Fund; the Vietnam Adjusted Compensation Fund; the Central Microfilm Operating Fund; and the Scholarship Revolving Loan Fund.

Abandoned Motor Vehicle Disposal Fund

At the February 1980 meeting, the Health Department reported the balance in the Abandoned Motor Vehicle Disposal Fund as approximately $850,000. It was reported that a balance in the fund of about $400,000 would be adequate. Additions are made to the fund by the imposition of a $2 tax on each initial North Dakota certificate of title issued to a passenger motor vehicle or a truck motor vehicle. The Health Department said the fund has been growing because, due to the present high price of steel, the Health Department has not had to offer incentive moneys to steel dealers in order for them to pick up abandoned vehicles.

The committee recommends a bill to amend Sections 39-26-11 and 39-26-12 of the North Dakota Century Code, to provide for the transfer of excess funds in the Abandoned Motor Vehicle Disposal Fund to the general fund and for the suspension of the tax on certificates of title. The bill allows the State Health Officer to reimpose the tax when it becomes necessary. The bill also states that on July 1, 1981, the amount by which the balance in the Abandoned Motor Vehicle Disposal Fund exceeds $400,000 shall be transferred from the Abandoned Motor Vehicle Disposal Fund to the general fund in the state treasury.

Vietnam Adjusted Compensation Fund

The committee recommends a bill to provide for the balance of moneys in the Vietnam Veterans' Adjusted Compensation Fund on July 1, 1981, to be transferred to the general fund.

It is estimated that the June 30, 1981, balance of the fund will be $3,365,306. This figure includes the July 1, 1979, balance of $5,666,692 less appropriations from the fund of $2,301,386 made by the 1979 Legislative Assembly for the 1979-81 biennium. The appropriation amount from the fund was originally $4,941,386 but was reduced by $2,640,000 due to the referral and defeat (at the September 1980, primary election) of the Cross Ranch purchase bill. It was noted that the balance of $3,365,306 is only an estimate depending on the actual expenditures from the appropriation mentioned above during the 1979-81 biennium.

Central Microfilm Operating Fund

The Secretary of State reported that he would prefer to have microfilm revenue deposited directly to the general fund, and then have the appropriation for the Records Management and Central Microfilm Division made entirely from the general fund. At the present time, microfilm revenue is deposited to the Central Microfilm Operating Fund, then appropriated back to the department.

The committee recommends a bill to amend Section 54-46.1-01 to provide for central microfilm revenue to be deposited in the general fund, eliminating the necessity for a Central Microfilm special fund, with the appropriation for the Central Microfilm and Records Management Division of the Secretary of State to be made entirely from the general fund.

State Scholarship Revolving Loan Fund

During discussion of the state Scholarship Revolving Loan Fund, the Bank of North Dakota reported that 4,444 loans were made from this fund and all but 39 have been repaid. Loans are no longer being made from this fund. Of the 39 remaining loans, 11 are considered uncollectible due to death or bankruptcy; legal action is pending on 13 of the loans; and payments are still being made on the remaining 15 loans. The Bank of North Dakota said it would like to write off the uncollectible loans, but

legislation is required authorizing the Bank to do so. The Bank said its auditors, in the most recent Bank of North Dakota audit report, have recommended that the state scholarship loan program be reviewed in detail and all loans be charged off which have no possible chance for further collection.

The committee recommends a bill to amend Section 15-62.1-13 to allow the Bank of North Dakota to cease collection efforts on loans made from the state Scholarship Revolving Loan Fund which are determined to be uncollectible by action of the Industrial Commission.

Other Funds

Other major funds discussed by the committee included the Vietnam Bond Sinking Fund and the Land and Minerals Trust Fund. It was reported that the June 30, 1981, estimated balance of the Vietnam Bond Sinking Fund is $4,947,130. It was also reported that the June 30, 1981, estimated balance of the Land and Minerals Trust Fund is $10,067,171.

STATE AUDITOR

Consolidated Financial Statements

The committee expressed interest in reviewing consolidated financial statements for the state of North Dakota. Therefore, the State Auditor prepared prototype financial statements to present fiscal year 1979 data on state governmental operations. 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, 1979

ASSETS

Cash	$ 307,761,000
Investments	595,995,000
Receivables (Net):	
Accounts and interest	109,709,000
Loans	309,807,000
Taxes	3,046,000
Federal funds sold	95,735,000
Inventories	14,638,000
Prepaid expenses	147,000
Property, plant, and equipment	393,627,000
Total Assets	$1,830,465,00

LIABILITIES AND EQUITY

Liabilities:	
Deposits, interest, salaries, and accounts payable	$ 444,759,000
Repurchase agreements	120,791,000
Claims and benefits payable	79,592,000
Other liabilities	58,087,000
Deferred revenue	17,327,000
Bonds payable	65,401,000
Notes payable	5,555,000
Total Liabilities	$ 791,512,000
Equity:	
Fund Balance	$1,038,953,000
Total Equity	$1,038,953,000
Total Liabilities and Equity	$1,830,465,000

*Unaudited

STATE OF NORTH DAKOTA
PROTOTYPE CONSOLIDATED STATEMENT OF REVENUES AND EXPENDITURES*
For fiscal year ended June 30, 1979

REVENUES:	
Federal	$ 171,182,000
Sales and services	117,047,000
Taxes and assessments	413,891,000
Licenses and permits, rents and royalties	58,370,000
Investment/interest income	93,879,000
Deposits	36,047,000
Premiums/policy fees	24,627,000
Other revenues and receipts	25,847,000
Total Revenues	$ 940,890,000
EXPENDITURES/EXPENSES:	
Salaries and wages	$ 85,023,000
Fees and services	28,400,000
Supplies and materials	18,944,000
Grants/benefits/claims, other distributions	338,232,000
Contract payments	78,635,000
Loan cancellations, bad debt expenses	705,000
Investment/interest expense, bond principal payments	44,102,000
Depreciation deletions	492,000
Cost of goods sold	33,539,000
General and administrative	73,789,000
Instruction and research	58,866,000
Benefit payments/contribution refunds	38,826,000
Other	2,567,000
Total Expenditures/Expenses	$ 802,120,000
Revenues over Expenditures	$ 138,770,000

*Unaudited

Responses to Audits and Recommendations

Some of the audit reports presented by the State Auditor included a section which contained the audited agencies' written responses to the various audit recommendations. Having these responses readily available helped the committee to better understand the recommendations and see what corrective action was being taken by an agency to comply with the recommendations. The committee was concerned because some agencies had not responded to the auditor's recommendations in writing, even though the recommendations were of an important nature.

The committee encourages the State Auditor to include in every audit report a summary of audit recommendations, along with the audited agency's written response to those recommendations. It was suggested that the summary be in a recommendation-response format.

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, 1979. The firm presented its audit report at the committee's February 1980 meeting.

The firm commended the State Auditor's office for the improvement in the quality of its performance of the postaudit function.

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 undertake performance audits on a regular basis. The firm recommended that the State Auditor's office establish written criteria to be used for the selection of agencies for future performance reviews.

PERFORMANCE REVIEWS

Workmen's Compensation Bureau

One agency subject to a performance review by the State Auditor during the interim was the Workmen's Compensation Bureau. The audit of the bureau included an expanded scope audit (performance review) and a financial audit for the years ended June 30, 1978 and 1979.

The State Auditor issued an adverse opinion on the financial statements of the Workmen's Compensation Bureau because, in addition to other problems, reporting for premium revenue, premium adjustments, and unearned premiums was not in accordance with generally accepted accounting principles. The auditor recommended the bureau adopt the full accrual basis of accounting, as appropriate for enterprise funds.

To assist in the performance review, the State Auditor acquired the services of Woodward and Fondiller, Inc., consulting actuaries from New York, New York, to perform an actuarial analysis of the Workmen's Compensation Bureau. It was reported that the soundness of the bureau's fund could not be determined, due primarily to the lack of sufficient historical data upon which to base projections and to significant differences in current bureau accounting practices compared to generally accepted accounting principles as applicable to fire and casualty insurance companies.

Insurance Commissioner's Office

Another agency subject to a performance review by the State Auditor was the Insurance Commissioner's office. Senate Bill No. 2001 of the 1979 Legislative Assembly

stated that, in the course of conducting the next regular audit of the State Insurance Commissioner's office, the State Auditor shall conduct an expanded scope audit (performance review). The State Auditor conducted an audit of the Insurance Department for the years ended June 30, 1977, 1978, and 1979, which included an expanded scope audit and a financial audit.

The audit report of the State Auditor included a number of recommendations relating to the various divisions of the Insurance Department, and some recommendations on suggested changes in state legislation. One such recommendation of the State Auditor was that the legislature should consider moving the annual statement filing and premium tax deadline for insurance companies from April 1 to March 1. The auditor reported that 42 of the 50 states have annual statement and premium tax payment deadlines on March 1 or earlier, or have the tax payments paid in installments. He said the state general fund could receive an additional $60,000 a year in interest income if the tax payment deadline was moved to March 1. He reported that the Insurance Department is currently receiving over $2 million of the $9 million in premium tax before March 1, because some companies are paying their tax as they do in the majority of the other states.

The committee recommends a bill to amend Sections 26-01-11 and 26-07-05, providing for a change in the annual statement filing and premium tax deadlines for insurance companies from April 1 to March 1.

Another recommendation of the State Auditor was that the legislature should consider legislation which would protect drivers from nonrenewal of their auto insurance for arbitrary or capricious reasons. The committee recognized that nonrenewal of automobile insurance is a serious problem and that legislation is needed to provide protection to insured persons. The committee considered a bill in this regard and encourages the Insurance Department to propose the necessary legislation.

The committee also suggested the Insurance Department introduce other legislation which was recommended by the State Auditor in his performance review of the Insurance Commissioner's office.

Federal Cash Management

At the October 1980 committee meeting, the State Auditor presented a progress report of a performance review of the handling and management of federal cash by the state of North Dakota. The preliminary report of the State Auditor revealed that many state agencies are not allocating all of the direct and indirect costs allowed for the administration of grant programs and that not all state agencies are filing grant applications with the state intergovernmental clearinghouse as required. It was also reported that agencies of state government have not filed grant requests with the Office of the Budget in accordance with Section 54-44.1-05. The State Auditor said there is no single office of state government that can provide a record showing the number of grants, the agencies who receive the grants, and the total amount of federal moneys received by all state agencies.

A preliminary recommendation of the State Auditor is that the state clearinghouse function be incorporated into and under the director of the Office of the Budget. Another recommendation is that a grants management section be established in the Office of the Budget for the purpose of bringing about a more efficient and effective administration of federal funds management. The State Auditor also said there are a number of state agencies who could be recovering indirect costs but are not doing so.

The committee encourages the State Auditor to complete the review of federal cash management before the 1981 Legislative Assembly so that a report on the review can be made available to legislators for their use during the legislative session.

Future Performance Review

The committee encouraged the State Auditor to follow through on his proposal to conduct a performance review of the food stamp program of the state of North Dakota, with emphasis given to the program as it relates to migratory workers.

INSURANCE DEDUCTIBLES ON STATE-OWNED MOTOR VEHICLES

In its review of audit reports presented by the State Auditor, the committee became aware that state agencies and institutions were not consistent in that they carried varying deductible amounts for comprehensive and collision insurance coverage on motor vehicles. The committee suggested that the deductibles for comprehensive and collision coverage be higher to save insurance premium costs. The committee requested staff to research the state's current procedures and policies in regard to automobile insurance.

The staff reported that the Department of Accounts and Purchases annually awards a contract to an insurance company for the state's motor vehicle insurance. All insurance agencies who have asked to be included on a bid list are sent requests for bids by the Department of Accounts and Purchases. The contract is for liability coverage only, and it is the choice of the individual state agencies as to whether or not they wish to carry comprehensive and collision coverage. The agencies also have their choice of deductible limits for such coverage. It was reported that most state agencies with liability coverage also have comprehensive and collision coverage, and that of the agencies with coverage for physical damage, a majority have contracts for $50 deductible comprehensive coverage and $100 deductible collision coverage.

The committee recommends that state agencies review their motor vehicle insurance coverage and consider carrying higher deductibles for physical damage, including $100 deductible comprehensive coverage and $250 deductible collision coverage.

The Department of Accounts and Purchases said it could make an effort to emphasize to the various state agencies that they could experience premium savings by carrying higher deductibles on their motor vehicle insurance coverage. The committee suggested that, at the time it is requesting bids, the Department of Accounts and Purchases should request bids on various amounts of liability coverage and should also request bids for physical damage coverage.

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, 1979, indicated that $1,657,960 of accounts receivable had been written off. The report for the year ended June 30, 1980, indicated that $1,617,737 of patients' accounts receivable were written off during that year. The State Hospital reported that the amounts now being written off are less than in previous years due to increased emphasis on the collection of accounts receivable.

OTHER ACTION AND DISCUSSION

Insurance on New Construction

The committee discussed the importance of improving insurance coverage for buildings at the institutions of higher education. The committee requested staff to prepare legislation, based upon recommendations of the State Fire and Tornado Fund of the Insurance Department, which would revise and improve the insurance rate structure applicable to the institutions of higher education.

The committee recommends a bill to repeal Section 26-24-14, relating to the new construction insurance rate charged by the State Fire and Tornado Fund on public property. The bill eliminates the higher rate charged for insurance of new buildings or additional insurance on existing buildings. The bill affects all state agencies that acquire insurance through the State Fire and Tornado Fund, including the institutions of higher education.

The State Fire and Tornado Fund manager supported the bill. He said the bill would distribute premium charges more equitably among all the insurance policies, thereby being more equitable to each state agency and political subdivision.

State Hospital — Transfers from County Jails

The acting superintendent of the State Hospital informed the committee at its October 1980 meeting of a recent North Dakota Supreme Court ruling which states that counties are responsible for providing medical services to their prisoners and must, as the committing agency, pay for the prisoners' expenses. The State Hospital estimated that there are 200 transfers each year from county jails to the State Hospital and that an average stay of 30 days would incur costs of about $2,000, therefore the counties could be liable for up to $400,000 per year for these transfers.

The committee recognized the financial hardship this ruling could have on the counties, and recommends a bill to prohibit the State Hospital from charging for services for patients who are transferred to the State Hospital from county jails.

Health Department

Also at the October 1980 meeting, the committee expressed concern about the situation in the State Health Department, as Health Department officials had projected a deficit for the 1979-81 biennium and about 32 full-time department employees had been laid off. Some committee members expressed interest in obtaining additional information regarding the Health Department before the next Legislative Assembly.

The State Auditor said the most recent completed audit of the Health Department was for the fiscal year ended June 30, 1979, and that the audit for fiscal year 1980 would be started within the next few months.

Because of the projected budget deficit of the Health Department, the committee asked the State Auditor to begin his annual audit of the Health Department earlier than scheduled so that the report can be made available to committee members prior to the 1981 Legislative Assembly. The committee also asked that the audit give special consideration to fees and services, including travel expenditures; the reduction in the number of departmental employees; and the effect of federal funding in regard to the projected deficit.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

Senate Concurrent Resolution No. 4071 directed a study of the legislative rules, including the Senate rules, House rules, and joint rules, with emphasis on finding methods of improving the legislative process, including the deletion of obsolete provisions and the giving of special attention to those rules in the two houses which differ.

The Legislative Council is directed by Section 54-35-11 of the North Dakota Century Code to make necessary arrangements to facilitate the proper convening and operation of the Legislative Assembly, except for the hiring of legislative employees to work during the regular session. This responsibility was assigned to the Legislative Procedure and Arrangements Committee.

The committee received periodic reports on and provided direction to the renovation projects in the legislative wing of the State Capitol authorized by House Bill No. 1003 (1979). The committee worked with an architectural firm in updating the estimated appropriation needed to complete the legislative wing renovation project approved during the previous biennium but not funded in House Bill No. 1003.

The chairman of the Legislative Council directed the committee to study legislative reapportionment as provided in House Concurrent Resolution No. 3008 (1979). This resolution had been delayed by the Legislative Council until availability of census data made action appropriate. As it appeared census data may be available in time to allow serious consideration of reapportionment matters during the 1981 Session, the chairman authorized this study.

Committee members were Representatives Richard Backes, Chairman, William Kretschmar, Corliss Mushik, Earl Strinden, and Vernon Wagner; and Senators S. F. Hoffner, David Nething, Rolland Redlin, and Russell Thane. The committee obtained the assistance of Mr. Leo Leidholm, Secretary of the Senate and also invited Mr. Roy Gilbreath, Chief Clerk of the House, to participate in meetings. The committee met seven times during the interim.

The report of the Legislative Procedure and Arrangements 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-seventh Legislative Assembly by the Legislative Council in November 1980.

LEGISLATIVE RULES STUDY

The committee was directed by Senate Concurrent Resolution No. 4071 to study the legislative rules with emphasis on finding methods of improving the legislative process. The committee was directed to give special attention to those rules which differ in the two houses.

Over the years the Senate and House have adopted many of the same rules. However, some of the rules have the same numbers in both houses and other similar rules have different numbers. To alleviate some of the confusion which this has caused, the committee decided to rearrange and renumber all of the rules, so that similar Senate and House rules would share the same numbering system.

The Senate and House rules were rearranged in chapters according to subject matter. Chapter I contains rules on organization and convening; Chapter II contains the rules on officers and employees; Chapter III contains floor procedure rules; Chapter IV contains rules relating to bills and resolutions; Chapter V contains the rules on committees; and Chapter VI contains the rules on committee reports. Chapter VII in the Senate rules contains the rule on executive nominations, while in the House this chapter contains the rules relating to the Committee of the Whole. Chapter VIII in both sets of rules contains the rule relating to the rules manual.

The joint rules have also been reorganized according to chapters. Chapter I contains the rules on communications and transmittals; Chapter II contains the rules on procedures on measures; Chapter III contains the rules on joint committees; Chapter IV contains the rule on joint sessions; Chapter V relates to fiscal notes; Chapter VI contains the rules on printing; Chapter VII contains the rule on legislative days; and Chapter VIII has the open meeting rule.

Parallel tables are published with this report as Appendix "A" and may be used to trace rule numbers from proposed to existing and vice versa.

Senate and House Rules Which Differ

The committee compared all Senate and House rules which differed from those in the other house. Some of these differences are based upon the inherent differences between the houses, such as the rules relating to the Lt. Governor voting in the Senate and the duties of the presiding officers in the respective houses. In addition, the Senate has a rule for the handling of executive nominations which has no counterpart in the House rules.

Other differences between Senate and House rules are based upon the size differentials between the houses. For example, the Senate has a rule that 50 percent of the members of a Senate committee constitutes a quorum, while the House has no such rule. The standing committee structure differs because of the size of the respective houses. The comparatively smaller size of the Senate permits more flexibility as respects the introduction of guests on the floor and floor amendments. In addition, the House has a procedure for forming a Committee of the Whole while the Senate has no similar procedure.

Some of the unique rules are based upon historical preferences of the members of the North Dakota Senate and House of Representatives. For example, the House has procedures set out in the rules relating to seniority and seating arrangements, while the Senate has no written rules on these subjects. Only the House has a rule prohibiting smoking in committee rooms. During the 1979 Legislative Session, the Senate adopted a rule providing that the Committee on Appropriations shall not change the intent of any measure rereferred to it after a hearing in another standing committee of the Senate, unless necessitated by consideration of the appropriation contained in the measure. The House has no comparable rule.

The vote required to suspend the rules is another matter in which the rules differ. Both houses require a vote of two-thirds of the members-elect to suspend the rules, but the House rule further requires unanimous consent to suspend the rules and pass a bill not heard by a committee, or to reconsider or suspend a rule requiring unanimous consent.

Orders of Business

The committee recommends that Senate Rule 301 (for-

merly Senate Rule 4) be amended by adding the words "procedural committees, and certain divided committee reports" to the seventh order of business, which now provides only for reports of select committees. This change will make the Senate rule consistent with the House rule.

Duties of Secretary and Chief Clerk

The committee recommends Senate Rule 203 (formerly Senate Rule 8) be amended by adding two subsections which currently appear only in the comparable House rule relating to the Chief Clerk. One of these subsections provides that the Secretary of the Senate shall provide identification badges for members of the Senate and employees and the other new subsection provides for supervision of materials to be distributed to members' desks.

The committee also recommends the House rule be amended to provide that the Chief Clerk perform "such other duties as shall be assigned by the Speaker" to be consistent with the similar Senate rule.

Duties of Sergeants-at-Arms

The committee recommends that House Rule 205 (formerly House Rule 9) be amended to include language now found in the Senate rule which provides that the sergeant-at-arms shall clear the floor of all persons except legislators, legislative employees, and members of the press commencing 15 minutes prior to the convening of the House. The House rule currently provides for the removal of all "unauthorized persons" during that time.

Order and Decorum

Senate Rule 304 (formerly Senate Rule 11) would be amended to include the sentence "When a member is called to order for offensive language, there shall be no debate." This sentence previously appeared only in the comparable House rule.

Rules of Debate

Senate Rule 306 (formerly Senate Rule 13) is recommended for amendment to improve the language and to include provision that a spokesman for a bill designated by a committee chairman shall not be limited to the time limits set on debate by other members. This will make the Senate rule identical to the comparable House rule.

Order of Motions

House Rule 311 (formerly House Rule 18) would be amended to provide that four motions named in the rule shall be decided without debate. These motions are to fix the time to which to adjourn, to adjourn, to lay on the table, and to move the previous question. This language now appears only in the comparable Senate rule.

Order in Which Question Put

House Rule 312 (formerly House Rule 19) is recommended for amendment to delete a sentence which reads "In filling blanks the largest sum and the longest time shall be put first." This language does not appear in the existing comparable Senate rule and serves no purpose under current practice.

Stating of Questions and Verification

The committee recommends that Senate Rule 313 (formerly Senate Rule 20) be amended to permit verification of voice votes by electronic voting machine rather than by having the members rise. This rule will then read essentially the same as the comparable House rule.

Nondebatable Motions

The list of motions which are not debatable found in Senate Rule 314 (formerly Senate Rule 21) would be amended by adding the clincher motion and amendments to fix the time of adjournment. These two motions are listed in the comparable House rule.

Previous Question

The committee recommends that House Rule 22 be repealed. It was noted the Senate has gotten along without this rule and special procedures are not needed to handle motions calling the previous question.

Division of Questions

The committee recommends that Senate Rule 316 (formerly Senate Rule 22) be amended to delete language providing that on bills containing appropriations, the division may be either by section or by line item. It was noted this language is not necessary. Senate rule 316 would be further amended by adding that there shall be no division of the question on a conference committee report. The House rule already contains that provision.

Aye and Nay Vote

Senate Rule 317 (formerly Senate Rule 23) is recommended for amendment to delete the words "member or any other" in the statement prohibiting persons from remaining by the Secretary's desk when the votes are being called. This change makes this rule consistent with the comparable House rule.

Procedure in Excusing Members From Voting

The committee recommends that House Rule 319 (formerly House Rule 26) be amended to provide that the procedures for excusing a member from voting occur prior to the taking of the vote. The House rule previously provided that the proceedings apply after the vote has been taken and before the chair has announced the vote. This change will make the rule consistent with the procedure followed and will make it consistent with the comparable Senate rule.

Introduction of Bills

House Rule 402 (formerly House Rule 30) is recommended for amendment to provide that no member of the House shall introduce more than three bills as prime sponsor after the 10th legislative day. This limitation was adopted by the Senate in 1979 but was not adopted by the House at that time. Committee members expressed the opinion that this limitation encourages earlier introductions of bills.

Delayed Bills and Resolutions

The committee recommends that Senate Rule 403 (formerly Senate Rule 30) be amended to require that all delayed bills and resolutions bear the name or names of the original sponsors. This change will make the Senate rule consistent with the comparable House rule.

Form and Style

The two houses have different rules concerning the form and style check by the Legislative Council staff. Both rules include procedures for the handling of bills when the form and style check delays the introduction of the measures beyond the usual deadline. It was noted that the House procedure is less cumbersome, and therefore the committee recommends that Senate Rule 405 (formerly Senate Rule 31) be amended to make it consistent with the House rule.

Printing and Distribution of Bills

The committee recommends the repeal of House Rule 36.1, relating to printing and distribution of bills. The Senate has no comparable rule and the same provisions are provided in Joint Rule 604 (formerly Joint Rule 25).

Social Services and Veterans Affairs Committee

The committee recommends that Senate Rule 501 (formerly Senate Rule 39) be amended to change the name of the Social Welfare and Veterans Affairs Committee to the Social Services and Veterans Affairs Committee. In addition to better reflecting the scope of this committee's jurisdiction, the committee made this recommendation because the House previously adopted this change in name.

Size of Employment Committee

The committee recommends Senate Rule 501 (formerly Senate Rule 39) be amended to reduce the size of the Employment Committee from nine to five members so both employment committees will be the same size.

Meetings of Chairmen

The committee recommends House Rule 505 (formerly House Rule 43) be amended to provide that meetings of committee chairmen be held at such time and place as may be designated by the majority leader, instead of at a specified time subject to the call of the chairman. This change makes the rule consistent with the comparable Senate rule.

Notice of Hearings

The committee recommends that House Rule 506 (formerly House Rule 44) be amended to delete the requirement that the Chief Clerk read notices of committee hearings and give three copies to the press and one copy to the Legislative Council staff. These changes make the rule consistent with the comparable Senate rule.

Committee Reports

Senate Rule 601 (formerly Senate Rule 46) is recommended for amendment to delete references to committee reports for indefinite postponement and replacement of that language with wording that a bill or resolution "do not pass." In addition, a new subsection would be added to this rule concerning divided reports similar to the comparable House rule, and Senate Rule 602 (formerly Senate Rule 47) would also be amended to contain a cross-reference to the new subsection. These changes will remove the differences between the houses on these procedures.

Setting Time Certain for Floor Debate

A new House Rule 331, which provides a procedure for setting a time certain for floor debate similar to the Senate rule (previously numbered Senate Rule 52.1), is recommended to make the rules consistent. It was noted this can be done without a rule but to be consistent, the committee recommends the House adopt this language to conform to the Senate procedure.

Second Reading

The committee recommends that House Rule 332 (formerly House Rule 54) be amended to permit measures to have their second reading on the same day they are reported back from committee on a two-thirds vote of the members-elect of the House instead of a two-thirds vote of the members present. This change will make the House rule comparable to the Senate rule.

Exception for Conference Committee Reports

The committee recommends that House Rule 605 (formerly House Rule 55) be amended to delete the requirement that only on the 60th legislative day may conference committee reports be acted upon the same day as received. This change makes the House rule consistent with the comparable Senate rule.

Recording Remarks in Journal

House Rule 339 (formerly House Rule 61) is recommended for amendment to add language that remarks shall be recorded when a member so desires. The existing language in the House rule does not make the recording of remarks mandatory as required by the Senate rule.

Clincher Motion

The committee recommends that Senate Rule 342 (formerly Senate Rule 63) be amended to add a sentence providing that clincher motions shall be decided without debate. The House rule currently contains a similar provision.

Electronic Recording Devices

The committee recommends the repeal of House Rule 85 which requires notification of a committee chairman whenever a person intends to use a recorder during a committee meeting. Committee members believe this rule is out of date and is no longer needed. The Senate has no comparable rule.

Bill Introduction Privilege and Deadline for Agency Bills

Executive branch agencies have had the privilege of introducing bills since the 1973 Session. Although the deadline for the introduction of bills sponsored by legislators and committees is the 15th legislative day, the agency bill deadline is the fifth legislative day. There are several advantages in having agencies directly introduce bills. The agency bill introduction privilege relieves legislators of sponsoring routine and housekeeping legislation and from appearing as prime sponsors on such bills. Communication between the branches of government is improved, as the agency of introduction is notified directly by committee clerks of the time and place of hearings on agency bills. The agency introduction privilege also permits earlier introduction of agency legislation, allowing executive branch agencies to prefile their bills, thus allowing their early printing, and permitting hearings on them earlier in the session than would be possible if legislator sponsors had to be secured.

There were 215 executive agency bills introduced in the 1979 Session, 119 in the Senate and 96 in the House. Only 62 of these bills were prefiled and 95 were introduced on the deadline day. Although the rules provide only for the introduction of bills by executive agencies, three concurrent resolutions were introduced at the request of executive branch agencies during the 1979 Session. Information on executive branch bill introductions is published as Appendix "B" to this report.

To provide equal treatment to the third branch of government, the judicial branch, the committee recommends the rules be amended to extend the bill introduction privilege to the Supreme Court as well as executive branch agencies. To require the prefiling of all agency bills, the committee recommends that Senate Rule 402 and House Rule 402 (formerly Senate Rule 29 and House Rule 30) and Joint Rule 208 (formerly Joint Rule 21) be amended to require agency bills to be introduced no later than December 15 prior to the ensuing regular session.

Limitation on Reconsiderations

The rules currently permit any member who votes on the prevailing side of a question or who did not vote on the question, or who voted on a question on which the votes were not recorded, to move for reconsideration of the question. If made after the end of the next legislative day, a motion to reconsider requires a two-thirds vote of the members-elect. There is no limit on the number of times a question may be reconsidered.

The committee recommends that Senate Rule 341 and House Rule 341 (formerly Senate Rule 62 and House Rule 63) be amended to provide that no question shall be reconsidered more than once in any natural day. The term "natural day" has been used because that term is defined in the Constitution.

Private Telephones on the Floor

It has been traditional in both houses for telephones to be provided the majority and minority leaders and the desk forces. Telephones for other legislators have been provided in temporary booths in Memorial Hallway.

In recent years increasing numbers of legislators have been ordering private telephones to be installed at their desks in the chambers. The use of these telephones during sessions is distracting to others and sometimes interferes with the orderly process of business. The committee recommends Senate Rule 350 and House Rule 350 which provide that no private telephones shall be allowed on the floors of the respective chambers. The committee has ordered telephones to be installed on the floors of each chamber, with one telephone for approximately four legislators' desks. The phones will be equipped with cut-off switches at the presiding officers' desks so that telephone service will be disconnected on these phones when the respective houses are in session. The telephone service with incoming WATS lines in Memorial Hallway will continue, (at least during the 1981 Session, after which new telephone areas may be provided) and the telephones in the chambers will be for outgoing calls only.

Votes Required for Certain Questions

Several provisions in the State Constitution and several Senate and House rules provide that certain questions require either majority votes or super majority votes of either the members-elect or the members present. However, legislators have not had the benefit of comprehensive lists of these vote requirements.

The committee recommends Senate Rule 315 and House Rule 315 which provide lists of those questions requiring a majority vote of the members present and voting, those questions requiring a majority vote of the members elect, those questions requiring a two-thirds vote of the members present and voting, and those votes requiring a two-thirds vote of the members-elect. In addition, the new House rule lists three instances where the House rules require the unanimous consent of House members. The Senate has no rules requiring unanimous consent. The rules provide cross-references to the legislative rules or constitutional provisions requiring the particular type of vote required.

The committee also recommends a new provision in the respective rules requiring that when a two-thirds vote of the members present and voting is required, those two-thirds shall in no event constitute fewer than a majority of the members-elect of the respective house. The intent of this language is to prohibit fewer members than a majority of the entire body from passing a motion which requires a two-thirds vote for passage.

Engrossing of Bills in Second House

The rules currently provide that all bills amended in committee or by floor amendment in the House of origin are to be engrossed before their second reading and final passage. Engrossing means the bills are retyped with the amendments in place.

Committee members recognize that multiple amendments to a bill sometimes make the measure extremely confusing, and engrossed copies of such measures would be of assistance. On the other hand, it is recognized that a rule requiring that all bills be reengrossed before final action would be costly and time consuming, as some measures would be delayed for an additional day.

A related question is whether bills that have been engrossed or reengrossed should be reprinted. It would be costly to reprint all bills that have been amended, and as minor amendments do not cause confusion, the expense is not needed in many cases.

The committee recommends amendments to Senate Rule 330 and House Rule 330 (formerly Senate Rule 52 and House Rule 53) to include language that any bill amended in the second house may, prior to second reading, be engrossed on motion of the house or upon request of a leader. Also recommended are amendments to Senate Rule 347 and House Rule 347 (formerly Senate Rule 69 and House Rule 75) to delete language which prohibits printing or engrossing of bills in the second house. These rules are amended to include language permitting the printing or engrossing of bills as provided in the rules.

Committee Reports to Amend and Do Not Pass

The rules do not provide for committee reports that bills "be amended and do not pass." Committee members observed that such reports have been presented by committees and accepted. To bring the rules into conformity with this practice, the committee recommends amendments to Senate Rule 601 and House Rule 601 (formerly Senate Rule 46 and House Rule 47) to permit committee reports that bills or resolutions be amended and do not pass.

Lobbyists Listed in Journals

The Senate rules currently provide that the Secretary of the Senate is to obtain a list of registered lobbyists from the Secretary of State and provide a copy of that list to each member of the Senate on the 35th legislative day.

Testimony from the Secretary of State indicated that office charges for making copies of the list of registered lobbyists, but provides information concerning names on the list at no charge. There were 466 registered lobbyists in 1979, and over 700 in a previous session.

The committee recommends amendments to Senate Rule 203 and House Rule 203 (formerly Senate Rule 8 and House Rule 8) to require the Secretary of the Senate and the Chief Clerk of the House to obtain a list of currently registered lobbyists and to have copies of those lists printed in the respective journals on the 35th legislative day. Members noted there are 3,000 copies of the daily journals printed, and printing the lists of lobbyists in the journals would provide ready access to the list by the public and would thereby serve the public interest.

Titles of Majority and Minority Leaders

The Senate and House rules refer to the majority and minority leaders as "floor" leaders. This language appears to be unique and the titles of leaders in other states do not use those words which sometimes causes confusion. Therefore, the committee recommends that

the word "floor" be deleted wherever it appears in the rules relating to the titles of the majority and minority leaders in both houses.

Employee Positions

Senate Rule 206 and House Rule 206 (formerly Senate Rule 79 and House Rule 86) name officers and employees of the respective houses. These rules have not been rigidly followed, as the employment committees have hired the personnel deemed necessary and have not always hired the exact numbers or titled positions provided for in the rules. To permit flexibility to meet the needs of employee requirements, the committee recommends that these rules be amended to delete the "group D" listing of employees and add language that other employees shall be appointed as deemed necessary by the Committee on Employment. Group D employees are allocated to the majority and minority parties in proportion to the parties' percentage of the total number of members-elect. This language will be retained for whatever positions are filled which are not listed as group A, B, or C employees.

The committee members recognize that some of the employee positions provided in "group B" are no longer necessary. The computer-assisted bill status system will be "on line" in 1981. This system has the capability of preparing daily calendars. As this function will be provided by the bill status reporters in each chamber, it will no longer be necessary for the Senate and House to hire calendar clerks. Therefore, the committee recommends deletion of references to calendar clerks in the rules. The committee also recommends the deletion of references to an assistant desk reporter and an enrolling and engrossing clerk from the list of "group B" Senate employees and the insertion of an assistant appropriations committee clerk, a chief page, and two desk pages. In addition the Senate rule is amended to increase the number of committee clerks from five to nine to make the rule conform to current practice.

The list of "group B" employees in the House would be amended by deleting the references to two assistant committee clerks and one calendar clerk. Committee members recognize that if any of the positions recommended for deletion are deemed necessary by the employment committees, the employees can be hired under the flexibility provided for those committees.

Personal or Private Interest

Section 21, Article IV, of the Constitution of North Dakota provides that any member of the Legislative Assembly who has a personal or private interest in any measure shall disclose the fact to the house of which he is a member and shall not vote on that measure without the consent of that house. Both houses have rules implementing this constitutional provision. Committee members expressed concern over confusion among legislators related to instances when a conflict should be disclosed. Members expressed the opinion that there is a difference between a specific conflict of interest as compared to a remote conflict because a legislator is a member of a larger group.

The committee recommends amendments to Senate Rule 18 and House Rule 18 (formerly Senate Rule 24 and House Rule 25) to add a sentence defining a "personal or private interest" as an interest that affects the member directly, individually, uniquely and substantially. All four of these requirements must be met for a matter to be a personal or private interest requiring disclosure. It is intended that this language serve as a guideline for individual legislators in deciding whether to disclose an interest in a measure.

Conference Committee Reports

Senate Rule 605 and House Rule 605 (formerly Senate Rule 54 and House Rule 55) are recommended for amendment to delete language providing an exception for conference committee reports for amendment from the requirement that copies of amendments be distributed before action. Committee members noted that, considering the ease with which copies are now made, there is no reason to retain this exception.

The committee also recommends the amendment of Senate Rule 602 and House Rule 602 (formerly Senate Rule 47 and House Rule 48) to delete the words "including a conference committee" in the rules permitting divided committee reports. In addition, the committee recommends that Joint Rule 301 (formerly Joint Rule 6) be amended by adding the language "and in no event shall a conference committee submit a divided report." Committee members expressed the viewpoint that there should not be conference committee minority reports.

Amending on Second Reading

The existing House rule permits amending bills on the floor only with unanimous consent except to fill blanks or to amend the title. The comparable Senate rule provides that bills may be amended on the floor on second reading.

Senate members of the committee observed that some amendments are complicated and confusing and should be submitted in writing. Therefore, the committee recommends amendments to Senate Rule 328 (formerly Senate Rule 50) to add a sentence providing as follows: "All floor amendments must be in writing and distributed to each member except those to amend the title or to make minor grammatical changes."

As the practice of permitting the introduction of bills with blanks has been discouraged, the committee recommends House Rule 328 (formerly House Rule 51) be amended by deleting the reference to filling blanks and by rewording the rule for clarity.

Rules Book

The committee recommends amendments to Joint Rule 603 (formerly Joint Rule 11) to add the requirement that the addresses and telephone numbers of legislators be included along with their names in the rules book. In addition, this rule would be amended to add the addresses and telephone numbers of the officers and employees of the Legislative Assembly, as well as the telephone numbers of state officials in the respective listings of these positions in the rules book.

Printing of Bills

Joint Rule 604 (previously Joint Rule 25) is recommended for amendment to change the number of copies of printed bills from 700 to 800. During the 1979 Session, the Senate increased the number of bills printed to the larger figure by motion, as it was determined 700 copies were insufficient.

Signing of Bills

The existing rules require the presiding officers to sign all bills and resolutions in the presence of the respective houses and, immediately before such signing, the titles are to be publicly read. Committee members expressed the opinion that these provisions are not practical and are not in keeping with current practice.

The committee recommends the amendment of Senate Rule 344 and House Rule 344 (previously Senate Rule 66 and House Rule 67) to provide that the presiding officers shall sign all bills and resolutions passed by both houses.

The language being deleted, requiring the signing in the presence of the bodies and publicly reading of titles, also appears in Section 40, Article IV of the North Dakota Constitution. This language was to have been deleted from the Constitution in the new legislative article presented to the voters at the general election in 1980. However, the proposed legislative article was not approved by the voters.

Obsolete Provisions

In revising and rearranging the rules, the committee found several obsolete provisions which it recommends for deletion.

Among the deletions of obsolete language is a provision in Joint Rule 603 (previously Joint Rule 11) providing that the Secretary of State shall keep rules books to be distributed to members-elect of the Legislative Assembly. As a practical matter, the Legislative Council staff has performed this function for several sessions.

Another recommended change is found in Senate Rule 201 and House Rule 201 (previously Senate Rule 7 and House Rule 7) relating to the payment of legislative expenses. These rules presently provide that the presiding officers shall sign vouchers for payment of money out of legislative expense funds of the respective houses. As a practical matter, these funds have not existed for many years, and payments are made from the appropriation for the Legislative Assembly. The committee recommends corrective amendments.

Another change to bring the rules into conformity with current practice is found in Senate Rule 325 and House Rule 325 (previously Senate Rule 37 and House Rule 37) relating to references to bills in the journals. The rules currently provide that after the first reading all references to bills in the journal shall be by number only. The committee recommends these rules be amended to provide that all references in the journal to bills shall be by number only, except that on the first and second readings such references shall be by number and short title.

The current rules provide that the Legislative Council staff is to check bills for conflicts with other legislation prior to introduction. As a practical matter, the check for conflicts is performed after introduction and is performed with the assistance of computer-assisted searching facilities. The committee recommends appropriate amendments to Senate Rule 405 and House Rule 405 (previously Senate Rule 32 and House Rule 33) to bring these rules into conformity with current practice.

The committee recommends an amendment to Joint Rule 302 (previously Joint Rule 13) to change the language to provide that similar committees of both houses may meet in joint session, rather than "shall" meet in joint session. Joint meetings of standing committees are discretionary rather than mandatory.

Committee Workload

When bills are introduced, the presiding officers in the respective houses refer them to appropriate standing committees based on jurisdictional descriptions set out in the rules. The committee reviewed statistics on bills and resolutions considered by each committee during the 1979 Legislative Session, which are published with this report as Appendix "C".

The last studies of committee workload were conducted approximately 10 years ago. In comparing the statistics, the committee found there has been some shifting, particularly reflected by a reduced workload for the Education Committee and Finance and Taxation Committee and an increased workload for the Industry, Business, and Labor; Judiciary; and State and Federal Government Committees.

The committee makes no recommendation for changes in the rules as a result of this review of the committee workload.

CENSUS DATA AND REAPPORTIONMENT

House Concurrent Resolution No. 3008 directed a study of the 1980 federal decennial census results and of legislative reapportionment based on those results. As early projections by the Census Bureau indicated that appropriate census data may be available in time for consideration of reapportionment matters during the 1981 Session, the committee approved a contract with the University of North Dakota Bureau of Governmental Affairs to develop a computer-assisted reapportionment plan.

The Bureau of Governmental Affairs worked with Dr. John M. Liittschwager, Chairman of the Systems Engineering Division of the University of Iowa, who had developed a computer-assisted reapportionment plan for the state of Iowa.

The committee approved the following criteria to be considered in developing reapportionment plans:

1. Each district is to have one senator and two representatives.
2. Population.
3. Compactness and contiguity.
4. The Missouri River is not to be crossed by any district boundary.
5. Political subdivision boundaries, except for school district boundaries.
6. Historical legislative areas.

It is anticipated the Bureau of Governmental Affairs will develop approximately six plans, including one following the current apportionment plan as much as possible. The committee was advised that, if the Missouri River is not to be crossed by any district, a reapportionment plan of either 54 districts or 47 districts would be necessary to approach the population equality of the current apportionment plan based on 1970 census figures.

The Census Bureau's projections for providing final data have been interrupted by a federal district court's order to the bureau to develop a formula to adjust for undercounts of population in large cities. In addition, the review process has taken much longer for the 1980 census than in previous censuses because of the relevance of the data caused by federal revenue sharing. The earliest date the final data will be provided is February 1, 1981, and the legal deadline to get this data to the states is April 1, 1981.

Because of the delays in the Census Bureau providing the data, it was necessary for the committee to approve a revision in the agreement with the Bureau of Governmental Affairs. The bureau is to provide the information on reapportionment plans as soon as possible, but there is no guarantee the information will be received in time for action by the 1981 Legislative Assembly.

DISPLAYS IN MEMORIAL HALLWAY AND USE OF CHAMBERS

A political party organization requested permission of the committee to place a bust of a retiring United States Senator in Memorial Hallway. The committee discovered that there were no statutes, regulations, or guidelines concerning such displays. A statue of a former member of the House of Representatives has been in Memorial Hallway since 1945, but no concurrent resolu-

tion nor bill was passed concerning the placement of this or any other statue in Memorial Hallway.

Section 54-21-18 of the North Dakota Century Code gives general jurisdiction over the State Capitol to the Director of Institutions. Committee members expressed the viewpoint that displays in Memorial Hallway should be under the jurisdiction of the legislative branch. The committee by motion approved the placement of the bust of Senator Milton R. Young in Memorial Hallway. However, in order to establish a long-range policy concerning displays in Memorial Hallway and usage of the legislative chambers by nonlegislative groups, the committee recommends a bill to provide the Legislative Council with authority to control the use of the legislative chambers and displays in Memorial Hallway. The bill provides that guidelines may be established to be administered by the Council or its designee.

GUIDELINES FOR CITIZEN PARTICIPATION

A member of the Legislative Assembly called to the committee's attention a concern expressed by some citizens that standing committee hearings may be intimidating for many persons who wish to testify. The concern expressed was that the formal atmosphere and technical terminology used in committee hearings may inhibit citizen testimony.

Committee members noted that some formalities are required in the lawmaking process, and there are dangers in attempting to become too informal. In addition, time constraints require orderly procedures to maximize the productivity of committee hearings. However, committee members expressed concern that citizens be encouraged to participate in the legislative process.

The committee approved the printing of a brochure for distribution to persons expressing an interest in appearing before legislative committees. The purpose of the brochure will be to acquaint the reader with the basic procedures followed by standing committees. The brochure will be brief and in laymen's language.

LEGISLATIVE PRINTING PENALTIES

Several statutes provide for the printing of legislative documents including journals and session laws. The statutory penalty for failure to meet the terms of a printing contract, found in Section 46-02-11, within the time specified is one quarter of one percent of the contract price for every 24 hours of delay. This statutory penalty has proven to be unreasonably low.

The committee recommends a bill to amend the printing penalty statutes to provide that the penalty for failure to complete a printing contract on time shall subject the contracting party to the penalty provided in the contract which may not exceed $250 for each 24 hours of delay. The bill contains other technical changes, including flexibility for contracting for the printing of journal indexes, deletion of the requirement that copyright procurement must be printed in each volume of the session laws, and other changes to clarify the printing laws.

STATE OF THE JUDICIARY ADDRESS

Although the State Constitution provides that the Governor shall communicate to the Legislative Assembly information of the condition of the state at the commencement of each session, there is no provision for a similar address by the Chief Justice of the Supreme Court. The tradition of having a State of the Judiciary Address began with Chief Justice Alvin C. Strutz in 1973 and has been continued during every subsequent session by Chief Justice Ralph J. Erickstad.

The Chief Justice requested procedures be established for the State of the Judiciary Address so that the 24 district court judges could be involved. If the date of the State of the Judiciary Address were established in advance, executive branch elected officials could be invited well in advance of that day to sit on the podium along with members of the Supreme Court.

The committee recommends an amendment to Joint Rule 401 (previously Joint Rule 18) to list the State of the Judiciary Address by the Chief Justice among the joint sessions allowed by the rules. In addition, the committee has directed the Legislative Council staff to work with the Supreme Court to make arrangements for the State of the Judiciary Address.

MISCELLANEOUS ADMINISTRATIVE MATTERS

The committee recommends continuation of the legislative internship program and also approved the hiring of an intern director. Also approved were continuation of the legislative tour guide program under which the Legislative Council hires a tour guide to coordinate high school tours of the Legislative Assembly, and the practice of hiring a person to screen applicants for legislative employment prior to the 1981 Session. Both of these practices began with the 1977 Session and were continued during the 1979 Session.

The committee authorized the employment committees to hire someone to operate the bill room prior to the convening of the 1981 Session. This practice was begun prior to the 1979 Session and proved to be a success. Opening the bill room prior to the convening of the regular session permits the distribution of copies of prefiled bills and saves the expense of photocopying these bills by the Legislative Council staff.

Because the former cafeteria on the ground floor of the Capitol tower will be available during the 1981 Session, the committee authorized the use of that room as a committee room during the 1981 Session in lieu of the Lewis and Clark Room. The Lewis and Clark Room is used by the Governor's staff during the interim, and it has been necessary to find new quarters for this staff during prior sessions.

As the bill status system will be "on line" in 1981 and has the capacity of preparing daily calendars, the committee approved the elimination of the position of calendar clerks and recommends the daily House and Senate calendars be prepared as a part of the bill status system.

The first page of bills introduced in the North Dakota Legislative Assembly have traditionally had a bill history box. This box requires the preprinting of bill paper and presents problems with the adaptability of computer-assisted bill drafting. Although members of the committee were aware of some usage of the bill box, it was noted it is not necessary to have preprinted forms on the front of each bill to perform this service. Therefore, the committee recommends that the bill history box be deleted from future bills.

Prior to the 1979 Legislative Session, the Legislative Council staff held a training session primarily for committee clerks but which was also open to committee chairmen and legislative interns. This training session dealt with such subjects as the preparation and usage of standing committee minutes. The committee recommends the continuation of this training program prior to the convening of the 1981 Session.

The North Dakota Medical Association has again offered to coordinate the doctor of the day program and will provide the necessary equipment. The committee has approved the continuation of this program.

The tentative agenda for the 1980 organizational session has been approved by the committee. A new feature of the agenda this year will be the scheduling of tours of state institutions in the Bismarck-Mandan area.

RENOVATION OF THE LEGISLATIVE WING AND ELECTRONIC VOTING MACHINES

Background

The 1977 Legislative Assembly authorized the Board of University and School Lands to invest permanent funds for the construction of an office building on the Capitol grounds. The legislation authorizing construction of the new Judicial Wing-State Office Building provided that additional space be made available either within the Capitol or in the building to be constructed for no fewer than six legislative hearing rooms and one large legislative hearing room.

During the 1977-79 interim, the Legislative Procedure and Arrangements Committee contracted with an architectural firm to develop plans for renovation of the legislative wing and those other portions of the Capitol which would be available for the legislative branch. The "large hearing room" required by the 1977 legislation will be located in the new office building. Several new committee rooms will be made possible on the ground floor by moving the Legislative Council staff to the offices to be vacated by the Supreme Court on the second floor of the Capitol.

As a result of the previous interim study, the 1979 Legislative Assembly considered an appropriation bill to renovate the legislative wing and the existing Supreme Court area. Because the new Judicial Wing-State Office Building will not be constructed until the end of the current biennium, the 1979 Session amended the appropriation bill to provide funds for only those portions of the renovation plan which would be performed during the 1979-81 biennium. Included in the appropriation were funds for an elevator connecting the ground floor with the third floor of the existing Supreme Court library, renovation of the House and Senate chambers to recarpet both and provide built-in filing cabinets, as well as the removal of four desks from each side in the House chamber to provide additional access to House members' seats.

Current Renovation Project

The committee delegated decisions concerning the administration of the appropriation provided in House Bill No. 1003 (1979) to the director of the Legislative Council. The director contracted with the architectural firm of Tvenge-Larson of Bismarck to coordinate the renovation authorized in the 1979 legislation, as well as to update the major legislative space renovation plans adopted during the 1977-79 interim.

The Legislative Council staff and the architects made regular reports to the committee. The committee made decisions concerning the location of built-in files, the relocation of page stations and working areas on the floor for members of the press, and the color and fabric for carpeting and furniture.

The committee also approved the location of the new elevator to serve the legislative wing between the ground floor and the third floor of the existing Supreme Court law library. Bids for this project are to be let in December 1980 with construction to begin after adjournment of the 1981 Session.

Legislative Wing Renovation

The 1979 Legislative Council Report contains a floor-by-floor description of the renovation project recommended as a result of the study conducted during the previous biennium. The committee accepted most of the recommendations of the previous report with certain notable exceptions. The following description is intended to provide a basic understanding of the recommendations of the committee. The architects' report will provide more detailed information. It should also be understood that these plans constitute the recommendations of this committee, and may be subject to change by a succeeding committee having jurisdiction during the construction phase.

Ground Floor

During the previous study, priority was given to finding as many committee rooms as possible on the ground floor. As a result of that study, 11 committee rooms would have been provided on the ground floor. The committee recommends a plan providing for 12 committee rooms on the ground floor, not counting the large hearing room. The committee rooms would be rooms G-1, G-2, G-3, G-4, G-5 & 6, G-7, the Blue Room, the Traill Room, and two new committee rooms developed in the space now occupied by the Highway Patrol on the north side of the main corridor and two committee rooms developed out of the existing cafeteria space. The configuration of the Traill Room would be changed, alleviating the necessity of having a pillar in the center of the room. The Lewis and Clark Room would become permanent office space for the Governor's staff and the Gold Room would be converted to office space for the Attorney General's staff. Access to the main suite of offices for the Attorney General on the first floor would be provided by the new elevator, which would occupy an area near the entrance to the Gold Room.

A new legislative lounge and study area and a doctor's examination room would be provided in the rear portion of Room G-4. The joint bill and journal room would include the existing bill room and Legislative Council copying room and would be expanded to the main hallway. Motorized files would provide more efficient use of space in this area.

The existing Legislative Council Library would become a studio for use by the electronic media, and the area which is now the legislative lounge and study area would become office space for the press. The space between the large hearing room and the main corridor would become a public coatcheck room with recessed space for refreshment machines.

The large hearing room would be renovated with a sloping floor and theater-type seats. The stage would be removed and 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 previous report provided for an office for the Speaker of the House near the Lt. Governor's office on the Senate side of the chamber. Committee members found that plan objectionable, and instead would place the Speaker in an office on the west balcony, which would also be used for a smaller office for the Chief Clerk of the House. The space previously planned for the Speaker would become a legislative study.

The three small offices on either side to the rear of the

Senate chamber would be converted into suites with two offices on each side for the majority and minority leaders and their secretaries and interns. No change is planned for the Senate conference room. The area now occupied by the majority and minority leaders would become the legislative phone room for use by members of both houses. Access to this room is possible without going through the Senate chamber. The area which now constitutes the supply room and the majority leader's secretary's office would become an office for the Secretary of the Senate.

The Attorney General's licensing area would be returned to the permanent control of the Attorney General, with the exception of the space required for the new elevator.

The majority and minority leaders in the House would continue to have offices in the approximate locations they have now, but these areas would be converted to provide separate offices for the leaders' secretaries.

The storage room which has access near the east entrance to the House chamber would become the joint supply room with a recessed counter so legislative employees could obtain supplies without standing in the House chamber.

A removable information booth with electronic bulletin boards would be provided in Memorial Hallway.

Balcony and Second Floor

As noted previously the Speaker and the Chief Clerk of the House would share the west balcony. The east balcony would become offices for interns.

Rooms 206 and 207 in the far northwest corner would become offices for Senate committee clerks. The circle of offices to the rear of the Senate balcony from Rooms 203 through 205 would become space for Senate and House stenographers. The offices to the east of the Senate balcony would become space for the House committee clerks. The plans call for construction of four restrooms, two on the Senate side and two on the House side, in closets which were originally designed to be used as restrooms.

The existing Supreme Court area would be used as offices for the Legislative Council staff. The mezzanine level in the existing law library would be removed and the main floor of the law library would become the joint Legislative Council-Attorney General's library. The third floor of the existing law library would become Legislative Council offices, part of which would perhaps be used by the Legislative Data Processing Division.

The tier of offices along the south and east portions of the second floor would be used by the Legislative Council professional and clerical staff.

The Supreme Court hearing room would be retained and used as a legislative committee room. The bench and platform at the front of the room will be removed to provide space for committee tables and the lighting will be upgraded. The committee recommends that the hearing room and the Supreme Court conference room be retained in their original form to the greatest extent possible.

Improved Space Utilization

According to information supplied by the architect, the proposal submitted by the committee will provide an increase of approximately 58 percent in the floor space for committee rooms, counting the new hearing room in the judicial wing. Working areas for legislators will increase by approximately 145 percent and the leaders will gain approximately 56 percent as compared to existing space for these purposes. The increased space for the press will be 90 percent, for Legislative Assembly employees the increase will be 31 percent, and for the Legislative Council staff the increase will be nine percent. As a whole, the legislative branch will realize a 46 percent increase in available space.

Electronic Voting Machines and Bulletin Boards

The existing electronic voting machines in both chambers were installed 10 years ago and are no longer manufactured. Although still functional, questions remain concerning the availability of replacement parts and service for this equipment. New electronic voting systems have many advanced features, including computer interfacing, and are more flexible and reliable than the existing machines.

During the previous interim, the Legislative Procedure and Arrangements Committee studied the possibility of replacing the unsightly bulletin boards used to announce committee hearings with electronic bulletin boards.

The committee recommends a budget item to provide the installation of new computerized electronic voting machines and for the installation of electronic bulletin boards. The new bulletin boards would be available in at least two locations in the legislative wing.

Electrical Conduit Plan

A study of the electrical and electronic conduit plan in the House and Senate chambers was conducted by the engineering firm of Schmit, Smith, and Rush of Minot. This study was conducted as a result of recurring problems caused by the inaccessibility of the wiring in the chambers.

Each time it is necessary to make alterations in any of the systems serving the House or Senate desks, the inaccessibility provides obstacles. It is anticipated the technology which will permit computer readers at each legislators' desk to replace the bulky bill books and to put necessary information at the fingertips of legislators is not far away. The committee recommends a budget item to provide for the development of five raceways beneath the Senate and House chambers. These will provide access for the wiring for the following systems: telephones, voting systems, sound systems, computer readers, and electrical outlets. Once installed, future changes in any of these systems could be made easily. The committee was advised that the time to install these raceways is when renovation is made to the rooms beneath the chambers.

Renovation Budget Request

The committee recommends a separate bill in the Legislative Assembly appropriation to cover the cost of the legislative wing renovation projects recommended by the committee. The amount recommended for these projects is $2,075,000, which includes the costs of remodeling the three levels in the legislative wing and the existing Supreme Court area, new electronic voting machines, electronic bulletin boards, and the necessary access conduits.

APPENDIX "A"

PARALLEL TABLES OF NUMBERING OF RULES

SENATE RULES

Table I

Proposed Senate Rule Number	Existing Senate Rule Number
101	1
102	2
103	3
104	76
201	7
202	72
203	8
204	5
205	9
206	79
301	4
302	6
303	10
304	11
305	12
306	13
307	14
308	15
309	16
310	17
311	18
312	19
313	20
314	21
315	New
316	22
317	23
318	24
319	25
320	26
321	27
322	33
323	34
324	36
325	37
326	38
327	49
328	50
329	51
330	52
331	52.1
332	53
333	55
334	55.1
335	56
336	57
337	58
338	59
339	60
340	61
341	62
342	63
343	64
344	66
345	67
346	68
347	69
348	75
349	78
350	New
401	28
402	29
403	30
404	31
405	32
406	35
407	34
501	39
502	39
503	40
504	41
505	42
506	43
507	44
508	45
509	65
510	70
511	38
601	46
602	47
603	48
604	71
605	54
701	73
801	77

Table II

Existing Senate Rule Number	Proposed Senate Rule Number
1	101
2	102
3	103
4	301
5	204
6	302
7	201
8	203
9	205
10	303
11	304
12	305
13	306
14	307
15	308
16	309
17	310
18	311
19	312
20	313
21	314
22	316
23	317
24	318
25	319
26	320
27	321
28	401
29	402
30	403
31	404
32	405
33	322

34	323 and 407
35	406
36	324
37	325
38	326 and 511
39	501
40	503
41	504
42	505
43	506
44	507
45	508
46	601
47	602
48	603
49	327
50	328
51	329
52	330
52.1	331
53	332
54	605
55	333
55.1	334
56	335
57	336
58	337
59	338
60	339
61	340
62	341
63	342
64	343
65	509
66	344
67	345
68	346
69	347
70	510
71	604
72	202
73	701
74	Repealed Previously
75	348
76	104
77	801
78	349
79	206

HOUSE RULES

Table I

Proposed House Rule Number	Existing House Rule Number
101	1
102	2
103	3
104	84
201	7
202	79
203	8
204	5
205	9
206	86
301	4
302	6
303	10
304	11
305	12
306	13
307	14
308	15
309	16
310	17
311	18
312	19
313	20
314	21
315	New
316	23
317	24
318	25
319	26
320	27
321	28
322	34
323	35
324	38
325	37
326	39
327	50
328	51
329	52
330	53
331	New
332	54
333	56
334	56.1
335	57
336	58
337	59
338	60
339	61
340	62
341	63
342	64
343	65
344	67
345	73
346	74
347	75
348	83
349	82
350	New
351	39.1
352	78
401	29
402	30
403	31
404	32
405	33
406	36
407	35
501	40
502	40
503	41
504	42
505	43
506	44
507	45
508	46
509	66
510	76
511	87
512	39.1
601	47
602	48
603	49

604	77
605	55
701	68
702	69
703	70
704	71
705	72
801	81

Table II

Existing House Rule Number	Proposed House Rule Number
1	101
2	102
3	103
4	301
5	204
6	302
7	201
8	203
9	205
10	303
11	304
12	305
13	306
14	307
15	308
16	309
17	310
18	311
19	312
20	313
21	314
22	Repealed
23	316
24	317
25	318
26	319
27	320
28	321
29	401
30	402
31	403
32	404
33	405
34	322
35	323 and 407
36	406
36.1	Repealed
37	325
38	324
39	326
39.1	351 and 512
40	501
41	503
42	504
43	505
44	506
45	507
46	508
47	601
48	602
49	603
50	327
51	328
52	329
53	330
54	332
55	605
56	333
56.1	334
57	335
58	336
59	337
60	338
61	339
62	340
63	341
64	342
65	343
66	509
67	344
68	701
69	702
70	703
71	704
72	705
73	345
74	346
75	347
76	510
77	604
78	351
79	202
80 (see 39.1)	Repealed Previously
81	801
82	349
83	348
84	104
85	Repealed
86	206
87	511

JOINT RULES

Table I

Proposed Joint Rule Number	Existing Joint Rule Number
101	1
102	3
103	4
201	5
202	7
203	8
204	9
205	12
206	16
207	17
208	21
301	6
302	13
303	15
304	24
401	18
501	14
601	2
602	10
603	11
604	25
701	19
801	22

Table II

Existing Joint Rule Number	Proposed Joint Rule Number
1	101
2	601
3	102

4 103
5 201
6 301
7 202
8 203
9 204
10 602
11 603
12 205
13 302
14 501
15 303
16 206
17 207
18 401
19 701
20 ..... Repealed Previously
21 208
22 801
23 ..... Repealed Previously
24 304
25 604

APPENDIX "B"

EXECUTIVE BRANCH AGENCY BILLS INTRODUCED IN 1979

There were 215 executive agency bills introduced in the 1979 Session, 119 in the Senate and 96 in the House.

Under the rules, agency bills are deemed to be introduced by the standing committee with general jurisdiction over the subject matter in the respective houses. The breakdown by committee in 1979 is as follows:

Name of Committee	Senate	House
Appropriations	1	1
Education	12	9
Finance and Taxation	6	3
Industry, Business, and Labor	50	17
Judiciary	4	8
State and Federal Government	17	22
Agriculture	2	5
Natural Resources	8	12
Political Subdivisions	1	4
Social Services and Veterans Affairs	8	8
Transportation	10	6
Joint Committee on Constitutional Revision		1
Total	119	96

The breakdown by day of introduction of agency bills in 1979 is as follows:

Day of Introduction	Senate	House	Total
Prefiled	27	35	62
First Day	4	5	9
Second Day	4	0	4
Third Day	17	5	22
Fourth Day	13	10	23
Fifth Day	54	41	95
Total	119	96	215

Although the rules specifically provide for the introduction of bills by executive agencies, three concurrent resolutions were introduced at the requests of such agencies in 1979. One was introduced by the Senate Natural Resources Committee, one was introduced in the Senate by the Committee on Constitutional Revision, and one was introduced by the House Natural Resources Committee. One of the resolutions was introduced on the second legislative day and two were introduced on the fifth legislative day.

APPENDIX "C"

BILLS AND RESOLUTIONS CONSIDERED BY COMMITTEES — 1979
HOUSE COMMITTEES

Name of Committee	Bills	Percentage of Total Bills	Resolutions	Percentage of Total Resolutions	Total Bills and Resolutions	Percentage of Total Bills and Resolutions
Appropriations	178	15.37	5	3.16	183	13.91
Education	91	7.86	15	9.49	106	8.05
Finance and Taxation	100	8.64	14	8.86	114	8.66
Industry, Business, and Labor	158	13.64	11	6.96	169	12.84
Judiciary	149	12.87	12	7.59	161	12.23
State and Federal Government	130	11.23	37	23.42	167	12.69
Agriculture	59	5.09	13	8.23	72	5.47
Natural Resources	59	5.09	13	8.23	72	5.47
Political Subdivisions	75	6.48	6	3.80	81	6.16
Social Services and Veterans Affairs	73	6.30	6	3.80	79	6.00
Transportation	85	7.34	9	5.70	94	7.14
Joint Constitutional Revision	1	.09	17	10.76	18	1.37
Totals	1,158	100.00	158	100.00	1,316	100.00

SENATE COMMITTEES

Name of Committee	Bills	Percentage of Total Bills	Resolutions	Percentage of Total Resolutions	Total Bills and Resolutions	Percentage of Total Bills and Resolutions
Appropriations	165	15.28	3	1.96	168	13.63
Education	99	9.17	14	9.15	113	9.16
Finance and Taxation	87	8.06	13	8.50	100	8.11
Industry, Business, and Labor	161	14.91	11	7.19	172	13.95
Judiciary	129	11.94	11	7.19	140	11.35
State and Federal Government	118	10.93	33	21.57	151	12.25
Agriculture	55	5.09	11	7.19	66	5.35
Natural Resources	60	5.56	15	9.80	75	6.08
Political Subdivisions	74	6.85	5	3.27	79	6.41
Social Services and Veterans Affairs	62	5.74	7	4.57	69	5.59
Transportation	69	6.39	11	7.19	80	6.49
Joint Constitutional Revision	1	.09	19	12.42	20	1.62
Totals	1,080	100.00	153	100.00	1,233	100.00

Note: These tables include all bills and resolutions referred and rereferred to the committees by the respective houses.

MEDICAL EDUCATION COMMITTEE

The Medical Education Committee was assigned one study resolution. House Concurrent Resolution No. 3085 directed a study of the four-year medical program of the University of North Dakota Medical School. The study included a review of the operation of the medical program, the program's efficiency in addressing problems sought to be answered by the original four-year Medical School concept, and the feasibility of establishing the third year of medical instruction in North Dakota.

Committee members were Representatives Oscar Solberg, Chairman, Gordon Berg, Brynhild Haugland, Jean Herman, Tish Kelly, Marjorie Kermott, Frank Larson, Robert Martinson, and Vernon Wagner; and Senators Charles Orange, Leland Roen, and Claire Sandness.

The report of the Medical Education 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-seventh Legislative Assembly by the Legislative Council in November 1980.

History of the University of North Dakota Medical School

A review of the University of North Dakota (UND) Medical School's history indicates that the territorial legislature appropriated $1,000 in 1887 for a School of Medicine at UND, although medical classes did not begin until 1907 and the first class, consisting of one student, graduated in 1909. The Medical School offered a two-year program including the basic sciences and some clinical experience. The students would then transfer to a degree-granting medical school in another state to complete their medical education.

For many years the UND Medical School received a portion of UND's regular appropriation until, in November 1948, state residents approved a statewide one-mill levy to support the Medical School. The proceeds from the one-mill levy were sufficent to fund the operation of the Medical School until 1967, when the Medical School requested an additional appropriation from the legislature.

During the 1971-73 interim, the Medical Education and Services Committee was created by the Legislative Council to review North Dakota's medical education situation. The 1973 Legislative Assembly subsequently approved a 2-1-1 medical program. The 2-1-1 program operates as follows: The program allows for 63 students (excluding five students in the continuing INMED, or Indians Into Medicine, program) in each of the first two years of the Medical School. The third year (1) provides for 35 students to attend the University of Minnesota School of Medicine and five students to attend the Mayo Medical School, with the remaining 23 students finding positions outside of the 2-1-1 plan in other medical schools throughout the country. For the fourth year (1) the 40 students remaining in the 2-1-1 plan are divided among the four area health education centers (AHEC's) in Grand Forks, Fargo, Minot, and Bismarck. In the spring of 1979 the UND Medical School was completely accredited for three years by the Association of American Medical Colleges and the American Medical Association, based on the university's present 2-1-1 medical program.

Preliminary Committee Review

In addition to determining whether or not to return the third year of the medical program to North Dakota, the committee, during its review, identified the following areas as important considerations:

1. Attracting and maintaining an adequate supply of qualified physician manpower.
2. Providing access to medical education for North Dakota residents.
3. Achieving the objective of increasing physician availability.
4. Developing a high quality medical education program.
5. Estimating the cost of returning the third year of the medical education program to North Dakota.

Early in the interim, the committee heard presentations by the president of UND and the dean of the UND Medical School regarding current and future operations of the Medical School. They reported that the five-year plan for the Medical School included the return of the third year to North Dakota, and estimated it could be done for about the same per-student cost that is presently being paid to the University of Minnesota Medical School. Medical School officials said they anticipated no difficulty in obtaining additional adequate faculty to provide third-year training and said providing third-year instruction would help encourage physicians to stay in North Dakota. It was noted that a high priority of this committee and North Dakota legislators is the retention of Medical School graduates in North Dakota.

It was reported that the Medical School's 1979-81 budget included $75,000 for operating costs to conduct a feasibility study of returning the third year of the medical program to North Dakota. It was suggested by UND that the study be done with the cooperation of, and in conjunction with, the Medical Education Committee.

The October 1979 committee meeting was held at the Medical School on the UND campus in Grand Forks, giving committee members an opportunity to tour the Medical School facilities and to hear from and visit with UND Medical School faculty, staff, and students. The students that testified were in general agreement that North Dakota could provide third-year training as good or better than the training provided in Minnesota.

Selection of a Medical School Consultant

Also at the October 1979 meeting, the committee encouraged the UND Medical School to contract with Dr. Stanley W. Olson, an expert in medical education, to conduct the study of the UND Medical School and the feasibility of returning the third year of the medical program to North Dakota. It was reported that the consultant recently retired as provost and professor of medicine at Northeastern Ohio Universities College of Medicine, a post he had held since November 1973. Prior to that time, the consultant had served in a number of capacities, including assistant director, Mayo Foundation, and consultant in medicine, Mayo Clinic; professor of medicine and dean, University of Illinois College of Medicine; dean and professor of medicine, Baylor University College of Medicine, Houston; and president, Southwest Foundation for Research and Education, San Antonio.

Final Report and Recommendations of the Consultant

The consultant presented a progress report on his study at the committee's February 1980 meeting, and presented his final report, "A Medical School in Transition," at the June 1980 committee meeting.

The following are the conclusions contained in the

consultant's report regarding his recommendation that the third year of the School of Medicine's program be taught in North Dakota:

"A. The available clinical resources are sufficient for the instruction of 50 third-year medical students.

B. There are sufficient physicians, either already on the faculty of the School of Medicine, or qualified for a faculty appointment, to provide clinical instruction for 50 students.

C. Although the resources for a quality program are currently available, and are likely to increase in the years ahead, they will become accessible for teaching purposes only if major efforts are made to weld the resources of the community and the university into an effective operational organization.

D. The basic sciences and clinical faculty members of the School of Medicine are beginning to function as an integrated faculty of medicine concerned with the total educational experience of the students in all four years of the course. The administration and full-time members of the faculty are making good faith efforts to incorporate voluntary and part-time faculty members into the structure of the School of Medicine as full partners.

E. A satisfactory beginning has been made in the development of the third-year curriculum. The clinical faculty will require substantial assistance in the further elaboration of the details of the curriculum. Funds should be budgeted in the next two years to provide personnel who can render this specialized educational assistance.

F. The added funds requested, together with the reallocation of the contract funds, which now go to the two medical schools in Minnesota, are adequate to conduct a program of instruction for 50 third-year students and 10 additional fourth-year students.

G. The adoption of the proposal for the third year is critical to the survival of the School of Medicine as a degree-granting institution. It can be implemented successfully provided that:

1. The School of Medicine continues its efforts to incorporate the clinical faculty fully into its structure and operation;
2. The physicians who staff the hospitals which are the principal potential teaching sites recognize that a viable, thriving School of Medicine is important to them and to the welfare of their patients and that, in recognition of this circumstance, they participate in the instruction of students and residents; and
3. The legislature makes reasonable amounts of money available to support the proposed program and that it use its good offices to hold both the university and the medical profession accountable to work on behalf of the people of North Dakota to provide them with the highest standard of medical care possible."

The consultant said the UND Medical School cannot survive indefinitely under the existing arrangement. He said the sooner steps are taken to establish a full program of medical education in North Dakota, the sooner the full resources of the state can be directed toward assuring a stable program which can be expected to thrive and to fulfill its obligations both to its students and to the people of the state.

The report stated that, based on an extensive analysis of current costs and careful review of projected costs, the administration of the UND Medical School proposed that the program be carried out with the following additional appropriated funds:

1981-82	$160,000
1982-83	$300,000
1983-84	$450,000 plus $715,000 now required for contracts with the two Minnesota medical schools
1984-85	$485,000 plus $715,000 now required for Minnesota contracts

(Note: These costs were preliminary estimates; final estimates of third-year instruction costs are addressed later in this report.)

The consultant called attention to the following facts regarding the added costs cited above:

1. These costs are computed in 1979 dollar values and do not take into account the effects of inflation.
2. They represent the cost of instructing 10 more third-year and 10 more fourth-year students.
3. They do not include the cost of additional residency training programs.

The consultant said the estimated additional costs are based on the assumption that there would be 50 students in the third and fourth year (10 additional for each year). He said it would be reasonable for the Medical School to admit more than 50 students in the first year of the program (for example, 60 students). He said this would allow for student attrition, transfers, etc., during the first two years and still provide for the Medical School to have 50 students in the third and fourth years.

The consultant said providing third-year medical instruction would require a commitment from a number of North Dakota physicians, who, he said, would participate if satisfactory arrangements are made.

After consideration of the consultant's final report, the committee encouraged the UND Medical School to develop and prepare detailed program budget information incorporating the third-year instruction into the medical program for the committee's review. The committee also encouraged the Medical School to continue negotiations regarding the third year with North Dakota hospitals, clinics, and physicians.

Medical School Proposal

Based on the consultant's recommendations and at the urging of the committee, the UND Medical School presented its proposal for the third year and the costs of providing third-year instruction to the committee at its last meeting in October 1980. The Medical School proposal is that the establishment of the third-year program in North Dakota will be in 1983, beginning with the 1983-84 school year.

The total 1981-83 biennium budget request for the UND Medical School is $41.2 million, of which $26.2 million is from the general fund. Included in this request is $56,700 to be used for third-year faculty development costs. The Medical School also said they plan to complete training programs in the areas of obstetrics/gynecology, pediatrics, and surgery during the 1981-83 biennium.

Following the 1981-83 biennium, the Medical School estimates the assumption of third-year instruction in North Dakota will cost $1,146,966 per year, beginning with the 1983-84 school year. This figure is partially based on an estimate of $13,200 per student per year for instructional (direct teaching) costs, and the costs assume instruction of 50 students in each of the third and fourth years. There are presently 40 students in Minnesota for the third year and 40 students in North Dakota area health education centers for the fourth year. The cost of 10 additional students in the fourth year is estimated to be third year and 40 students in North Dakota area health education centers for the fourth year. The cost of 10

$32,000, or $3,200 per student per year. This is based on 32 weeks at $100 per week for preceptor instruction (see definition of preceptor instruction below).

The direct teaching cost of $13,200 per year per clerk (student) allows for $275 per week per clerk ($13,200 divided by 48 weeks) to be divided into Preceptor and Formal education payments. Preceptor instruction is provided the clerk(s) by a licensed physician simultaneous with patient care training in a hospital or clinic setting. Formal instruction is provided the clerk(s) in the form of lectures, seminars, and small group sessions. The Medical School is presently allocating $100 per week per clerk to the Preceptor portion and $175 per week per clerk to the Formal portion, but the actual distribution will be determined through negotiations between the community (clinics, practices) and the Medical School departments.

If third-year instruction continued to be provided in Minnesota, the Medical School estimated that the costs for the 1983-84 school year would be $1,175,000, based on 50 students and an average cost per student per year of $23,500. This is in comparison to the estimate of $1,146,966 for providing third-year instruction in North Dakota. The UND Medical School is paying the University of Minnesota approximately $20,500 per student per year for 35 students for the 1980-81 school year, and the cost per student per year for the five students at the Mayo Clinic Medical School is somewhat less than the cost at the University of Minnesota. The total cost of sending 35 students to the University of Minnesota for the 1980-81 school year is approximately $740,000.

The Medical School expects that a majority of the third-year instruction will be at two sites — Fargo and Bismarck, with some instruction at Grand Forks and Minot.

Support for Medical School Proposal

The commissioner of the Board of Higher Education said the board was positive and unanimous in its decision to support location of the third-year of medical instruction in North Dakota, and feels it would have a positive effect on the quality of medical education in North Dakota.

In negotiations with various North Dakota hospitals, clinics, and associations, the Medical School reported it has received letters of concurrence in support of establishing the third year of the medical program in North Dakota from the following organizations:

- Dakota Clinic, Fargo
- Fargo Clinic, Fargo
- Dakota Hospital, Fargo
- St. John's Hospital, Fargo
- St. Luke's Hospital, Fargo
- Veterans Administration Center, Fargo
- Mid-Dakota Clinic, Bismarck
- Bismarck Hospital, Bismarck
- St. Alexius Hospital, Bismarck
- Heart-Lung Clinic, St. Alexius Hospital, Bismarck
- Grand Forks Clinic, Grand Forks
- Valley Medical Associates, Grand Forks
- Medical Center Rehabilitation Hospital, Grand Forks
- United Hospital, Grand Forks
- U.S. Air Force Hospital, Grand Forks
- Jamestown Hospital, Jamestown
- St. Joseph's Hospital, Minot
- North Dakota Hospital Association
- North Dakota Medical Association

Recommendation

The committee recommends a resolution directing the State Board of Higher Education to make the necessary changes to provide for the third year of the Medical School curriculum of the University of North Dakota Medical School to be taught in North Dakota, beginning with the 1983-84 school year. The resolution supports the recommendations made by the medical consultant in his final report.

Other Considerations and Discussion

During the interim, the committee heard testimony from representatives of various hospitals, clinics, and associations. The committee urged the UND Medical School to work closely with these organizations as plans for third-year instruction continue.

The UND Medical School reported that the University of Minnesota Medical School and the Mayo Clinic Medical School are being kept informed about the plans of UND with regard to the third-year program. If the legislature approves the third-year program, the UND Medical School will notify the Minnesota schools so they can begin planning for discontinuance of third-year training in Minnesota, following completion of the 1982-83 school year.

NATURAL RESOURCES COMMITTEE

Senate Concurrent Resolution No. 4067 directed a study of the adequacy and sufficiency of the state's surface mining and reclamation laws to enable the state to secure an approved state regulatory program under the Surface Mining Control and Reclamation Act of 1977.

House Concurrent Resolution No. 3078 directed a study of the relative rights of the owners of surface and mineral estates as those rights relate to mineral development.

Senate Concurrent Resolution No. 4012 directed a study of the possible implementation of Section 404 of the Federal Water Pollution Control Act by the State of North Dakota through its State Water Commission.

House Concurrent Resolution No. 3016 directed a study of the development of a floodway and floodplain management program, taking into account current requirements of related federal legislation.

House Concurrent Resolution No. 3022 directed a study of the powers, duties, and jurisdictional boundaries of water management districts and legal drain boards. The objective of the study was to determine the most effective and efficient method to provide for management, at the local level, of the state's water resources.

These studies were assigned to the Legislative Council's Natural Resources Committee, whose members were Representatives Richard Kloubec, Chairman, Gordon Berg, Don Berge, Florenz Bjornson, Rosie Black, William Gorder, Lyle Hanson, Ralph Hickle, Howard Hove, Byron Langley, Rick Maixner, Jack Murphy, Burness Reed, Kenneth Thompson, Francis Weber, and Henry Wessman; and Senators Stella Fritzell, J. Garvin Jacobson, Adam Krauter, Shirley Lee, Bonnie Miller Heinrich, Rolland Redlin, and Leland Roen.

The report of the Natural Resources 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-seventh Legislative Assembly by the Legislative Council in November 1980.

SURFACE MINING AND RECLAMATION

North Dakota has regulated surface mining practices and the reclamation of surface mined lands since 1969. This state's reclamation laws have been continuously upgraded and, by 1979, were considered by many to be among the best in the nation. In 1979 the Legislative Assembly was forced to choose either to amend this state's reclamation laws to conform with federal requirements under the Federal Surface Mining Control and Reclamation Act of 1977 or to acquiesce to federal control of all surface mining activities in North Dakota. The Legislative Assembly chose to retain the authority to regulate surface mining in North Dakota, within the constraints of the federal Act.

Under the terms of the federal Act, each state wishing to assume or maintain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within that state was required to submit a state program containing:

1. A state law providing for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the federal Act.
2. A state law providing sanctions for violations of state laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which meet the minimum requirements of the federal Act, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease and desist orders by the state's regulatory authority or its inspectors.
3. A state regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the state to regulate surface coal mining and reclamation operations in accordance with the requirements of the federal Act.
4. A state law providing for the effective implementation, maintenance, and enforcement of a permit system, meeting the requirements of the federal Act for the regulation of surface coal mining and reclamation operations for coal on lands within the state.
5. A process for the designation of areas as unsuitable for surface coal mining.
6. A process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations.
7. Rules and regulations consistent with regulations issued by the Secretary of the Interior pursuant to the federal Act.

The North Dakota Public Service Commission (PSC), as the agency responsible for regulating surface mining control and reclamation in North Dakota, has been engaged for over two years in a dialogue with the U.S. Department of the Interior's Office of Surface Mining over the adequacy of the state's regulatory program.

Testimony to the committee by Public Service Commission President Richard Elkin and PSC staff indicated that, initially, the Office of Surface Mining compiled a list over 500 pages long of "deficiencies" in North Dakota's state program. The majority of these "deficiencies" proved to be simply the result of the Office of Surface Mining staff's unfamiliarity with the surface mining and reclamation practices in North Dakota. The list was subsequently paired to a more manageable length of approximately 125 issues which remained to be resolved. Still more dialogue ensued, and the list was reduced to less than 25 issues. Most recently, the Office of Surface Mining announced that the state program will receive conditional approval if regulatory or statutory amendments are made in 13, as yet unspecified, areas.

Public Service Commission testimony indicated that the adequacy of the present program is still being discussed with the Office of Surface Mining. If necessary, the Public Service Commission will introduce legislation in the 1981 Legislative Session to adapt North Dakota's current surface mining control and reclamation laws in conformance with federal requirements. The Public Service Commission expects North Dakota's state plan to qualify for unconditional approval by the Office of Surface Management.

SURFACE AND MINERAL OWNERS' RELATIVE RIGHTS

In pursuing its study of the relative rights of the owners' surface and mineral estates, as those rights relate to mineral development, the committee received testimony from the North Dakota Geological Survey, Roosevelt-Custer Regional Council, City of Dickinson, North Dakota Lignite Council, North Dakota Petroleum Council, North Dakota Farm Bureau, Dakota Resource Council, Billings County Surface Interest Association, U.S. Forest Service, and numerous private individuals.

Traditionally, at common law, ownership of land was considered to be a coelo usque ad centrum (from the heavens above to the depths below). Gradually, in

response to continuing economic pressures for the development of minerals, the common law evolved to allow the severance of the surface and mineral estates. Such a severance may be made by a grant of the mineral estate, a separate grant of both the surface and mineral estates, or a grant of the surface estate with a reservation of the mineral estate. The body of law, whether common law or codified, is constantly evolving in order to satisfy current needs. In North Dakota, mineral development is largely confined to lignite coal and oil and gas. As a consequence, North Dakota has enacted statutory schemes defining the relative rights of surface owners and owners of in situ (in its original place) lignite or oil and gas.

The North Dakota Surface Owner Protection Act (North Dakota Century Code Chapter 38-18) defines the rights of and remedies available to the owners of surface estates overlying severed deposits of lignite coal. The Act requires a written notice describing contemplated surface mining operations to be given to the surface owner and the surface owner's consent to such operations to be obtained before the Public Service Commission may issue a permit to surface mine the land. If a mineral developer cannot obtain the surface owner's consent, the developer may bring an action in district court to establish the relative rights of the parties and the measure of damages available to the surface owner. The Act provides for compensation to the surface owner for damages occasioned by loss of agricultural production and disturbance of farm buildings.

North Dakota Century Code Chapter 38-11.1 provides for compensation to surface owners for damages occasioned by the loss of agricultural production and income, lost land value, and loss of value of improvements caused by the exploration for or drilling of an oil and gas well and the ensuing production operations. Notice of contemplated drilling operations is required to be given to the surface owner, and the mineral developer is required to exercise due care in conducting drilling operations. The Act provides for the contractual determination of damages and contemplates legal action if the surface owner and mineral developer cannot agree on damage payments.

Both Chapters 38-18 and 38-11.1 are of very recent origin. Consequently, there is very little basis on which to determine the effect of the two chapters on the relative rights and actions of surface and mineral owners. As a result of this dearth of information, the committee elected to tour the lignite and oil and gas producing areas of western North Dakota to learn from the people of that region of any difficulties or inequities being experienced in the development of minerals.

The committee visited the Knife River Coal Company's Beulah coal mine, Montana-Dakota Utilities' Coyote I lignite-fired, steam-generated power plant, the Gulf Oil Company's Little Knife Gas Plant near Killdeer, the new oil development fields north of Medora, and the established Fryburg oil field. At the conclusion of the tour, the committee held a public hearing in Dickinson to enable residents of the mineral development area of western North Dakota to express their views as to the relative rights of surface and mineral owners.

Testimony received by the committee indicated that the people of western North Dakota are concerned about problems associated with the present rapid development of lignite coal and oil and gas reserves. There was much testimony indicating that some aspects of oil and gas development are not being effectively regulated, whether because of confusion over the jurisdiction and functions of the several state agencies involved or because the amount of funding necessary to effectively regulate oil and gas development has not been made available.

In response to the concerns expressed during the course of its study, the committee wishes to express its support of any legislative or administrative programs designed to foster better communication among the residents of western North Dakota, North Dakota Geological Survey, North Dakota Health Department, and North Dakota Industrial Commission in order to promote understanding of the problems facing landowners, industry, and the regulators in the development of North Dakota's mineral reserves. The committee further supports both the creation of a Dickinson branch of the Geological Survey, as a step in improving communication, and additional funding to enable the Geological Survey to better respond to the tremendous increase in oil and gas development in western North Dakota.

WATER POLLUTION CONTROL

Section 404 of the Federal Water Pollution Control Act requires a permit to be secured from the Secretary of the Army prior to placing dredged or fill material in navigable waters. Navigable waters have been defined to include coastal and inland waters, lakes, rivers, and streams that are navigable waters of the United States, including adjacent wetlands; and all other waters of the United States such as isolated wetlands and lakes, intermittent streams and prairie potholes the degradation or destruction of which could affect interstate commerce.

The Federal Clean Water Act of 1977 provided a procedure whereby the governor of any state desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters within its jurisdiction may submit to the Environmental Protection Agency (EPA) a full and complete description of the proposed program. Within 120 days after submittal of the state program, the Environmental Protection Agency shall determine whether the state has sufficient authority to issue permits under guidelines established by the EPA.

In its study of possible state implementation of Section 404 of the Federal Water Pollution Control Act, the committee received testimony from the North Dakota Farm Bureau, State Highway Department, and State Water Commission. Testimony indicated that, presently, the process for securing Section 404 permits from the federal government is both costly and time consuming. Some permit applications are processed by the Omaha office of the Army Corps of Engineers while others are processed by the Minneapolis office. Differences in administration and interpretation between the two offices have resulted from this unwieldly procedure. Committee testimony indicated that, although the requirements of the Section 404 program would be the same whether administered by the state or the federal government, it would greatly expedite the Section 404 permitting process if the program were administered by a state agency.

At the committee's request, the State Water Commission staff prepared general enabling legislation allowing the state to assume Section 404 permitting responsibilities. The Water Commission staff explained that Environmental Protection Agency guidelines would govern state implementation of the Section 404 program. These guidelines have yet to be finalized, causing some uncertainty as to how the state should proceed. The committee therefore urged the State Water Commission to seek information relating to state implementation of Section

404 and, if deemed desirable, to introduce a bill during the 1981 Legislative Session providing for such implementation.

FLOODPLAIN MANAGEMENT

In 1968 Congress enacted the National Flood Insurance Act, offering a voluntary national flood insurance program to provide limited indemnification to victims of flood disasters. The prime objectives of the Act were to make flood insurance available at reasonable rates, through means of a federal subsidy, to residents of flood prone areas and to require local jurisdictions to enact land use control measures as a condition for the availability of federally subsidized flood insurance. In regulations promulgated in accordance with the 1968 Act, the federal insurance administrator established the criteria for determining the adequacy of a community's floodplain management regulations. These regulations must be legally enforceable, must apply uniformly throughout the community to all privately and publicly owned land within flood prone, mudslide, or flood-related erosion areas, and the community must provide that the regulations take precedence over any less restrictive conflicting local laws, ordinances, or codes. The criteria require the adoption of both zoning regulations and regulations governing subdivision development. It appears that cities, townships, and counties in North Dakota have the authority necessary to qualify for the national flood insurance program. The issue before the committee was whether to develop minimum state standards for floodway and floodplain regulation or to allow local political subdivisions total discretion in zoning and land use policy.

In conducting its study of floodplain management, the committee received testimony from the North Dakota State Water Commission, North Dakota Disaster Emergency Services, North Dakota League of Women Voters, U.S. Soil Conservation Service, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Red River Joint Water Management District, City of Grand Forks, City of Moorhead, Minnesota, and North Dakota Natural Science Society. In addition to its regular meetings in Bismarck, the committee held public hearings in Grand Forks and Fargo.

Early testimony before the committee specified two primary reasons for floodplain management legislation:

1. To develop uniformity of floodplain management and practice.
2. To enable the state to respond to the federal government on behalf of local governments.

It was also stated that, if the state does not develop a plan for mitigating flood hazards, federal disaster relief and other programs may be made unavailable. The committee chose to pursue the idea of not merely expanding the coverage of federal flood insurance, but actually to mitigate flood damage.

The committee elected to work with the State Water Commission in preparing legislation providing guidelines for local governments concerning floodplain management and giving the State Water commission authority to enforce floodplain management regulations. Testimony indicated that state legislation can better address local problems than can the present federal legislation. Also, it was pointed out that the state must exhaust its own resources before federal flood aid can be obtained, and the state has expended money many times without curing the underlying problems of flooding. As an example, since 1969, North Dakota has had presidential declarations of flood disasters 10 times — more than all of the neighboring states combined. Every county in the state has sustained flood damage in the past few years. North Dakota has suffered an estimated loss of nearly $1 billion to flooding in the past decade.

The committee's intent in formulating floodplain management legislation was to have local people accept responsibility for and administration of programs for floodplain management. The legislation was designed to be an aid to those local governments seeking to act responsibly and an inducement to those local governments reluctant to deal with the problems of floodplain management. It was noted that an agreement to obtain assistance for 1979 flood damages in North Dakota stipulated development of a state program for flood control. Indeed, testimony indicated that federal disaster assistance may be refused to the entire state if no mitigation program is developed, but, if the state adopts such a program, aid can be refused only to noncomplying areas.

The committee recommends a bill which would provide the following:

1. Definitions compatible with those used in the national flood insurance program.
2. Administration by the State Engineer with right of appeal to the State Water Commission.
3. Delineation of floodways by the State Engineer.
4. Local floodplain management ordinances providing for the preservation of the capacity of the floodway to carry and discharge the base floods, minimization of flood hazards, and guidance of development in the floodplain. The ordinances are to be based on adequate technical data and engineering advice and consistent, where possible, with local and regional planning.
5. Imposition by the State Engineer of a floodplain management plan if a local government fails to adopt floodplain management ordinances.
6. Permissible uses within a floodway including agriculture, forestry, and recreation.
7. Prohibited uses within a floodway, for example, dwellings.
8. Permissible uses within the flood fringe, for example, dwellings whose lowest floor is equal to or one foot above the base flood elevation.
9. Permitting procedures for nonconforming structures.
10. Inclusion of local governmental units in the national flood insurance program.

The committee realized that alleviation of flooding and flood-related damage can be most effectively realized through a combination of floodplain management and management of waters. The committee addressed both of these approaches through legislation. It should be noted that the floodplain management bill recommended by the committee places responsibilities on the water resource districts created by the legislation resulting from the committee's study of water management and therefore, it must be amended if the water management bill fails or is substantially amended.

WATER MANAGEMENT

Presently, water management in North Dakota is performed principally on the local level by water management districts and legal drain boards. Both entities possess much the same water management authority and exercise this authority within the artificial boundaries of county lines. The issue before the committee was whether the present situation represents the most effective and

efficient method of providing for local water management and, if not, what steps must be taken to provide for such water management.

In conducting its study, the committee held public hearings in Bismarck, Grand Forks, and Fargo and received testimony from the State Water Commission, North Dakota Water Users Association, Burleigh County Water Management District, Morton County Water Management District, Devils Lake Joint Water Management District, Red River Joint Water Management District, Nebraska Association of Resource Districts, Minnesota Association of Watershed Districts, North Dakota Township Association, and the Barnes County Commission. In conducting its study, the committee elected to work with the State Water Commission and an advisory committee composed of legislators and local water management officials.

Early in the committee's study, testimony indicated that water could be more effectively managed on the local level if the management agencies had jurisdictional boundaries along watershed lines and if local efforts were not duplicated by other agencies. Testimony revealed that, presently, water management districts, although possessing broad powers, are often hindered in their water management activities by the actions of legal drain boards or other water management districts. In addition, water management district bonding authority is often limited by the requirement of a countywide vote of approval. Also, if water management districts wish to exercise joint powers, each county commission must approve a mill levy before money may be raised.

The committee heard testimony indicating that the water management authorities in other states had been restructured to remedy problems similar to those presently existing in North Dakota, which, in general, were:

1. Too little local control.
2. Inadequate procedures and entities for implementation of projects.
3. Small districts with inadequate funding.
4. Overlapping authorities.
5. Gaps in authority in some areas.

Retaining local control of water management was made a priority by the committee. The committee received recommendations from the advisory committee to organize districts along watershed lines, elect district commissioners, abolish legal drain boards, and grant district boards authority to establish budgets and fund projects. The advisory committee also recommended that each district be composed of several subdistricts, also based on watershed boundaries, thereby permitting more intensified local water management.

The committee received much testimony favoring the election of district board members. It was felt that not only would elected board members be more responsive to local needs, but election may be necessary in order to ensure adequate taxation authority. Testimony also favored giving district boards the additional authority to issue revenue bonds and to review proposed culverts and bridges.

After consideration of the testimony received and the recommendations of the advisory committee, the committee recommends a bill with the following major provisions:

1. Establishment of water resource district boundaries along watershed lines where feasible. In no event shall a water resource district boundary divide a section or a city. There will be a minimum of 25 and a maximum of 40 water resource districts in the state.
2. Special election of water resource district boards of managers, with one manager elected from each of two, four, six, or eight subdistricts and one manager elected at large. Each manager will have a term of four years.
3. Elimination of existing water management districts and legal drain boards to avoid the present duplication of jurisdiction.
4. Formation of interim water resource district boards consisting of members of existing water management district boards and legal drain boards. The duties of the interim boards will be to recommend to the State Engineer the number of permanent members and subdistricts and to initiate the transfer of assets and obligations to the water resource districts.
5. Authority to require the State Highway Department, railroads, counties, and townships in the district, to coordinate proposals for bridges and culverts with the district in order to promote sound water management practices.
6. Authority to levy up to four mills with two additional mills being available for joint boards.
7. Authority to issue revenue bonds in any amount up to $10 million.
8. Authority to require upstream landowners who have artificially altered the hydrologic scheme to share with downstream landowners the responsibility of providing for proper management and control of surface waters.
9. Authority for final approval of dike and dam permits.
10. Authority to construct projects and specially assess those benefited.
11. Authority to control drainage.
12. An emergency clause to allow the reorganization to begin upon passage and approval of the bill.

POLITICAL SUBDIVISIONS COMMITTEE

House Concurrent Resolution No. 3050 (1979) directed a study of the fire insurance premium tax distribution to the political subdivisions, the desirability of improvements in the distribution formula, and whether the distribution should be pursuant to a specific general fund appropriation or a special fund distribution.

Senate Concurrent Resolution No. 4049 (1979) directed a study of the problems of residential developments in rural areas near established cities and the incorporation of cities, with emphasis on the effects of such developments and newly created cities on established cities and the need for planning and coordination related to police and fire protection, water and sewer systems, city planning and zoning, schools and other services, as well as the effects on the tax structures of all affected political subdivisions.

These studies were assigned to the Legislative Council's interim Political Subdivisions Committee. Committee members were Representatives Charles Mertens, Chairman, Kelley Boyum, John Crabtree, Ralph Dotzenrod, Paul DuBord, Tom Kuchera, and Francis Weber; and Senators Phillip Berube, Donald Hanson, Evan Lips, Clayton Lodoen, Duane Mutch, Frank Shablow, and I. E. Solberg.

The report of the Political Subdivisions 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-seventh Legislative Assembly by the Legislative Council in November 1980.

FIRE INSURANCE TAX STUDY

North Dakota Century Code Section 18-04-04 requires all insurance companies issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril to furnish the Insurance Department with information on the amount of all premiums received upon such policies issued on property within the corporate limits of any city, within the boundaries of any fire protection district, or within the boundaries of any rural fire department as certified by the State Fire Marshal.

Section 18-04-05 provides a standing appropriation for an allocation of insurance premium tax proceeds by the Insurance Department as follows:

1. To cities not within the boundaries of a fire protection district, a sum equal to 2.25 percent of the premiums received by insurance companies issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance on property in such cities.
2. To each city fire department performing service outside of its incorporated limits, the sum of $100.
3. To each rural fire department not certified by the State Fire Marshal, the sum of $200 per year.
4. To each rural fire protection district or rural fire department certified by the State Fire Marshal, $200 plus a sum equal to 2.25 percent of the premiums received by insurance companies issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance on property within the boundaries of such rural fire protection districts or property served by certified rural fire departments.

The committee approached the assigned study in terms of three basic issues:

1. The equity of the present allocation formula.
2. A determination of the adequacy of the amount of moneys presently allocated.
3. A determination of the advisability of allocating premium tax moneys by specific general fund appropriations or by continuing special fund distribution.

In conducting its study, the committee solicited and received testimony from the North Dakota Insurance Department, State Fire Marshal, North Dakota Firemen's Association, city fire departments, rural fire departments, and rural fire protection districts.

Testimony before the committee revealed that, at present, there are 397 fire departments in North Dakota, of which 53 are rural fire departments, 149 are rural fire protection districts, and 195 are city fire departments. City fire departments and rural fire protection districts are financed by premium tax allocations and local mill levys, while rural fire departments are financed through donations and contracts with individuals and local units of government. There are some areas of the state which are not being currently served by any fire department.

Testimony indicated that moneys presently received under the premium tax allocation are being used for new equipment, new structures, and updated training. Fire departments responsible for serving large industrial plants are receiving training and purchasing equipment in preparation for the fighting of industrial fires. In general, testimony from firemen throughout North Dakota indicated satisfaction with the premium tax allocation formula currently in effect.

Senate Bill No. 2026 (1979) appropriated $2 million for the allocation of premium tax moneys to fire departments in North Dakota. North Dakota Century Code Section 18-04-05 also provides for a continuing appropriation for the allocation of such moneys. In 1979 a deficiency appropriation was used to resolve a conflict between the provisions of Section 18-04-05 and the general appropriation bill. During the 1981 Legislative Session, the Insurance Department will introduce a bill providing for a deficiency appropriation of approximately $773,000. This amount is considered necessary to fund fully the allocations required by Section 18-04-05. The committee supports the present allocation formula contained in Section 18-04-05 and supports any deficiency appropriation necessary to provide the requisite funding for the 1979-81 biennium. The committee did not address the issue of whether allocations are better funded through a special fund distribution or a biennial general fund appropriation.

RESIDENTIAL DEVELOPMENT STUDY

In conducting its study of residential developments and incorporation of cities, the committee solicited and received testimony from city, county, and township officials; professional planners; realtors; rural subdivision residents; township residents; Farmers Home Administration; regional councils for development; Association of Counties; and League of Cities. In addition, the committee held public hearings in Bismarck and Fargo, as well as touring residential developments on the outskirts of Fargo.

The committee viewed the issue of residential development in five separate, but related, aspects:

1. The provision of a method of incorporation which would best ensure continued corporate viability and have the least detrimental effect on existing units of government.

2. The provision of a method of consolidation, allowing currently dysfunctional cities to regain viability.
3. The provision of a more practical method for cities to zone areas outside their corporate limits.
4. The provision of a method to enable counties to regulate more effectively the development of rural subdivisions.
5. The provision of methods for residents of a rural subdivision to obtain urban services without incorporating as a city.

Incorporation

Presently, North Dakota subscribes to the "magic number" theory of incorporation; i.e., the primary factor considered in determining whether or not a territory should be incorporated is the number of inhabitants. The committee learned through testimony that a territory may seek incorporation for any number of reasons, e.g., desire to control zoning and planning, desire to provide urban services and improvements, and desire to take advantage of taxes and other sources of funding available only to cities.

In studying the issue of city incorporation, the committee determined to meet three major objectives:

1. To ensure that the authority to allow incorporation remains with the local county commissions.
2. To provide each county commission with discretionary authority to grant or prohibit incorporation, as well as guidelines to be used in determining whether or not incorporation should be granted.
3. To create a state level appeals board to provide administrative review of the decisions of the local board of county commissioners.

Testimony received by the committee indicated four primary factors to be considered in determining whether incorporation should be granted:

1. Proximity of the proposed city to existing cities.
2. Ability of a proposed city to provide urban services.
3. Effects the proposed city, if incorporated, would have on other local units of government.
4. Factors favoring continued viability of a city, once incorporated.

Testimony disclosed that several factors are necessary to enable a community, whether incorporated or not, to be viable:

1. Financial authority (taxing, bonding, applying for grants).
2. Regulatory authority (police, fire, planning, and zoning).
3. Provision of services (water, sewer, streets, lighting, safety, and recreational facilities).
4. Independence (community recognition and autonomy).

After receiving testimony, the committee approved a bill, the major points of which are as follows: Section 1 provides requisites for incorporation; it deletes the present minimum population requirement and requires that the proposed city have, in the view of the local board of county commissioners, all the qualities necessary to ensure continued viability as a functioning unit of municipal government.

Section 3 requires that, upon receipt of a petition for incorporation as a city, the board of county commissioners give public notice of a hearing on the issue of incorporation.

Section 4 provides that any petition for incorporation must be accompanied by a plan showing how municipal services will be provided and other information including population, population density, per capita assessed valuation, proximity to populated areas, likelihood of significant growth, need for services, present cost and adequacy of services, and effect of proposed action and alternative actions on adjacent areas.

Section 5 grants the board of county commissioners the authority to approve or disapprove, with or without amendment, the petition for incorporation.

Section 10 provides that any final action by a board of county commissioners may be appealed by either the electors or the property owners of the proposed city, any established city within five miles of the proposed city, any other county encompassing territory in the proposed city or having territory within the potential zoning jurisdiction of the proposed city, and any township encompassing territory in the proposed city or within the city's potential zoning jurisdiction.

Section 12 establishes the Municipal Incorporation Review Commission, consisting of the Secretary of State, Tax Commissioner, and the Agriculture Commissioner. The members of the commission or their designees, are charged with determining if the findings of the board of county commissioners, with respect to the petition for incorporation, are clearly erroneous.

Section 16 provides that the county commissioners' determination is reviewable by a writ of certiorari to district court. Other legal remedies are not precluded.

Alternatives to Incorporation

As mentioned previously, the reasons for inhabitants of a rural area to seek incorporation are somewhat varied. Generally, however, incorporation is viewed as the only practical solution to any of a number of problems which may develop in a rural subdivision. The committee realized that, in revising the criteria and procedures for city incorporation, it was addressing only one of a series of interrelated problems associated with residential development in rural areas. Indeed, the committee soon realized that it could not address one problem without affecting the whole. Testimony revealed that residents of rural subdivisions often desire urban services but have no practical method of financing either services or improvements unless the subdivision is allowed to incorporate. At the same time, the surrounding township and county may be severely strained by the demands of rural subdivision residents for urban services. Presently, counties can create special assessment districts to provide for very limited types of improvements. General governmental services must presently be financed by countywide or townshipwide mill levies.

The committee recommends three bills to enable residents of rural subdivisions to obtain and finance improvements and services without unduly burdening the surrounding township or county.

The first bill amends current law by expanding the types of improvements counties may install upon petition by rural subdivision residents. The bill also allows for the installation of improvements and the assessment of benefited property owners upon resolution by the board of county commissioners. Notice of the resolution must be published and the resolution is effective in the absence of protests filed by 40 percent of the property owners to be affected by the improvements. If 40 percent or more of the property owners protest, a hearing is held and the county commissioners may affirm, modify, or vacate the resolution.

The second bill provides for the creation of rural subdivision service districts for the installation of improvements and the provision of services. Under the terms of the draft, a service district is established by a majority of

the voters in the subdivision. Special assessments may be levied to finance those improvements specified by the local board of township supervisors, if any, or by the board of county commissioners in the absence of an organized township. The district has authority to provide those general governmental services specified by the local township, or in the absence of an organized township, the county. General property tax levying authority is limited to 18 mills. The district may be dissolved upon a majority vote of the qualified voters.

The third bill allows rural subdivision service districts to participate in joint or cooperative action with any city in this state. Agreements between districts and cities may provide for eventual annexation of the district, or an extension by the city of its governmental authority.

County Regulation of Rural Subdivision Development

The committee received testimony indicating that many of the problems associated with residential development in rural areas and the incorporation of new cities stem from the original subdivision development itself. Although exact statewide figures are unobtainable, it appears that rural subdivisions are proliferating rapidly in North Dakota. As an example, there are presently about 130 rural subdivision developments within 10 miles of Bismarck. The board of county commissioners of Burleigh County approves development of an additional 15 to 20 rural subdivisions each year. The committee heard testimony to the effect that ineffectual regulation of rural subdivision development harms both the subdivision residents and the local units of government. By not requiring subdivision developers to provide an adequate infrastructure (streets, lights, water, sewer, etc.), local units of government may endanger the health and safety of subdivision residents. These same local units of government are often asked to bear additional costs to furnish improvements or services to the subdivisions. Both the counties and townships may have implied authority to control subdivision development. The committee recommends the bill to provide counties with express authority to control rural growth.

Section 1 of the bill defines "subdivision" as the division of a tract of land for the purpose of sale or building development. Section 2 grants counties express authority to regulate subdivision of land and provides that prior subdivision regulations are not invalidated.

Section 3 prohibits application of the Act within the corporate limits or extraterritorial zoning jurisdiction of cities. Also, the Act does not affect the use of land or buildings for the normal incidents of farming.

Sections 4, 5, and 6 relate to county preparation of a subdivision resolution, hearings on the resolution, and publication of the resolution.

Section 12 provides that if a county requires approval of plats as a prerequisite to the subdivision of land, no subdivision may be made, except in accordance with the finally approved plat; no plat approval shall be given except upon receipt of recommendations by the county planning commission and the board of supervisors of the township in which the proposed subdivision is located; and no plat shall be finally approved unless provisions are made for public health, safety, and general welfare.

Section 15 provides counties with express remedies for violations of the Act or any subdivision resolution or regulation adopted thereunder.

Consolidation

Presently, North Dakota has no procedure permitting or governing the consolidation of cities. The committee received testimony indicating that such procedure would be desirable. It would permit more orderly development of metropolitan areas by allowing cities to consolidate if their residents so desired. It would also enable the residents of dysfunctional cities to retain the order, sources of financing, and services which city government can provide.

The committee approved a bill providing for the consolidation of cities upon approval by a majority of those voting on the question in each of the involved cities. The process may be initiated by either a resolution of the governing body or a petition by 10 percent of the number of qualified voters in each of the cities to be consolidated. If a majority of the voters of each city seeking consolidation choose to do so, they may direct the governing body of that city to appoint a number of its members to meet with the members of the governing body of the other city seeking consolidation, to formulate a plan for consolidation. The consolidation plan must then be approved by a majority of the voters of each city in order to become effective.

Extraterritorial Zoning

The committee received testimony from planning agencies throughout the state indicating that the present statutory provisions governing cities in the zoning of rural areas is not optimally effective because the area of such zoning authority is required to be bounded by a radial arc some fixed distance from the cities' corporate limits. This inevitably results in single tracts of land being subject to the zoning jurisdiction of more than one governmental entity.

In order to remedy this situation, the committee proposes a bill which would apply a city's extraterritorial zoning authority to each quarter-quarter section of unincorporated territory, the majority of which is located within a specified distance of the city's corporate limits. This proposal wil simplify cities' administrative application of zoning regulations and, at the same time, prevent the inequities possible when one tract of land is governed by the zoning jurisdiction of two units of government.

RETIREMENT COMMITTEE

North Dakota Century Code Section 54-35-02.3, enacted by the 1977 Legislative Assembly, provides for the biennial appointment by the Legislative Council of a committee on public employees retirement programs. 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 were Representatives Robert Martinson, Chairman, James Gerl, Irven Jacobson, and Gordon Larson; and Senators James Cussons, Bonnie Miller Heinrich, and Gilman Strand.

The report of the Retirement 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-seventh Legislative Assembly by the Legislative Council in November 1980.

The committee established January 1, 1980, as the deadline for submission of retirement proposals by individuals. Organizations were given until April 1, 1980, to submit proposals, with the understanding that organizational proposals would be submitted in bill draft form. The committee established these deadlines to allow the committee and its actuary sufficient time to evaluate the proposals. All individual proposals were incorporated into bill drafts prior to submittal for actuarial review to enable the actuary to evaluate the proposal as it would appear if introduced before the Legislative Assembly.

The committee sent a total of 229 letters notifying elected and appointed state officials, legislators, college presidents, retirement program administrators, public employee organizations, and local governmental organizations of the committee's assigned functions and criteria for submission of proposals.

The following is a summary of proposals over which the committee took jurisdiction:

1. Proponent: Rachel Elsberry
   Proposal:
   a. Increase the length of creditable service in the Public Employees Retirement System (PERS) from 30 years to 35 years.

      Committee Report: Unfavorable recommendation

      Actuarial Analysis:

      The existing retirement program does not recognize years of service in excess of 30 in determining benefits if such excess service was earned prior to July 1, 1966. The above-referenced bill would liberalize this restriction such that only years in excess of 35 (earned prior to July 1, 1966) would be disregarded in the benefit formula.

      Following are the approximate actuarial cost implications if this bill were enacted:

      Dollar increase in annual employer cost ..... $ 174,000
      Percent of salary increase 0.14%
      Increase in unfunded liability ... $2,148,000

   b. Provide graduated increases in the PERS benefit formula multiplier based on length of service and corresponding to annual leave policies now in effect.

      Committee Report: Unfavorable recommendation because proposal provides excessive income replacement

      Actuarial Analysis:

      The above-referenced bill would change the benefit factor for future retirees from 1.04% per year of service to the following schedule:

      (i) 1.04% for first three years of employment, plus
      (ii) 1.30% for next four years of employment, plus
      (iii) 1.56% for next five yers of employment, plus
      (iii) 1.56 for next five years of employment, plus
      (v) 1.82% for next six years of employment, plus
      (v) 2.08% for years of employment in excess of 18

      Following are the approximate actuarial cost implications if this bill were enacted:

      Dollar increase in annual cost . $ 8,630,000
      Percent of salary increase 6.85%
      Increase in unfunded liability . $42,310,000

      As we discussed, the type of benefit formula considered by this bill, wherein the benefit accrual rate is significantly greater for employees with long years of service, would not be allowed for a private plan covered under the Employee Retirement Income Security Act of 1974.

   c. Require the state to provide all contributions toward retirement under PERS.

      Committee Report: Favorable recommendation

      Actuarial Analysis:

      The referenced bill would create a noncontributory system for state employees and judges. The employer contribution rate for these participants would increase to 9.12%. Political subdivisions covered under the retirement system would be required to continue the historical contributory system (5.12% of salary contributed by employer and 4.00% by employee).

      As we have discussed, the elimination of some or all of the employee contribution has the effect of reducing the total cost of the retirement system. This is because some potential future benefits are eliminated; i.e., the refund and death benefits attributable to employee contributions.

      On the assumption that approximately 70% of current active employee compensation falls

within the category of either state employee or judges' compensation, the enactment of this bill would have the effect of decreasing the total annual cost of the retirement system by approximately $534,000 or 0.42% of salary; from 8.38% (see page 12 of the July 1, 1980, actuarial valuation) to 7.96%.

d. Reduce period of employment necessary to qualify for PERS disability benefits from 10 years to seven years.

Committee Report: Unfavorable recommendation — committee prefers proposal 12(f) by Public Employees Retirement System

Actuarial Analysis:

The referenced bill would reduce the eligibility requirement for future disability pensions from 10 years of covered employment to seven years or, alternatively, to five years.

Following are the approximate actuarial cost implications if this bill were enacted:

	Disability Service Requirement	
	5 years	7 years
Dollar increase in annual employer cost	$66,000	$40,000
Percent of salary increase	0.05%	0.03%
Increase in unfunded liability	$49,000	$29,000

2. Proponent: Marjorie Bye
Proposal:

a. Make the provisions for crediting years of service in PERS past age 65 retroactive to July 1, 1977.

Committee Report: Favorable recommendation

Actuarial Analysis:

The referenced bill (similar to 42.01) would give service credit beyond age 65 for participants who retired on or after July 1, 1977, but before July 1, 1979. Retirements on and after July 1, 1979, have been receiving this additional credit.

Our calculations are based on the information contained in your letter of May 29, 1980, which indicates that 89 retirees would be affected by this bill with increases in monthly benefits totaling $1,223.43.

The projected costs shown below assume the effective date of this bill would be July 1, 1981. The first column assumes the bill would not retroactively increase benefits from date of retirement to June 30, 1981; the second column assumes the benefit increases would be retroactive.

	Benefit Increase Retroactive?	
	No	Yes
1. Lump sum appropriation	$118,500	$160,300
2. If no appropriation, unfunded liability would increase by line 1 amount. The unfunded liability payment, based on the 21-year amortization period as of July 1, 1981, would increase as follows:		
a. Dollar amount	$ 9,800	$ 13,300
b. Percent of compensation	.009%	.012%

b. Provide PERS postretirement adjustments for retirees.

Committee Report: Unfavorable recommendation

Actuarial Analysis:

The cost of providing ad hoc retirement increases to retirees equal to a percent of their benefits is equal to the pensioner liability (present value of future benefits) of the affected pensioners on the date of the increase multiplied by the percentage increase.

As an example of this cost, assume all retired individuals on July 1, 1981, who were on the retirement rolls for at least two years are to receive a 3% increase (corresponding to a 12% cost of living under the 1 for 4 formula in the bill). Also assume the special prior service pensions are to be excluded from this increase.

Note that the individuals who would be affected are those on the rolls as of July 1, 1979. The July 1, 1979, liability for these individuals is $4,422,800 (see page 25 of our July 1, 1979, valuation report). The July 1, 1981, liability for these retirees would be approximately 10% lower because of aging and deaths; 90% of $4,422,800 is approximately $4,000,000. Thus, a 3% increase in benefits would require an appropriation of approximately $120,000.

The bill indicates that the increase would first be effective July 1, 1983, so that the number of retirees affected would be approximately twice the number on the July 1, 1979, rolls (assuming prior service pensions are excluded). Thus, a 3% benefit increase on July 1, 1983, could be expected to cost roughly $240,000 on a lump sum appropriation basis.

c. Reduce period of employment necessary to qualify for PERS disability benefits from 10 years to five years.

Committee Report: Unfavorable recommendation — committee prefers proposal 12(e) by PERS

Actuarial Analysis:

The referenced bill would reduce the eligibility requirement for future disability pensions from 10 years of covered employment to seven years or, alternatively, to five years.

Following are the approximate actuarial cost implications if this bill were enacted:

	Disability Service Requirement	
	5 years	7 Years
Dollar increase in annual employer cost	$66,000	$40,000
Percent of salary increase	0.05%	0.03%
Increase in unfunded liability	$49,000	$29,000

d. Require the state to pay all PERS contributions toward retirement.

Committee Report: Favorable recommendation

Actuarial Analysis:

The referenced bill would create a noncontributory system for state employees and judges. The employer contribution rate for these participants would increase to 9.12%. Political subdivisions covered under the retirement system would be required to continue the historical contributory system (5.12% of salary contributed by employer and 4.00% by employee).

As we have discussed, the elimination of some or all of the employee contribution has the effect of reducing the total cost of the retirement system. This is because some potential future benefits are eliminated; i.e., the refund and death benefits attributable to employee contributions.

On the assumption that approximately 70% of current active employee compensation falls within the category of either state employee or judges' compensation, the enactment of this bill would have the effect of decreasing the total annual cost of the retirement system by approximately $534,000 or 0.42% of salary; from 8.38% (see page 12 of the July 1, 1980, actuarial valuation) to 7.96%.

e. Provide graduated increases in the PERS benefit formula multiplier based on length of service.

Committee Report: Unfavorable recommendation because proposal provides excessive income replacement

Actuarial Analysis:

The above-referenced bill would change the benefit factor for future retirees from 1.04% per year of service to the following schedule:

(i) 1.04% for first three years of employment, plus
(ii) 1.30% for next four years of employment, plus
(iii) 1.56% for next five years of employment, plus
(iv) 1.82% for next six years of employment, plus
(v) 2.08% for years of employment in excess of 18

Following are the approximate actuarial cost implications if this bill were enacted:

Dollar increase in annual cost . $ 8,630,000
Percent of salary increase 6.85%
Increase in unfunded liability . $42,310,000

As we discussed, the type of benefit formula considered by this bill, wherein the benefit accrual rate is significantly greater for employees with long years of service, would not be allowed for a private plan covered under the Employee Retirement Income Security Act of 1974.

f. Allow full PERS retirement benefits after 30 years of service and on attaining age 50.

Committee Report: Unfavorable recommendation

Actuarial Analysis:

The referenced bill (similar to 105.01) would allow normal retirement prior to age 65, without reduction for early retirement, to future retirees who have 30 or more years of covered service. The only difference between the two bills is that No. 107.01 would require a minimum retirement age of 50 whereas No. 105.01 would have no age requirement. From an actuarial cost standpoint, a minimum age requirement of 50 attached to a "30-and-out" provision would have an insignificant impact. It can be noted that only persons hired under age 20 could be affected by the age 50 requirement. Therefore, the two bills are treated as identical for actuarial cost purposes.

It is important to recognize that although employees may be eligible to retire with full benefits at an earlier age, this does not necessarily mean they will actually retire at the earliest age they can receive unreduced benefits. For purposes of pricing these bills, we assumed employees would retire two years after they are first eligible for unreduced benefits but not later than age 65. The following chart illustrates our assumptions:

Entry Age	Assumed Retirement Age
20	52
25	57
30	62
33 & older	65

Based on these retirement age assumptions, which we believe are reasonable, following are the approximate actuarial cost implications if either of the referenced bills is enacted:

Dollar increase in annual employer cost ..... $ 2,245,000
Percent of salary increase 1.76%
Increase in unfunded liability . $20,079,000

g. Allow years of service credit in PERS for all service performed after July 1, 1977, regardless of the number of years of service prior to that date.

Committee Report: Unfavorable recommendation

Actuarial Analysis:

The existing retirement program does not recognize years of service in excess of 30 in determining benefits if such excess service was earned prior to July 1, 1966. The above-referenced bill would remove this limitation.

Following are the approximate actuarial cost implications if this bill were enacted:

Dollar increase in annual employer cost ..... $ 305,000
Percent of salary increase 0.24%
Increase in unfunded liability .. $3,770,000

3. Proponent: Donald D. Mund
   Proposal: Provide normal retirement for employees of the State Penitentiary with 25 years of service at age 55.

Committee Report: Unfavorable recommendation

Actuarial Analysis:

As written, the referenced bill would reduce the normal retirement age for Penitentiary employees from age 65 to 55. Pursuant to your letter of August 11, 1980, however, our calculations assume that the bill draft will be amended such that the normal retirement age will be:

(i) Age 55 for Penitentiary employees who have accrued 25 years of covered employment if their last 10 years were spent as a Penitentiary employee.
(ii) For Penitentiary employees who accrue 25 years of covered employment after age 55 but before age 65 and whose last 10 years were spent as a Penitentiary employee, the normal retirement age will be the age at which they accrue 25 years of covered employment.
(iii) For all other Penitentiary employees, the normal retirement age will be age 65.

The bill would increase the contribution requirements as follows:

(i) The employer contribution rate for Penitentiary employees would increase from 5.12% to 6.40%.
(ii) The employee contribution rate would increase from 4.00% to 5.00%.

For informational purposes, following is a summary of the Penitentiary employee census data enclosed with your letter of September 23, 1980:

	Males	Females	Total
Number of active employees	95	0	104
Average age	41	41	41
Average years of credited service	7	4	7
Total annual compensation	$1,425,000	$114,800	$1,539,800
Average annual compensation	$ 15,000	$ 12,800	$ 14,800

If enacted, this bill would have the following effects:

(i) Increase in funded liability $487,000
(ii) Increase in total (employee plus employer) normal cost 15,500
(iii) Increase in total annual cost, expressed as a percentage salary 3.56%

The additional contributions required by the bill, equal to 2.28% of salary (1.28% from employer and 1% from employee), are 1.28 percentage points less than the increase in actuarial cost of 3.56% of salary. Thus, in order for the bill to be "self-supporting", the employer or employee contribution would have to be increased.

The additional actuarial costs shown above are based on an assumption that employees will retire, on average, one year after their normal retirement age, or at age 65, if earlier.

The following chart illustrates how this assumption affects different entry age employees:

Entry Age	Assumed Retirement Age
Under 31	56
35	61
39 & over	65

4. Proponent: Senator Robert B. Melland
   Proposal: Provide that the PERS postponed retirement date relates to severance of employment on or after July 1, 1977.

Committee Report: Favorable recommendation

Actuarial Analysis:

The referenced bill (similar to 117.01) would give service credit beyond age 65 for participants who retired on or after July 1, 1977, but before July 1, 1979. Retirements on and after July 1, 1979, have been receiving this additional credit.

Our calculations are based on the information contained in your letter of May 29, 1980, which indicates that 89 retirees would be affected by this bill with increases in monthly benefits totaling $1,223.43.

The projected costs shown below assume the effective date of this bill would be July 1, 1981. The first column assumes the bill would not retroactively increase benefits from date of retirement to June 30, 1981; the second column assumes the benefit increases would be retroactive.

	Benefit Increase Retroactive?	
	Yes	No
1. Lump sum appropriation	$118,500	$160,300
2. If no appropriation, unfunded liability would increase by line 1 amount. The unfunded liability		

payment, based on the 21-year amortization period as of July 1, 1981, would increase as follows:

a. Dollar amount .	$ 9,800	$ 13,300
b. Percent of compensation . .	.009%	.012%

5. Proponent: Dale R. Sailer
   Proposal:
   a. Require the state to pay all contributions toward retirement under PERS.

      Committee Report: Favorable recommendation

      Actuarial Analysis:

      The referenced bill would create a noncontributory system for state employees and judges. The employer contribution rate for these participants would increase to 9.12%. Political subdivisions covered under the retirement system would be required to continue the historical contributory system (5.12% of salary contributed by employer and 4.00% by employee).

      As we have discussed, the elimination of some or all of the employee contribution has the effect of reducing the total cost of the retirement system. This is because some potential future benefits are eliminated; i.e., the refund and death benefits attributable to employee contributions.

      On the assumption that approximately 70% of current active employee compensation falls within the category of either state employee or judges' compensation, the enactment of this bill would have the effect of decreasing the total annual cost of the retirement system by approximately $534,000 or 0.42% of salary; from 8.38% (see page 12 of the July 1, 1980, actuarial valuation) to 7.96%.
   b. Increase the PERS benefit formula multiplier to 1.5 percent.

      Committee Report: Unfavorable recommendation

      Actuarial Analysis:

      The referenced bill would increase the benefit factor to 1.5% or, alternatively, to 2%. Our calculations assume retirees on the rolls would receive the increase. Following are the projected costs of these two alternatives in terms of the July 1, 1979, valuation results. Note that an increase effective July 1, 1981, would produce higher dollar amounts (because of increases in salaries), but the percent-of-salary costs would not differ significantly from those shown below.

	Increase Benefit Factor to:	
	1.5%	2.0%
1. Increase in unfunded accrued liability	$26,200,000	$54,680,000
2. Increase in annual employer cost:		
a. Dollar increase . .	$ 4,860,000	$10,200,000
b. Percent of salary increase	4.8%	10.0%

      The above cost increases, as indicated, are paid by the employer. The calculations assume a continuation of the 4% employee contribution rate.

   c. Increase the interest rate on individual PERS retirement accounts from five percent to six percent.

      Committee Report: Favorable recommendation

      Actuarial Analysis:

      The referenced bill would increase the interest crediting rate on employee refunds from 5% to 6%.

      No actuarial cost impact on the System.

6. Proponent: Dr. Milton V. Wisland
   Proposal: Increase PERS benefit formula multiplier to two percent.

   Committee Report: Unfavorable recommendation

   Actuarial Analysis:

   The referenced bill would increase the benefit factor to 1.5% or, alternatively, to 2%. Our calculations assume retirees on the rolls would receive the increase. Following are the projected costs of these two alternatives in terms of the July 1, 1979, valuation results. Note that an increase effective July 1, 1981, would produce higher dollar amounts (because of increases in salaries), but the percent-of-salary costs would not differ significantly from those shown below.

	Increase Benefit Factor to:	
	1.5%	2.0%
1. Increase in unfunded accrued liability	$26,200,000	$54,680,000
2. Increase in annual employer cost:		
a. Dollar increase .	$ 4,860,000	$10,200,000
b. Percent of salary increase .	4.8%	10.0%

   The above cost increases, as indicated, are paid by the employer. The calculations assume a continuation of the 4% employee contribution rate.

7. Proponent: Ralph Hamre
   Proposal: Provide for PERS annual cost-of-living increase.

   Committee Report: Unfavorable recommendation

   Actuarial Analysis:

The cost of providing ad hoc retirement increases to retirees equal to a percent of their benefits is equal to the pensioner liability (present value of future benefits) of the affected pensioners on the date of the increase multiplied by the percentage increase.

As an example of this cost, assume all retired individuals on July 1, 1981, who were on the retirement rolls for at least two years are to receive a 3% increase (corresponding to a 12% cost of living under the 1 for 4 formula in the bill). Also, assume the special prior srvice pensions are to be excluded from this increase.

Note that the individuals who would be affected are those on the rolls as of July 1, 1979. The July 1, 1979, liability for these individuals is $4,422,800 (see page 25 of our July 1, 1979, valuation report). The July 1, 1981, liability for these retirees would be approximately 10% lower because of aging and deaths; 90% of $4,422,800 is approximately $4,000,000. Thus, a 3% increase in benefits would require an appropriation of approximately $120,000.

The bill indicates that the increase would first be effective July 1, 1983, so that the number of retirees affected would be approximately twice the number on the July 1, 1979, rolls (assuming prior service pensions are excluded). Thus, a 3% benefit increase on July 1, 1983, could be expected to cost roughly $240,000 on a lump sum appropriation basis.

8. Proponent: Associate Justice Vernon R. Pederson
   Proposal: Equalize retirement benefits of those judges retiring under PERS with those retiring under the provisions of North Dakota Century Code Chapter 27-17.

Committee Report: No recommendation

Actuarial Analysis:

The referenced bill would establish a separate retirement system for supreme and district court judges.

We have assumed essentially the same benefit structure as for the Public Employees Retirement System with the following exceptions:

1. The employee contribution rate will be 5% of salary.
2. The normal retirement benefit will equal 50% of the salary payable to judges of the classification the retired judge had at the time he retired.
3. Postretirement benefit increases on three alternative bases:
   I. Benefits increase at the same percentage as the corresponding active salary.
   II. Benefits increase at ¼ the percentage increase of the corresponding active salary increase except **current** retired judges' benefits are indexed by the full percentage salary increase.
   III. Benefits increase at ¼ the percentage increase of the corresponding active salary increase including future benefit increases to current retirees.
4. Retirees would have one of three optional retirement benefit elections as were available under the "Old Judges' Retirement System."

As we did not have full census data for all active judges, our calculations were necessarily approximate. We allowed for 29 active judges with an average annual salary of $40,000. The cost to provide **future** benefits to the existing group of retirees under the "Old Judges' Retirement System" is included in our calculations.

Following are the results of our calculations for Plans I, II, and III described under Item 3, above:

PLAN I — All Benefits Increase by Full Salary Increase.

Employer Cost ..... $ 696,000
Percent of Salary Employer Cost. 60.0%
Initial Unfunded Liability ... $5,323,000

PLAN II — Future Retirees' Benefits Increase by ¼ Salary Increase — Current Retirees' Benefits Increase by Full Salary Increase.

Employer Cost ..... $ 545,000
Percent of Salary Employer Cost. 47.2%
Initial Unfunded Liability ... $4,505,000

PLAN III — All Benefits Increase by ¼ Salary Increase (including current retirees).

Employer Cost .... $ 505,000
Percentage of Salary Employer Cost..... 43.5%
Initial Unfunded Liability ... $3,976,000

9. Proponent: Henry A. Lahaug
   Proposal: Increase the PERS benefit formula multiplier to 1.5 percent.

Committee Report: Unfavorable recommendation

Actuarial Analysis:

The referenced bill would increase the benefit factor to 1.5% or, alternatively, to 2%. Our calculations assume retirees on the rolls would receive the increase. Following are the projected costs of these two alternatives in terms of the July 1, 1979, valuation results. Note that an increase effective July 1, 1981, would produce higher dollar amounts (because of increases in salaries), but the percent-of-salary costs would not differ significantly from those shown below.

	Increase Benefit Factor to:	
	1.5%	2.0%
1. Increase in unfunded accrued liability	$26,200,000	$54,680,000
2. Increase in annual employer cost:		
a. Dollar increase.	$ 4,860,000	$10,200,000
b. Percent of salary increase	4.8%	10.0%

The above cost increases, as indicated, are paid

by the employer. The calculations assume a continuation of the 4% employee contribution rate.

10. Proponent: Eugene Masse
    Proposal: Allow employees to retire with full benefits after 30 years of service regardless of age.

Committee Report: Unfavorable recommendation

Actuarial Analysis:

The referenced bill (similar to 107.01) would allow normal retirement prior to age 65, without reduction for early retirement, to future retirees who have 30 or more years of covered service. The only difference between the two bills is that No. 107.01 would require a minimum retirement age of 50 whereas No. 105.01 would have no age requirement. From an actuarial cost standpoint, a minimum age requirement of 50 attached to a "30-and-out" provision would have an insignificant impact. It can be noted that only persons hired under age 20 could be affected by the age 50 requirement. Therefore, the two bills are treated as identical for actuarial costs purposes.

It is important to recognize that although employees may be eligible to retire with full benefits at an earlier age, this does not necessarily mean they will actually retire at the earliest age they can receive unreduced benefits. For purposes of pricing these bills, we assumed employees would retire two years after they are first eligible for unreduced benefits but not later than age 65. The following chart illustrates our assumptions:

Entry Age	Assumed Retirement Age
20	52
25	57
30	62
33 & older	65

Based on these retirement age assumptions, which we believe are reasonable, following are the approximate actuarial cost implications if either of the referenced bills is enacted:

Dollar increase in annual employer cost $2,245,000
Percent of salary increase 1.76%
Increase in unfunded liability . $20,079,000

11. Proponent: North Dakota Game Law Enforcement Association
    Proposal: Allow liberalized retirement benefits for law enforcement officials.

Committee Report: Unfavorable recommendation

Actuarial Analysis:

This bill would establish a different plan of benefits for law enforcement personnel.

In accordance with the referenced bill draft, the following is a description of the four different plans of benefits we have evaluated on behalf of law enforcement personnel:

1. Two alternative plans as to normal retirement age:
   (i) Age 55 and completion of 25 years of service but not later than age 65, and
   (ii) Age 60 and completion of 30 years of service but not later than age 65.
2. Two alternative plans as to benefit accruals:
   (i) **1.25%** multiplied by years of covered employment multiplied by final average salary (highest five years), and
   (ii) **1.50%** multiplied by years of covered employment multiplied by final average salary (highest five years).
3. Disability benefit after 10 years of covered employment equal to accrued normal retirement benefit but not less than $250 per month.
4. Vesting after 10 years.
5. Preretirement death benefit to spouse equal to 50% of accrued normal retirement benefit; payable for life of spouse or until remarriage. This spouse benefit is only payable if death occurs after at least 10 years of covered employment.
6. Employee contribution rate of 4.00% of salary.

The four plans studied are a combination of items 1 and 2 above. Following is a summary of these four:

	Normal Retirement Eligibility		Benefit
	Age	Service	Accrual
Plan I	55	25	1.25%
Plan II	60	30	1.25
Plan III	55	25	1.50
Plan IV	60	30	1.50

We received census information on 144 of the approximate 400 law enforcement personnel who would be affected by this bill. If these 144 are a representative sample of the total group of 400, then the percent of salary costs and per capita amounts contained herein will be accurate. Following is a summary of the census information we received:

Number of active employees 144
Average age 39
Average years of covered employment .. 7.5
Total annual compensation $1,952,000
Average annual compensation .. $ 13,600

We understand that some of the law enforcement personnel who would be covered under this new provision are not currently covered by the retirement system. Because these employees would not have any accumulated retirement system assets on their behalf, the employer normal cost will be greater than for those employees who are currently covered.

Following is a summary of our calculated employer costs both as a percent of salary and on a "per active employee" basis. For the reason stated above, separate costs are shown for employees currently covered by the retirement system and employees not currently covered.

Plan	Normal Retirement Eligibility: Age	Normal Retirement Eligibility: Service	Benefit Accrual	Percent of Salary	Employer Cost Per Active Employee: Normal Cost	Employer Cost Per Active Employee: Additional Unfunded Liability
Employees currently covered by retirement system:						
I	55	25	1.25%	8.35%	$580	$6,800
II	60	30	1.25	6.68	500	5,000
III	55	25	1.50	11.28	780	9,300
IV	60	30	1.50	9.29	680	7,200
Employees not currently covered by retirement system:						
I	55	25	1.25%	11.35%	$580	$11,800
II	60	30	1.25	9.68	500	10,100
III	55	25	1.50	14.28	780	14,400
IV	60	30	1.50	12.30	680	12,300

The actuarial costs shown above are based on an assumption that employees will retire, on average, one year after their normal retirement age or at age 65, if earlier. The following chart illustrates how this assumption affects different entry age employees:

Entry Age	Assumed Retirement Age: Plans I & III	Assumed Retirement Age: Plans II & IV
Under 31	56	61
33	59	64
35	61	65
39 & over	65	65

12. Proponent: Public Employees Retirement System
Proposal:
   a. Allow expanded participation in PERS by political subdivisions.

      Committee Report: Favorable recommendation

      Actuarial Analysis

      The referenced bill would allow certain other political subdivisions to participate in the retirement system and would add no additional cost, assuming they participate on an actuarial equivalent basis; i.e., higher contributions or a limit on accumulated service may be required.

      No actuarial cost impact on the system.
   b. Allow PERS board increased flexibility in the investment of retirement funds.

      Committee Report: Favorable recommendation

      Actuarial Analysis:

      The referenced bill would allow the Retirement Board to invest moneys of the system and should reduce investment expenses; thus, there will be a savings to the system if the board's investments were the same as those an investment consultant would otherwise have made.
   c. Allow crediting of unused sick leave to determine PERS retirement benefits.

      Committee Report: Unfavorable recommendation

      Actuarial Analysis:

      The above-referenced bill would allow the use of unused sick leave time (not salary) to determine an individual's retirement benefit. Pursuant to our discussion, we have assumed in our cost calculations that this would only apply to future retirees.

      Following are the approximate actuarial cost implications if this bill were enacted:
      Dollar increase in annual cost $181,000
      Percent of salary increase 0.14%
      Increase in unfunded liability $888,000
      Please note that our calculations assumed this provision would have the effect of increasing future retirement awards by 1.4%. This percentage increase was based on the information gathered by your office.
   d. Remove PERS remarriage restrictions.

      Committee Report: Favorable recommendation

      Actuarial Analysis:

      This referenced bill would remove the remarriage restriction with regards to surviving spouse benefits.

      No actuarial cost impact on the system.
   e. Allow participation by political subdivisions in the PERS group insurance program.

      Committee Report: Favorable recommendation

      Actuarial Analysis:

      The referenced bill would allow political subdivisions to participate in the Public Employees Group Insurance Program and would add no cost to that program if, on average, they "pay-their-share".
   f. Reduce PERS disability vesting period from 10 years to 180 days.

      Committee Report: Favorable recommendation

      Actuarial Analysis:

      The referenced bill would reduce the eligibility requirement for future disability pensions from 10 years of covered employment to 180 days and change the benefit amount from "accrued retirement benefit" to "60% of final average salary less the Social Security primary benefit less workmen's compensation, if any."

      Pursuant to our discussions, the calculated costs contained herein assume that the bill would be modified such that the disability pension would not be less than the accrued retirement benefit for disabled participants with at least 10 years of covered employment.

      Following are the approximate actuarial cost implications if this bill were enacted:

      Dollar increase in annual employer cost $348,000
      Percent of salary increase 0.27%
      Increase in unfunded liability ..... None

g. Allow repurchase of past service credit under PERS.

Committee Report: Favorable recommendation

Actuarial Analysis:

This bill would allow repurchase of past service credit upon reemployment.

No actuarial cost impact on the system.

13. Proponent: Legislative Council's Budget "B" Committee

Proposal:

a. Allow noncontributory retirement in PERS with current rate of total contributions.

Committee Report: Favorable recommendation

Actuarial Analysis:

The referenced bill would create a noncontributory system for state employees and judges. The employer contribution rate for these participants would increase to 9.12%. Political subdivisions covered under the retirement system would be required to continue the historical contributory system (5.12% of salary contributed by employer and 4.00% by employee).

As we have discussed, the elimination of some or all of the employee contribution has the effect of reducing the total cost of the retirement system. This is because some potential future benefits are eliminated; i.e., the refund and death benefits attributable to employee contributions.

On the assumption that approximately 70% of current active employee compensation falls within the category of either state employee or judges' compensation, the enactment of this bill would have the effect of decreasing the total annual cost of the retirement system by approximately $534,000 or 0.42% of salary; from 8.38% (see page 12 of the July 1, 1980, actuarial valuation) to 7.96%.

b. Allow noncontributory retirement in PERS with current benefit formula.

Committee Report: Unfavorable recommendation because committee prefers proposal (a)

Actuarial Analysis:

The referenced bill would create a noncontributory system for state employees and judges. The employer contribution rate, however, would not increase by the full 4% contributed by the employees but by a lesser amount which recognizes that future benefit payments will be less under a noncontributory system (see memorandum which reviews bill draft No. 89.01). This bill requires that political subdivisions covered under the retirement system continue the historical contributory system (5.12% of salary contributed by employer and 4.00% by employee).

If this bill were enacted, the employer contribution rate on behalf of state employees and judges would have to increase by 3.4%, from 5.12% to 8.52%.

14. Proponent: North Dakota Highway Patrol

Proposal:

a. Provide liberalized benefits and increased contributions to North Dakota highway patrolmen's retirement program.

Committee Report: Favorable recommendation

Actuarial Analysis:

In response to your letter of October 15, 1980, and specifically in regard to the legislative bill draft No. 150.02, I would make the following comments:

1. The proposed legislation reflects selected items which we previously examined in our actuarial report to you and supplemental letter. The proposal, coupled with the indicated funding modifications, develops amortization periods comparable to those which currently exist which are deemed to be within the imposed actuarial limits.

2. In terms of a "One Sum Cost" or "Capitalized Present Value" our determination develops an amount of $800,000 additional to support the proposed revisions. Expressed in terms of an annual funding requirement, they would require an additional $50,000 per year by the state in order to maintain the existing amortization period.

Therefore, it appears that both bill draft Nos. 150.02 and 190.01 can be appropriately supported by the projected contribution by the state of $447,984 for the next biennium.

b. Provide ad hoc postretirement adjustments to North Dakota highway patrolmen's retirement program.

Committee Report: Favorable recommendation

Actuarial Analysis:

In response to your letter of October 15, 1980, and specifically in regard to the legislative bill draft No. 190.01, I would make the following comments:

1. The proposed legislation reflects selected items which we previously examined in our actuarial report to you and supplemental letter. The proposal, coupled with the indicated funding modifications, develops amortization periods comparable to those which currently exist which are deemed to be within the imposed actuarial limits.

2. In terms of a "One Sum Cost" or "Capitalized Present Value" our determination develops an amount of $70,000 additional to support the proposed revisions. Expressed in terms of an annual funding requirement, they would require an additional $4,500 per year by the state in order to maintain the existing amortization period.

Therefore, it appears that both bill draft Nos. 150.02 and 190.01 can be appropriately supported by the projected contribution by the state of $447,984 for the next biennium.

15. Proponents: James Broton
Harold Van Heuvelen
Proposal: Provide military service credit in Teachers' Fund for Retirement (TFFR) if the applicant taught in another state prior to induction into military service.

Committee Report: Favorable recommendation but committee prefers proposal (h) by Teachers Retirement Task Force

Actuarial Analysis:

This bill is similar to bill draft TRTF-10.02 and can be absorbed within the current 12.50% contribution rate.

16. Proponent: Arnold Hermunslie
Proposal: Provide additional TFFR retirement credit for teachers with prior service in nonpublic schools.

Committee Report: Favorable recommendation

Actuarial Analysis:

This proposed bill would permit teachers now in public schools to purchase service credit for prior teaching in nonpublic schools. It does not specify any time period during which the purchase must be made, nor does it limit the number of years that could be purchased. We would recommend that this be reviewed by legal staff.

It would appear that very few individuals would be affected. The cost impact to the fund could be absorbed within the current 12.5% contribution rate.

17. Proponent: North Dakota Retired Teachers Association
Proposal: Provide a $1 per month postretirement adjustment in TFFR for each year of public school or college teaching service.

Committee Report: Favorable recommendation

Actuarial Analysis:

We have calculated the cost to fund the above-referenced bill.

It will require an appropriation of approximately $1,797,000 to fund the increase for the two-year period beginning July 1, 1981, and ending June 30, 1983.

In the event the adjustment is to be extended beyond June 30, 1983, the cost will be recalculated accordingly.

We have been asked to comment on whether or not the cost to fund the proposed increase under the above bill was included in the $14,500,000 appropriation authorized during the last session.

This letter will confirm that the funding of bill draft TRTF-8.03 was not included in the $14,500,000. In order to fund bill draft TRTF-8.03 an additional appropriation of $1,797,000 would be required.

18. Proponent: Teachers Retirement Task Force
Proposal:

a. Provide liberalized teachers disability retirement benefits under TFFR.

Committee Report: Favorable recommendation

Actuarial Analysis:

We have reviewed the above-referenced bill and, in our opinion, it will have a minimal cost impact on the fund and will not cause an increase in the current 12.50% contribution rate.

b. Provide additional retirement options under TFFR for retiring teachers.

Committee Report: Favorable recommendation

Actuarial Analysis:

We have reviewed the above-referenced bill and, in our opinion, it will have a minimal cost impact on the fund and will not cause an increase in the current 12.50% contribution rate.

c. Expand the definition of "teacher" for retirement purposes under TFFR.

Committee Report: Favorable recommendation

Actuarial Analysis:

We have reviewed the above-referenced bill and, in our opinion, it will have a minimal cost impact on the fund and will not cause an increase in the current 12.50% contribution rate.

d. Standardize the definition of "year" for retirement purposes under TFFR.

Committee Report: Favorable recommendation

Actuarial Analysis:

We have reviewed the above-referenced bill and, in our opinion, it will have a minimal cost impact on the fund and will not cause an increase in the current 12.50% contribution rate.

e. Allow beneficiaries of deceased teachers additional flexibility in repurchasing service credit under TFFR.

Committee Report: Favorable recommendation

Actuarial Analysis:

We have reviewed the above-referenced bill and, in our opinion, it will have a minimal cost impact on the fund and will not cause an increase in the current 12.50% contribution rate.

f. Provide percentage postretirement adjustments for TFFR retirees.

Committee Report: Favorable recommendation

Actuarial Analysis:

We have actuarially determined the cost to fund the above-referenced bill. It will require an appropriation of approximately $3,150,000 to fund the postretirement adjustment.

g. Provide early retirement date for teachers under TFFR.

Committee Report: Favorable recommendation

Actuarial Analysis:

We have reviewed the above-referenced bill and, in our opinion, it will have a minimal cost impact on the fund and will not cause an increase in the current 12.50% contribution rate.

h. Provide for participation of nonpublic schoolteachers in TFFR.

Committee Report: Favorable recommendation

Actuarial Analysis:

We have reviewed the above-referenced bill and, in our opinion, the minimal cost impact to fund the bill can be absorbed within the current 12.50% contribution rate.

In addition, the bill should have very little effect on the current funding schedule.

The committee reviewed each proposal and solicited testimony from proponents, retirement program administrators, and other interested persons. The committee was able to utilize the actuarial services retained by the Public Employees Retirement System, the Teachers' Fund for Retirement, and the Highway Patrolmen's retirement system as well as retaining the actuarial services of the Martin E. Segal Company in evaluating many of the proposals. In submitting proposals for actuarial evaluation, the committee combined similar proposals in order to avoid duplication of effort. The committee obtained written actuarial information on each of the proposals over which it took jurisdiction.

The committee refused to take jurisdiction over proposals which either:

1. Did not pertain specifically to public employees retirement programs.
2. Did not require legislative action by the 1981 Legislative Assembly.
3. Did not conform to the committee's criteria for submission of proposals.

In evaluating each of the proposals, the committee considered the actuarial effect, number of people affected, method of funding, effect on the state's general fund, effect on the retirement program, and other consequences of the proposal or any alternatives to the proposal. Based upon these factors, each proposal received either a favorable recommendation, an unfavorable recommendation, or no recommendation. A copy of the actuarial evaluation and the committee's report on the proposal will be appended to each proposal and delivered to the proponent. Each proponent will then be responsible for securing introduction of that proposal. A copy of the committee's report and the actuarial evaluation will be appended to each proposal when it is introduced.

The committee notes that it has no authority to require evaluation of amendments made to retirement legislation during the legislative session. The committee has expressed its concern over the detrimental effects such amendments may have and suggests that any amendments made to retirement legislation should receive actuarial evaluation as well as review of other possible effects.

SOCIAL SERVICES COMMITTEE

The Social Services Committee was assigned three studies. Senate Concurrent Resolution No. 4053 directed a study of Chapters 50-01 and 50-02 of the North Dakota Century Code, relating to residence for poor relief purposes, to explore the legal sufficiency and adequacy of those chapters, and to examine the basis for allocating responsibility for payment for general and public assistance among the several counties. Senate Concurrent Resolution No. 4088 directed a study of the present procedures involved in determining child custody, visitation rights, and related domestic relations issues, and a consideration of alternative approaches to more adequately and efficiently protect the rights of children. House Concurrent Resolution No. 3044 directed a comprehensive study of the needs of physically handicapped young adults in the state, including transitional needs of individuals living in protected environments; residential needs of vocationally educable young adults and those attending sheltered workshops; transportation needs of those able to attend college or vocational training facilities; recognition of psychological and emotional needs; architectural barriers; and clarification of the respective responsibilities of the various state and local agencies involved in the provision of residential care, treatment, supervision, related support services, and protection to physically handicapped young adults.

Committee members were Representatives Tish Kelly, Chairman, Pauline Benedict, Paul DuBord, Aloha Eagles, Brynhild Haugland, Arvid Hedstrom, Carolyn Houmann, Alice Olson, Glenn Pomeroy, Steve Swiontek, and Michael Unhjem; Senators Hal Christensen and James Cussons; and Citizen Members Dr. Myron Burger, John Keating, Edith Kjos, and Warren Stokes.

The report of the Social Services 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-seventh Legislative Assembly by the Legislative Council in November 1980.

POOR RELIEF STUDY

Senate Concurrent Resolution No. 4053 reflected legislative concern with serious problems in the administration of programs such as aid to families with dependent children (AFDC) and medical assistance (MA), which lack specific county residence provisions. The absence of specific provisions has caused reliance on the poor relief laws as a basis for allocating the local share of assistance costs. As a result of this allocation system, approximately one-third of the state's assistance recipients live in counties other than those which have financial responsibility for them.

Background

The United States Supreme Court has made it illegal for a state to impose durational residence requirements as a condition of eligibility for any federally supported program (Shapiro v. Thompson, 1968). The court did not determine whether this freedom of interstate travel also applies to movement from county to county, but a North Dakota Attorney General's opinion of May 16, 1973, indicates that the basic reasoning of Shapiro v. Thompson applies to movement between counties as well as to movement between states.

Chapter 50-01 of the North Dakota Century Code sets forth the eligibility requirements and administrative structure of county poor relief (general assistance), while Chapter 50-02 sets forth the methods for determining residence for the purposes of administering and receiving poor relief. Under present interpretation of the law, a person or family moving from one county to another county cannot establish legal residence in the second county until they have lived there for a full year without receiving financial or medical assistance from the first county. Section 50-02-04(4) further stipulates that a person living in a licensed home for the aged and infirm or a long-term care facility cannot count the time spent in that facility for purposes of establishing residency. Senate Bill No. 2551 (1977), which failed to pass, would have amended that provision to allow the time spent in those facilities to be included in the computation for establishing residency. House Bill No. 1545 (1979) created Section 50-01-01.1, which requires the director of the county social service board or a designated individual to determine an applicant's eligibility for relief, and amended Section 50-01-01 to limit county relief applications to the amount of the county poor relief appropriation, utilizing the reimbursement procedure of Section 50-01-09.2.

The county residence requirement merely provides a technique for allocating the local share of assistance costs for the AFDC and MA programs. The present system requires both the original county of legal residence and the second county to maintain complete files but general case management responsibilities remain with the original county. Disagreements arise between counties about which county is financially responsible. Eligible applicants must sometimes wait to receive assistance until the county disputes are resolved. The interpretation of the present poor relief laws is further confused by a conflict between two district court rulings and some Attorney General's opinions.

Interim Study

Representatives from the Social Service Board testified that only 11 states hold their political subdivisions partially responsible for the nonfederal share of assistance costs. North Dakota is believed to be the only state that holds the county of former residence responsible. Five suggestions were offered to resolve the problem of county responsibility and allocation of the local share of assistance costs. The five possible solutions were to make the county of physical residence the county of legal residence, to fix each county's share of assistance costs according to the proportion of the state's total population living in that county, to use property valuation as the basis for allocation, to use a combination of population and property valuation as the basis for allocation, and to eliminate county responsibility for any portion of the nonfederal costs of AFDC and MA.

Pursuant to the testimony and recommendations presented by the Social Service Board, the committee requested preparation of two bill drafts. Alternative 1 fixed county responsibility for reimbursement for AFDC, MA, and general assistance based on physical presence. Alternative 2 used a population formula to determine county reimbursement to the State Social Service Board for AFDC and MA and a physical presence plus intent test to determine county responsibility for general assistance reimbursement. Representatives of the North Dakota Association of County Social Service Directors commented on the two bill drafts, saying the association favored a population-based formula because residency determination remained too complicated. The association's spokespersons also urged the state to assume all or a greater share of the costs of assistance

programs, despite testimony by the Social Service Board that it would cost the state an additional $8 million to assume total responsibility for the AFDC and MA programs.

Two new alternative bill drafts were then prepared. Under one, a physical presence test would be used to determine county responsibility for general assistance and administration of AFDC and MA, with the state assuming payment of 100 percent of the nonfederal shares of AFDC and MA and the counties assuming payment of 100 percent of general assistance, including optional supplementation under Title XVI of the Social Security Act. Under the other, a physical presence test would be used to determine county responsibility for general assistance and administration of all assistance programs, and a population formula would be used to determine county responsibility for reimbursement to the state for nonfederal shares of AFDC and MA. The state would reimburse the counties for 100 percent of optional supplementary payments while the counties would have to assume all general assistance payments.

The Social Service Board provided statistical information on the effects the various alternatives would have on county and state expenditures for AFDC, MA, and general assistance. The board's representatives favored a population formula as being the most equitable way to determine county responsibility for assistance programs. County social service directors said they preferred to have the state assume 100 percent of the nonfederal shares of AFDC and MA because a population approach would impose severe financial hardship on some counties. The Social Service Board and county social service board directors then worked out a compromise bill draft, Alternative 3, which requires the Social Service Board to reimburse the counties for 80 percent of general assistance expenditures, including optional supplementary payments under Title XVI of the Social Security Act, and requires counties to reimburse the state for 15 percent of the nonfederal share of AFDC payments and 10 percent of the nonfederal share of MA payments. The compromise would provide the counties with approximately $3.5 million in fiscal relief during the next biennium.

Recommendations

The Social Services Committee recommends one bill, Alternative 3, to the Legislative Council for introduction in the 1981 Legislative Assembly. The bill adds new sections to Chapter 50-01 of the North Dakota Century Code, determining residence for the poor relief purposes by a physical presence plus intent test, stating how residence is lost, and noting the effects of a change in county residence. The bill also provides fiscal relief to the counties by having the state assume 80 percent of county general assistance expenditures, reducing the county share of nonfederal AFDC costs from 25 percent to 15 percent, and reducing the county share of nonfederal MA costs from 15 percent to 10 percent. Finally, the bill repeals Chapter 50-02 which contains the old provisions for determination of residence for poor relief purposes.

CHILD CUSTODY AND VISITATION STUDY

Senate Concurrent Resolution No. 4088 resulted from a dissatisfaction with child custody, visitation, and other domestic relations law, despite substantial amendments to those statutory provisions by the 1979 Legislative Assembly. The resolution acknowledges the fact that children have rights which must be protected and which are increasingly recognized in divorce and custody proceedings.

North Dakota Law Before 1979 Changes

Section 14-05-22 of the North Dakota Century Code provided that the court, in a divorce action, could direct the custody, care, and education of the children as seemed necessary or proper, and could vacate or modify the custody order at any time. Section 14-09-07 provided that a parent entitled to custody could change residence without restriction except for the power of the district courts to restrain any removal which would prejudice the child's rights or welfare. The father and mother of a legitimate unmarried minor are equally entitled to the child's custody, services, and earnings and neither parent can transfer those rights to any other person without written consent of the other parent (Section 14-09-04). When the father and mother are separated, rather than divorced, the father has no rights superior to the mother regarding the care, custody, education, and control of the children and the district court, upon application, may award custody to either parent (Section 14-09-06). No person other than the parents may assume permanent care and custody of a child without authorization by a court of competent jurisdiction (Section 14-10-05).

1979 Legislative Action

House Bill No. 1054 created Section 14-14-22.1 of the North Dakota Century Code and imposes a Class C felony penalty for intentional removal or detention of a child outside North Dakota by a noncustodial parent in violation of a custody decree. Detention outside the state for more than 72 hours is prima facie evidence of intent. House Bill No. 1585 created three new sections relating to award of custody. Section 14-09-06.1 requires the judge to award custody to whichever person, agency, organization, or institution as will, in his opinion, promote the child's best interests. The section further provides that there is no presumption between the mother and father, whether natural or adoptive, as to which will promote the child's best interests. Section 14-09-06.2 lists factors to be considered in awarding custody and allows the court to make orders about what security should be given for the care, custody, and support of the child. Section 14-09-06.3 allows the court in a contested custody proceeding to designate a person or agency to make an investigation and report concerning custodial arrangements, with costs being assessed against either or both parties or, if both parties are indigent, against the county.

House Bill No. 1585 also amended Sections 14-05-22 and 14-09-07. Section 14-05-22 now requires custody awards or changes in custody to be made in accordance with the provisions of Chapter 14-09 and requires the court, upon request of the noncustodial parent, to grant that parent visitation rights sufficient to maintain a parent-child relationship unless the visitation rights would endanger the child's physical or emotional health. Section 14-09-07 now forbids the custodial parent to change the child's residence to another state without a court order or consent of the noncustodial parent, where the noncustodial parent has been granted visitation rights by decree and has exercised those rights within one year.

Legislation which was considered in 1979, but not enacted, included House Bill No. 1646, relating to modification of a custody decree in another state and the international application of the Uniform Child Custody Jurisdiction Act, and House Bill No. 1661, relating to reasonable support for the spouse and minor children during and after divorce proceedings.

North Dakota Case Law

The primary consideration in awarding child custody

is the best interests of the child. Despite the 1977 repeal of a statutory preference for awarding custody of a child of "tender years" to the mother, the North Dakota Supreme Court has retained the tender years doctrine as one factor to be considered in determining custody. The child's preference is another factor for consideration if the child is old enough to form an intelligent preference. Joint custody or award of custody to the father are not precluded if found to be in the child's best interests. The trial court has wide discretion in awarding child custody and retains control of the divorce decree insofar as the child's rights are concerned. When circumstances change to affect the child's best interests, the court can modify the custody award. Under North Dakota Rule of Civil Procedure 52(a), a reviewing court may not set aside a trial court's particular findings of fact in divorce and custody cases unless those findings are clearly erroneous.

Interim Study

Social service personnel, psychologists, attorneys, judges, citizens groups, and interested individuals testified before the committee. Memoranda were prepared on statutes and recent case law in Wisconsin, California, Minnesota, and Texas; family courts and other alternatives to divorce litigation; and responses by district judges to a committee survey.

Citizen comments showed concern that the "irreconcilable differences" justification has made it too easy to get a divorce, that judges do not have enough time to handle divorce cases properly, that joint custody should be awarded more often, that reasonable visitation rights are not specific enough, and that the present system makes it too expensive for many people to go back to court to resolve postdivorce problems.

The social service workers and psychologists noted that the adversary legal system is contradictory to the resolution of child custody issues where the primary concern should be the child's best interests, to be determined on a case-by-case basis as quickly as possible. These professionals suggested that specialists in child-related matters, who were independent of any governmental organization, furnish the court with psychological and social data. They also suggested that the children involved in custody disputes be represented by independent legal counsel.

Senator Herschel Lashkowitz, sponsor of the study resolution, urged the committee to examine other domestic relations issues that affect custody issues. He recommended legislation to provide funding for a support staff of professional persons to assist state courts in domestic relations matters.

The attorneys suggested that one reason the family court system has failed might be because it does not consider the psychology of decisionmaking. Mandatory investigation and counseling was recommended as one way to alleviate some postdivorce problems even if it does not reduce the number of divorce actions. It was also suggested that a person with appropriate expertise, not necessarily a lawyer, be appointed to represent the child in disputed custody cases, where the decisions are frequently economic decisions rather than custody decisions.

The committee sent a survey memorandum to district judges and requested comments about possible changes in domestic relations law. The limited responses indicated a negative reaction to the idea of a family court system. The only suggestion to receive substantial support was the appointment of a guardian ad litem to represent a child when custody is disputed. One judge expressed the opinion that investigative reports are a valuable aid in helping the judge reach a decision.

The committee voted to have a domestic referee bill draft prepared. The bill draft provided for appointment of domestic referees for each county, set forth the duties of the domestic referee, granted authority to carry out those duties, authorized the counties to provide for a mill levy to support the domestic referee, allowed the domestic referee to issue temporary orders, and repealed the family court chapter of the North Dakota Century Code. Copies of the bill draft were made available to district judges, county judges and juvenile supervisors for comments. Responses indicated that although the concept of a domestic referee was a good one, additional staff and expenditures would be necessary and certain provisions would need to be changed. The committee then recommended several amendments to the bill draft, but a motion to amend the draft to incorporate the suggested changes failed to pass. A motion to amend the bill draft to allow the district court to appoint appropriate professional persons for the purpose of counseling and mediation upon application of the parties or at the court's discretion also failed to pass.

Recommendations

The Social Services Committee makes no recommendations in regard to the child custody and visitation study.

PHYSICALLY HANDICAPPED STUDY

House Concurrent Resolution No. 3044 directed a followup study to House Bill No. 1576, passed by the 1979 Legislative Assembly in response to problems faced by physically handicapped young adults in North Dakota, particularly the lack of services, facilities, programs, and qualified people to help the physically handicapped.

1979 Legislative Action

Seven bills passed during the 1979 Legislative Assembly relate to the handicapped and the interim study. House Bill No. 1188 requires the Motor Vehicle Registrar to issue plates marked with special identification to any handicapped person, upon application and payment of the regular license fee. House Bill No. 1189 authorizes law enforcement officials to enforce reserved handicapped parking requirements in parking facilities open to the public, whether publicly or privately owned. House Bill No. 1576 requires the Social Service Board and the State Department of Health to adopt rules which do not conflict with federal laws and which ensure provision of appropriate medical, social, and psychological services to nongeriatric persons residing in nursing homes, intermediate care facilities, boarding homes for the aged and infirm, or any combination thereof.

House Bill No. 1624 requires the Social Service Board to pay room and board for handicapped students in out-of-state placements in public or private facilities and requires the Department of Public Instruction to develop and implement interagency agreements in order to comply with the education-related service requirements of Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973.

House Bill No. 1694 requires all public buildings and facilities constructed in whole or in part from state funds or political subdivision funds to be accessible to the physically handicapped by July 1, 1981, with the exception of institutions under the supervision and control of the Board of Higher Education and areas of public build-

ings which are not used for activities open to the general public. Two institutions under the Board of Higher Education's jurisdiction are to have all programs offered at those institutions accessible by the July 1, 1981, deadline. Senate Bill No. 2252 directs school boards to recruit homes and facilities to provide boarding home care for special education students and to provide boarding home care for special education students in dormitories; and sets up a certification process for such boarding homes. Senate Bill No. 2196 provides a number of tax exemptions for the handicapped.

Statutory Authority

There is no comprehensive chapter or title in the North Dakota Century Code to deal with programs for the physically handicapped. Section 23-13-13 requires public buildings and facilities to meet health, safety, and accessibility standards for physically handicapped persons in wheelchairs. Section 48-02-19 requires that public buildings and facilities be usable by the physically handicapped and sets forth the duties of the state construction superintendent in implementing the section. Chapter 25-15 provides for the licensing, standards, development, and continuation of long-term sheltered workshops which furnish remunerative employment to severely handicapped individuals who are unable to participate in competitive employment because of their disabilities. Chapter 50-26 establishes the Governor's Council on Human Resources which coordinates the activities and serves as a clearinghouse for information of various committees working with problems related to physical handicaps.

Impact of Federal Law

Section 504 of the Rehabilitation Act of 1973 applies to state, county, and city agencies, as well as to private organizations. This section provides that a qualified handicapped person cannot, solely because of the handicap, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity which receives federal financial assistance. The United States Secretary of Labor can allow disabled persons to work at less than minimum wages, but handicapped individuals may not be paid less than 50 percent of the minimum wage paid to nonhandicapped individuals who work in the same locality and perform the same type, quality, and quantity of work. The Department of Housing and Urban Development has authority to assist low income handicapped persons to obtain adequate housing through rent supplements, loans to housing projects for the handicapped, and mortgage insurance for housing projects of eight or more units where half the units are specifically designed for the elderly or handicapped. Public Law 94-142, the Education for All Handicapped Children Act of 1975, requires states to provide educational opportunities for handicapped children. North Dakota established a protection and advocacy program in October 1977 as a condition to receiving federal financial assistance. The program is independent of any state agency which provides services to the developmentally disabled and has the authority to pursue legal, administrative, and other remedies to protect the individual rights of persons who are disabled because of mental retardation, cerebral palsy, epilepsy, or autism.

Vocational Rehabilitation Division

The Vocational Rehabilitation Division of the Social Service Board is responsible for making all disability determinations for Title II and Title XVI of the Social Security Act and for administering rehabilitation services to handicapped persons as prescribed in Chapter 50-06.1 of the North Dakota Century Code, the state plan for vocational rehabilitation, and in the Rehabilitation Act of 1973. The eight regional offices, one in each of the Governor's designated planning regions, are responsible for direct provision of rehabilitation services in accordance with an individually written rehabilitation program which must be reviewed with the client on at least an annual basis. Because the agency lacks adequate funding to provide services to all eligible handicapped persons, selection is made according to a federal mandate to give priority to persons who have a severe disability as that term is defined by the Department of Health and Human Services in the Code of Federal Regulations (45 CFR 1361.1(w)).

Interim Study

The committee heard testimony from representatives of state agencies, professionals who work with handicapped persons, handicapped persons, and parents of handicapped persons. Written testimony and other materials on the physically handicapped were presented, including the results of an informal survey of state institutions and agencies and a formal survey conducted by the Bureau of Governmental Affairs. The testimony emphasized the importance of providing suitable housing and services for handicapped young adults in order to avoid the present situation which forces many handicapped North Dakotans to leave the state to find appropriate facilities and services. Handicapped young adults who are unable to take care of themselves and cannot remain at home now have the option of leaving North Dakota or living in a nursing home, which deprives them of association with their peers. Housing for permanent residents, housing for transitional living, and transportation were identified as the most critical needs of the physically handicapped, followed by recreational opportunities and meaningful sheltered employment opportunities.

The informal survey estimated that 300 to 350 physically handicapped persons in North Dakota need services. The Bureau of Governmental Affairs survey indicated that approximately 284 handicapped persons in the state need help with adequate housing. The Division of Vocational Rehabilitation, however, estimated that about 1,300 persons of its total caseload of 3,900 persons fall into the category of handicapped with a primarily physical disability. Division personnel pointed out that although existing state facilities and services deal with the physically handicapped under certain circumstances, no facility is designed primarily for handicapped young adults who desire independent living situations. Although there are federally funded/state administered programs to help alleviate the housing problem, existing funds are usually fully obligated and new programs can be developed only by reducing funding for existing programs. The committee saw examples of existing facilities and programs for physically handicapped adults when it toured the Medical Center Rehabilitation Hospital in Grand Forks and New Horizons Manor, the Evaluation Training Center, and Fraser Hall in Fargo.

Valley Memorial Home in Grand Forks expressed an interest in providing for handicapped young adults in a new facility which it is building and which will be connected with the Medical Center Rehabilitation Hospital. The director of the Social Service Department of Fargo's Dakota Hospital said that facility is interested in expanding its services for outpatient treatment of severely handi-

capped adults but is hindered by the unavailability of transitional housing for an outpatient rehabilitation program. She noted that inpatient services cost about $225 per day while outpatient services would be about $125 per day.

The Division of Vocational Rehabilitation presented information on the 1978 amendments to Title VII of the Rehabilitation Act of 1973. The amendments provide for the establishment of independent living centers in existing or new facilities. The centers then provide comprehensive services to enable handicapped persons to live as independently as possible. One option under Part A of Title VII would provide a federal grant of 90 percent of expenditures for comprehensive services to eligible individuals, to be matched by 10 percent state expenditures, but that option has not yet been funded by Congress. Under Part B of Title VII, grants for establishing independent living centers are awarded on a competitive basis. The grants require no state matching funds, but do require a showing of continued ability to operate when grant funds are not available.

Another grant possibility might be available under Section 305 of the Rehabilitation Act which provides for 80 percent federal funds and 20 percent state matching funds. Funds received under a Section 305 grant would primarily be used to provide comprehensive services for handicapped individuals through Fraser Hall and other facilities.

At the Division of Vocational Rehabilitation's invitation, the committee voted to have Representative Kelly sit on the advisory committee for selecting a grantee to receive the federal funds for establishing a center for independent living services. HITT, Inc., of Mandan, the selected applicant, had not received the funds by the time of the committee's last meeting in September 1980.

A community development specialist said financial resources for the physically handicapped are available, but that administrative and organizational problems are responsible for lack of facilities and services because no specific person or agency has responsibility for case management or societal recreational services for the physically handicapped. A vocational counselor raised a related problem concerning employment of the handicapped. Handicapped persons have substantial expenses whether they are employed or unemployed, but government subsidies and programs are usually denied them when they are employed. As a result, the handicapped person who is employed is responsible for the extra costs and is lucky to break even. Many handicapped persons choose to work as volunteers in order to continue receiving government benefits.

Members of the Developmental Disabilities Council related the service system provisions in their deinstitutionalization plan to the needs outlined in the physically handicapped study. They noted that the definition of developmental disabilities in Public Law 94-142 is not synonymous with mental retardation and also cautioned that the definition will not include all physically handicapped persons.

The committee considered many recommendations, including an appropriation to supplement federal grants; an appropriation to help establish independent living centers; an appropriation to an existing or new state agency to develop a case management system; encouraging one or more of the regional centers to provide comprehensive services to the physically handicapped; a suggestion to Budget "B" Committee that it include the physically handicapped in its plans or recommended legislation concerning the developmentally disabled; and amending Chapter 6-09.2 of the North Dakota Century Code to permit loan guarantees for the construction or acquisition of centers for independent living.

Other alternatives which the committee discussed included encouraging nursing homes to provide areas for the exclusive use of physically handicapped persons, and recommending an appropriation to the Legislative Council to conduct an in-depth needs determination study for the physically handicapped.

Recommendations

The Social Services Committee voted to ask Budget "B" Committee to include 20 additional beds for the physically handicapped in the developmental disabilities plan or legislation it recommends to the Legislative Council. The committee also voted to conduct an investigation of the status of the nursing home revolving loan fund and recommends a bill to amend Chapter 50-21 of the North Dakota Century Code to make revolving loan funds for nursing homes and homes for the aged and infirm available for facilities constructed or used exclusively for the physically handicapped.

RELATED COMMITTEE STUDY

The county social service board directors, in cooperation with the Social Service Board, asked the committee to consider a bill draft which provides a statutory basis for delivery of social services and funding assistance for counties to deliver Title XX social services. The committee was supplied with a chart of optional and required programs under federal law, state law, and court order; cost estimates and source of funds for programs; and descriptions of program services.

An amended version of the bill draft was presented at the last committee meeting. The amended bill draft provides for a comprehensive planning mechanism for delivery of social services on federal, state, and local levels and changes the formula for determining the state share of nonfederal funds for Title XX programs. Under the amended bill draft the state would pay 16 percent of the federal share of county social service expenditures. Although 16 percent of the current federal share is equivalent to the present formula of 50 percent of the nonfederal share, this will change if inflation continues and federal expenditures remain the same or decrease. Counties would have to absorb any difference resulting from the changed formula.

Recommendations

The Social Services Committee recommends that the amended bill for provision and financing of social services be introduced in the 1981 Legislative Assembly and that the moneys required to implement the bill draft be included in the Social Service Board's budget.

STATE AND FEDERAL GOVERNMENT "A" COMMITTEE

House Concurrent Resolution No. 3083 directed a study of the Old West Regional Commission's activities which impact North Dakota including the effect of the commission's spending in North Dakota, the extent of that spending, and the extent of North Dakota's involvement with the commission.

House Concurrent Resolution No. 3035 directed a comprehensive study of the role of the Legislative Assembly in relation to the economic and social aspects of Indian intergovernmental matters, and the relationships between the American Indian tribal governments and the state of North Dakota, including questions of jurisdictional authority of the state on Indian reservations and the role of the state in providing services to the Indian people. The study was also to include a review of the role of the federal government in these relationships and services, the role of the Indian Affairs Commission in state government and in providing services to the tribal governments and to the Indian people, and a review of the potential for economic development and job creation on Indian reservations and for Indian people.

Committee members were Representatives Earl Strinden, Chairman, Lyle Hanson, James Kennelly, Tom Kuchera, Byron Langley, Fern Lee, Robert Martinson, Jack Murphy, Charles Scofield, and Henry Wessman; Senators Francis Barth, Phillip Berube, and Steve Farrington; and Citizen Members LeRoy Chief, Harriet Skye, Carl McKay, Austin Gillette, Pat McLaughlin (replaced by Frank Lawrence), and Wayne Keplin (replaced by James Henry).

The report of the State and Federal Government "A" 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-seventh Legislative Assembly by the Legislative Council in November 1980.

OLD WEST REGIONAL COMMISSION

Historical Background

The Old West Regional Commission (OWRC) is a federal-state partnership with the stated purpose of solving regional economic problems and stimulating orderly economic growth in the region, consisting of Montana, Nebraska, North Dakota, South Dakota, and Wyoming. Established in 1972 under the Public Works and Economic Development Act of 1965, (Pub. L. 89-136; 79 Stat. 552), it is one of eight commissions throughout the country comprising all or parts of 40 states. In 1975 Congress linked all commissions under a common authority and legislative cycle and broadened their scope of activity so they are all comparable in authority to the prototype regional commission — Appalachia. This new authorization permits the commission to continue its program of seeking economic development through sponsorship of research, development, and demonstration projects in critical economic areas. It also provides for sponsorship of longer range programs in the fields of energy, transportation, health, and vocational education.

According to the 1979 Old West Regional Commission annual report, the total funds available for technical assistance through Old West Regional Commission grants came to $10,616,060. Of this amount, $3,216,678 went to the family training center program; $734,432 to human resources projects; $2,238,574 to industrial development and international trade; $433,909 to natural resources and energy; $1,125,097 to agriculture and forestry; $559,000 to recreation and tourism; $209,277 to transportation; $150,000 to regional economic analyses; $1,212,937 to government services; and $700,000 to state investment planning, for a total obligation of technical assistance funds of $10,579,904. Administrative expense funds which were obligated included $413,128 for the federal cochairman's office and $419,178 for the commission office for a total obligation of administrative funds of $834,306. There was also $1,443,960 available for supplemental grants. Of this, $100,000 was put toward natural resource projects and $367,516 went to recreation and tourism for a total of $467,516.

The Old West Regional Commission consists of the governors of Montana, Nebraska, North Dakota, South Dakota, and Wyoming, and a federal cochairman appointed by the President. Its activities are guided by a set of bylaws. One of the governors is elected each year to serve as the state cochairman. He and the federal cochairman comprise the Executive Committee which is charged with administration of commission activities such as staff supervision. However, the federal cochairman has final authority and may veto action by the governors.

The commission offers the governors, the states, and their subdivisions an instrument for implementing and articulating regional economic policy. To assure technical coordination and liaison with the state agencies and the federal cochairman's office, each governor designates a representative who assists in approving and implementing commission programs and policies. This representative, called an alternate, may vote on commission matters in the absence of his governor, providing a quorum of governors is present. In North Dakota, this alternate is currently Mr. George "Woody" Gagnon.

As senior federal official, the federal cochairman is the principal link between the commission and the federal establishment. He is also responsible for the proper and effective expenditure of federal funds involved in commission activities. The federal cochairman maintains an office in Washington. The Washington staff consists of federal civil service personnel and handles the fiscal matters. The commission staff is headquartered at Rapid City, South Dakota, with a subregional office at Billings, Montana.

Under joint federal-state supervision, the commission, with the assistance and guidance of five advisory committees, has established these basic program objectives:

1. Increasing the per capita personal incomes in the 18 substate areas of the region to about $4,800 (in 1967 dollars) for the non-Indian population in 1985. This translates into a personal income increase of $280 per capita in five projected deficit substate areas.
2. Increasing per capita personal income among American Indians in the region by about $350 (in 1967 dollars) above the expected 1985 level.
3. Preventing serious potential dislocations or disruptions from occurring in the regional economy as a result of rapid energy-related developments.
4. Achieving the environmental quality implied in the federal and state regulations for air and water pollution, and maintaining high quality areas.
5. Improving health services, especially in the more rural parts of the region.
6. Providing for increased citizen participation in the governmental decisionmaking process and providing a forum for discussing regional issues.

These goals are sought through technical assistance for research, development, and demonstration projects directed at the source of economic problems. Projects may be conducted by state agencies or institutions, private organizations, communities, or firms selected on a grant basis or through competitive proposals. Organizations interested in proposing projects to the commission may submit their proposals to, or seek information from, the commission alternate in their state. Proposals are reviewed and programs recommended by advisory committees in agriculture and natural resources, industrial development, energy, transportation, and human resources (health and housing).

The Agricultural and Natural Resources Advisory Committee members are W. Gordon McOmber, Keith Kelly, Robert Simons, and Terry Whiteside from Montana; E. Mickey Stewart, Dr. Martin A. Massengale, Steve Oltmans, and Dominick P. Costello from Nebraska; Lynn Clancy, Senator Francis Barth, Adam Fleck, and Bruce Larson from North Dakota; Clint Roberts, Agnes Anson, Delwyn Dearborn, and Gary Wietgrefe from South Dakota; Larry Bourret, Herbert Manig, Walter C. Yose, Jr., and Kevin McCoy from Wyoming; and William J. Fogarty, David K. Gaarder, and Gordon E. Hoven from the Old West Regional Commission office in Billings, Montana.

The Industrial Development Advisory Committee members are Robert G. KoKoruda, Daniel Horgan, and Paul Bunn from Montana; Chuck Elliott, Dr. William Spitzenberger, and Robert Gangel from Nebraska; Tony Roso and Michael C. Johnson from Wyoming; Bruce Bartch and Allen W. Goldberg from North Dakota; and William C. Gipp, Jack Oberlitner, and Dr. Dale Clement from South Dakota.

The Energy Resources Advisory Committee members are Wallace H. Johnson and William Palmer from Nebraska; Robert Kaiser, Russell Staiger, and Cliff Ness from North Dakota; Robert Anderson, Ted J. Doney, Rich Itami, and Tim Gallagher from Montana; W.M. Wilson, Pam Abel, and John Niland from Wyoming; and John Wagner, James Richardson, Harry W. Christianson, and Warren R. Neufeld from South Dakota.

The Transportation Advisory Committee members are Ron Richards, Terry Whiteside, and Wayne Budt from Montana; David Coolidge, Derald S. Kohles, and Donald Lehr from Nebraska; Joel Melarvie and Lloyd Lammer from North Dakota; James Rothstein, Jim Meyers, and Eugene Rowen from South Dakota; and Leno Menchini and Jack Warburton from Wyoming.

The Human Resources Advisory Committee members are William Ikard, Gary Curtis, and Judith Carlson from Montana; Richard Blair, Jim Ellenbecker, and Judith Meierhenry from South Dakota; Stanley H. Torvik, Harvey Peterson, and Winnifred Hickey from Wyoming; Carrol Burchinal and Thomas W. Campbell from North Dakota; and Elizabeth Palmer and Don Gerber from Nebraska. Mr. Norman C. Schauer, Rapid City, is the Old West Regional Commission advisor for this group.

Other Old West Regional Commission committees include the Tourism/Recreation Advisory Committee. The committee members are Wally Reber, Dr. Robert Horne, and Katherine Satrom from North Dakota; Jan Wilson, Jack Dennis, and Randy Wagner from Wyoming; Richard Gartrell, Gary Toebben, and Del Whiteley from Nebraska; Lowen Schuett, Bill Honerkamp, and David Geisler from South Dakota; and Ron Holliday, Bill Howell, and John Wilson from Montana. The Old West Regional Commission office advisor to the group is Mr. William B. Glennon from Rapid City.

The last Old West Regional Commission committee is the Rural Water Systems Advisory Board. The committee members are Dr. Louis Allen and Robert L. Moore from Wyoming; Dean Connett and Dr. Alfred Gigstad from Nebraska; Dr. Norman Barnard and Tim Gill from Montana; Warren R. Neufeld and Richard Lommen from South Dakota; and John Allen, Vern Fahy, and Nancy Rockwell from North Dakota.

Old West Regional Commission in North Dakota

Although authorization for the formation of the Old West Regional Commission came in 1965 with the passage of the Public Works and Economic Development Act, and the commission itself was formed in 1972, there were no legislatively appropriated funds from North Dakota until the 1975 Legislative Assembly provided $60,000 for the 1975-77 biennium. This funding level has grown each biennium. The 1979 Legislative Assembly has appropriated $108,750 to the Old West Regional Commission. This money is combined with that appropriated by the other states comprising the commission and is used to fund the commission's staff in Rapid City, South Dakota, and Billings, Montana. The grants which the commission controls are made up entirely of federal funds. There is also a federal staff funded by federal money.

Many of the projects funded by the Old West Regional Commission are conducted within North Dakota. Currently, there are approximately eight such projects. These range from a $631,875 grant to study the development and funding of rural water delivery systems in the region, to a grant of $15,420 to study commercial air service to small communities in the region and the effect continued deregulation of the air industry will have on such service. The grantee, in this case the University of North Dakota Department of Aviation, was to develop specifically a presentation and written proposal for Jamestown, North Dakota, for eventual presentation to the Civil Aeronautics Board. With the data to be developed, it is hoped the grantee can assist Jamestown in reaching an agreement that is acceptable to the citizens of Jamestown and to the authorities at the local, state, and national levels.

North Dakota also receives both monetary and nonmonetary benefits from projects carried on in other states. OWRC records show that these monetary benefits have exceeded $17,900,000 since the commission's formation. By far the largest portion of this was through the excess property program which was in existence from 1975 through 1977. Under this program, the commission was authorized to acquire used government property at no cost to the state. This property went to cities, counties, schools, and colleges which were required to pay only for shipment or delivery of the equipment. In North Dakota alone, the value of this property exceeded $12 million.

In addition, each state of the commission receives nonmonetary benefits in the form of results of several projects conducted in the region such as the 1978 cement shortage study, the 1977 regional coal lab study, and the 1978-79 study on rail transportation which involves the study of the Milwaukee Railroad.

Testimony

The committee heard testimony from Mr. George Gagnon, North Dakota's alternate delegate, and Mr. John Loucks, Executive Director, Old West Regional Commission, Rapid City, South Dakota. Mr. Gagnon told committee members that the Old West Regional Commission has established offices in Japan and Frankfurt, Germany. He stated that the three goals of the foreign offices are to:

1. Assist North Dakota people to promote the sale of North Dakota products abroad.
2. Encourage cultural exchange.
3. Encourage tourism to the Old West Regional Commission states.

Mr. Loucks explained the grant approval procedure to the committee stating that initial grant proposals are first routed to the alternate who reviews them and makes a recommendation. From there they go to a committee of the Old West Regional Commission for its recommendation and then to the Governor who is the state's representative on the board. Mr. Gagnon pointed out that there is an ongoing evaluation process and that some contracts are terminated if the grantee does not follow the grant proposal. The total budget for grants for the Old West Regional Commission for the 1980 fiscal year is approximately $7.5 million, all of which is federal money. Most of the commission funding comes from the Department of Commerce although some of the programs and projects are funded through other federal government agencies. It was pointed out that the commission does not provide continuous funding. Most of the projects are begun by the commission and then funding must be supplied by other sources. Mr. Loucks agreed that regional commissions are not an answer to all the problems of the states involved but stated that there are many problems and opportunities where a cooperative effort is the most efficient way to provide solutions.

Mr. Loucks and Mr. Gagnon briefly reviewed some of the projects which have been completed or are ongoing. In the energy field, the commission has finalized impact statements to assist energy development, done gasohol research, and investigated the effects of coal mining. The family training center at Glasgow, Montana, was initially sponsored by the Health Department and is now administered by the Old West Regional Commission. This center is similar to the United Tribes Center at Bismarck but is not restricted to Indians. This is the first year which the center has asked for funding from the Old West Regional Commission and the commission was assured that this would be a "one shot" grant. Other Old West Regional Commission grants include $500,000 to the regional veterinary medical school which paid the director and a small staff who are researching the feasibility of such a school. This project is still in the planning and evaluation stage and no commitment has been made for or by North Dakota. Another project is the Center for Innovation which is an organization to assist inventors in the Old West area in marketing and selling their products. This center is located in Missoula, Montana. Although there is no staff in North Dakota, someone from the Missoula office does periodically travel to the state.

Conclusions and Recommendations

A continuous awareness of Old West Regional Commission projects and activities, and an evaluation of its performance by the North Dakota Legislative Assembly is important since the regional approach to problem solving for individual states must be contrasted with problem solving by direct federal financing to the individual states. The Legislative Assembly is, by the Constitution, the policymaking branch of state government. Some of the Old West Regional Commission studies relate directly to this responsibility. Therefore, the committee recommends that the Legislative Council receive annual personal reports from the governor's alternate to the Old West Regional Commission on activities and projects of the commission. Furthermore, legislators should be made aware that they can direct resolutions on suggested projects to be funded by the Old West Regional Commission to the Governor for his consideration.

INDIAN STUDY

Historical Background

The negotiation of treaties was one of the earliest legal techniques developed by the United States in its relation with Indian tribes. Article VI of the United States Constitution provides that the Constitution itself, laws of the United States, and treaties made under the authority of the United States "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to Contrary notwithstanding." (Article VI, United States Constitution).

By use of its treatymaking powers with Indian tribes and other foreign nations, the United States acquired certain territories as its own. Rather than dispossessing the prior claimants of these territories (as was the case with sovereigns such as Spain, England, France, Mexico, or Russia), The United States recognized Indian tribal claims to certain lands and established these areas for the exclusive use and benefit of the tribes. Indian reservations were established not as examples of sovereign beneficence from the United States to Indian tribes, but from lands retained by the tribes, as the original sovereigns and owners, from their other cessions to the United States. From this principle of reserved tribal interests, which Mr. Felix Cohen has described as "perhaps the most basic principle of all Indian law," three general components have been articulated:

"1. An Indian tribe possesses . . . all the powers of any sovereign state.
2. Conquest renders the tribes subject to the legislative power of the United States and, in substance terminates the external powers of sovereignty of the tribe, e.g., its power to enter into treaties with foreign nations, but does not by itself affect the internal sovereignty of the tribe, i.e., its powers of local self-government.
3. These powers are subject to qualification by treaties and by express legislation of Congress, but, save as thus expressly qualified, full powers of internal sovereignty are vested in the Indian tribe and in their duly constituted organs of government." (Felix S. Cohen, Handbook of Federal Indian Law).

As part of the "supreme law of the land," Indian treaties are entitled to the same status given to other constitutionally sanctioned rights in the United States. Under the Constitution, treaty terms are controlling over conflicting provisions in state constitutions and law, and all state and federal officers and representatives are bound by their oaths of office to uphold them.

It may be said that the recognized relationship between the federal government and the Indians is that of guardian and ward whereby the latter is placed under the care and control of the former. The tribes, though in certain respects regarded as possessing the attributes of nationality, are held to be not foreign, but domestic dependent nations or communities. However, according to Supreme Court decisions, the guardian-ward relationship between the federal government and Indians need not be perpetually continued and Congress may determine how and when it shall terminate.

Since the Indian title in lands is only a right of occupancy, the fee being in the United States, an Indian nation or tribe is incapable of alienating lands except to the United States or with its consent. "Upon incorpora-

tion into the territory of the United States, the Indian tribes thereby, under the territorial sovereignty of the United States and their exercise of separate power is constrained so as not to conflict with the interests of this overriding sovereignty." (Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, at p. 209). The federal government does possess the power to convey the fee to lands occupied by Indian tribes. However, the power of the United States to control and manage the affairs of its Indian wards in good faith for their welfare is subject to constitutional limitations and does not enable the United States, without paying just compensation, to appropriate lands of an Indian tribe to its own use or to hand them over to others. Compensation for such appropriation should be based on the value at the time of disposal rather than the value at the time when the suit was begun.

Civil and Criminal Jurisdiction

Committee members toured three of the four reservations studied. One of the most prevalent problems experienced by all of the reservations appears to be the question of jurisdiction. In 1953, Congress conferred jurisdiction over certain civil and criminal matters involving Indians on reservations to five states and established a mechanism whereby other states could acquire such jurisdictional authority over activities on Indian reservations. For those states with constitutional provisions disclaiming state authority over Indian reservations, of which North Dakota is one, the federal law provided that jurisdiction could not be assumed by "any such state until the people thereof have appropriately amended their state constitution or statutes, as the case may be." (Pub. L. 280, 67 Stat. 588).

Section 203 of the North Dakota Constitution, subsection 2, contains the jurisdictional disclaimer mentioned above. However, that same subsection goes on to state that "the Legislative Assembly of the state of North Dakota may, upon such terms and conditions as it shall adopt, provide for the acceptance of such jurisdiction as may be delegated to the state by act of Congress" (Section 203, North Dakota Constitution).

The 1963 Legislative Assembly enacted Chapter 27-19 of the North Dakota Century Code which is entitled "Indian Civil Jurisdiction." The purpose of this chapter was to provide a method by which the reservations located in North Dakota could allow the state to exercise jurisdiction over "all civil causes of action which arise on an Indian reservation . . . ." (Section 27-19-02, NDCC). The chapter also provides a method by which such acceptance may be withdrawn.

In addition to providing for acceptance of jurisdiction over the entire reservation, there is a provision which allows an individual Indian to "accept state jurisdiction as to himself and his property by executing a statement consenting to and declaring himself and his property to be subject to state civil jurisdiction...." (Section 27-19-05, NDCC). However, the North Dakota Supreme Court, in Nelson v. DuBois, 232 N.W.2d 54, has ruled that this section is not valid and that an individual Indian cannot confer jurisdiction upon the state by consent. State civil jurisdiction can only be obtained by state and tribal compliance with Public Law 90-284.

If the reservation has accepted state court jurisdiction, almost any civil action, regardless of where it occurred or who it involved, would properly be venued in state court. Certain actions, by statute, cannot be handled in state court. However, state court could decide such actions as determination of parentage of children, commitments by county mental health boards or county judges, guardianships, marriage contracts, and obligations of support.

If the reservation has not accepted state court jurisdiction, the question of which judicial system should hear the case depends upon the subject matter and where the action arose. Basically, the North Dakota Supreme Court has stated that causes of action arising on the reservation, even if between an Indian and a non-Indian or arising on a state highway running through the reservation, cannot be heard in state court if the reservation has not accepted that jurisdiction as provided for in Chapter 27-19. (Gourneau v. Smith, 207 N.W.2d 256, and Schantz v. White Lightning, 231 N.W.2d 812).

Similarly criminal jurisdiction usually involves an allocation of authority among the federal, tribal, and state courts. This allocation of authority depends in general upon three factors – subject matter, locus (physical site of the criminal event), and person.

Jurisdiction of the federal courts must be based, in every instance, upon some applicable statute since there is no federal common law of crimes. From the standpoint of areas of application, the federal criminal statutes relating to Indian affairs are of three types:

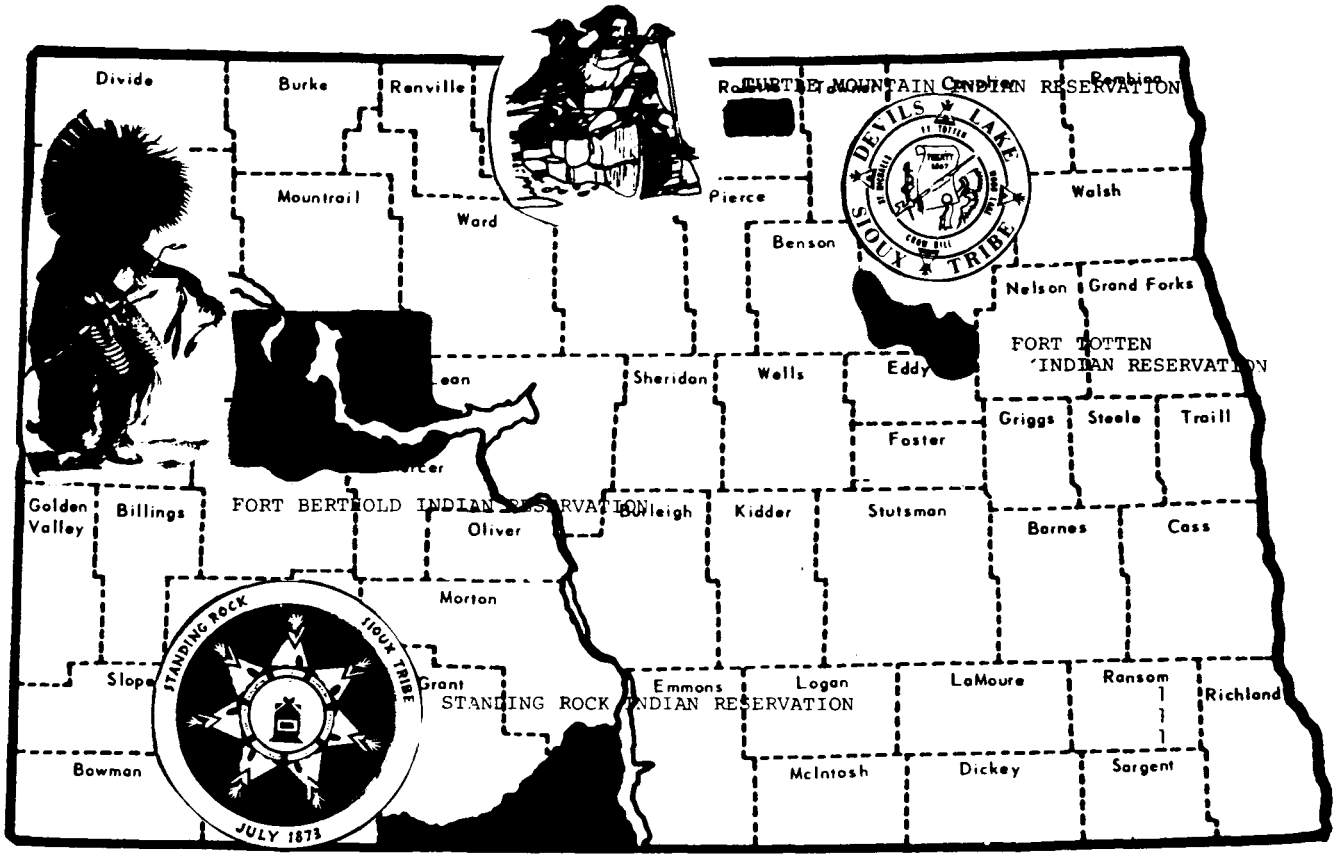
1. Those that apply regardless of the locus of the offense, such as the crime of selling liquor to an Indian.
2. Those that apply within areas under the exclusive jurisdiction of the federal government, such as the offense of receiving stolen goods.
3. Offenses punishable only when committed within the "Indian country" or within "an Indian reservation," for example, the offense of possessing intoxicating liquors in the Indian country.

The jurisdiction of tribal courts and state courts also depends upon the factors of subject matter, locus, and person. Taking each of these three factors separately, some generalizations can be made as to jurisdiction.

With subject matter, the federal government, by statute, has retained jurisdiction in the case of certain "major" crimes; such as murder, rape, arson, larceny, etc. Any time one of these specifically enumerated crimes is committed on an Indian reservation, the proper forum for prosecution is a federal court. The state government, at least in North Dakota, has not specifically carved out offenses over which it retains original and sole jurisdiction. That is not to say that there are not situations in which offenses committed within a reservation would be prosecuted in state court. However, that jurisdiction is gained not by the subject matter or locus of the offense, but rather by the persons involved in the situation (e.g., non-Indians). Tribal court is the proper forum for adjudication of most offenses, other than "major" crimes, committed on the reservation.

The locus of the crime is another factor in determining jurisdiction. Generally, offenses off the reservation, regardless of who is involved and what the subject matter of the offense is, are tried in either federal or state court. Generally, offenses within a reservation are tried in either federal or tribal court. However, it is possible that the state court would gain jurisdiction if neither the accused nor the victim were Indian.

This leads us to the final factor in determining criminal jurisdiction – the people involved in the crime itself. As was previously stated, the general rule for crimes committed outside the reservation is that tribal court does not have jurisdiction, regardless of whether Indians were involved. For crimes on the reservation, except in the situation where non-Indians were both the accused and the victim as previously mentioned, jurisdiction is divided between federal and tribal court, depending upon the seriousness of the offense involved.



Reservations in North Dakota

All or a portion of five Indian reservations are located in North Dakota. These are the Fort Berthold Indian Reservation, Turtle Mountain Indian Reservation, Fort Totten Indian Reservation, Standing Rock Indian Reservation, and the Sisseton Indian Reservation. The last two reservations are located on the North Dakota-South Dakota border with portions of them in South Dakota. Because such a small portion of it is located within the state, the Sisseton Indian Reservation is considered a South Dakota Indian reservation.

The **Fort Berthold Indian Reservation,** home of the Three Affiliated Tribes (Mandan, Arikara, and Hidatsa), is located near the center of the western half of North Dakota. The reservation is divided into five separate segments by Lake Sakakawea and lies in five different counties — Mountrail, McKenzie, Dunn, Mercer, and McLean. Towns on the reservation include New Town and Parshall. Located near the reservation are Garrison, 20 miles to the east; Halliday and Killdeer on the south; and Watford City, 25 miles to the west.

The reservation consists of nearly a million acres of land. Approximately 353,000 acres of In Fee Patent status land were returned to the reservation in 1972 when the courts upheld an action of the Three Affiliated Tribes to reaffirm the original reservation area boundaries of 1880. According to the 1980 Bureau of Indian Affairs' (BIA) Labor Force Report, the Indian population on Fort Berthold was 3,314. Of this number, 1,180 or 37.9 percent constituted the labor force. Six hundred fifty-nine were employed and 521 were unemployed. On the Fort Berthold reservation, the BIA employs 90 permanent people and 52 temporary people. The primary sources of income include ranching and employment with the BIA, the tribe, and the Public Health Service. There is some seasonal labor such as construction and farm work and others receive income from individually allotted lands leased for grazing and farming.

The Tribal Council consists of a chairman and 10 members elected at-large. All 11 members are elected for four-year terms. The council meets regularly on the second Tuesday of each month with special meetings called when necessary. The executive officers, except the chairman, are elected by the council members. The council members serve staggered terms so that half of the members are elected every two years.

The council is the sponsoring agency for the Community Action Program funded under the Economic Opportunity Act of 1964. The tribe also is the sponsoring agency for legal aid services, manpower program, tribal finances, alcoholism program, Headstart program, the community health representatives program, and the housing program. The elementary and high school students from the reservation go to schools in New Town, Mandaree, Parshall, White Shield, Twin Buttes, and Halliday.

Fort Berthold Community College began operation in the fall of 1973 with two course offerings in two communities. The college currently offers 60 courses in five communities. Under the dispersed learning center model, the community college does not operate with a central campus. Instead, courses are taken to the students in their own community. The college is a member of AIHEC (American Indian Higher Education Consortium), an agency that provides services to Indian-controlled community colleges. The college currently has rental facilities in the trailers north of Highway 23 at the junction to Four

Bears Village, and a library at the Four Bears Museum across from the Four Bears Motor Lodge. At the current time, the college offers a two-year program under the auspices of Mary College leading toward the associate of arts degree in four areas. These four major areas are accounting, community mental health, mid-management, and Native American studies. Study areas are also offered in education, general studies, and secretarial science.

The **Turtle Mountain Indian Reservation,** home of the Chippewa Indians, is located about 10 miles east of the International Peace Garden and 10 miles south of the Canadian border. It lies entirely within Rolette County. The nearest towns are Rolla on the east, Rolette on the south, Dunseith on the west, and St. John on the north. The reservation is approximately 46,000 acres in size.

According to the 1980 BIA Labor Force Report, the total Indian population on the Turtle Mountain reservation was 8,278. Of this number, 2,954 or 35.7 percent constituted the labor force. One thousand seven hundred forty were employed and 1,214 were unemployed. The BIA employs 167 permanent employees and 86 temporary employees on the Turtle Mountain reservation. The main sources of employment are construction, the Jewel Bearing Plant at Rolla, the U.S. Government, San Haven, Community Action Program, the Public Health Service Hospital in Belcourt, the Community Hospital at Rolla, farming, and the Turtle Mountain Corporation.

The Tribal Council consists of eight members elected from four legislative districts and the chairman elected at-large. It meets regularly on the first Wednesday of each month with special meetings called when necessary. Elections for all positions are in May of all even-numbered years. All council members have been given management and government training and are full-time employees. The income received from the leasing of tribal land is used for the council's operating expenses. The council established a Community Action Program under the Economic Opportunity Act of 1964. Current overall budget moneys are used for administration, remedial and adult education, library-study hall, emergency food and medical services, arts and crafts, emergency plumbing, community services, housing, gardening, Headstart program, and an alcoholism program.

Elementary and secondary students from the reservation are generally educated on the reservation. The Turtle Mountain Elementary School has 800 students, Turtle Mountain Middle School has 300 students, and the Turtle Mountain High School has 525 students. Ninety-eight percent of these students are Native American. The Dunseith Day School (elementary) has 135 students, all of which are Native American. Other schools educating Indian children are the Ojibwa Elementary School, the St. John Public School, the Rolla Public School, the Rolette Public School, and the Dunseith Public School.

In 1972 local Indian citizens applied for and received a charter from the tribe to establish the Turtle Mountain Community College. Funding was gained through a developing institutions grant. North Dakota State University-Bottineau was to administer an accredited college program on the Turtle Mountain reservation. The Turtle Mountain Community College has maintained affiliate relationships with North Dakota State University-Bottineau from 1973 to 1979, with Mayville State College from 1973 to 1980, and with the University of North Dakota from 1979 to present. The purpose of these relationships is to provide mutual institutional assistance to strengthen the quality and broaden the range of curricular services that can be offered. In addition, the Turtle Mountain Community College is a member of the American Indian Higher Education Consortium (AIHEC).

The Turtle Mountain Community College campus is located in Belcourt, which is a central community for the Turtle Mountain reservation. The college utilizes eight classrooms — a biology lab, a chemistry lab, a business classroom, an adult education classroom, and four general classrooms. Two buildings house the business office, the student service office, the faculty, the secretarial support staff, the president's office, and the library. Another building adjacent to the administration and classroom buildings serves as the student activity center. A vocational building houses the business classroom, a secretarial area, and two offices. Another large vocational building has been constructed for the vocational trades area. The college offers basic curriculum leading to the degrees of associate of arts, associate in science, preprofessional training, and vocational education training.

The **Fort Totten Indian Reservation,** home of the Devils Lake Sioux, is located near the center of the eastern half of North Dakota. It lies mainly in Benson and Eddy Counties with small parts in Nelson and Ramsey Counties. Devils Lake forms much of the northern boundary of the reservation. The nearest towns are Devils Lake, five miles north of the boundary; Tolna on the east; Sheyenne and New Rockford on the south; and Oberon, Maddock, and Minnewaukan on the west. The reservation consists of 244,000 acres.

According to the 1980 BIA Labor Force Report, the total Indian population on the Fort Totten reservation was 2,815. Of this number, 1,015 or 36.1 percent constituted the labor force. Four hundred were employed and 615 were unemployed. Of the employed, 51 were permanent BIA employees and 34 were temporary BIA employees. The primary sources of income are ranching, farming, the Bureau of Indian Affairs, the tribe, the Public Health Service, seasonal construction and farm labor, and the Devils Lake Sioux Manufacturing Corporation. Some Indians also receive checks from the U.S. government for individual allotted lands leased for grazing and farming.

The Tribal Council consists of six members. The chairman is elected at-large, four councilmen elected from two voting districts, and a secretary elected at-large but without a vote on the council. All of these members are elected for four-year terms which are staggered with half elected every two years. Meetings are held regularly on the last Tuesday of each month with special sessions called according to the Constitution. The council operates on a limited budget which is used for traveling expenses.

The Tribal Council has established a Community Action Program under the Economic Opportunity Act of 1964, a community center at Fort Totten which was funded largely through a tribally sponsored EDA Planning and Development Office grant, a Family Development Center, work experience in training programs, alcoholism counseling, youth counseling, day care program, a home for the elderly, community health representatives, tribal administration, home improvements, tribal social program, surplus commodity program, manpower tribal program, health planning program, tribal farm program, tribal finance, early childhood enrollment, tribal work experience, and public information.

There is a BIA elementary school at Fort Totten with 149 students and a public high school with 240 students. Many attend BIA boarding schools at Wahpeton (elementary) in North Dakota, and Flandreau (high school) and Pierre (elementary) in South Dakota. About 213

students are in grades K-6 at the tribally operated school at St. Michael. Other students are educated at Warwick, Oberon, and Devils Lake. Plans have been drawn and bids let for a new school building to be constructed at Fort Totten. This building will house kindergarten through grade 12 and will cost approximately $14.8 million. The projected enrollment will be approximately 1,200 students. Many of the students currently attending surrounding schools will use this new facility causing a decline in enrollment for some of the surrounding school districts.

The Fort Totten Community College, started in 1974, is funded under Title III, Higher Education Act, and is affiliated with Lake Region Junior College and the University of North Dakota. The college is housed in the Kennedy Center and is a member of the American Indian Higher Education Consortium.

The **Standing Rock Indian Reservation**, home of the Standing Rock Sioux Tribe, is located on the west bank of Oahe Reservoir (Missouri River), on both sides of the North Dakota-South Dakota state line. In North Dakota it includes all of Sioux county. Bismarck-Mandan is 35 miles north of the reservation boundary. The reservation itself consists of approximately 850,000 acres. Of that, about 300,000 acres are located in North Dakota.

According to the 1980 BIA Labor Force Report, the Indian population on the North Dakota portion of the Standing Rock reservation was 4,059. Of this number, 1,761 or 43.4 percent constituted the labor force. Three hundred twenty-five Indians were employed and 1,435 were unemployed. The BIA on the Standing Rock Indian Reservation employs 148 permanent employees and 98 temporary employees. The main sources of income are ranching and farming. Others work for the BIA, the tribe, the Public Health Service, Cannonball Industries, and seasonal construction and farm work. Some Indians also receive income from leasing of individually allotted land.

The Tribal Council consists of 14 members representing seven districts and elected for two-year terms, and the chairman who is elected at-large for a two-year term. One member from each of the districts stands for election in the fall of each year. Primary elections take place on the last Wednesday in July and the general elections are held the last Wednesday in September. The council meets regularly on the first Wednesday of each month with standing committees meeting regularly the third Monday of each month. The council has established a Community Action Program under the Economic Opportunity Act of 1964 and also operates programs such as land management and industrial development, provides educational loan grants, and sponsors arts and crafts. The council is also in charge of the Standing Rock Housing Authority, the Standing Rock Retirement Complex Authority, and the Skill Center Building.

On the North Dakota side of the reservation, elementary and secondary students are educated at Selfridge, Fort Yates, Solen, and Cannonball. The Standing Rock High School in Fort Yates opened its doors in the fall of 1979. The cost of the facility was approximately $7 million with most of these funds coming through the BIA. The school has approximately 350 students in grades 7 through 12.

In 1963 the first college classes were offered at Fort Yates through the Division of Continuing Education of Bismarck Junior College. It soon became apparent that there was a need for a continuous college education program. In November 1971 representatives of a number of agencies formed the Community College Committee. This committee was formally recognized by the Standing Rock Tribal Council on April 11, 1972. It requested Bismarck Junior College (BJC) to assist in the development and administration of a Standing Rock Community College. With the assistance of BJC, a learning center was established at Fort Yates. In 1972, 95 students enrolled in eight courses. The college received a $100,000 grant for the 1973-74 academic year from the federal government under the provisions of Title III of the Higher Education Act of 1965 (Pub. L. 89-329). In August 1974 the college moved to its present location in the Skill Center Building which was completed that year. The administrative offices and classrooms are still located in the Skill Center Building at Fort Yates.

The first graduation was held on May 14, 1976, when seven students received associate of arts degrees. In January 1977 classes were also begun in Mobridge, South Dakota. Standing Rock Community College currently has an enrollment of 150-175 students each semester. Approximately 70 percent of these are American Indian. The college is a member of the American Indian Higher Education Consortium. College credits are received through the parent institution, Bismarck Junior College, which is fully accredited by the North Central Association of Colleges and Secondary Schools. The college provides an academic curriculum for students desiring to continue in a four-year college, an adult education program, and a number of vocational programs.

Wahpeton Indian School

Although the site was approved in 1904 and the original construction completed during the years 1905 and 1906, the Wahpeton Indian School did not officially open until 1908 with an initial enrollment of 77 students. The original facility consisted of one school building, one boys' dormitory, one girls' dormitory, one mess hall, one laundry, one warehouse, and water and sewage systems. These were constructed at an estimated cost of $74,000. During the years 1924 to 1929, a second schoolhouse was built at a cost of $53,000. This contained eight classrooms, an auditorium, and basement space under one section of the building. By the year 1929, the school enrolled 328 Indian pupils from the states of North Dakota, South Dakota, Minnesota, and Montana. At the present time, nine grades are carried at the school. The first four continue school work all day while the others are on a three-quarter-day plan. Aside from the academic subjects, instruction is also given in shop work, farming, dairying, and domestic sciences. Some of the students graduating from the Wahpeton school continue their high school studies at the Flandreau School in Flandreau, South Dakota, or the Haskell Institute in Lawrence, Kansas. Currently, the BIA employs 82 permanent employees and seven temporary employees at the Wahpeton Indian School.

State Agency Services to Indians

The committee heard testimony from representatives of state agencies which provide services to Indians. All of these individuals indicated that Indians living on reservations in North Dakota, as citizens of the state, are eligible for all programs provided by state agencies. However, some of the state agencies either offer programs on the reservation or have programs which are primarily utilized by Native Americans.

Health Department

The Division of Maternal and Child Health offers three programs which are utilized extensively on the reservation. The first is the North Dakota Improved

Child Health Project which is entirely supported by federal funds under Title V and Title X in the amount of $149,700 per year. The purpose of this program is to reduce the infant mortality rates where they are higher than the national standard. This includes the reservations in North Dakota. Among other things, the project provides direct funding for the staff to teach prenatal education. The major emphasis is on prevention rather than treatment. The second program under this division is the Sudden Infant Death Syndrome (SIDS) in which parents are contacted and counseled when their infant child dies suddenly and unexpectedly. They are also eligible to receive an autopsy on the child at the state's expense. Between July 1, 1977, and June 30, 1979, nine such deaths were reported on the reservation. This program paid for six autopsies and provided for followup in seven cases. The third program is the Supplemental Food Program for Women, Infants, and Children (WIC). This program provides food supplements for children, up to the age of five, and mothers when inadequate nutrition is likely. The program is operated on three of the four reservations in North Dakota and is funded through the Department of Agriculture. On Fort Totten and Turtle Mountain reservations the program is operated under the North Dakota Health Department. On the Standing Rock reservation the operation is controlled by the tribe and on the Fort Berthold reservation a federally funded supplemental food program is in effect.

The director of the Division of Environmental Engineering, Health Department, stated that his department provides services in the areas of air pollution control, radiation control, and noise control. The Air Pollution Control Program has issued permits to operate for incinerators and grain elevators located on Indian reservations. The program has reviewed and approved the aerial pesticide spraying of mosquitoes on an Indian reservation. The program issues permits to operate for asphalt paving plants based in North Dakota. These plants have operated on Indian reservations and have been inspected by the program staff while being operated on Indian reservations.

The division operates on air quality monitoring station at Mandaree on the Fort Berthold Indian Reservation. In the past, an air quality monitoring station was operated at Parshall on the Fort Berthold Indian Reservation, but this station was shut down in 1979.

The division staff has also presented lectures on air pollution at New Town and Parshall to Indian representatives.

When the Air Pollution Control Program reviews and issues construction permits for large sources of air pollution off the Indian reservation, such as those near Beulah and Underwood, the department considers the effects of air quality on the Indian reservation just as if it were any other part of the state. The Air Pollution Control Program is also available to assist Indian reservations in handling air pollution problems, drafting regulations and providing other technical assistance, as may be required. This assistance is available upon request.

The Radiation Control Program registers and inspects medical and dental X-ray machines that are used by the U.S. Public Health Service at medical facilities on the Indian reservations in the state. This service is provided at the request of the U.S. Public Health Service.

The Noise Control Program has received a grant from the U.S. Environmental Protection Agency effective October 1, 1979, that provides funds for assisting local communities in developing local noise control ordinances and enforcement programs. This service would be available to any community located on Indian reservations. Communities on Indian reservations will be advised of its availability. Upon request, the department can investigate noise complaints on reservations and assist the reservation in resolving them.

The Health Department also administers the Robert Wood Johnson Foundation School Health Services Project of $1.2 million which is being used to train four nurses as family nurse practitioners with further specialized study as school nurse practitioners. They would be placed in Rolette and Kidder Counties since there are no public health nurses there at the present time. The result of this grant would provide additional nurse practitioners at the Turtle Mountain reservation for the purposes of screening, diagnosing, recommending for treatment, and followup services, including counseling and community training. The project is funded for five years from September 1978 through June 1983.

The Division of Mental Health and Retardation has been involved with the Indian reservations for a number of years providing consultation on mental health problems. The committee was informed that 23.6 percent of the commitments over the last year were of Native Americans. Of these, 17 percent were for psychological problems and 83 percent were for alcohol or drug problems. Most of these individuals are placed at the State Hospital rather than local mental health centers because of the cost.

The Division of Alcoholism and Drug Abuse is in charge of administering approximately $900,000 allocated to the state from the National Institute of Alcohol Abuse and Alcoholism. Of that amount, approximately $500,000 was diverted to Indian tribes and the United Tribes Educational Technical Center. It was stated that at the State Hospital, 63 percent of the non-Indian patients are repeaters and 67 percent of the Indian patients are repeaters. The alcohol and drug abuse problem was statistically greater on the reservation than off the reservation.

It was also noted that the State Health Department offers limited laboratory and immunization services to Indians on the reservation. A little over 50 percent of these services are federally funded.

Social Service Board

The Social Service Board's services are divided into four major areas: (1) economic assistance; (2) medical services; (3) vocational rehabilitation; and (4) community services. The director of each of these programs testified on the services to Indians offered by their division.

In the area of economic assistance, four programs are offered which service Indians on the reservation. These are the AFDC program, the food stamp program, housing assistance, and foster care.

For October 1979 the department estimated that the Native American population in North Dakota was 3.8 percent of the total population. For that same month, 11,531 residents received AFDC. Of those, 3,729 or 32.3 percent were Native American. This amounts to approximately 14.9 percent of the total Native American population.

In the food stamp program for April 1979, a total of 19,103 families received food stamps. Of this number, 2,858 or 15 percent were Native American. In determining eligibility for the food stamp program, net monthly income is arrived at by subtracting 20 percent from the earned income, adding the total unearned income, deducting a standard deduction of $75, deducting medical expenses in excess of $35 for individual household members age 60 or over in receipt of SSI or Social

Security disability payments, deducting child and dependent care costs to a maximum of $90, and deducting shelter costs in excess of 50 percent of the household's adjusted income through the first five steps listed. A sliding scale based on the number in the household determines the maximum allowable income. For households with one individual, $316 is allowed each month and for households of eight individuals, $1,028 is allowed. For each individual household member over eight, an additional $102 is allowed. To determine program benefits, a household's net adjusted income is multiplied by 30 percent and that amount is substracted from the U.S. Department of Agriculture's thrifty food plan for that size household. This, once again, is a sliding scale dependent upon the household size. For households with one person, the dollar amount is $63; for households of eight members, the dollar amount is $376; and for each additional member after eight, an additional $47 is added. For example, an eligible four-person household with a net adjusted food stamp income of $400 would be entitled to $89 worth of coupons. The $400 is multiplied by 30 percent which equals $120. The thrifty food plan amount for a four-member household is $209. Substracting $120 from $209 gives this family $89 worth of coupons.

In the housing assistance program, for August 1979, a total of 1,374 households participated. Of this number, 74 were Native American. This program, which is funded by the Department of Housing and Urban Development, is a rental assistance program for low-income renters, households, and mobile home owners administered by the Social Service Board of North Dakota. Eligible renter households are assisted so that they pay no more than 25 percent of their income toward rent. The program is designed to achieve equal housing opportunity for participants and to build upon the efficiency, effectiveness, and equity of an agency with statewide jurisdiction in the administration of housing assistance payments program in a rural environment. To quality for assistance under this program, the family unit must consist of either two or more persons; or a single person age 62 or older; or, if under 62, one who is handicapped or disabled. Certain income limits for eligibility are based upon gross income and range from a low of $10,400 for a single person to $18,600 for an eight-person household. These income limits are slightly higher for Burleigh, Cass, Grand Forks, and Morton County residents. Also, there are maximum allowable gross rents under this program. These range from $151 for an efficiency apartment to $279 for a four-bedroom apartment. There are also limits placed on the utilities which must be paid by the renter to qualify for payments under this program.

In the foster care program, for October 1979, 460 children were placed and payments of $98,002 were made. Of this total, 144 children were Native American and payments for these placements totaled $28,028.

The director of medical services explained the Medicaid program which is administered by his department. Title XIX is a section within the Social Security Act which authorizes each state to create medical assistance programs. Under this law, there are certain programs which the state is obligated to furnish if it decides to provide Medicaid. These programs include inpatient hospital services, outpatient hospital services, lab services, skilled nursing services, and family planning, among others. There are approximately 25 optional services which a state can elect to provide and North Dakota provides virtually all of these. Most utilized services in North Dakota are the inpatient hospital services and the physician services. Approximately 4.4 percent of the total population of North Dakota is receiving medical assistance and, of this group, 17.8 percent are non-whites. The majority of these are Native Americans. For September 1979, a total of 13,452 people in North Dakota received medical assistance services costing $3,787,293.28. Of this total, 1,945 people were Native American and those services cost $370,440.80.

The director of community services indicated that his office serves Indians both on and off the reservation. Some of the offices located around the state do have hours established on the reservation. However, it was emphasized that the services available statewide are open to all eligible applicants. These services include companionship, counseling-therapy, day care for adults and children, emergency services, family planning, fuel and utilities financial assistance, homemaker services, information and referral, placement, respite care, and weatherization, among others.

The director of rehabilitation services stated that his department was established to enable handicapped persons to prepare for or maintain employment. Their funding is 80 percent federal and 20 percent state. The services they offer include evaluation of vocational potential, guidance and counseling, physical and mental restoration, interpretive services for the blind, and placement services. There are no age limits for participation in the program but they seldom serve people under the age of 14. Seventy percent of their clients are between the ages of 18 and 35. Approximately four percent, or 1,000 people, who were rehabilitated during the last year were American Indians. Approximately eight percent of the applicants for services are American Indians, 7.5 percent of the clients served are American Indians, and four percent of the clients rehabilitated are American Indians. However, the programs established by this department are not specifically geared to Indians. Much of the rehabilitation is alcohol-related and done at alcohol treatment centers. If services are not available on the reservation, the department will pay for Indians to go where the services are available.

Vocational Education

Mr. Carrol Burchinal, State Director for Vocational Education, testified that his department is participating in partial funding of a number of vocational education programs on Indian reservations in North Dakota. He also stated that they are participating in the national project "Extending the Benefits of Vocational Education to Indian Populations." The purpose of this project is stated in its title. The vehicles for this extension are existing state and local education agencies. The Turtle Mountain reservation has been selected as the pilot site. However, this project is only in the "needs assessment" stage at the present time. In addition, the Vocational Education Department is establishing a task force to formulate a statewide plan for postsecondary and adult minority vocational education. This is a result of a citizens study committee recommendation which was made to the Vocational Education Department. The department is also providing technical assistance by state staff to reservation schools and institutions and the United Tribes Educational Technical Center.

Mr. Burchinal stated that there have been no major conflicts to the present time and that he is very pleased with the cooperation between the state department and the Indian reservations. However, one of their major constraints is complying with the federal restrictions and local or state matching requirements for most of the vocational education funds.

Department of Public Instruction

Mr. Howard Snortland, State Superintendent of Public Instruction, stated that the BIA originally was responsible for educating all Indian children. Over the years, some of the local school boards covering Indian territories have opted to accept foundation aid payments for the Indian students they are educating and either provide their own school, or contract with the BIA to provide the educational services. By accepting the responsibility for educating these Indian students, the schools are eligible for foundation aid and for federal impact dollars. These impact moneys are available only for Indian students who are living on tax-exempt land. Whenever the BIA does not educate students, they become the state's responsibility. The 21- and 20-mill school levies apply only to land outside of the reservation.

Mr. Harold Rhodes, Director of the Food Distribution Program, stated that the Department of Public Instruction is the sole outlet for seven commodity programs including Disaster Emergency Services. These programs are available to all people of North Dakota although the commodity supplemental food program has been phased out and replaced by the WIC program through the Health Department.

The Food Distribution Program for households on Indian reservations was of most interest to the committee. Under this program, persons on the reservation who qualify may choose on a household-by-household basis to participate either in the food stamp program or in the commodity program. This program was placed under the Department of Public Instruction by executive authority in 1957. The program is serving approximately 5,800 people out of a total of 17,500 reservation residents. There is some crossover between people taking this program and the food stamp program and it is not necessary for people taking the commodities to accept everything in the commodity package. However, unlike the food stamp program, there is no sliding scale of eligibility with the commodity program. The funds involved are all federal moneys and the Department of Public Instruction merely acts as a channeling agency. Mr. Rhodes anticipated that, in the future, the tribes would contract directly with the federal government for these same services.

Federal Aid Coordinator Office — Economic Opportunity Programs

Mr. Jerry Broadhead testified that the principal role of his office is to coordinate and mobilize federal resources for low income people and programs within the state. One problem they have experienced is with federal programs which have different methods of channeling services and funds to the reservation. Mr. Broadhead recommended that the federal programs be provided directly to the tribes rather than channeling money and services through state agencies. He also recommended that the functions of the Indian Affairs Commission be broadened and strengthened by increasing the professional staff and by placing a satellite office of this agency on each of the reservations. Furthermore, he suggested that the Indian Affairs Commission act as a clearinghouse to advise the Governor on matters concerning Indians and should have the power to hold up any agency's federal grant applications until the effect on Indians is known.

Job Service

Mr. Michael Deisz, Deputy Executive Director, Job Service North Dakota, testified that Job Service currently has 14 full-time offices in North Dakota assisting residents to obtain either employment or prepare for such employment. He stated that the offices in Devils Lake and Rolla serve the reservations nearby and that there is a suboffice in New Town. Also, there is an itinerant worker who serves the Standing Rock reservation. As of October 1979, approximately nine percent of those persons drawing job insurance were Indians. Mr. Deisz said that the goal of the CETA training program was to enroll 19 percent Native Americans. To facilitate this, the Native American Outreach and Coaching Program was established. The purpose of this program is to make Indians aware of services under CETA and to encourage their participation.

It was stated that one of the major problems facing Indians was their unwillingness to move to where the jobs are located. Many Indians prefer to stay close to the reservation where there are few job opportunities. Also, Indians who move off the reservation lose many of the benefits available to them if they had remained on the reservation. The Fort Berthold reservation poses a unique problem in that it is part of four distinct regional planning districts. However, Job Service and CETA have pooled moneys from each of these planning districts to serve the reservation from a single office.

State Water Commission

Mr. Michael Dwyer, Legal Counsel, State Water Commission, testified that the State Water Commission does not have any jurisdiction over Indian lands and Indians irrigating on their own land do not need a water permit from the State Water Commission. However, he added that the State Water Commission has volunteered to meet with Indian representatives and make their services available to the reservations. He said that some tribes have established their own water codes although he was unaware of any North Dakota tribes having done so.

Law Enforcement Council

At the present time, the Law Enforcement Council has only limited activity on the Indian reservations in North Dakota. The council was instrumental in construction of a juvenile detention center at Fort Totten and for implementing a youth counseling program there. They have also implemented a law enforcement awareness program on the Turtle Mountain reservation. At the present time, the council is not participating in any projects on either the Standing Rock reservation or the Fort Berthold reservation. However, in the past, the council has provided lay advocates at Fort Berthold. The primary funding source for Law Enforcement Council projects are state and federal funds. The state's contribution is five percent. The Law Enforcement Council does collect data on reservations and includes that in its federal plan since the reservations are classified as high crime areas.

University of North Dakota

Ms. Lou Palmer, Director of Native American Programs, University of North Dakota, Grand Forks, distributed brochures to committee members explaining the various Indian programs available at the University of North Dakota. At the present time, there are approximately 209 Indian students enrolled at the university. It was stated that most of the community colleges located on the reservations are providing primarily liberal arts courses. Ms. Palmer added that Indian students having a limited math-science background are not likely to pursue degrees that emphasize those areas. Therefore, it is important to stress those courses starting in grade school.

The INMED program was instituted in 1973 and is currently established to encourage Indian students to enter all allied health areas. The program offers both financial and academic support to these students, including tutor services. Indian students from the five-state area of North Dakota, South Dakota, Wyoming, Montana, and Nebraska, are eligible for these services. Primary funding sources at the present time are a health center opportunity program grant from the Department of Health, Education, and Welfare and funds from the Indian Health Service. Since 1973, the program has recruited 382 undergraduates/special graduates and professional students. So far, 25 professional Indian people have been produced through the direct support of the INMED program. Twenty-two are in medicine, one in dentistry, one in nursing, and one has received a master's degree in public health. At the present time, the program has 26 undergraduate or special graduate students and 19 professional students who are or have received support. Ten of the undergraduates or special graduates and four of the professional students are residents of North Dakota. In an effort to expose students to the various health careers available, a summer work practicum is provided through the Indian Health Service scholarship. Students are encouraged to work at a reservation health facility in an area in which they are interested, i.e., nursing, lab tech, mental health, physician's aide, etc., to increase their awareness of the Indian health problems and to provide them with meaningful work experience.

The Department of Indian Studies at the University of North Dakota began in September 1977 with two full-time and several part-time faculty members. Presently, there are three full-time faculty and the program continues to rely on part-time faculty and faculty from other departments to teach courses pertinent to the Indian studies major. The department offers an average of 10 courses per semester with a total enrollment of about 160 students each semester. There are currently eight students pursuing majors in Indian studies and 10 students pursuing minors. Most of these are Indian students but the program has an increasing enrollment of non-Indian students as the department becomes better known. A recent recommendation by the State Board of Education that teachers certified in North Dakota have Indian studies or multicultural courses has meant that more non-Indian students are taking Indian studies courses.

United Tribes Education Technical Center

United Tribes Educational Technical Center (UTETC) is a residential vocational school owned and operated by American Indians. It is located on a 100-acre site three miles south of Bismarck and houses 53 Indian families and approximately 46 single Indian students on the former Fort Lincoln army site. The institution is a state-chartered, nonprofit corporation owned and operated by the five reservations located in whole or in part within North Dakota. These reservations include Fort Berthold, Fort Totten, Standing Rock, Turtle Mountain, and Sisseton.

The history of UTETC is tied closely to the formation of the United Tribes of North Dakota. Established in 1963 as an intertribal organization designed to monitor termination legislation then proposed in North Dakota, the organization also sought to address other evident needs of the tribal membership. Several years after the successful fight to stop termination legislation, the group incorporated as the United Tribes of North Dakota Development Corporation (UTNDDC).

In 1968 UTNDDC acquired the use of Fort Lincoln for a residential employment training center, and named it the United Tribes Employment Training Center. Initially, administration and operation of the center was subcontracted to Bendix Corporation, which had submitted a proposal which would eventually lead to management of the center directly by UTNDDC. The first students began arriving in late August 1969, and the center was formally dedicated on September 6, 1969. Bendix Corporation ceased operation of the facility in July 1971, and UTNDDC took over direct management under contract from the BIA. Under Indian leadership, an administrative staff was selected and has maintained continuous operation of the center from 1971 until the present. In October 1975, the name of the center was changed to the United Tribes Educational Technical Center since this name more accurately reflected the center's nature and purpose as a whole. The campus provides students and their families with housing, an elementary school, a child development center, recreational facilities, and an Indian setting. Counseling, job placement, legal, and medical services are also available. The vocational courses offered by the center include auto body repair, building trades, automotive repair, business-clerical, electrical programs, food service, licensed practical nursing, nutrition technician, nurse's aide, paraprofessional counseling, plumbing, police science, printing press, semitruck operator, sheet metal, and welding.

Indian Affairs Commission

The Indian Affairs Commission is the only state agency which was established principally to assist Indian people. The membership of the commission is legislatively mandated (Section 54-30-01, NDCC) and is empowered to "mobilize the support of state and federal agencies in assisting Indian individuals and groups in North Dakota, especially the four tribal councils, as they seek to develop their own goals, project plans for achieving those goals, and implement those plans." (Section 54-36-03, NDCC). The commission hires an executive director and support staff to assist in carrying out the duties and recommendations of the commission.

Two programs which the commission has assisted in establishing are the North Dakota Indian scholarship program and the North Dakota Indian Development Fund. The Indian scholarship program is governed by Chapter 15-63. This legislation mandates the formation of the State Board of Indian Scholarships and directs it to encourage persons of Indian blood to attend and graduate from institutions for higher education within the state, to formulate standards, regulations, and procedures for administration of the chapter, and to award scholarship grants as provided for in the chapter.

For the 1979-81 biennium, $85,000 was appropriated for the North Dakota Indian scholarship program. Forty-eight students were awarded grants during the 1979-80 academic year. These grants averaged $800, ranging from $400 to $1,500. Twenty of these students attended the University of North Dakota, seven attended Mayville State College, seven attended Mary College, five attended North Dakota State University, three attended Minot State College, and one each attended Bismarck Junior College, Little Hoop Community College, Dickinson State College, Standing Rock Community College, North Dakota State University-Bottineau, and Valley City State College.

For the 1980-81 academic year, 53 students were awarded grants averaging $894. These grants ranged from $420 to $1,500. Of these students, 19 attended the University of North Dakota, nine attended North Dakota State University, four attended Mayville State College, four attended Mary College, three attended Bis-

marck Junior College, three attended Standing Rock Community College, three attended Valley City State College, two attended Minot State College, two attended the Bismarck Hospital School of Radiologic Technology, and one each attended Little Hoop Community College, Lake Region Junior College, Turtle Mountain Community College, and North Dakota State School of Science. These grants used up the entire appropriation of $85,000.

The North Dakota Indian Development Fund's purpose is to assist the Indian people "to take full advantage of the opportunities they have to improve their economic well-being." (Section 54-34.2-02, NDCC). The 1979 Legislative Assembly passed House Bill No. 1116 which required that moneys from the fund be used only "for state or local matching funds as may be required by a federal, tribal, or private agency for participation in Indian development projects." (Section 54-34.2-04, NDCC). The bill also provides that only the tribal council can approve reservation development projects. However, either the tribal council or a development project approved by the council or an off-reservation development project (which must be approved by the North Dakota Indian Affairs Commission) may apply to the commission for funding.

House Bill No. 1013 appropriated $323,880 to the Indian Affairs Commission for the 1979-81 biennium. Of this amount, $195,000 is set aside for grants, benefits, and claims; $107,333 is for salaries and wages; $17,979 is for fees and services; $2,050 is for supplies and materials; and $1,518 is for equipment. Of this total amount, only $223,880 are general fund dollars. This compares with a $209,675 general fund appropriation in 1977 and a $158,029 appropriation in 1975.

Employment and Reservation Industries

In addition to the problem of jurisdiction, the problems of the employment and the educational opportunities were discussed extensively both in meetings at Bismarck and during the tours of the Fort Totten, Fort Berthold, and Standing Rock Indian Reservations. Each of these reservations relies heavily on employment by the BIA and the tribe. In addition, each of the reservations is attempting to establish local industry to assist in widening the local economic base.

Fort Totten

At Fort Totten, the Devils Lake Sioux Manufacturing Corporation employs approximately 325 persons. Of these, 58.2 percent are Native American. The corporation currently contracts with the United States Army for Camouflage Systems and with the Fisher Body Division of General Motors for automobile carpeting. The plant has recently expanded to include a building in Devils Lake. The operation in Devils Lake involves sewing of vinyl bags to pack camouflage and also some sewing on the carpeting produced for the car manufacturers. The corporation will be expanding into the production of military helmets sometime next summer but this will provide very few additionial jobs. When the company was formed in 1973, ownership was split with the Devils Lake Sioux Tribe owning 30 percent and the Brunswick Corporation owning 70 percent. Presently, the tribe owns 51 percent of the company. This appears to be the most successful of any industry operating on a reservation.

The Fort Totten tribal chairman told the committee that the tribe has imposed a four percent sales tax on new construction on the reservation. He said that this money, along with the profits from the Devils Lake Sioux Manufacturing Plant, have been used by the tribe to repurchase land within the boundaries of the original reservation which, over the years, had been sold to non-Indians. The goal of the tribe is to return at least 50 percent of this land to trust status. Another of the plans for stimulating economic growth on the Fort Totten Indian Reservation includes the construction of a shopping center at Fort Totten. This center will consist of a building 182 feet long by 70 feet wide which will house a grocery store, a cafe, a laundry, a bank, a post office, a barber-beauty shop, and a variety store area. The facility will be owned by the tribe and each of the retail outlets will be rented to individuals. The tribe hopes that construction will start by September 1980 and be completed sometime in the spring or summer of 1981. The building will be funded by an Economic Development Administration grant. Rental agreements will include the equipment for each of the facilities. It is hoped that this will provide opportunities for Indians to get into business and to provide an outlet for money to be spent on the reservation rather than off the reservation. At this time, all applicants for businesses except one have been residents of the reservation.

Fort Berthold

At Fort Berthold, a number of Indians are employed by the Four Bears Lodge and the Northrop Corporation. The Four Bears Lodge was built in 1972 with a grant from the Economic Development Administration under the Department of Commerce. At the present time, the facility employs 19 individuals, 18 of whom are Native American. The facility is owned by the tribe under a separate charter with a separate board of directors. In the past, portions of the facility have been closed because they have not generated enough income. Presently, the coffee shop is open for breakfast and lunch but not for dinner. The dining center is closed at all times. Additional funds have been obtained from a Small Business Administration grant and tribal moneys. Recently, a study of the facility was conducted by the Cornell University Hotel Management School personnel. These individuals will assist in training the management of the facility.

The Northrop Corporation, which is located on the eastern edge of New Town, is involved in the manufacturing of electronic equipment used for navigational systems. The facility was established in October 1970 and currently employs approximately 102 individuals. Of these, 51 are Native American.

Standing Rock

The Cannonball Industries which is located on the Standing Rock Indian Reservation has been in existence for the past several years and currently manufactures cattle guards and portable fences. When this operation was first begun, it manufactured trash can racks with funding through CETA moneys. However, these racks proved to be limited money makers and the plant switched over to its current operation after receiving a Small Business Administration grant. After several weeks during which production was stopped, the plant will be starting again with four workers and one office person. They hope to expand production into cattle feeders and perhaps trailers by next spring.

Conclusions and Recommendations

The committee found that there was no evidence, nor were documented allegations made even when solicited, that any pattern of discrimination by any agencies of the state or of its subdivisions exists. There is evidence that the tribal organizations and the BIA do discriminate

against Indians who are not residents of the reservation. Such matters are the direct outgrowth of federal policy and only curable by congressional action.

Lack of job opportunities remains the underlying and most serious problem for Native Americans living on reservations. This serious and chronic problem is the root cause of family and marital stress, alcoholism, and other social ills. It is the conclusion of the committee that these very serious social problems on reservations cannot be successfully cured until the high percentage of unemployment is reduced to a tolerable level. Even though some success has been realized in bringing industry and job opportunities to the reservations, it is grossly inadequate.

Energy development, if the tribal government and members of the reservation desire it, would appear to offer the best opportunity for expanding employment on the reservation. However, it is obvious that it will be difficult to bring jobs in adequate numbers to the reservation. This means that Native Americans on the reservation will have to move to where the jobs are available.

The committee further found on strong evidence that most federal programs that are administered through the BIA are basically paternalistic and do not encourage Native Americans to attain independence and work toward self-development and improvement.

The committee questioned the quality of education being provided on the reservation through the community colleges. Enrollments are generally low and the academic structure is oftentimes disjointed. The committee is urging that there be a serious study conducted and evaluation made as to the qualifications of educational programs on the reservation to make sure that Native Americans are receiving the type of education which will allow them to compete in the job market, not just receive degrees. It appears that lack of incentive and role models still remains a serious problem for Indian children. Committee members expressed concern over the lack of Native Americans in the professional academic programs such as engineering, accounting, medicine, and business. There is a strong need to correct this situation as well as to strengthen the vocational programs in the secondary school system.

For these reasons, the committee recommends that a resolution be drafted and sent to Congress urging them to extend the rights conferred on Indian citizens to enrolled members regardless of where they live. Also, the committee recommended a concurrent resolution urging Congress to provide for direct funding of services to the reservations rather than channeling federal moneys through state agencies.

The committee also passed two other resolutions as a result of the Indian study. The first is a resolution directing a study of the feasibility of consolidating the Fort Berthold reservation into one single county. At the present time, Fort Berthold is made up of parts of five separate counties. Testimony indicated that this situation causes a great number of problems with the delivery of services to the reservation.

The final resolution passed by the committee would direct the State Water Commission to work with the tribal governments in North Dakota to determine a policy on the allocation of water which will best serve the citizens of North Dakota, both on and off the reservation.

STATE AND FEDERAL GOVERNMENT "B" COMMITTEE

The State and Federal Government "B" Committee was assigned two study resolutions during the 1979-81 interim. Senate Concurrent Resolution No. 4019 directed the committee "to conduct a comprehensive study and evaluation of adult correctional facility needs throughout the state and to develop a comprehensive state corrections master plan which includes a long-range approach to meeting those needs." Within the scope of the study, the committee was additionally directed "to conduct a comprehensive study and evaluation of the location of the properties and facilities of the North Dakota State Penitentiary to ascertain the economic and program impacts they have on its future operations and to determine if there is a need to relocate the Penitentiary."

Senate Concurrent Resolution No. 4036 directed a study "to examine the setting of priorities for the use of state-owned land, to determine whether state-owned land should be sold by negotiation or by bid, and to determine the feasibility or desirability of establishing uniformity in the various methods and processes of transferring state-owned land."

Committee members were Senators Francis Barth, Chairman, Robert Albers, James Cussons, and Harry Iszler; Representatives Jim Brokaw, Oben Gunderson, Fern Lee, Robert Martinson, Walter Meyer, Corliss Mushik, Allen Richard, and Elaine Vig; and Citizen Members Myron Atkinson, Jr., and Kenneth Morgan.

The report of the State and Federal Government "B" 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-seventh Legislative Assembly by the Legislative Council in November 1980.

CORRECTIONS STUDY

Background

As background for the corrections study, the committee toured the Penitentiary, the State Farm, and lands owned and controlled by the Penitentiary and State Farm. Because the study resolution called for an extensive evaluation of the State Penitentiary and adult correctional facility needs throughout the state which would necessarily involve structural, engineering, and architectural determinations and whereas the development of a comprehensive state corrections master plan would involve extensive data gathering, criminal justice and correctional expertise, the committee obtained the services of a consultant to aid in the committee study.

After interviewing eight potential consultants and reviewing their proposals, the committee voted to contract with The Ehrenkrantz Group, P.C., Architects and Criminal Justice Planners, New York City, and Engineers-Architects, P.C., Grand Forks. Extensive assistance in data and statistical gathering for the study was provided by the Combined Law Enforcement Council staff.

The consultants began work in November 1979 with an analysis of the existing correctional and criminal justice system including the State Penitentiary and State Farm, county and city jails, probation and parole, law enforcement, the judicial system, available community services, population projections, and innovative practices in other states.

The consultants provided the committee with four status reports dealing with background orientation, data collection, systemwide policy options, and preliminary recommendations. Following discussion of each report with the committee, necessary changes were made by the consultants. A draft final report and recommendations were presented to the committee by the consultants in August 1980 and approved. The final committee-approved report was completed in September 1980. The consultants' work product included a 20-year program for the North Dakota correctional system, which was developed as a result of their study.

A number of areas were examined by the consultants in the development of a correctional system/facilities plan for the state and local levels. These included prison and jail inmate populations, physical plant conditions, management and organizational systems, probation and parole practices, the law enforcement process, judicial issues and practices, state population growth trends, community resources and programs, fiscal resources, and prison industries.

The consultants' State Penitentiary and State Farm study included visual inspections of the facilities, the structural conditions, and the mechnical and electrical systems. A photographic description was made of all buildings for future reference. A profile of Penitentiary and State Farm inmate populations was completed, and the prison industry operations were inspected.

For county and city jails, a comprehensive jail survey instrument was developed by the North Dakota Law Enforcement Council and the consultants which was administered at every county and city jail in the state by the Law Enforcement Council staff. The consultants personally accompanied the jail inspection team in viewing 16 county jails which represent more than 70 percent of the total jail beds in the state and which house approximately 85 percent of the state's jail population. The jail visits included a survey of the physical plants, administration, operational procedures, services, and programs. The facilities were also photographed, floor plans were drawn for later reference, and profiles of the jail inmate populations were collected.

Consultant Recommendations

Final study recommendations made by the consultants concerning the North Dakota State Penitentiary include:

1. Retaining the Penitentiary at its present location in Bismarck.
2. Undertaking a major renovation program entailing the demolition and replacement of unsound and unsuitable structures, and the renovation, expansion, or construction of new facilities based on the evaluation of current need and conditions and compliance with national and state standards. The consultants found during the study that four of the 10 major buildings inside the Penitentiary walls are in poor to fair condition and six buildings are in good condition.
3. Preparing a long-term master development plan for the Penitentiary for presentation to the 1981 Legislative Assembly.
4. Giving high priority to developing equal facilities for female offenders within the renovated Penitentiary.
5. Retaining existing Penitentiary land holdings with possible consolidation of properties to improve farming operation efficiency.

Concerning the North Dakota State Farm, the consultants recommend that:

1. The existing State Farm be replaced by a totally new facility built on State Penitentiary property with funding to be appropriated for the 1981-83 biennium. The consultants determined during their study that six of the eight buildings at the State Farm are in poor condition, while two buildings are in good condition.
2. The State Farm should have an initial 60-bed capacity, increasing to 85 beds by the year 2000.
3. The new facility should be planned to minimize reliance on the Penitentiary for services.

The consultants also recommend the creation of new state-operated satellite institutions with:

1. Up to four satellite facilities constructed in strategic locations throughout the state.
2. Each facility drawing its primary inmate population from a 75-mile radius of that institution.
3. The satellite facilities would house:
   a. State offenders who have committed nonviolent crimes and have no history of assaults.
   b. State inmates with three months remaining in their sentences to be placed in satellite facilities nearest to the inmates' eventual release destination for participation in work or study release programs.
   c. County offenders who have sentences ranging between 31 days and one year.

   The satellite facilities are intended to offer the judiciary and corrections officials increased flexibility in sentencing and placement alternatives, and most importantly to reduce the burden on the counties of providing correctional services for inmates sentenced to relatively long terms, e.g., longer than 30 days.

Construction of the satellite facilities is recommended to proceed in phases over the course of 20 years with the first 40-bed facility recommended for funding in the 1981-83 biennium.

The eventual bed capacity of the satellite facilities is recommended to reach 260 beds by the year 2000. Of those beds, approximately 60 beds are recommended to be reserved for use by the counties.

Concerning the state's jail system, the consultants propose:

1. Creation of a state grant/aid program to counties and cities for upgrading jail facilities to comply with state standards with state funds to be matched on a dollar-for-dollar basis by the grant recipient agency.
2. Authorization of a grant/aid program in the 1981-83 biennium with the actual expenditure of funds to be determined on a priority basis and the ability of the county or city to satisfy the grant requirements.
3. Phased reclassification of the state's jails to limit the maximum length of stay in detention/lockup facilities to no more than 30 days, and in holding facilities for 12 to 72 hours. Selective variances are recommended to be granted to jail facilities to permit lengths of incarceration up to 90 days.

The consultants also recommend that the state devise a management mechanism to ensure that the goals of the correctional system/facilities plan are achieved over the next 10 to 20 years and to allow for midcourse corrections as necessary to respond to unforeseen circumstances. The consultants recommend that a small number of personnel be assigned to perform administrative, coordinative, monitoring, planning, and reporting duties. Management responsibility is recommended to rest with either an existing or newly created agency with funding for personnel and support costs to be appropriated in the 1981-83 biennium and in following bienniums.

The consultants recommend modifications to the North Dakota Century Code to:

1. Provide the courts with greater flexibility in committing offenders to state- and county-operated institutions and programs.
2. Permit certain felony charges to be reduced to misdemeanor status when the convicted person is sentenced to any state or county correctional facility rather than just the State Farm as at present.
3. Provide equal legal status for female offenders sentenced to state institutions.

The consultants additionally recommend the creation of a permanent legislative criminal justice committee to review corrections and criminal justice issues.

Recommendations concerning the outlined areas and other areas of the North Dakota criminal justice system are set forth in detail in the North Dakota Correctional System/Facilities Study Final Report available for review through the Legislative Council office. The final report was approved and adopted by the State and Federal Government "B" Committee.

Penitentiary, State Farm, and Satellite Appropriations

As a result of the final report and in agreement with the consultants' recommendations, the State and Federal Government "B" Committee recommends a bill draft appropriating $20,789,080 for construction, renovation, and equipping of facilities at the State Penitentiary; $2,400,500 for constructing new facilities at the State Farm; and $2,232,150 for constructing a new satellite correctional facility.

An additional $55,000 would be appropriated to the Director of Institutions for hiring an attorney to (1) assist in monitoring the implementation of the correctional system plan and making biennial progress reports to the Governor and the Legislative Assembly; (2) update and modify the correctional system plan to assure that stated purposes and objectives are being met and to recommend system plan changes which reflect unforeseen developments; (3) coordinate and prepare a biennial fiscal plan to carry out the purposes and objectives of the correctional system plan; and (4) carry out such other duties as assigned by the Director of Institutions.

Jail Grant Program

A second bill draft would appropriate $3,923,380 to the Combined Law Enforcement Council for the purpose of a matching grant program for county and city jails. Moneys would be available on a dollar-for-dollar match basis for jail and juvenile detention facility construction and renovation purposes and other programs which would enable local units of government to meet the standards and rules prescribed by the Attorney General pursuant to Chapter 12-44.1. Counties and cities could also pool grant moneys with other counties and cities for such purposes. Counties not operating jails and counties and cities desiring to discontinue jail operation could additionally use grant moneys for purchasing and operating vehicles to transport prisoners to other jails, for associated costs of prisoner transportation, and for housing in other approved facilities.

Each county commission or city governmental body desiring to obtain jail grant funds would be allowed to appoint a five-member corrections advisory board to develop a plan for use of jail grant funds, for providing matching funds, and for meeting state jail standards. The plan would then be approved by the governing body and

submitted to the Combined Law Enforcement Council for approval.

Each of the 11 city jails and each of the counties would be eligible to receive a flat $25,000 matching grant. Each county with a jail facility categorized under the present classification system as grade 1 which allows for the confinement of inmates for not more than one year, or grade 2 which allows for confinement of inmates for not more than 30 days would be eligible for an additional grant determined by multiplying $15,000 by the average daily county jail population for the preceding year.

Counties with a per capita income below the state average of $7,432 would have their total grant allocation increased through a ratio comparing the state average per capita income and the county average per capita income.

The Combined Law Enforcement Council would be assigned additional duties under the bill of:

1. Coordinating and managing the distribution of jail grant funds and arranging for appropriate audit activities.
2. Promulgating rules for implementing and administering the jail grant program.
3. Providing technical assistance to counties and cities applying for jail grant funds.
4. Ascertaining compliance with jail grant criteria and state jail standards prior to and following grant approval.
5. Establishing biennial priorities for the disbursement of grant funds.

The sum of $125,000 would be appropriated to the Law Enforcement Council for administering the jail grant program.

Sentencing Alternatives Bill Draft

A third bill draft recommended by the committee would amend Section 12-51-07 relating to prisoners eligible for commitment to the State Farm, and Section 12.1-32-02 relating to sentencing alternatives. The bill was recommended to the committee by the Director of Institutions' office.

With stated exceptions, a basic eligibility requirement under Section 12-51-07 would allow all males who would otherwise be committed to county jail or the Penitentiary to be committed to the State Farm if the sentence is more than 30 days but not more than one year. This change is recommended so that only those sentenced for Class A misdemeanors or felonies will be sent to the State Farm.

Subsection 2 of Section 12-51-07 would be amended to remove the word "Penitentiary" and insert in lieu thereof the words "correctional facility" to ensure that persons sentenced to federal correction centers for felonies are not thereafter sentenced to the State Farm. The federal system does not refer to its facilities as penitentiaries and some judges have interpreted the provision to allow such former federal prisoners to be sentenced to the State Farm.

A further restriction is added under subsection 3 to prevent a person from being sentenced to the State Farm who has a history of violent assaultive behavior which has resulted in physical injury or serious psychological harm to others. There have been instances of such first offenders having been sentenced to the State Farm, and it has resulted in a disruption of the State Farm routine.

The provision providing for reduction of a felony conviction to a misdemeanor upon being committed to the State Farm is removed from Section 12-51-07 and placed in the penalties and sentencing chapter of the Criminal Code under Section 12.1-32-02.

Section 12.1-32-02 is amended to provide that a court may sentence a person to a term of imprisonment in a state correctional facility, a regional corrections center, a county jail, or the State Farm if convicted of a felony or a Class A misdemeanor. A person may be sentenced to a county jail or a regional corrections center if convicted of a Class B misdemeanor. The desire is to keep those with sentences of 30 days or less at the local level.

A new subsection is added to Section 12.1-32-02 to give female offenders equal status with male offenders. Under the provision, a court may commit a female offender to the State Penitentiary or other suitable facility under the same minimum security restrictions and with the same privileges as State Farm inmates when the sentence imposed is more than 30 days but not more than one year. Additionally, a person convicted of a felony who is sentenced to imprisonment for not more than one year shall be deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment.

STATE-OWNED LAND STUDY

Background

The legal historical background for the sale, lease, or exchange of state-owned land begins with congressional enactment of the Enabling Act which provided for the creation of North and South Dakota, Montana, and Washington.

Section 10 of the Enabling Act granted the 16th and 36th sections of land in each township to the state "for the support of common schools."

Section 12 of the Enabling Act granted 50 sections of unappropriated public land within the state "for public buildings at the Capitol . . . for legislative, executive, and judicial purposes." An additional 90,000 acres of land were granted by Section 16 "for the use and support of agricultural colleges" in the state.

Section 17 of the Enabling Act additionally granted 500,000 acres to the state for various colleges and institutions.

North Dakota Constitution

Section 156 of the North Dakota Constitution gives the Board of University and School Lands control of the appraisal, sale, rental, or disposal of all school and university lands, subject to the provisions of the North Dakota Constitution and legislative enactment.

Section 158 of the Constitution provides that no original school or institutional grant land shall be sold for less than the fair market value, and in no case for less than $10 per acre. All sales must be held at the county seat of the county where the land is located. Sales are by public auction to the highest bidder following weekly publication of notice for three weeks in a legal newspaper published nearest the land to be sold and also in the official county newspaper.

Section 161 of the North Dakota Constitution gives the legislature authority to provide by law for leasing lands granted to the state by the United States for educational and charitable purposes. However, no law is to authorize the leasing of the lands for longer than five years, and a lease shall be for pasturage and meadow purposes only. Such lease shall be granted at a public auction after notice in the same manner as provided for land sales. If the school lands were under cultivation at the time of leasing, they may be leased for other than pasturage and meadow purposes until sold. Coal land may also be leased for agricultural cultivation for periods not exceeding five years as provided by the legislature.

Section 164 gives the Legislative Assembly authority to provide by law for the sale or disposal of all public lands granted by the United States to the state for purposes

other than the support of the common schools. The Legislative Assembly, in providing for the appraisal, sale, rental, and disposal of such lands, shall not be subject to the provisions and limitations imposed by the Constitution regarding common school lands.

Board of University and School Lands

The Board of University and School Lands has full control of the selection, appraisal, rental, sale, disposal, and management of (1) lands donated or granted by or received from the United States or from any other source for the support and maintenance of the common schools; (2) all lands the state acquires by escheat (failure of ownership); (3) all lands donated or granted by or received from the United States or from any other source for the maintenance of the educational, penal, or charitable institutions; and (4) all lands acquired by the state through investment of the permanent school funds, as a result of mortgage foreclosure or otherwise (Section 15-01-02, NDCC).

Original Enabling Act grant land is sold following appraisal by the county board of appraisers and newspaper notice at public auction in the county in which the land is situated. All nongrant land is to be sold at public sale except (1) land obtained through foreclosure which may be repurchased by the mortgagor or his heirs by private sale, at any time before such lands are offered at public sale, for not less than the amount due at the time of the foreclosure sale with interest, and (2) land acquired under a cancelled contract for deed which may be redeemed by the purchaser or his heirs during a one-year period from the date of cancellation for not less than the amount due at the time of cancellation with interest.

Nongrant land sold at public auction is to be sold to the highest bidder. The auction must be held in the county in which the lands are located following newspaper notice. The land cannot be sold for less than appraised value.

Other State Entities

A different sale procedure is set forth for the remaining state entities. Real property held in the name of the state of North Dakota for the use and benefit of any of its departments or agencies may be transferred and conveyed by quitclaim deed, executed in the name of the state of North Dakota, by the Governor and attested by the Secretary of State (Section 54-01-05.1, NDCC). Whenever any department or agency of the state other than the Board of University and School Lands and the Bank of North Dakota is authorized to sell such real property, the sale must be for cash. The land will be sold by the county auditor or other person designated by the department or agency concerned at public auction held at the courthouse of the county where the real property is located. Notice of sale is to be published in the official paper of the county in which the property lies for three consecutive weeks, the last publication to be not less than 10 days before the sale date. The administrative head of the department or agency concerned is to issue the notice in his or her name, and notice is to set out the place, day, and hour of the sale, a description of the real property to be sold, and include a statement that the state reserves the right to reject any and all bids (Section 54-01-05.2, NDCC).

Legislative Transfers or Sale Authorizations

In regard to legislative transfers of land, Section 54-01-05.3 provides that each bill authorizing or directing the sale, lease, or exchange of specific land owned by the state, or any of its instrumentalities, must be referred upon or prior to its introduction, to the Attorney General. The Attorney General is then to review the bill to ensure that it contains a sufficient legal description and accurately describes the parties to the transaction. The Attorney General is to receive an abstract of title to the land to be sold, continued to date, and give his legal opinion as to ownership of the land. The Attorney General then is to present the bill and a written report of his findings to the presiding officer of the house in which the bill is introduced.

The Attorney General will also, under Section 54-01-05.3, receive an opinion from the Commissioner of University and School Lands on whether the sale, lease, or exchange contemplated is consistent with the commissioner's classification of the particular parcel of land pursuant to Section 15-02-05.1, and relative to the appraised value of the land. The Attorney General is to include this opinion in his report.

Section 15-02-05.1 provides that, as an aid in making the necessary determinations, the Commissioner of University and School Lands is to classify all land owned by the state or it instrumentalities according to its highest and best use. "Highest and best use" is that use of the land which will most likely produce the greatest benefit to the state and its inhabitants, and which will best meet the needs of the people. The considerations of the commissioner shall include soils capability, vegetation, wildlife use, mineral characteristics, public use, recreational use, commercial or industrial use, aesthetic values, cultural values, surrounding land use, nearness to expanding urban areas, and any other resource, zoning, or planning information relevant to the determination.

Remaining State Lands

When North Dakota was admitted to the Union, the state was granted land from the public domain for the support and maintenance of the common schools, for buildings at the State Capitol, and for various educational and charitable institutions. The land is commonly referred to as "original grant land" and amounted to 3,191,770.28 acres. In addition to "original grant land," North Dakota acquired more than 1.5 million acres, most of it through foreclosure of farm loans during the 1930's. This land is commonly referred to as "nongrant lands" or "acquired lands."

A total of 707,517.14 acres of "original grant" and "acquired" land remain today under the control of the Board of University and School Lands.

The next largest holder of state-owned land is the Highway Department which controls 196,884.66 acres. An additional 116,517.64 acres of state-owned land are controlled by 10 state agencies, boards, and departments for a grand total of 1,020,919.44 acres of state-owned land, or approximately 2.3 percent of the total acreage in the state (approximately 45,225,000 acres).

Legislative Land Transfer Bill

After hearing from various departments and agencies concerning the methods used for the sale and lease of state-owned land and after consideration of present law concerning the transfer of state-owned land, the committee expressed satisfaction with present methods of executive land transfer and concentrated its efforts on the procedure for transferring state-owned land by legislative enactment.

A number of concerns were expressed by the committee members. With comparatively little state-owned land remaining, the committee believes more control is needed over legislative transfers. Concerns were expressed

whether the legislature gets the necessary information needed for making an intelligent decision concerning a proposed transfer. Instances were cited where bills have been introduced in prior sessions without much being known concerning the reasons for the proposed transfer.

Concerns were also expressed whether the legislature should be responsible for specifically determining to whom a sale is going to be made, the method of sale, and the sale price. Concerns were expressed whether the state gets the true value it could potentially get for the land through legislative transfer. The committee believes land should have an appraised value and be put up for auction for not less than appraised value with the legislature only being concerned with whether or not the land should be sold.

Concern was additionally expressed about late bills being introduced through the Delayed Bills Committee. The committee believes the legislature should have more time to consider land transfer proposals. Additionally, Land Department representatives said they did not have sufficient time during a legislative session to do the type of appraisal and analysis needed. The Land Department cited problems of appraising land in January or February.

The committee believes the legislature should consider whether a proposed transfer is in the best interests of the state rather than just in the best interests of the persons in a limited geographical area. The legislature should also know what the future potential is for the land and how a sale would affect the future of the institution controlling the land.

The attitude of the institution controlling the land should additionally be available to the legislature through a written report.

The committee therefore recommends legislation requiring every legislative bill which authorizes the sale, lease, or exchange of state-owned land to be prefiled by the first day of the legislative organizational session. The sale or lease of state-owned land would be at public auction.

A written report from the supervising agency controlling the land is to accompany each legislative bill and include:

1. An analysis of the type of land involved.
2. A title opinion and an updated abstract of title for land sales or exchanges.
3. A determination of whether the land is needed for present or future agency uses.
4. A description of the party or parties, if known, who are interested in the land and the purposes for which the land is desired.
5. A determination of whether it is or is not in the best interests of the state to sell, lease, or exchange the land.
6. One appraisal for land sales or exchanges when the land value is $50,000 or less, and two or more appraisals when the land value is in excess of $50,000.
7. A map showing the boundaries of the land proposed to be sold, leased, or exchanged; the present ownership of land adjacent to such lands; and the purposes for which the adjacent lands are used.

The Commissioner of University and School Lands is to review each legislative bill along with the written report from the supervising agency prior to the beginning of the regular legislative session. The commissioner then will issue a written opinion on the proposed transfer and, in doing so, is to consider the "highest and best use" of the land.

If a proposed legislative transfer is approved and becomes law, land to be sold or leased is to be offered at public auction conducted by the State Land Department pursuant to department rules. No land is to be sold at auction for less than appraised value and the buyer or buyers are to pay additionally the cost of preparing the land for sale as determined by the State Land Department. If more than one appraisal is provided, the appraised value of the land to be sold is to be as determined by the Commissioner of University and School lands. The value is not to be less than the lowest appraisal or higher than the highest appraisal.

Section 54-01-05.3 which provides the present procedure for legislative sale of state land would be repealed.

Game and Fish Department Leases

Concern was expressed during the committee's study about the Game and Fish Department offering farming, haying, and grazing leases on a first preference basis to the former landowner or to an adjacent landowner rather than offering land leases to the public at large. Several committee members expressed concern that others near the Game and Fish Department land also suffer from wildlife depredation but have no opportunity to lease the land. Several members believe this is an unfair practice because the contracts usually continue on for a number of years.

Game and Fish Department representatives explained that Game and Fish Department land is currently leased for one to five year periods on a 70 to 30 percent share basis. The lessee provides the machinery for farming leases and assumes any other expenses necessary to produce a crop. The lessee then gets 70 percent of the resulting crop and the Game and Fish Department gets 30 percent which is used for winter wildlife feeding. Hayland is leased on an annual basis with income to the department based on the net tons produced.

The committee requested and considered a bill draft which would limit lease periods of Game and Fish Department lands to no longer than five years for farming or haying leases. Leases could not be entered into other than through advertisement and public bids. Following consideration at two committee meetings, the bill was withdrawn from further committee consideration because of problems in determining a proper bidding procedure.

SENATE

Senate Bill No. 2002 — Legislative Wing Improvement and Renovation. This bill appropriates $2,075,000 for improvements to and renovation of the legislative wing and certain portions of the ground floor and second floor levels of the Capitol tower, including new electronic voting systems and electronic bulletin boards. (Legislative Procedure and Arrangements Committee)

Senate Bill No. 2042 — Objections to Administrative Agency Rules. This bill authorizes the Administrative Rules Committee to object formally to an administrative agency rule and thus place on the agency the burden of establishing that the rule is within the agency's authority. (Administrative Rules Committee)

Senate Bill No. 2043 — Agency Rule Duplication of Statutory Language. This bill provides that the Attorney General cannot approve any rule as to legality if that rule merely repeats or paraphrases statutory language purportedly implemented by that rule. (Administrative Rules Committee)

Senate Bill No. 2044 — Effective Date of Agency Rules. This bill provides that rules become effective the first day of the month after the month of publication in the North Dakota Administrative Code. (Administrative Rules Committee)

Senate Bill No. 2045 — Repeal of Random Motor Vehicle Maintenance Program. This bill repeals the random motor vehicle maintenance program operated by the Highway Patrol. (Administrative Rules Committee)

Senate Bill No. 2046 — Noxious Weed Control. This bill establishes county weed boards as the primary noxious weed control authorities in the state; requires the appointment, certification, and education of county weed control officers; and authorizes leafy spurge and cannabis control programs. (Agriculture Committee)

Senate Bill No. 2047 — Allows Changes to Central Personnel Classification System. This bill allows changes to the Central Personnel classification system during a biennium, including the addition of classifications to the compensation plan during a biennium. (Budget "B" Committee)

Senate Bill No. 2048 — State Becomes Self-Insurer of Life Insurance Program. This bill provides the option for the state to become a self-insurer of the state employee life insurance program. (Budget "B" Committee)

Senate Bill No. 2049 — Organization and Use of Data Processing Resources. This bill defines the responsibilities of the Central Data Processing Division and state agencies for use of data processing resources. It provides that the director of the Central Data Processing Division is to supervise all executive branch agency data processing activities and approve data processing equipment acquisitions. The bill requires state agencies to develop data processing plans as part of their biennial data processing budget requests. It also creates a data processing committee to advise the Central Data Processing Division on its services. (Data Processing Committee)

Senate Bill No. 2050 — Regulation of the Collection and Dissemination Information About Individuals Maintained by State Agencies. This bill limits the collection and dissemination of personal or confidential information on individuals by state agencies to situations where it is necessary to administer state or federal programs; where written consent or request has been made by the individual; or for law enforcement or judicial purposes. The bill provides that individuals may review confidential or personal information about them that is on file with a state agency. The bill also provides for legal recourse and penalties. (Data Processing Committee)

Senate Bill No. 2051 — Availability of Information From Business Entities Offering Data Processing Services. This bill prohibits disclosure by any business entity offering data processing services for a fee, of the information it is processing, except written consent of the individual or business for which the data processing service is performed. (Data Processing Committee)

Senate Bill No. 2052 — School Aid Weighting Factor Change. This bill changes the weighting factor from .9 to 1.0 for public elementary schools with an enrollment of 100 or more but less than 1,000. (Education Committee)

Senate Bill No. 2053 — Analyzing School Bus Routes. This bill appropriates $180,000 to reimburse school districts who receive an analysis of their school bus routes through the Engineering Experiment Station at North Dakota State University in Fargo. (Education Committee)

Senate Bill No. 2054 — Unemployment Compensation — Employer Liability. This bill provides that wages earned in insured work by an individual who leaves a base period employment, either voluntarily or through misconduct connected with the employment, are not to be included in the base period for the purpose of determining that individual's monetary eligibility to receive unemployment compensation, although compensation cannot be totally denied to any otherwise eligible individual under this bill. (Education Committee)

Senate Bill No. 2055 — Employee Eligibility for Unemployment Compensation Benefits. This bill provides that an individual is to be disqualified for unemployment compensation benefits if he has left his last or any base period employment voluntarily without good cause attributable to the employer, or for misconduct, unless he can demonstrate that he has earned remuneration for personal services in employment equivalent to at least 10 times his weekly benefit amount and has not left his last work under disqualifying circumstances. (Education Committee)

Senate Bill No. 2056 — Water Sales Exempt From Sales Tax. This bill exempts all sales of water, including bottled water, from sales tax. (Finance and Taxation Committee)

Senate Bill No. 2057 — All Real Property Assessed Equally. This bill requires all property to be assessed at 10 percent of its true and full value, repeals the 21-mill levy for schools and replaces those funds with a state general fund appropriation of $33 million, provides that statements of full consideration be filed with the State Board of Equalization or the register of deeds whenever a deed is filed, and contains an emergency clause. (Finance and Taxation Committee)

Senate Bill No. 2058 — Classification of Real Property for Taxation. This bill provides for the classification of property in four different classes for purposes of assessment — agricultural land at 6.8 percent; residential property at 10.4 percent; business, commercial, and railroad property at 12.2 percent; and property assessed by the State Board of Equalization other than railroad property at 18.4 percent. This bill also limits the increases or reductions on property taxes levied for the first two years, requires statements of full consideration, and has an emergency clause. (Finance and Taxation Committee)

Senate Bill No. 2059 — Property Taxation — Separate Classification for Agricultural Property. This bill requires all property to be assessed at 10 percent of its

true and full value except agricultural property which would be assessed at 7.5 percent of true and full value. The bill also provides for a limited homestead exemption, limits increases or reductions in taxes for the first two years, requires statements of full consideration, and contains an emergency clause. (Finance and Taxation Committee)

Senate Bill No. 2060 — Home Health Agencies. This bill requires home health agencies to obtain licenses from the Health Department and provides for state payment for home health care services for indigents. (Health Care Committee)

Senate Bill No. 2061 — Health Maintenance Organizations (HMOs). This bill removes statutory restrictions on the development of HMOs and authorizes the Public Employees Retirement Board to provide an HMO option for eligible employees. (Health Care Committee)

Senate Bill No. 2062 — Revised Uniform Comparative Fault Act. This bill creates the Revised Uniform Comparative Fault Act which sets out the effect of the contributory fault of each party to a lawsuit on the recovery of damages, the apportionment of damages, setoff restrictions, right to an enforcement of contribution by other parties at fault, and effect of a release. (Judiciary "A" Committee)

Senate Bill No. 2063 — Private Rights of Action Against Insurance Companies. This bill authorizes private rights of action against insurance companies for violation of the Unfair Insurance Practices Act. (Judiciary "A" Committee)

Senate Bill No. 2064 — Sentencing Authority of Municipal Judges. This bill clarifies the right of a municipal judge to impose deferred or suspended sentences. It also gives municipal courts specific authority to use sentencing alternatives other than fines and imprisonment. (Judiciary "A" Committee)

Senate Bill No. 2065 — Payment of Fines Into the Municipal Treasury. This bill clarifies the fact that all fines, penalties, and forfeitures collected as a result of a judgment of a district court or county court of increased jurisdiction rendered pursuant to an appeal from the municipal court, are to be paid into the municipality's treasury. (Judiciary "A" Committee)

Senate Bill No. 2066 — Uniform Court Financial Accounting Procedures. This bill authorizes the Supreme Court to establish uniform court financial accounting procedures which do not conflict with the accounting procedures established by the State Auditor. (Judiciary "A" Committee)

Senate Bill No. 2067 — Change of Judge in Postjudgment Proceedings. This bill allows a request for a change of judge in postjudgment divorce proceedings to modify an order for alimony, property division, child support, or child custody. (Judiciary "A" Committee)

Senate Bill No. 2068 — Eminent Domain Changes. This bill requires a condemnor to make a written offer based on an appraisal prior to starting an eminent domain action, and provides for disclosure of other property owners affected by a project. Condemnation commissioners to appraise affected property, upon request, are also authorized, as is possession of the property after judgment or condemnation commissioner award. Conditions are also established for mandatory payment of litigation expenses to the landowner. No court challenge as to use and necessity may be made more than 90 days after written notification to affected property owners of a Public Service Commission decision granting a transmission facility route permit or an energy conversion facility certificate of site compatibility. Additionally, the bill requires the Attorney General to prepare descriptive pamphlets on eminent domain which the condemnor is to provide to affected landowners. (Judiciary "B" Committee)

Senate Bill No. 2069 — Motor Vehicle Titling and Registration. This bill provides for extensive amendment of the motor vehicle titling and registration statutes with emphasis on delineating the differences between the registration and titling processes. (Judiciary "C" Committee)

Senate Bill No. 2070 — No-fault Insurance — Motor Vehicle Owner Defined. This bill defines motor vehicle owner for the purposes of the no-fault insurance statutes as a person, other than a lienholder, having the property in or title to a vehicle. (Judiciary "C" Committee)

Senate Bill No. 2071 — Repeal of Blank Pistol Prohibition. This bill repeals Section 62-04-05 which makes the manufacture, use, sale, or keeping for sale in the state any blank cartridge pistol, blank cartridge revolver, or other blank cartridge firearm, or a blank cartridge cap containing dynamite, or firecrackers exceeding more than three inches in length and one-half inch in diameter, a misdemeanor. (Judiciary "C" Committee)

Senate Bill No. 2072 — Teacher Representation at Nonrenewal or Discharge Hearing. This bill provides that a teacher's spouse or one other family member of the teacher's choice, in addition to the two representatives presently allowed, may attend a hearing of the school board on discharge for cause or nonrenewal of the teacher's contract if the teacher so desires. (Judiciary "C" Committee)

Senate Bill No. 2073 — Commissioner of Deeds Authority. This bill repeals Chapter 44-07 which provides for an official to furnish notarial services outside the state. The position has not been filled in recent years. (Judiciary "C" Committee)

Senate Bill No. 2074 — Federal Aid Coordinator Appointed by the Governor. This bill provides for the appointment of the Federal Aid Coordinator by the Governor and requires the Governor to set the salary of the coordinator within the limits of legislative appropriation. (Judiciary "C" Committee)

Senate Bill No. 2075 — Ten Commandments Display in Classrooms. This bill provides that the display of the Ten Commandments in classrooms will be permissive rather than mandatory and that the placards will be purchased with funds available through voluntary contributions made to the school board or the president of the institution of higher education. The bill also contains a statement of purpose for the display which relates to the secular application of the Ten Commandments. (Judiciary "C" Committee)

Senate Bill No. 2076 — Eminent Domain Plaintiff to Pay Jury Costs. This bill provides that the plaintiff, other than a governmental entity, exercising eminent domain authority must pay jury costs before a final condemnation order will be issued. (Judiciary "C" Committee)

Senate Bill No. 2077 — Wage Assignments for Child Support. This bill makes the North Dakota statutes relating to wage assignments for child support consistent with federal limitations. (Judiciary "C" Committee)

Senate Bill No. 2078 — Compensation Paid Election Officials and the Ballot Form. This bill resolves a conflict between duplicate sections relating to compensation paid inspectors, judges, and clerks at elections and arrangements of names on the general election ballot. (Judiciary "C" Committee)

Senate Bill No. 2079 — Motor Vehicles — Transfer Abandoned Motor Vehicle Fund. This bill provides for the transfer of excess funds in the abandoned motor vehicle disposal fund to the general fund and for the

suspension of the tax on certificates of title. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2080 — Veterans — Vietnam Bonus Fund Transfer to General Fund. This bill transfers the balance of moneys in the Vietnam veterans' adjusted compensation funds on July 1, 1981, to the general fund. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2081 — Revision of State's Accounting and Financial Reporting System. This bill directs the Director of the Department of Accounts and Purchases to revise the state's accounting and financial reporting system, including provision for an accrual accounting system. A $1 million general fund appropriation to the Department of Accounts and Purchases is provided to implement those revisions. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2082 — State Hospital — Patients Transferred From County Jails. This bill prohibits the State Hospital from charging for services to patients who are transferred to the State Hospital from county jails. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2083 — Consolidation of Cities. This bill provides a procedure for the consolidation of cities upon a majority affirmative vote of the electors of each city. (Political Subdivisions Committee)

Senate Bill No. 2084 — Extraterritorial Zoning Along Nonradial Lines. This bill limits cities' extraterritorial zoning jurisdiction to each quarter quarter section, the majority of which is within a specified distance of the city limits. (Political Subdivisions Committee)

Senate Bill No. 2085 — Nursing Home Revolving Loan Fund Available for Facilities for Physicially Handicapped. This bill provides revolving loan funds for nursing homes and homes for the aged and infirm available for facilities constructed or used exclusively for the physically handicapped. (Social Service Committee)

Senate Bill No. 2086 — County and City Jail Grant Program. This bill appropriates $3,923,380 for a county and city jail matching grant program to be used for jail and juvenile detention facility construction and renovation or other programs which enable local governments to meet jail standards. Funds could also be used for purchasing and operating vehicles to transport prisoners to other jails, for associated costs of prisoner transportation, and for housing in other approved facilities. The Law Enforcement Council would receive $125,000 to administer the program. (State and Federal Government "B" Committee)

Senate Bill No. 2087 — State Penitentiary, State Farm, and Satellite Facility Construction. This bill appropriates $20,789,080 for construction, renovation, and equipping of facilities at the State Penitentiary; $2,400,500 for constructing new facilities at the State Farm; and $2,232,150 for constructing a new satellite correctional facility. The Director of Institutions would receive $55,000 for hiring an attorney to assist in monitoring the implementation of the correctional system plan and to perform other duties. (State and Federal Government "B" Committee)

Senate Concurrent Resolution No. 4001 — Study of Jurisdiction Over Equitable Cases, Provisional Remedies, and Trusts. This resolution directs the Legislative Council to study the subject of jurisdiction over equitable cases, provisional remedies, and trusts, with emphasis on the appropriate jurisdiction of the new county courts. (Judiciary "A" Committee)

Senate Concurrent Resolution No. 4002 — New Political Subdivisions Article. This resolution calls for a new political subdivisions article to the State Constitution which would require that the Legislative Assembly provide for the extension of home rule to county government; allow the Legislative Assembly or a home rule charter to provide that a political subdivision could transfer, or revoke the transfer, to the county in which it is located any of its powers or functions, and provide that county offices would no longer have constitutional status. (Judiciary "C" Committee)

Senate Concurrent Resolution No. 4003 — Size of Board of County Commissioners. This resolution calls for a constitutional amendment which allows any county with a population greater than 15,000 to increase the number of county commissioners to seven or nine. This draft would only place the question on the ballot in the general election in 1982 if the proposed political subdivision article is not passed in the primary election in that year. (Judiciary "C" Committee)

Senate Concurrent Resolution No. 4004 — Eliminate Obsolete Reference in Constitution. This resolution calls for an amendment to Section 7, Article IX, of the Constitution to delete references to Section 159 which has been repealed. (Judiciary "C" Committee)

Senate Concurrent Resolution No. 4005 — Eliminate Obsolete Reference to School for the Blind. This resolution calls for an amendment to Section 13, Article IX, of the Constitution to eliminate obsolete references relating to the School for the Blind. This resolution also transfers power to determine the location of the School for the Blind from the Board of Administration to the Legislative Assembly. (Judiciary "C" Committee)

Senate Concurrent Resolution No. 4006 — Eliminate Obsolete Reference to Four-Mill State Property Tax. This resolution calls for amendment of Section 9, Article X, of the Constitution to remove reference to the four-mill state property tax which can no longer be levied due to approval by the voters of an amendment to Section 1, Article X, of the Constitution. (Judiciary "C" Committee)

Senate Concurrent Resolution No. 4007 — Repeal Section 12.1, Article VI, of the Constitution. This resolution calls for the repeal of Section 12.1, Article VI, of the Constitution. This section relates to retirement, discipline, and removal of the Supreme Court and district court judges, and duplicates another section of the constitution. (Judiciary "C" Committee)

Senate Concurrent Resolution No. 4008 — Election of the Governor and Lieutenant Governor. This resolution calls for a constitutional amendment to provide for the election of the Governor and Lieutenant Governor to a two-year term in 1984 and thereafter to four-year terms. (Judiciary "C" Committee)

Senate Concurrent Resolution No. 4009 — Revisions of State's Accounting and Financial Reporting System. This resolution directs the Director of the Department of Accounts and Purchases to revise the state's accounting and financial reporting system, to include an accrual accounting system. (Legislative Audit and Fiscal Review Committee)

Senate Concurrent Resolution No. 4010 — Fort Berthold Reservation As One County. A concurrent resolution directing the Legislative Council to study the feasibility of consolidating the Fort Berthold Indian Reservation into a single county. (State and Federal Government "A" Committee)

HOUSE

House Bill No. 1042 — Redefinition of Administrative Agency. This bill redefines administrative agency to include every administrative unit of the executive branch of state government, with exceptions specifically listed. (Administrative Rules Committee)

House Bill No. 1043 — Agencies Specifically Subjected to Chapter 28-32. This bill specifically subjects the Seed Department, Laboratories Department, Highway Corridor Board, and hazardous materials regulations of the Motor Vehicle Department to the Administrative Agencies Practice Act, and specifically excepts the interest rate determinations of the State Banking Board from the public hearing and notice requirements of the Act. (Administrative Rules Committee)

House Bill No. 1044 — Redefinition of Rule. This bill redefines rule to include all statements of general application which implement, interpret, or prescribe law or policy, with exceptions specifically listed. (Administrative Rules Committee)

House Bill No. 1045 — Emergency Commission Appropriation for Energy-Related Regulatory Duties. This bill appropriates $200,000 to the Emergency Commission for state agencies to conduct additional regulatory duties resulting from increased energy development. (Budget "A" Committee)

House Bill No. 1046 — Status of Mental Health and Human Service Centers. This bill clarifies the status of the mental health and retardation service units and human service centers under the Central Personnel Division classification and pay plan. It provides that all mental health and retardation service units and human service centers will be required to come under the Central Personnel Division classification and pay plan. (Budget "B" Committee)

House Bill No. 1047 — PERS Totally State Funded. This bill provides for a totally state-funded retirement system. The state would pay 9.12 percent of the employee's monthly salary providing the employee an increase in take home pay equal to his present contribution to the plan. The benefit factor used to calculate retirement benefits would also increase from 1.04 percent to 1.1 percent. (Budget "B" Committee)

House Bill No. 1048 — Counties Exempted From Paying Medical Services. This bill exempts counties from reimbursing the State Social Service Board for funds spent for medical services by intermediate care facilities for the developmentally disabled persons. (Budget "B" Committee)

House Bill No. 1049 — Loan Fund for Facilities for Developmentally Disabled. This bill establishes a loan fund at the Bank of North Dakota allowing a preferable interest rate of two percent below the Bank of North Dakota's prime interest rate and includes an appropriation of $4 million in general fund moneys for the remodeling, construction, or acquisition of intermediate care facilities for the developmentally disabled in accordance with the plan approved by the Budget "B" Committee. (Budget "B" Committee)

House Bill No. 1050 — Authority to License Facilities for Developmentally Disabled Persons. This bill clarifies the authority of the Division of Vocational Rehabilitation and the Mental Health and Retardation Division to license facilities for developmentally disabled persons. (Budget "B" Committee)

House Bill No. 1051 — Interstate Vocational Education Reciprocity Agreements. This bill authorizes the State Board for Vocational Education to enter into reciprocity agreements with Minnesota in the area of post-secondary vocational education. (Education Committee)

House Bill No. 1052 — Handicapped Education Cost Sharing Arrangements. This bill provides for contracts between the state institutions and local school districts for those costs of educating handicapped children at the state institutions over and above what the state institution normally budgets, and provides that these costs be paid from funds appropriated to the Emergency Commission for special education. (Education Committee)

House Bill No. 1053 — Isolated School District Additional Aid. This bill appropriates $8 million for additional aid to isolated school districts in North Dakota which qualify. (Education Committee)

House Bill No. 1054 — Redistribution of Remainder of Current Biennium's Foundation Aid. This bill contains an emergency provision and authorizes the expenditure of $12 million in unexpended foundation aid appropriation to school districts based on school bus transportation mileage and average daily membership. (Education Committee)

House Bill No. 1055 — Dedication of Portion of Oil and Gas Tax to Secondary Roads. This bill changes the distribution of the initial one percent of the existing oil and gas gross production tax so that 15 percent of that amount is earmarked for use by the State Highway Department to assist in constructing and maintaining secondary roads. (Finance and Taxation Committee)

House Bill No. 1056 — Oil and Gas Tax Distribution — Increasing County Distribution. This bill changes the oil and gas gross production tax distribution brackets from increments of $200,000 to increments of $400,000. (Finance and Taxation Committee)

House Bill No. 1057 — In-County Distribution of Oil and Gas Tax. This bill changes the distribution of money from the oil and gas gross production tax within a county by dividing that portion which currently goes to the county road and bridge fund equally between the county road and bridge fund and the county general fund. (Finance and Taxation Committee)

House Bill No. 1058 — Uninsurable Pooled Risk Group Program. This bill establishes an intercarrier pool of insurance companies to offer six health insurance plans to medically uninsurable residents at premiums which are self-supporting and based on generally accepted actuarial principles. (Health Care Committee)

House Bill No. 1059 — Guaranteed Renewable Accident and Sickness Insurance Policies. This bill forbids cancellation of a guaranteed renewable accident and sickness insurance policy for any reason, other than failure to make timely payments, except after written notice of at least 24 months delivered or mailed to the insured. (Health Care Committee)

House Bill No. 1060 — Unified Judicial System — State Assumption of District Court Expenses. This bill establishes a unified judicial system, consisting of the Supreme Court, the district courts, the county courts, and the municipal courts, and provides for the assumption by the state of many district court expenses. (Judiciary "A" Committee)

House Bill No. 1061 — Technical Corrections Necessitated by the Unified Court Systems Bill. This bill amends all sections of the North Dakota Century Code which are affected by the unified judicial system bill. It removes references to the county courts of increased jurisdiction, county judge with increased jurisdiction, county justices, and county justice courts and replaces

them, where necessary, with references to the county court and county judge. The bill also relates to the payment of certain distraict court expenses. (Judiciary "A" Committee)

House Bill No. 1062 — State Officer and Employee Defense Fund. This bill appropriates $500,000 for a special fund to defend state officers and employees against claims arising out of negligence or any wrongful act, error, or omission while acting in an official capacity or within the scope of employment. The fund could be used by the Attorney General to provide a defense, and to pay reasonable attorneys' fees, costs, attorneys' fees awarded against a state official, and expenses other than money damages resulting from a judgment. No waiver of sovereign immunity is made by the state. Additionally, state agencies could purchase liability insurance and would waive immunity only as to the amount and types of coverage obtained. (Judiciary "B" Committee)

House Bill No. 1063 — Political Subdivisions Liability Act Changes. This bill provides that a political subdivision must be sued directly for injuries caused by the alleged negligence, wrongful act, or omission of an official or employee who was acting within the scope of employment or office. An official or employee could be joined in the suit if there is any question whether the officer or employee was acting within the scope of employment or office. An officer or employee would not be liable for money damages if acting within the scope of employment or office. (Judiciary "B" Committee)

House Bill No. 1064 — Garnishment. This bill creates a new simplified garnishment procedure which is in compliance with federal law. (Judiciary "C" Committee)

House Bill No. 1065 — Required Consent Before Adoption. This bill amends the statutes which require the consent of a mother of an illegitimate child before it may be adopted, but do not require similar consent from the father by removing the distinction between the unwed mother and the unwed father. The bill also provides that consent to adoption by an unwed parent (mother or father) is not required if the failure of the parent to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent contrary to the best interests of the child. (Judiciary "C" Committee)

House Bill No. 1066 — Adult Court Jurisdiction Over Certain Juvenile Traffic Offenses. This bill provides that all Title 39 motor vehicle offenses committed by juveniles 14 years and older will be handled in adult court. (Judiciary "C" Committee)

House Bill No. 1067 — Technical Correction — State Property Tax Reference. This bill removes a reference to the state property tax rate in Section 57-15-02 in response to the approval by the voters at the primary election of the amendment to Section 1, Article X, of the Constitution to prohibit legislative imposition of property taxes. The bill also repeals two obsolete sections relating to the state four-mill property tax. (Judiciary "C" Committee)

House Bill No. 1068 — Technical Corrections — County Judge and Clerk of District Court. This bill makes technical corrections to the Code which are necessary due to the approval of the amendment of Section 8, Article VII, of the Constitution to remove the county judges as a constitutional office if the judicial revision bill submitted by the interim Judiciary "A" Committee is not approved by the 1981 Legislative Assembly. (Judiciary "C" Committee)

House Bill No. 1069 — Technical Corrections — Obsolete Name and Statutory References. This bill makes technical corrections which eliminate obsolete name and statutory references throughout the North Dakota Century Code. (Judiciary "C" Committee)

House Bill No. 1070 — Insurance — Repeal New Construction Rate. This bill eliminates the higher rate charged for insurance of new buildings, or for additional insurance on existing buildings, by the State Fire and Tornado Fund. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1071 — Scholarships — Cease Collection Efforts on Uncollectible Loans. This bill allows the Bank of North Dakota to cease collection efforts on loans made from the state scholarship revolving fund when loans are determined to be uncollectible by action of the Industrial Commission. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1072 — Secretary of State — Central Microfilm Division to be Funded by General Fund. This bill provides that the Central Microfilm Division of the Secretary of State's office be funded by general fund appropriation, and that central microfilm revenue be deposited in the general fund rather than a special fund. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1073 — Insurance — Premium Tax and Annual Statement Deadline. This bill provides that the insurance premium tax payment deadline and the filing date for an insurance company's annual statement be changed from April 1 to March 1. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1074 — Penalties for Public Printing contracts. This bill increases the penalty for failing to complete a public printing contract on time from one-fourth of one percent per day to a maximum of $250 per day as may be provided in the contract. (Legislative Procedure and Arrangements Committee)

House Bill No. 1075 — Control Over Memorial Hallway and Legislative Chambers. This bill provides that the Legislative Council have jurisdiction over displays in Memorial Hallway and use of the legislative chambers. (Legislative Procedure and Arrangements Committee)

House Bill No. 1076 — Floodplain Management. This bill grants local communities express authority to control floodway and floodplain development based on criteria and standards established by the State Engineer. (Natural Resources Committee)

House Bill No. 1077 — Water Resource Reorganization. This bill eliminates existing water management districts and legal drain boards and provides instead for water resource districts with jurisdiction along watershed boundaries, possessed of taxing, bonding, and assessment authority and extensive control over management of waters. (Natural Resources Committee)

House Bill No. 1078 — County Installation of Rural Subdivision Improvements. This bill expands the types of improvements a board of county commissioners can provide at the request of residents of rural subdivisions, and it allows county commissioners to provide by resolution for the installation of improvements and the assessment of benefited property owners. (Political Subdivisions Committee)

House Bill No. 1079 — Incorporation of Cities. This bill provides criteria for county commissioners in considering whether to approve, disapprove, or approve in part petitions for city incorporation. The final decision of the board of county commissioners is appealable to the newly created Municipal Incorporation Review Commission. (Political Subdivisions Committee)

House Bill No. 1080 — City Cooperation with Service Districts. This bill allows cities and rural subdivision

service districts to engage in joint or cooperative activities. (Political Subdivisions Committee)

House Bill No. 1081 — Rural Subdivision Service Districts. This bill enables the residents of a rural subdivision to create a service district for the installation of improvements and provision of governmental services provided that the improvements and services are approved by the local township or county. (Political Subdivisions Committee)

House Bill No. 1082 — County Regulation of Rural Subdivisions. This bill grants counties express authority to regulate development of rural subdivisions and provides criteria and procedures for doing so. (Political Subdivisions Committee)

House Bill No. 1083 — Change in Residence Test for Poor Relief — Allocation of Local Share of Assistance Costs. This bill provides a physical presence test to determine residence for poor relief purposes, states how residence is lost, notes the effects of a change in county residence, and provides fiscal relief for counties by changing the basis for allocating the local share of assistance costs. (Social Services Committee)

House Bill No. 1084 — Comprehensive Social Services Plan — Changes Formula for State Share of Nonfederal Funds. This bill provides for a comprehensive planning mechanism for delivery of social services and changes the state share of nonfederal funds for Title XX programs from 50 percent of the nonfederal share to 16 percent of the federal share. (Social Services Committee)

House Bill No. 1085 — Prisoners Eligible for State Farm — Sentencing Alternatives. This bill prohibits prisoners with a history of violent assaultive behavior which has resulted in physical injury or serious psychological harm to others from being sentenced to the State Farm. A person guilty of a felony or a Class A misdemeanor could be sentenced to a state correctional facility, a regional corrections center, or a county jail; and a person guilty of a Class B misdemeanor could be sentenced to a county jail or a regional corrections center. The bill also allows female offenders to be sentenced to a facility under the same conditions as State Farm inmates when their sentence is more than 30 days but not more than a year. A person convicted of a felony who is sentenced to imprisonment for a year or less is deemed convicted of a misdemeanor upon successful completion of imprisonment. (State and Federal Government "B" Committee)

House Bill No. 1086 — Legislative Land Transfer Procedure. This bill requires legislative bills authorizing the sale, lease, or exchange of state-owned land to be prefiled by the first day of the organizational session. Sale or lease of such lands is to be at public auction. The agency controlling the land is to provide a written report which includes a land analysis, title opinion and title abstract, a determination of whether the land is needed for agency purposes, a description of known persons interested in the land, a determination whether it is in the best interests of the state to dispose of the land, an appraisal, and a map showing the land boundaries and the ownership and use of adjacent lands. The Commissioner of University and School Lands is to review the information and issue an opinion concerning the proposed transfer. (State and Federal Government "B" Committee)

House Concurrent Resolution No. 3001 — Title XIX Plan Amended. This resolution directs the North Dakota Social Service Board to amend the State Title XIX plan to provide coverage for medical services provided by the intermediate care facilities to developmentally disabled persons. (Budget "B" Committee)

House Concurrent Resolution No. 3002 — Resolution Encouraging Service Providers to Implement Plan for Developmentally Disabled. This resolution encourages state agencies, institutions, and service providers at the community level to take such action as may be necessary to encourage the implemention of the plan for community services for developmentally disabled persons during the 1981-83 biennium. (Budget "B" Committee)

House Concurrent Resolution No. 3003 — Resolution Directing Legislative Council Study to Monitor Deinstitutionalization. This resolution directs a Legislative Council study to monitor the efforts of the State Department of Health, Social Service Board, Director of Institutions' office, and various providers of services on the community level as they establish intermediate care facilities and provide additional services to developmentally disabled persons during the 1981-83 biennium. (Budget "B" Committee)

House Concurrent Resolution No. 3004 — Leasing of State Lands. This resolution calls for a constitutional amendment which would provide that land granted to the state for educational and charitable purposes may be leased for purposes, time periods, and upon such terms and conditions as the Legislative Assembly may provide. (Judiciary "C" Committee)

House Concurrent Resolution No. 3005 — Right to Convene a Special Session. This resolution calls for a constitutional amendment which would allow the Legislative Assembly to convene in special session upon the call of the Governor or upon the written request of two-thirds of the members of each house. The mechanics of a legislative call would be provided by law. (Judiciary "C" Committee)

House Concurrent Resolution No. 3006 — University of North Dakota Medical School. This resolution directs the State Board of Higher Education to provide the third year of the University of North Dakota Medical School curriculum in North Dakota, beginning with the 1983-84 school year. (Medical Education Committee)

House Concurrent Resolution No. 3007 — Directing Funding of On-Reservation Services to Indians. A concurrent resolution urging Congress to provide direct federal funding of services to the Indian reservations in North Dakota. (State and Federal Government "A" Committee)

House Concurrent Resolution No. 3008 — Congress to Extend Reservation Benefits to All Enrolled Indians. A concurrent resolution urging Congress to extend the rights and benefits conferred by it on Indian citizens enrolled in recognized tribes to those individuals regardless of where they live. (State and Federal Government "A" Committee)

House Concurrent Resolution No. 3009 — Development of Water Policy on Indian Reservations. A concurrent resolution directing the State Water Commission to work with the Indian reservations in North Dakota to develop a comprehensive policy on the allocation of water for all of North Dakota. (State and Federal Government "A" Committee)

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 an 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.
   g. All resolutions adopted by an interim committee must be referred to the Legislative Council for approval prior to introduction during a legislative session, publication, or distribution.
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 November 15 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

7. 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.