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SUMMARY
BRIEFLY — THIS REPORT SAYS

ADMINISTRATIVE RULES COMMITTEE

The Council reviewed all state administrative agency rulemaking actions from November 30, 1980, through August 31, 1982. Although concern was expressed over the substance of some rules, no formal objections were filed. The Council also reviewed all rules of the Department of Human Services. The Council recommends a bill to specifically except rules of the central personnel system and of the director of the Central Personnel Division from the application of the Administrative Agencies Practice Act.

The Council studied the standards for accreditation of schools and the criteria for certification of teachers, with special emphasis on the procedures for adoption and the effect of the standards and criteria. The Council also reviewed teacher competency testing and evaluation for the issuance, renewal, and revocation of teachers' certificates.

AGRICULTURE COMMITTEE

The Council studied various means to attract and encourage the construction of additional agricultural products processing plants in the state. The Council makes no recommendation for legislation in this area but does recommend that the Economic Development Commission and the Agricultural Products Utilization Commission continue their cooperative efforts to attract this type of industry to the state.

The Council considered the possible combination of several agricultural products promotion agencies to allow joint efforts to increase the sales of state agricultural products. These agencies are currently working together informally and have formed the "All Crops Council" for information gathering and exchange. The Council makes no recommendation for legislation in this area.

The Council studied revisions of the state beekeeping laws. The major issues included the two-mile radius restriction, leasing requirements, registration requirements, fee assessments, inspections, and enforcement. The Council recommends a bill which among other things requires an annual beekeeper's license fee of $5; increases inspection fees from 10 cents per colony to 10 cents per colony for hobby operators, 20 cents per colony for sideline operators, and 25 cents per colony for commercial operators; and modifies the two-mile radius restriction so that it is applicable only to commercial locations maintained by different beekeepers.

The Council also studied the burden of transmission lines and pipelines on North Dakota farmland. Various state and federal laws have been enacted to regulate the construction and routing of these lines. The Council makes no recommendation for legislation in this area but does recommend continued monitoring of utilities by the Public Service Commission under the current laws.

BUDGET SECTION

The Council approved the transfer of $11,746,432.58 from the lands and minerals trust to the permanent fund of the common schools for the transfer of title of the Judicial Wing and State Office Building to the state of North Dakota. The Council also approved the fiscal year 1983 general fund appropriation and a $200,000 operating loan for Lake Region Community College.

The Council received reports on the establishment of the Department of Human Services, the status of the Southwest Pipeline Project, and the status of the general fund. The Council heard and approved requests from the Board of Higher Education for the authority to accept gifts and grants for the construction of buildings on the University of North Dakota and Mayville State College campuses.

The Council monitored the status of the nine new federal block grants created by the Omnibus Budget Reconciliation Act of 1981. The Council conducted public hearings on the proposed federal fiscal year 1983 state plans for several of the block grants.

Tour groups visited major state institutions and agencies, evaluated requests for major improvements and structures, and heard problems encountered by the institutions.

BUDGET "A" COMMITTEE

The Council monitored deinstitutionalization and the establishment of intermediate care facilities and services for the developmentally disabled. The Council heard reports on Association for Retarded Citizens v. Olson and on available services for the developmentally disabled. An amount of $3.7 million of the $4 million appropriation for the developmentally disabled loan fund has been committed to nonprofit organizations for construction of intermediate care facilities. The 1983-85 plan for developmentally disabled persons includes a request for $99.7 million, $78.5 million from the

general fund. This represents a total increase from the 1981-83 appropriations of $27.5 million, and an increase of $29.8 million from the general fund. The plan will allow for the placement of 255 residents from the Grafton State School and projects a total of 323 ICF/DD beds being in place by June 1985.

The Council heard several concerns, including a need for a continued monitoring of the community services, for cautious remodeling and construction of the Grafton State School, for adequate funding of boarding costs of special education children, and for a monitoring of available state resources to finance institutional and community programs.

BUDGET "B" COMMITTEE

The Council monitored the establishment of the University of North Dakota Medical School four-year medical education program in North Dakota, which is to be completed in 1984. The Council studied the medical center loan fund and recommends a bill to change the qualification requirements of loan applicants, amount of loans to be granted, and loan conditions.

The Council studied special funds and cash accounts maintained in the state treasury. The Council recommends two bills to help alleviate general fund cash flow problems. One bill transfers $25 million from the lands and minerals trust fund to the general fund. The other bill provides for the funding of state revenue sharing to political subdivisions directly from the general fund.

The Council recommends a bill to change the annual certification of homestead tax credit information by county auditors from March 1 to February 10 and to provide a penalty for failure to file by the deadline.

The Council requested the Office of Management and Budget to include the expenditure of funds from all sources of revenue in the executive budget, and the State Treasurer to transfer moneys remaining in the Vietnam adjusted compensation fund to the veterans' postwar trust fund. The Council encouraged agencies to be prepared to provide the 1983 Legislative Assembly with projections of state aid to political subdivisions which are compatible with the executive budget for the current and 1983-85 bienniums.

BUDGET "C" COMMITTEE

The Council contracted with the Interstate Consulting Service of the Council of State Governments for a comprehensive study of the Central Personnel Division. The Council recommends a bill to revise the structure of the State Personnel Board, the duties of the board, and the duties of the director of the Central Personnel Division.

The Council studied the fees charged by state agencies, boards, and commissions to license persons, activities, and facilities. The Council reviewed the fee structure of 17 agencies and departments of state government, giving each agency an opportunity to testify regarding the costs and collections of the fees collected by them. The Council recommends six bills to revise the fee amounts charged by the Securities Commissioner, Department of Banking and Financial Institutions, Agriculture Department, State Laboratories Department, Real Estate Commission, and Public Service Commission. The Council also recommends a bill to require agencies to provide information on fees with their biennial budget requests rather than file annual reports with the State Auditor.

The Council monitored the status of major state agency and institution appropriations. The review focused on expenditures of the institutions of higher education and the charitable and penal institutions, and the appropriations for elementary and secondary education and to the Department of Human Services for medical and economic assistance.

The Council recommends a bill to require the vehicles used by commercial haystack movers to be registered with the Motor Vehicle Department.

BUSINESS OPERATIONS COMMITTEE

The Council studied the state's Sunday closing laws, the condition of small businesses in this state, and the workmen's compensation wage base. The Council did not adopt the Business Operations Committee's report. The committee had recommended bills that would have broadened the exceptions to Sunday closing, increased the jurisdictional amount in small claims court, and clarified the law relating to shoplifting.

EDUCATIONAL FINANCE COMMITTEE

The Council studied the general subject of elementary and secondary school finance in North Dakota, focusing on the manner in which state education and transportation aid is distributed to school districts and the effectiveness of the mill levy process at the district level. The Council considered a new school funding approach known as the "70-30 concept," after the percentage objective in state-local school finance. The

Council makes no recommendation to modify the existing foundation program or to implement a new system of school funding.

The Council recommends a bill to provide for consolidation of 15 different school district mill levies into two mill levies — a general fund levy and a special fund levy.

The Council recommends a bill to alter the present system of distributing state aid to school districts for schoolbus operation costs. The bill provides for school districts to receive approximately two-thirds of their state funding entitlement on the basis of the number of students that they transport on a per-mile basis, and one-third of that entitlement on the basis of the number of students in the district compared to the total square mileage of that district.

The Council also recommends a bill to require voters in school district reorganization elections to vote on a proposed mill levy to operate the new district for one year at the same time they vote on the proposed district reorganization.

FINANCE AND TAXATION COMMITTEE

The Council studied productivity valuation of agricultural land for assessment purposes. The Council recommends two bills. One bill makes adjustments to the assessment valuation formula for agricultural land. The other bill protects taxpayers and taxing districts by allowing each taxing district to levy the same amount in dollars as levied the prior year plus seven percent, subject to adjustments.

The Council studied distribution of the revenue generated by the oil and gas gross production tax. The Council recommends a bill which places caps on county revenues from the oil and gas gross production tax for the 1983-85 biennium which are 10 percent above the caps imposed during the 1981-83 biennium.

FINANCIAL INSTITUTIONS COMMITTEE

The Council studied the state's laws dealing with regulation of financial institutions, and recommends three bills to coordinate federal and state truth-in-lending provisions by accepting, as compliance with state disclosure requirements, full compliance with federal disclosure requirements; lower the limits on loans made by large credit unions; and make "housekeeping" changes that would remove, from State Banking Board membership requirements, the provision that a member have experience in a state-chartered savings and loan association and that would coordinate language allowing state-chartered institutions the same privileges granted to their federally chartered counterparts.

The Council also studied North Dakota's interest rate laws and recommends three bills to allow variable rate loans; remove the ceiling on revolving charge account interest and allow a minimum monthly interest charge for those accounts; and increase the present ceiling on late payment charges from 18 percent a year to 21 percent a year.

The Council also studied due-on-sale clauses and regulation of bank mergers and consolidations but makes no recommendation for legislative action on these issues.

The Council studied proposals to increase the state income tax exemption on interest and also to allow a broader tax exemption for certain MIDA bond income earned by banks. Although the Council makes no recommendation for legislative action, it believes these are appropriate areas for tax relief.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Council received several briefings on the progress of the litigation surrounding the Garrison Diversion Project, the status of construction activity, the mitigation issue, discussions with Canadian officials, and on possible alternative financing for the project. The Council received comments from representatives of groups with diverse views on the project. The committee toured several features of the project and attended a Garrison Diversion Conservancy District board meeting at its headquarters in Carrington.

INSURANCE CODE REVISION COMMITTEE

The Council studied the insurance laws of the state for the purpose of making a comprehensive revision with emphasis on technical and grammatical changes. The Council recommends a bill to replace 657 statutory provisions with 538 provisions affecting the Commissioner of Insurance, insurance companies, "state" insurance companies, and insurance premiums and rates. The bill enacts a new Title 26.1. The Council also recommends a bill to make the changes throughout the North Dakota Century Code which are required due to the enactment of the new title. The Council recommends a concurrent resolution directing a study of the insurance provisions remaining in Title 26 that were not revised during the 1981-83 legislative interim.

The Council received the automobile insurance rating study report that was requested by 1981 Senate Concurrent Resolution No. 4018. The Council also received the State Auditor's recommendations on the performance audit of the Office of Commissioner of Insurance.

JUDICIARY COMMITTEE

The Council studied state statutes concerning guardianship of developmentally disabled persons. The Council recommends a bill to divest the superintendent of Grafton State School of automatic guardianship over the school's residents and establish a limited type guardianship and conservatorship.

The Council also studied statutes relating to Senate confirmation of gubernatorial appointments and recommends a bill to remove Senate confirmation requirements for appointees to the Postsecondary Education Commission, Board of Public School Education, Council on the Arts, State Historical Board, and Multistate Tax Commission.

The Council studied the extent of the jurisdiction of district and county courts over trusts, equity, and provisional remedies and recommends a bill to make it clear the actions for claim and delivery of property, attachment, garnishment, and forcible detainer with some dollar limitations are within the jurisdiction of the county court and to give county courts concurrent jurisdiction with district courts over trusts.

The Council studied the need for creation of statutory rights for emancipated minors but makes no recommendation for legislative action.

The Council also recommends five bills as a result of its statutory revision responsibility. These bills make technical corrections to the Code relating to obsolete name and statutory references; provide the form to be used for initiative, referendum, or recall petitions; extend the crime of hindering law enforcement to circumstances where the actor knows of conduct which is a Class AA felony; apply the intent language to both circumstances under which the crime of terrorizing may be charged; and apply the mandatory four-year minimum prison term for being armed when committing a felony even when being armed is an element of the offense for which the offender is convicted.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council reviewed 78 audit reports presented by the State Auditor's office.

The Council reviewed the changes being made to the state's accounting system by the Office of Management and Budget, and supports the completion and implementation of the system. The Council recommends a bill to provide for the implementation and operation of the accrual accounting system.

The Council studied the utilization of aircraft by state government and the feasibility of a state aircraft pool. The Council recommends a resolution recommending the establishment of an aircraft pool and urging state departments, agencies, and institutions to increase the efficiency of employee travel by utilizing aircraft whenever it is economical.

The Council reviewed a report by the State Auditor regarding his study of the management of state-owned motor vehicles. The Council recommends a bill to require the Office of Management and Budget to establish a central vehicle management system and adopt vehicle purchase guidelines, to authorize the Highway Department to prepare vehicles for sale by auction, and to authorize agencies to use decals rather than paint on the front doors of state vehicles.

The Council recommends a bill to create an operating fund for use by the State Auditor. The Council also recommends a bill to require permit application fees collected by the Public Service Commission to be deposited in the general fund rather than in the surface mining and reclamation fund.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Council supervised the renovation of the legislative wing of the State Capitol and made the necessary arrangements for the 1981 reconvened session as well as the 1982 organizational session.

To provide the best information available regarding the fiscal impact of legislation affecting counties and cities without incurring substantial expense, the Council recommends a joint rule to require fiscal notes or statements indicating no state agency has the information on bills impacting counties or cities.

The Council recommends a bill to clarify the powers of the Committee on Public Employees Retirement Programs. Language is added concerning when measures must be referred to the committee during sessions and language is deleted which attempted to render invalid bills passed which did not conform to statutory procedural requirements.

The Council adopted guidelines for the use of legislative chambers and the use of Memorial Hall.

NATURAL RESOURCES COMMITTEE

The Council studied the laws relating to irrigation districts to determine whether changes are necessary to provide for workable organization and operation of irrigation districts under current technologies and conditions. The Council recommends a

bill to address the use of new technologies in irrigation and to modernize election procedures, management, and operation of irrigation districts.

The Council studied the boundaries of water resource districts and the selection of management for these districts. The Council determined that watershed boundaries for water resource districts and the election of water managers was presently not feasible.

POLITICAL SUBDIVISIONS COMMITTEE

The Council studied state protection of the pay and status of public employees who are members of the National Guard. The Council recommends no change in state law providing paid leave of absence for National Guard personnel who are public employees.

The Council studied revision of statutes relating to political subdivisions. The Council recommends a bill to place all mill levy limitations relating to political subdivisions in a single chapter of the Century Code.

The Council studied development of county and city jails and recommends three bills. One bill provides that Grade 2 jails may confine inmates for not more than 90 days; Grade 3 jails may confine inmates for not more than 96 hours; and Grade 2 and Grade 3 jails do not need to provide outdoor recreation areas, contact visitation areas, or exercise rooms separate from day rooms. One bill appropriates $3,900,000 to the Attorney General for a loan program to enable counties and cities to upgrade jail facilities to meet state jail standards. One bill appropriates $1,270,000 to the Attorney General for a program to provide per diem payments to counties for holding prisoners in county jails who are awaiting trial in district court or who have been sentenced by district court.

The Council studied the applicability of antitrust laws to cities. The Council recommends a bill to extend state antitrust immunity to cities and city governing bodies acting within the scope of powers granted to them by law.

The Council studied regulation of games of chance. The Council recommends a bill to provide local regulation of the number of blackjack tables per site and the number of sites per organization, increased license fees to local government for licensing and site approval, age and hour limitations on conducting games of chance, and a graduated tax on quarterly adjusted gross proceeds of organizations conducting games of chance.

REAPPORTIONMENT COMMITTEE

The Council developed a legislative reapportionment plan providing for 53 legislative districts. The Council recommended a bill implementing the legislative reapportionment plan which was introduced during the continued 47th Legislative Assembly in November 1981.

RECORDS MANAGEMENT COMMITTEE

The Council studied records management practices in state government. The Council recommends a bill to establish an Office of Information Management which will be a records management program including micrographics and forms management to improve the efficiency of state government. The Council also recommends that the Director of Institutions' office provide space for a state records center. The director is to be appointed and supervised by the Governor rather than by the Secretary of State who is currently responsible for the records management program.

The proposed Office of Information Management will make decisions concerning the retention and disposition of state records through a committee on information management. Each state agency is to designate a records coordinator to carry out the program in each agency. The Office of Information Management will also provide assistance to agencies needing new or revised forms.

RETIREMENT COMMITTEE

The Council studied the retirement program for supreme and district court judges in this state and recommends a bill to establish separate and improved retirement benefits for these judges.

The Council studied the actuarial standards, soundness, funding, benefits, and coverage of the Highway Patrolmen's Retirement System, with emphasis on the feasibility of expanding the system to cover other law enforcement personnel. The Council recommends a bill to increase the state contribution to the Highway Patrolmen's Retirement System because of a shortfall in funding of that system. The Council also recommends a bill to place the administration of the Highway Patrolmen's Retirement System under the Public Employees Retirement System.

The Council solicited and reviewed 27 proposals affecting many aspects of various public employee retirement programs. The proposals were received from legislators and agencies having the bill introduction privilege. The Council obtained actuarial and fiscal information on each of these proposals and reported this information to each proponent. The Council gave favorable recommendations to 13 of the proposals.

SOCIAL SERVICES COMMITTEE

The Council studied state laws and regulations governing nursing homes. The Council recommends an appropriation of $1 million which will supplement the existing home health care program and enable those individuals to receive home health care services who do not qualify for Medicaid assistance and whose income does not exceed by 350 percent the income level and property eligibility guidelines for Medicaid. After studying the rights of nursing home residents, the Council recommends a bill to provide for the appointment of state and regional long-term care ombudsmen. The Council studied nursing home drug distribution systems and recommends a bill to permit nursing home residents to choose their pharmacist regardless of the type of drug distribution system used by their nursing home. Alternatives for nursing home patient prescreening were studied by the Council. No recommendation for legislation is made in this area. The Council studied various alternatives relating to the equalization of nursing home rates. A bill is recommended to forbid any nursing home or intermediate care facility receiving medical assistance payments from state funds or federal funds distributed by the state from charging their private pay patients rates for services which exceed by more than 15 percent those rates approved by the Department of Human Services for similar services rendered to medical assistance recipients.

The Council also studied various proposals to improve the high risk pool insurance program being offered through the Comprehensive Health Association of North Dakota. In an attempt to keep premium rates affordable, the Council recommends a bill to place a 125 percent premium cap on those rates, exempt experimental surgery from coverage, and give a tax credit for assessments paid by participating insurance companies. The bill also provides for a qualified plan of health coverage for those costs not eligible to be paid by Medicare, permits continuous coverage for nonelective procedures, and makes only those participating insurance companies which are liable for state income tax responsible for losses due to claims and expenses of the risk pool insurance program.

TAX STATUTES REVISION COMMITTEE

The Council studied the need for nonsubstantive revision of statutes relating to taxation and recommends five bills. One bill provides for uniform usage of the terms assessed valuation and taxable valuation throughout the Century Code. One bill deletes obsolete statutory language relating to taxation of personal property. Another bill updates the federalization date for the North Dakota estate tax to allow recognition of federal provisions created by enactment of the Economic Recovery Tax Act of 1981. Two bills revise and consolidate five Century Code chapters relating to taxation of special fuels and motor vehicle fuels into two chapters.

TENNECO PLANT COMMITTEE

The Council studied the potential impact of the proposed Tenneco Coal Gasification Plant on the city of Beach, North Dakota, and the surrounding area. The Council recommends a concurrent resolution for continued study of the Tenneco Gasification Plant impacts in North Dakota during the next interim. The study committee should include a representative from the Beach-Golden Valley County area and should include a report on the ramifications of the various water resource issues involved upon the North Dakota Southwest Pipeline Project.

TRANSPORTATION COMMITTEE

The Council studied the state's highway financing methods. The Council recognizes that highways are capital assets that need to be properly maintained and that this is a costly objective. The Council recommends that funding be increased for highway purposes. However, the Council does not recommend any specific method or funding level.

The Council also studied the impact of oil and gas exploration and development on roads in the affected areas of the state. The Council recognizes that the exploration has a significant and costly effect on the conditions of roads in that part of the state. The Council recommends that a method be adopted to provide more funds to relieve the impact of oil and gas exploration. However, the Council does not recommend a bill on the issue.

REPORT
of the
NORTH DAKOTA LEGISLATIVE COUNCIL

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

FORTY-EIGHTH LEGISLATIVE ASSEMBLY
1983

NORTH DAKOTA LEGISLATIVE COUNCIL

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CHESTER E. NELSON, Jr.
Legislative Budget
Analyst & Auditor

North Dakota Legislative Council

STATE CAPITOL — BISMARCK 58505-0183 TELEPHONE (701) 224-2916

January 4, 1983

The Honorable Allen I. Olson
Governor of North Dakota

Members, Forty-eighth Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations to the 48th Legislative Assembly.

Major recommendations include: the transfer of funds from the lands and minerals trust fund to the general fund; a new formula for state support for schoolbus transportation; adjustments to the assessment valuation formula for agricultural land; changes in interest rate statutes; revision of statutes on insurance; establishment of a guardianship procedure for developmentally disabled persons; elimination of Senate confirmation for many gubernatorial appointees; clarification of jurisdiction of county courts; establishment of an aircraft pool and of a central vehicle management system for state government; revision of statutes governing irrigation districts; funding for a loan program to enable counties and cities to upgrade jail facilities; funding for a county reimbursement program for holding district court prisoners; regulation of games of chance; establishment of new records management procedures; increases in judicial retirement benefits; limitations on nursing home rates; and protection of nursing home residents.

The report also discusses committee findings and 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/fn
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, the Garrison Diversion Overview 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 the new Judicial Article.

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 several 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 deriving its authority from North Dakota Century Code (NDCC) Sections 54-35-02.5, 54-35-02.6, and 28-32-03.3. In addition to its statutory mandate to review administrative agency rules, the committee studied the standards and criteria used for school accreditation and teacher certification pursuant to Senate Concurrent Resolution No. 4050.

Committee members were Representatives William Kretschmar, Chairman, L.E. Berger, Rosie Black, Alvin Hausauer, Dean Horgan, Gordon Larson, Arthur Melby, Glenn Pomeroy, Steven Swiontek, and Janet Wentz; and Senators Phillip Berube, Joe Leibhan, David Nething, Curtis Peterson, and Jens Tennefos.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

ADMINISTRATIVE AGENCY RULES REVIEW

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

1. Whether administrative agencies are properly implementing legislative purpose and intent.
2. Whether there are court or agency expressions of dissatisfaction with state statutes or with rules of administrative agencies promulgated pursuant thereto.
3. Whether 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) a review of all rules of a selected administrative agency. The committee's review authority is statutorily limited to rules assigned to the committee. At the committee's request, the Legislative Council chairman assigned all rules published in the North Dakota Administrative Code (NDAC) effective after November 30, 1980, and the rules of the Department of Human Services. The November 1980 date allowed continuation of the rules review initiated by the Administrative Rules Committee during the 1979-81 legislative interim.

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 or 1981 Legislative Assemblies.
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 916 rule changes from November 30, 1980, through August 31, 1982. Approximately 364 rule changes resulted from 1981 legislative action and 134 changes resulted from 1979 legislative action. Approximately 127 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., medical assistance rules are related to 1981 legislative action on eligibility for medical assistance and to federal requirements for a medical assistance program and Medicare supplement insurance rules are related to 1981 legislative action concerning Medicare supplement insurance standards and to federal approval of the standards.

The appendix to this report tabulates the rule changes published in the Administrative Code and reviewed by the committee from November 30, 1980, through August 31, 1982. The tabulation depicts the number of rules amended, created, superseded (by created rules), and repealed. The most important qualification of the tabulation is that each rule is viewed as one unit, although rules differ greatly in length, complexity, nature, and importance. Tables and appendices were treated as separate rules. Changes to organizational rules were not included in the tabulation. Thirty-eight agencies amended their organizational rules during the review period.

Several agencies indicated that a substantial number of changes resulted from the 1981 legislative amendment of NDCC Section 28-32-02 (which was recommended by the 1979-81 Administrative Rules Committee). The change to the statute prohibited rules which repeated or paraphrased the text of statutes.

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

The committee placed importance on proper implementation of legislative purpose and intent. The committee's strongest concern involved NDAC Section 45-04-03-03, a rule of the Commissioner of Insurance with respect to interest rates on life insurance policy loans. The rule allows an insurance policy to provide for a maximum policy loan interest rate at not more than eight percent per annum or at an adjustable rate established by the insurer from time to time. The statutory provisions implemented by the rule contain blank spaces for the interest rate. The committee's concern was that legislative intent may have been to leave the blanks in the statutes to allow negotiation between the insurer and the insured, while the rule hampers the negotiation process.

Individual committee members expressed concern over NDAC Section 17-02-01-01 which establishes educational requirements for chiropractors that differ from those required by NDCC Section 43-06-09 and NDAC Section 13-03-09-01 which allows a higher maximum interest rate on loans than that provided by NDCC Section 6-06-18. In both cases the concern was with the use of rulemaking to avoid specific statutory requirements.

Committee members also expressed concern over rules which prohibit shaking, biting, hitting, or physically punishing children in child care centers and rules which establish staffing ratios in child care centers. In these instances, the concerns involved the use of rulemaking to enforce certain child care philosophies and to restrict competition in providing child care services.

Although concerns were expressed over these rules, formal objections were not filed by the committee.

Selected Agency Rules — Department of Human Services

The committee reviewed the rules of the Department of Human Services. The department was selected because it

was created by the 1981 Legislative Assembly. The department has 313 rules which were summarily described to the committee. The only concerns expressed by committee members involved the rules on child care, which were previously described in this report.

Recommendation

The committee recommends a bill to clarify whether the Central Personnel Division is an administrative agency subject to NDCC Chapter 28-32. The definition of administrative agency specifically does not include the Office of Management and Budget except with respect to rules relating to the central personnel system as authorized under NDCC Section 54-44.3-07. The State Personnel Board is a five-member board responsible for fostering a system of personnel administration in the classified service of state government. The board adopts rules under Section 54-44.3-07. The Central Personnel Division is within the Office of Management and Budget and is responsible for establishing classification and compensation plans for the classified service. The division adopts rules under Section 54-44.3-12, subject to the approval of the board. An interpretation could be made that the definition of administrative agency includes the Central Personnel Division.

The bill would specifically except rules of the central personnel system and of the director of the Central Personnel Division from the application of NDCC Chapter 28-32. The bill would not remove the State Personnel Board from the application of the chapter.

SCHOOL ACCREDITATION AND TEACHER CERTIFICATION STUDY

The resolution directed a study of the standards for accreditation of public and private schools and the criteria for certification of teachers, with special emphasis on the procedures followed by the Superintendent of Public Instruction in adopting the standards and criteria, the substance of the standards and criteria, and the effect the standards and criteria have on the cost of education in the state.

School Approval and Accreditation Requirements

All students, except those who are deaf, blind, or mentally deficient, are required to attend schools **approved** by the Superintendent of Public Instruction. The statutory requirements of approval are (1) at least 180 days of classroom instruction during each school term (NDCC Section 15-47-33); (2) employment of certificated teachers (Section 15-36-11); (3) instruction in subjects mandated by Sections 15-38-07, 15-41-06, and 15-41-24; and (4) compliance with local and state health, fire, and safety laws (e.g., Chapter 15-35).

The Superintendent of Public Instruction is authorized to adopt accreditation standards for all public and private schools (NDCC Section 15-21-04.1). Schools are not required to meet the standards, but any school which complies with the standards is an **accredited** school.

Adoption of School Accreditation Standards

North Dakota Century Code Chapter 28-32 specifies the rulemaking and hearing process for administrative agencies. However, the application of the chapter depends upon the definition of administrative agency. The definition specifically excludes the Superintendent of Public Instruction, except with respect to rules prescribed under Section 15-21-07 (appeals from county superintendents of schools), rules relating to teacher certification, and rules relating to professional codes and standards approved under Section 15-38-18.

Lack of a statutory procedure governing the adoption of accreditation standards raises basic procedural questions such as type of notice, opportunity for public comment, opportunity for public hearing, procedure for final adoption, publication and distribution of standards, and appeals.

The procedure followed by the Superintendent of Public Instruction in adopting accreditation standards applicable to the 1982-83 school year involved these steps:

1. Selection of master committees at the elementary, junior high, and senior high levels. The three committees were composed of school administrators, school board members, and teachers.
2. Eight regional public meetings were held for the purpose of revising current standards and soliciting suggested changes.
3. The master committees met to review current standards, review suggested changes, assign accreditation topics to specific subcommittee study groups, and to recommend changes to the current standards.
4. The first draft of the revised standards was distributed to all school administrators, teachers, school board members, legislators, and other interested groups or individuals.
5. The master committees reviewed the responses to the first draft and suggested any appropriate revisions.
6. The second draft was completed and distributed to all administrators for comments.
7. The Council of School Administrators conducted eight regional meetings to receive final reaction to the proposed standards.
8. The superintendent reviewed the final draft, and the suggestions obtained at the eight regional meetings and from the distribution of the second draft to the administrators.
9. An advisory committee composed of school administrators made its final recommendations to the superintendent.
10. The superintendent adopted the standards and the standards were distributed for implementation.

Cost of Meeting School Accreditation Standards

North Dakota does not statutorily impose sanctions against an unaccredited (but approved) school. North Dakota Century Code Section 15-40.1-07 provides that the high school per-pupil payments under the foundation aid program may be made only to school districts offering at least four units of standard high school work approved by the Superintendent of Public Instruction, employing certificated teachers, and meeting the other requirements of Chapter 15-40.1. An approved, but unaccredited, school would meet these requirements. An accredited school does not obtain additional state aid, nor does an unaccredited school lose foundation payments. However, student teachers are not placed in unaccredited schools and graduates of unaccredited schools may not be accepted by prestigious colleges.

The Department of Public Instruction provided the committee with an estimate of the cost of attaining accreditation by an approved school district educating from 150 to 199 pupils with an organization of grades 1-6 and grades 7-12. The accreditation standards for the school include a one-half time superintendent, one-third time elementary and secondary principals, certain elementary and secondary curriculum requirements, guidance and counseling at the secondary level, pupil and personnel services at the elementary level, librarians at the elementary and secondary level, certain library expenditures at the elementary and secondary level, and various testing

requirements. The estimated cost to meet these requirements was $48,655.

Teacher Certification Criteria

The Superintendent of Public Instruction, after consulting with the Teachers' Professional Practices Commission, determines the criteria for teacher certification (NDCC Section 15-36-01). The criteria are based upon standards which include consideration of character, adequate educational preparation, and general fitness to teach in the public schools of the state. Section 15-41-25 requires every high school teacher teaching any of the minimum high school curriculum courses to have a valid teacher's certificate and a major or minor in the course area or field being taught. A teacher granted a certificate to teach courses relating to the trade, industrial, technical, and health disciplines does not need a major or a minor in those fields.

Adoption of Teacher Certification Criteria

The Superintendent of Public Instruction is defined as an administrative agency for the purposes of NDCC Chapter 28-32 with respect to teacher certification. Chapter 28-32 establishes the general requirements for rulemaking, hearings, and appeals, while the administrative agency must establish the specifics, e.g., public notice time frames.

The procedure followed by the Superintendent of Public Instruction in adopting changes to teacher certification criteria involves these steps:

1. The Teachers' Professional Practices Commission reviews concerns expressed by the education community at large.
2. The commission holds open meetings on the concerns, and makes recommendations to the superintendent.
3. The superintendent holds a statewide public hearing and announces it through legal notices in the major newspapers and by news releases.
4. After the hearing the superintendent adopts the rule changes.

The cost of meeting the teacher certification criteria was described as interwoven with the cost of obtaining a college education.

Teacher Competency

The committee received testimony describing teacher competency testing around the nation and the National Teachers' Examination. The information included the states which require tests for teacher certification, the type of tests given, and the subject areas of the tests. At least 13 states have imposed testing effective prior to 1983. Seven of these states use the National Teachers' Examination, developed by the Educational Testing Service.

The committee also received information on teacher preparation by the state's education colleges and methods used by school districts to provide in-service followup as a part of a total school evaluation process. NDCC Section 15-36-01 requires certification criteria to include considerations of adequate educational preparation and general fitness to teach in the public schools of the state. The testimony indicated that teacher competency testing and evaluation for the issuance, renewal, and revocation of certificates could be implemented under present statutes.

Conclusion

The committee makes no recommendation as the result of its study. The primary concern over the lack of statutory procedures on school accreditation standards was alleviated once the procedure followed in adopting the new standards was described to the committee. No questions were raised as to the costs of meeting school accreditation standards and teacher certification criteria.

APPENDIX
STATISTICAL SUMMARY OF RULEMAKING BY AGENCY

	Amended	Created	Superseded	Repealed
Accountancy Board	3			
Agriculture Commissioner	4			
Attorney General	1	171		
Banking Department	9	8	2	
Chiropractic Examiners Board	1	1		
Health Department	11	25	11	
Highway Corridor Board	2			
Highway Department	3			
Historical Board		9		
Industrial Commission	45			
Insurance Commissioner	1	49		
Livestock Sanitary Board	2			
Nursing Board	18			5
Nursing Home Administrators Board	1			
Pesticide Control Board	2	1		
Physical Therapists Examining Committee		15		
Plumbing Board	7			
Public Instruction Superintendent	3			
Public Service Commission	18	20	3	7
Real Estate Commission	3	21		
Securities Commissioner	2	1		
Seed Commission	7	5		1
Human Services Department	34	224	132	18
Tax Commissioner		5		
Treasurer		1		
Veterinary Medical Examiners Board		4		
Total	177	560	148	31

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned four studies. Senate Concurrent Resolution No. 4043 directed a study of the feasibility and desirability of state promotion of processing plants for North Dakota products within the state. Senate Concurrent Resolution No. 4044 directed a study of the feasibility of combining the marketing efforts of the North Dakota Beef Commission, North Dakota Dairy Products Promotion Commission, North Dakota Edible Bean Council, North Dakota Potato Council, North Dakota Sunflower Council, and North Dakota Wheat Commission to allow joint efforts to increase sales of North Dakota agricultural products and at the same time allow each entity to maintain its autonomy. Senate Concurrent Resolution No. 4048 directed a study and review of state laws governing beekeeping for the purpose of revising, modernizing, and clarifying the current laws to promote the maximum, equitable, and safe production of bee products within the state. House Concurrent Resolution No. 3049 directed a study of the burdens and benefits, both present and future, associated with electrical and gas transmission lines, buried cables, oil and gas well sites, drainage and water lines, and saltwater and oil lines, particularly with respect to how these burdens and benefits relate to North Dakota's agricultural lands.

Committee members were Senators Harry Iszler, Chairman, Robert Albers, Bruce Bakewell, Francis Barth, James Dotzenrod, Joe Leibhan, and Marvin Sorum; and Representatives Charles Anderson, William Gorder, Dean Horgan, Carolyn Houmann, Bruce Larson, Gordon Matheny, Arthur Melby, Walter Meyer, Dorothy Moum, Fred Nagel, Eugene Nicholas, Verdine Rice, Craig Richie, Jim Sorum, and Wilbur Vander Vorst.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

PROCESSING PLANT STUDY

Senate Concurrent Resolution No. 4043 reflected legislative concern with the high costs of transporting North Dakota agricultural products out of state for processing, loss of jobs and revenue, and the increasing threat of railroad abandonment within the state.

Existing Legislation

North Dakota Century Code (NDCC) Chapter 54-34 provides for the creation and administration of the Economic Development Commission (EDC). Section 54-34-01 provides that the EDC is intended "to carry out a program of promotion and economic development . . . through the establishment of new business and industry, the expansion of existing business and industry, the development of new markets for agricultural, and other products, the encouragement of international trade, the development of tourism, and the attraction of new residents, business, and industry."

Specific duties given to the director of the EDC include the planning of a program for agricultural and industrial promotion which will attract investors, investment capital, and new residents as well as encouraging the growth and development of business and industry. NDCC Section 54-34-06(2)(3). The director is also responsible for the formation and coordination of the efforts of local development and for providing information to political subdivisions which may be useful in their efforts to encourage business and industry within the state. NDCC Section 54-34-06(6).

North Dakota Century Code Chapter 4-14.1 provides for the creation of the Agricultural Products Utilization Commission (APUC). The purpose of this commission is "to provide necessary assistance in the construction, operation, and maintenance of an agriculturally derived alcohol plant in North Dakota" and to cooperate "with private industry to establish private owned agriculturally derived alcohol manufacturing plants . . ." (NDCC Sections 4-14.1-01 and 4-14.1-02(4)).

In addition to the EDC and APUC there are several agricultural products promotion commissions including the Beef Commission, Dairy Products Promotion Commission, Edible Bean Council, Potato Council, Sunflower Council, and Wheat Commission. Each of these commodities groups is responsible for working toward improvements in the research, production, and marketing of their respective farm commodities.

The Legislative Assembly has also enacted specific legislation which provides tax incentives for new industry to locate within the state.

North Dakota Century Code Chapter 40-57.1 grants a five-year ad valorem exemption on small industrial plants if the municipality in which the plant is to be situated requests and receives the permission of the State Board of Equalization. A five-year income tax exemption is also allowed if both an ad valorem tax exemption is granted and if the State Board of Equalization determines that "the granting of the exemption is in the best interests of the people of North Dakota."

An ad valorem and income tax exemption on existing structures is also allowed if the structures have not been used for at least "three consecutive years prior to the commencement of project operation." Additionally, a property tax exemption is allowed on "speculative industrial buildings" erected for the "purpose of attracting new industry to" North Dakota but only so long as the building remains unoccupied and until "the next annual assessment date following the first occupancy." Use of these tax incentives is limited to small industrial plants because of the "extraordinary burdens [which large industrial plants place] on state and local governmental services and facilities."

Another statute which may be used to encourage the production of items manufactured within the state is NDCC Section 48-02-10. This section requires all boards or commissions purchasing material for alterations, improvements, additions, or repairs to present structures or erecting new structures, to purchase products manufactured in North Dakota, if the quality and price of those products are equal or better than those not manufactured in North Dakota. This statute also establishes a preference for products which are at least partially manufactured in North Dakota.

Finally, the Legislative Assembly has enacted statutes to encourage the sale of "land, buildings, or improvements, used or useful in connection with a revenue-producing enterprise to a beginning businessman." NDCC Section 57-38-01.2(1)(n). Application of this statute for purposes of establishing processing plants within North Dakota is limited however, because the term "beginning businessman" is defined as one who among other things, is both a resident of North Dakota and who has, "including the net worth of [his] dependents and spouse, if any, a net worth of less than $100,000." As a result this limitation will preclude investment by many persons who have sufficient capital to invest in the establishment of a processing plant from utilizing this incen-

tive to encourage the sale of land to them. Furthermore, this provision does not allow a tax reduction for a sale to nonresidents.

Interim Study

Representatives from the Department of Agriculture testified regarding their efforts to attract industrial processors of agricultural products into the state. Currently the state has local processing of sugar beets, durum, buckwheat, sunflowers, potatoes, and some livestock. Although it is desirable to attract this type of industry, the committee was cautioned by these representatives that such promotion should be attempted only if the processing plants have a good chance of survival.

The suitability of processing agricultural products in the state depends in large part upon the particular crop. A representative from the Dairy Products Promotion Commission reported that there is adequate local processing of North Dakota dairy products.

A representative from the EDC testified that the processing of established products such as potatoes, durum, Dakota would have a difficult time competing with industries in other states which are established in the market and have the advantage of less expensive transportation costs.

A representative from the EDC testified that the processing of established products such as potatoes, durum, and sunflowers could be increased in North Dakota. The EDC projected that North Dakota could currently support seven more processing plants in addition to the existing 35 plants located in the state. The EDC's five-year plan includes additional flaxseed processing, turkey processing, honey processing, pasta processing, fish farming, and alcohol producing plants.

A primary goal of the EDC is to persuade processing industries that North Dakota would provide them a healthy and profitable business climate. In order to do this the EDC, in cooperation with North Dakota State University, conducts feasibility studies. These studies focus on specific industries and their potential for success. If favorable these studies are presented to industrial firms in attempts to persuade them to locate in the state. The ratio of processing plants built to feasibility studies conducted has been very encouraging according to the EDC.

The committee was also advised that the EDC believes a turkey processing plant might be feasible at this time in North Dakota. It was reported to the committee by a representative of the North Dakota Turkey Federation that that group had decided to begin a fund drive to raise finances for construction of a turkey processing plant. A possible site has been looked at and projected operating costs have been analyzed.

Representatives from the various agricultural products industries advised the committee that the state could assist them in their efforts by implementing lower loan interest rates and developing loan programs through the Bank of North Dakota to attract this type of industry.

The following chart reflects current processing being done in the state:

Product	Percentage Processed	Total Production
Hard red spring wheat	3% 1/	179,650,000 bushels
Durum	7% 1/	
Sunflower — oil	30%	2,243,500,000 pounds
Sunflower — nonoil	60%	
Barley	18% 2/ 1/	48,000,000 bushels
Sugar beets	98%	—
Potatoes	10%	15,680,000 cwt.
Flaxseed	less than 1%	3,100,000 bushels
Flax straw	95%	—
Soybeans	0%	3,500,000 bushels
Corn for grain	0% 1/	16,820,000 bushels
Edible beans	0%	—
Oats	0% 1/	13,500,000 bushels
Rye	greater than 10% 1/	—
Milk	80%	907,000,000 pounds
Honey	10%	14,300,000 pounds
Cattle (calves)	14%	818,240,000 pounds
Hogs (feeders)	15%	96,859,000 pounds
Sheep (lambs)	1%	14,418,000 pounds
Turkeys	less than 5%	955,000 birds
Broilers	not available	—
Wool	0%	—

1/ These percentages do not include grains used for feed manufacture.

2/ Due to the small 1980 crop of barley, this percentage is greater than usual.

Conclusion

The committee makes no recommendation for legislation in this area and proposes that the Economic Development Commission and Agricultural Products Utilization Commission continue their cooperative efforts to attract suitable processing industries to the state.

AGRICULTURAL PRODUCTS MARKETING

Senate Concurrent Resolution No. 4044 mandated a study regarding the possible combination of several independent agricultural commodities marketing agencies. The purpose of this resolution was to consider allowing joint efforts to increase sales of state agricultural products and at the same time allow the individual marketing

agencies to maintain autonomy while improving efficiency.

Existing Law

North Dakota Century Code Chapter 4-24 provides for the collocation of agricultural promotion groups. Section 4-24-07 provides for collocation of the Wheat Commission, Sunflower Council, Dairy Products Promotion Commission, and Beef Commission no later than July 1, 1983. Each of these groups are to share administrative and clerical services as well as equipment and supplies. The collocated offices may, by majority vote of the groups, agree to furnish services to other statutory promotion groups.

Interim Study

The various commodity groups have organized the "All Crops Council." The council is designed to be an information gathering place. Through the council all commodities groups are able to work together and advise each other of their plans and what is presently happening in their area of the agricultural market. Such an exchange of information enables each commodity group to talk about other products when discussing their own products with potential buyers. It was reported that there is a good rapport between the various commodities groups, North Dakota State University, Department of Agriculture, and other regional entities interested in the promotion of agricultural products. The committee was urged by the commodity group representatives not to recommend any legislation that would jeopardize these good relations by giving any one individual body dictatorial powers over the others.

Representatives from several other commodities groups all testified that each group should remain structurely autonomous and that all groups are currently cooperating very well with each other. A representative from the North Dakota Dairy Products Promotion Commission indicated that the collocation idea has been discussed by the commodities groups and that progress is being made in that regard. The various groups are trying to find a place with enough space for all of them as well as any other groups that might want to collocate. It was also pointed out that some advertisement plans have been done with two or more commodities being promoted at the same time.

Conclusion

The committee makes no recommendation for legislation regarding the combination of commodities groups.

BEEKEEPING LAWS

Senate Concurrent Resolution No. 4048 required a review and revision of the state laws relating to beekeeping to modernize the laws and to clarify conflicting or ambiguous sections of the law.

History

The history of this state's beekeeping laws is long. The state's first beekeeping statutes (Chapter 140, 1923 Session Laws) were enacted in 1923. The primary purpose at that time was to safeguard the beekeeping business from the spread of diseases. This was done through inspectors appointed by the Commissioner of Agriculture. An apiary owner had a duty to report to the inspector if any of his bees were infected. The inspector was also given the power to enter private property to examine an apiary to determine whether it contained diseased bees (see 1923 Session Laws, Ch. 140, Section 6). Orders from the commissioner to eradicate discovered disease had to be complied with within 10 days and no damages were allowed the owner in the event that destruction of his apiary was necessary (see 1923 Session Laws, Ch. 140, Sections 8 and 9). The chapter also provided a minimum penalty of $5 to a maximum of $100 for a violation of the chapter.

Changes in the beekeeping laws were made by the Legislative Assembly in 1929, 1939, 1941, 1955, 1967, 1969, 1975, 1977, and 1979. The refinement of the state beekeeping laws included major changes in requiring the inspector rather than the commissioner to prescribe a plan to deal with infected bees; prohibiting the sale or transfer of bees without a certificate of health; providing for inspection and license fees; providing for the registration of commercial locations with radius requirements between these locations; prohibiting the transfer of beekeepers' licenses; requiring out-of-state beekeepers to pay increased license fees; permitting emergency regulations to be ordered by the commissioner; reducing a three-mile commercial radius restriction to two miles; and limiting exemptions of the radius restriction for pollination purposes to 30 days.

Existing Law

There were no amendments or changes to the beekeeping laws during the 1981 Legislative Assembly.

North Dakota law presently provides that "no new commercial location may be established within two miles [3.22 kilometers] of another commercial location. No commercial operator may establish an apiary within two miles [3.22 kilometers] of another commercial operator. A noncommercial beekeeper with one to twenty-four colonies will have territorial rights on one location." NDCC Section 4-12-03. The law further provides that seed growers may request the Commissioner of Agriculture for additional locations for the purpose of pollinating their crops. However, the movement of bees onto fields of clover or alfalfa is limited to a maximum of 30 days from the date of the requests. Finally, property owners are exempt from the radius requirements in the state. For the purpose of this law a "property owner" means a person who "has actual use and exclusive possession of the land; provided, however, that any person leasing land for the primary purpose of establishing an apiary thereon shall not be considered a property owner, nor shall any person who does not own and personally manage and operate the bees and hives placed on such land."

Inspection of apiaries is carried out as the Commissioner of Agriculture deems necessary. Actual inspections are performed by the inspector or his deputy and one may deny or hinder access to the premises on which the apiary to be inspected is located. The inspector is responsible for making orders to eradicate any discovered disease.

It is a Class A misdemeanor to violate the beekeeping laws or any regulation promulgated thereunder. Any items confiscated as a result of a violation may be sold at a sheriff's sale.

Abandoned apiaries may also be seized and sold after a five-day notice is given to the owner as to the date the sale is to take place. Unsanitary conditions in apiaries must be corrected within 30 days after a notice of such condition is given to the owner or operator of the apiary.

Extent of the Beekeeping Industry in North Dakota

During 1979, 458 beekeepers were licensed. Of these, 130 of the licenses issued were commercial licenses. Also during 1979, 190,000 colonies were registered. Of these, 175,987 were out-of-state colonies. Production for the

year 1979 is as follows: honey — 22,800,000 pounds; beeswax — 365,000 pounds. During 1979 North Dakota was ranked second only to Florida in honey production and it produced 10.41 percent of the honey produced on the national market. Of the commercial licenses issued during 1979, 85 of those licenses were for residents and 45 were for nonresidents.

In 1981, 466 beekeepers were licensed in North Dakota. Of these, 422 were commercial beekeepers. The number of colonies located in the state during 1981 was 273,600 colonies. Of these colonies, 165,366 were out-of-state colonies.

In 1982 approximately 515 beekeepers were licensed. Of these beekeepers, hobby operators were licensed for 1,688 colonies; sideliners, 16,541 colonies; and commercial operators, 263,816. This comes to 282,045 colonies.

Interim Study

The committee heard exhaustive testimony regarding the bee laws from commercial, sideline, and hobby beekeepers, concerned citizens, and representatives from the Department of Agriculture. Major issues include the two-mile radius restriction, leasing requirements between the landowner and beekeeper, registration requirements, fee assessments, inspections, and enforcement.

The North Dakota Beekeepers Association and individual beekeepers testified in favor of the two-mile radius restriction. The restriction was supported because it controls disease, helps regulate the influx of bees into the state, and prevents overgrazing.

Testimony against the two-mile radius restriction indicated that some beekeepers believe the restriction makes it more difficult for beginning beekeepers and out-of-state beekeepers to begin their operations in North Dakota because there are so few sites available. It was also questioned whether the restriction actually prevents disease and suggested that experienced beekeepers can effectively control disease among their bees without the restriction.

Many beekeepers also expressed their desire for more stringent enforcement of the bee laws. A representative from the Department of Agriculture testified that the Apiary Division was understaffed with bee inspectors so that only spot inspections could be made in an attempt to maintain compliance with the law. The department also recommended procedures that would more quickly and effectively penalize those parties who are found to be in violation of the law.

The committee considered a proposal to increase commercial operator fees from 10 cents per colony to 25 cents per colony. Many beekeepers believe this was too much of an increase. The Department of Agriculture supported the increased fee for the revenue would be used to step up enforcement and provide for more thorough inspections. The proposed increase in revenue would make the Apiary Division self-sustaining.

The following is a list of revenues that would be derived from different fee schedules for the biennium based on the current number of colonies registered. Option 6 is that which was included in the proposal considered by the committee.

	Rate per Colony	Income	Biennium
1. Hobbyist	$.10	$ 168.80	
Sideliner	$.10	1,654.10	
Commercial	$.10	26,381.60	
			$ 56,409.00
2. Hobbyist	$.15	$ 253.20	
Sideliner	$.15	2,481.15	
Commercial	$.15	39,572.40	
			$ 84,613.50
3. Hobbyist	$.20	$ 337.60	
Sideliner	$.20	3,308.20	
Commercial	$.20	52,763.20	
			$112,818.00
4. Hobbyist	$.10	$ 168.80	
Sideliner	$.15	2,481.15	
Commercial	$.15	39,572.40	
			$ 84,444.70
5. Hobbyist	$.10	$ 168.80	
Sideliner	$.15	2,481.15	
Commercial	$.20	52,763.20	
			$110,826.30
6. Hobbyist	$.10	$ 168.80	
Sideliner	$.20	3,308.20	
Commercial	$.25	65,954.00	
			$138,862.00

The proposal also included a $5 license fee. Based on 515 beekeepers, this fee would generate $2,575 per year or $5,150 for the biennium. The Apiary Division's budget request is $123,188.

It was suggested by a representative from the Apiary Division of the Department of Agriculture that inspection of honey houses could be carried out more effectively by the State Laboratories Department. Very few honey houses are inspected because the Apiary Division is inadequately staffed and funded to carry out that duty. Although the bee laws specifically gives the Department of Agriculture responsibility for these inspections state law also authorizes the State Laboratories Department to make such inspections. The director of the State Laboratories Department reported that agency would be willing to be responsible for these inspections.

Recommendations

The committee recommended to the Apiary Division a uniform lease form that may be used by landowners and beekeepers.

The committee recommends a bill to repeal NDCC Chapter 4-12 and to create NDCC Chapter 4-12.2. Among other things, the bill would:

1. Require an annual license fee of $5 to be paid by each beekeeper operating within the state. In addition to the license fee a hobby operator is required to pay a fee for prevention of disease of 10 cents per colony, a sideline operator 20 cents per colony, and a commercial operator a fee of 25 cents per colony. In addition to these fees beekeepers are required to pay a minimum honey promotion fee assessment of $1 or five cents per colony of honey bees licensed by the beekeeper. Current assessments are a minimum $1 or 10 cents per colony inspection fee, and a minimum $1 or five cents per colony honey promotion fee.
2. Require the written permission from landowners and registration by beekeepers of all apiaries located in the state.
3. Provide for the revocation of apiary sites by property owners who provide written notice to the Department of Agriculture and the individual beekeeper. This is a new provision.
4. Modify the two-mile radius restriction so that it is applicable only to commercial locations owned by another beekeeper. Current law restricts any commercial apiary from being located within two miles of another commercial apiary.
5. Allow the sale or transfer of commercial apiaries to another licensed beekeeper with the written permission from the property owner. This is a new provision.
6. Require physical evidence of the identification of all hives located within the state. This is a new provision.
7. Remove from the Department of Agriculture the authority to inspect honey houses thereby allowing the State Laboratories Department to assume this responsibility.
8. Creates civil and criminal penalties for violation of rules adopted by the Commissioner of Agriculture as well as the provisions of law embodied in the bill draft. The bill also provides the commissioner with the authority to refuse to grant a license to any person found guilty of repeated violations of the chapter. Current law provides criminal penalties for violation of the chapter.

TRANSMISSION LINE EFFECTS

House Concurrent Resolution No. 3049 directed a study regarding the burden of transmission lines and pipelines on North Dakota farmland. The resolution reflected a legislative concern regarding the effect of transmission lines on present and future landowners.

The sponsor of House Concurrent Resolution No. 3049 testified that his three main concerns regarding the resolution were:

1. That landowners receive individual notice of proposed route and corridors for transmission lines.
2. The adequacy of the North Dakota Energy Conversion and Transmission Facility Siting Act (NDCC Chapter 49-22).
3. Burial of all transmission lines.

History

Since the close of the 1975 Session the Legislative Assembly, either by interim committees or during sessions, has considered proposed legislation to force compensation for transmission line easements.

The Legislative Council's Committee on Finance and Taxation during the 1975-77 interim considered a bill draft which offered two alternative methods of compensating landowners. The landowner could choose between either a lump sum payment or annual payments for 10 years. The bill draft also provided that the landowner could require the utility to arbitrate the easement fee. This bill was not enacted into law.

North Dakota Century Code Section 49-22-16.2 enacted by the 1979 Legislative Assembly provides the landowner an option to receive either a lump sum payment or equal payments paid annually with interest on the outstanding balance. This option does not apply to easements for which the compensation is less than $5,000.

During the 1981 Session a bill was considered which would have based annual installment payments made under Section 49-22-16.2 on the market value of the property affected, capitalization rate, and the value of land taken which would be adjusted annually to reflect changing land prices in the county. Additionally the landowner would also be granted a third option. This option would allow the landowner to receive a single sum payment and thereafter receive annual installments in an amount "equal to twice the average of that being received for the rental of land of the same type in that county." This bill was not enacted into law.

Applicable Federal Laws

The Federal Power Commission's jurisdiction includes authority to license and regulate the interstate transmission of electricity.

The Retail Regulatory Policies of Electrical Utilities Act (60 U.S.C.A. 2611 et seq.) applies to electrical utilities whose total sales exceed 500 million kilowatt hours per year. The Act requires that the North Dakota Public Service Commission (PSC) establish hearing procedures which give both the utility company and the consumer an opportunity to be heard. Furthermore, the PSC and the utility are required to adopt standards which prohibit master metering in new buildings; automatic adjustment clauses which do not meet specified requirements; termination of electrical services unless specific requirements are met; and the collection from anyone other than shareholders for promotional and political advertising. The Act also requires the utility to provide its customers with information regarding rate schedules.

The National Environmental Policy Act requires an environmental report on every "major federal [action] significantly affecting the quality of the human environment." This report is to contain "a detailed statement by the responsible officials on" the environmental impact, adverse environmental effects which cannot be avoided if the proposed plan is implemented, available alternatives, the relationship between short-term uses and long-term productivity, and any irreversible and irretrievable commitments of resources which are involved in the proposed action. Because many of the transmission lines in North Dakota cross state boundaries or in some other way affect interstate commerce these transmission lines may be subject to federal regulation and as a result the environmental impact statement may be required before transmission lines are constructed.

Existing State Law

The North Dakota Energy Conversion and Transmission Facility Siting Act was enacted in 1975 and is codified as NDCC Chapter 49-22. The statement of policy found in NDCC Section 49-22-02 speaks to two problems

— protection of the environment and the welfare of the citizens of this state. It is the policy of the state of North Dakota to select sites which minimize adverse human and environmental impact while at the same time ensure continuing system reliability, integrity, and the fulfillment of energy needs in an orderly and timely fashion. Portions of NDCC Chapter 49-22 provide areas of protection to individual landowners in the siting of transmission facilities.

Specifically the law provides that a utility is required to submit a 10-year plan to the PSC which describes the location, size, and type of all facilities to be owned by the utility in the next 10 years. This plan must also describe the efforts of the utility to coordinate its planning with other utilities, the efforts to involve environmental protection and land use planning agencies and utilities planning process and project the demand for the service rendered by the utility for the next 10 years as well as describe to what extent and the manner in which the utility will meet the projected demand. Additionally, the utilities are required to indicate the potential impact of the planned facilities on existing environmental values as well as how any potential adverse effects on such values may be avoided or minimized.

Each time an application for a certificate of site compatibility is filed, the PSC is to hold a public hearing. At these hearings interested persons are to be given an opportunity to be heard. In evaluating the application the PSC must consider the effect of the facilities on the land, water, air, and human resources within that area. Other environmental factors which are to be considered are set out in NDCC Section 49-22-09.

House Concurrent Resolution No. 3049 not only contemplates transmission lines but also buried cables, oil and gas well sites, drainage and water lines, and saltwater and oil lines. While pipelines are considered to be transmission facilities within the meaning of NDCC Section 49-22-03 if they are transmitting water to or from an energy conversion facility, not all pipelines in the state fit under this definition, and they are therefore regulated under NDCC Chapter 49-19, common pipeline carriers.

Common pipeline carriers are defined as persons who transmit, other than water, any substance through a pipeline for hire, or those persons who by either the terms of their contract with the United States or under the laws of the United States are declared expressly to be common carriers. NDCC Chapter 49-19 authorizes every common pipeline carrier to use the right of eminent domain to obtain land through which its pipeline will be laid.

There are no provisions in NDCC Chapter 49-19 for the protection of landowners or of the environment. NDCC Section 49-07-05.1, however, provides for the violation of gas safety standards. Under this section any person who violates any law or rule promulgated by the PSC is subject to a civil penalty not to exceed $1,000 for each violation for each day that the violation persists. The maximum penalty under this section is not to exceed $200,000 for any related series of violations. The laws or rules referred to in this section are enacted pursuant to the Natural Gas Pipeline Safety Act. This Act provides that the secretary shall adopt interim minimum federal safety standards for pipeline facilities and the transportation of gas in every state in which the state itself has not enacted such standards. The standards adopted by the PSC for the transmission and distribution of gas are those which "conform to the current minimum safety standards for transportation of natural and other gas by pipeline as adopted by the United States department of transportation." North Dakota Administrative Code Section 69-09-03-01.

North Dakota Century Code Section 49-22-16.1 offers protection to persons who are subject to the use of unfair tactics in acquiring land or easements for a transmission facility. This section makes it unlawful for any person employed by a public utility to acquire easements through the use of "harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics to induce the owner of the land to be affected by the facility to grant or agree to any easement." If the conduct of the person obtaining the easements aggrieves at least five landowners, those landowners may seek a remedy in the appropriate district court. If the court determines that the person or persons employed by the utility have harassed, threatened, intimidated, misrepresented, deceived, acted fraudulently, or used other unfair tactics in acquiring or attempting to acquire an easement from at least five separate landowners the court must declare the easements void. The court may also either return the compensation paid to the offending utility, allow the landowner to retain the compensation or award the landowner three times the amount of the compensation as damages, either punitive or compensatory. Additionally, the court must award costs and reasonable attorney fees to the plaintiffs when they prevail. On the other hand if the utility prevails, the court must file a copy of its memorandum opinion or order with the PSC. Upon receipt of an order against the utility company, the PSC may revoke or suspend the permit which was issued with respect to the route affecting the aggrieved landowners. If no permit has been issued for that site or route, the PSC may refuse to issue one.

Present and Future Transmission Lines

Pipelines in North Dakota are classified in three categories — gas, crude oil, and water. Presently North Dakota has 448.75 miles of gas pipeline, 171.2 miles of crude oil pipeline, and 40.1 miles of water pipeline which qualify as transmission lines and are therefore under the jurisdiction of the PSC.

The total mileage of electric transmission lines in North Dakota is 5,375 miles. This total is divided into five categories — 115 kilovolt lines account for 2,100 miles; 230 kilovolt lines account for 1,906 miles; 345 kilovolt lines account for 879 miles; ±250 kilovolt lines account for 233 miles; and ±400 kilovolt lines account for 257 miles.

Proposed facilities consist of both pipeline and electric facilities. Presently there are 628.5 miles of gas line proposed, and 544 miles of crude oil line. Water pipeline which is presently proposed is the Basin Electric AVS Sakakawea intake structure to Dickinson. Proposed electrical facilities include 131 miles of 230 kilovolt line, 219 miles of 345 kilovolt line, and 405 miles of 500 kilovolt line, for a total of 755 miles of proposed electrical line.

Interim Study

The committee heard expert testimony regarding the efficacy of burying transmission lines. A representative from the Massachusetts Institute of Technology testified that underground cable lines could be used for most power lines. The cost would be approximately six times that of overhead lines but that underground lines would more than make up that difference in energy savings. The minimal increase in costs would probably be borne by consumers.

Expert testimony by a representative of the Nebraska Public Power District indicated underground lines are not economically feasible. Overhead lines were described as easier to repair, less expensive to install, and generally preferred by the energy industry at this time.

Representatives from several utility companies reported that the technology to bury power lines was available but that the current cost was prohibitive. It was agreed that consumers would ultimately have to bear the increased costs of burying power lines. The testimony also indicated that rodents posed a problem to underground lines unless the lines are buried at least six feet deep.

The PSC conducted a study pursuant to the request of several landowners along the MANDAN corridor. The study researched the possibility of putting that line underground. The study concluded that it would not be feasible to construct the MANDAN line underground because of the long distance of the line and the magnitude of the power which would be transmitted.

Several landowners testified regarding the increased costs to farmers as a result of having to farm around transmission line poles and towers. Also listed among their complaints regarding the transmission lines was the deterioration of scenery, weed problems, and possible health hazards. The testimony also indicated landowners desired a better opportunity for input regarding proposed routes and a requirement that utilities prove that there is a "need" for the lines to be built at all.

The committee also received testimony regarding the burden of pipelines on farmland. A representative from Northern Border Pipeline Company reported that the company has had a very good response from landowners during the construction of that line. Notice to the landowners along the proposed pipeline route was usually placed in the paper but that sometimes personal notices were mailed.

The committee toured the Northern Border Pipeline Project. Several committee members expressed their opinion that the project was well run with few problems caused to landowners. It was suggested that no new legislation was needed in this area but that continued monitoring by the PSC would be adequate.

The committee discussed a bill draft requested by a representative of the PSC relating to oil and gas gathering lines. The bill draft would have required permits for the construction and gas gathering lines. The PSC would grant these permits if the PSC's criteria were met. A representative from the North Dakota Petroleum Council testified that presently no state agency has been given the authority over these gathering lines located on private property.

A representative from the PSC later reported that that agency was no longer interested in pursuing the bill draft since there had been no complaints regarding this matter. The representative testified that oil companies were doing a good job and that the cost of implementing the bill would be too high for both the PSC and the oil industry.

Recommendation

The committee recommends continued monitoring of utilities by the PSC under the current laws and makes no recommendations for new legislation in this area.

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 Representatives Vernon Wagner, Chairman, Richard Backes, Aloha Eagles, Layton Freborg, Ronald Gunsch, Roy Hausauer, Robert Jacobsen, Harley Kingsbury, David Koland, Tom Kuchera, Peter Lipsiea, Lawrence Marsden, Ruth Meiers, Charles Mertens, Corliss Mushik, Olaf Opedahl, Jim Peterson, Oscar Solberg, Earl Strinden, Kenneth Thompson, Michael Unhjem, and Francis Wald; and Senators Stella Fritzell, Donald Hanson, Evan Lips, Robert Melland, L.L. Naaden, David Nething, Jack Olin, Rolland Redlin, Leland Roen, Bryce Streibel, Harvey Tallackson, Russell Thane, Malcolm Tweten, Kent Vosper, Jerome Walsh, and Frank Wenstrom.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

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

1. House Bill No. 1006 appropriates out of any moneys in the lands and minerals trust fund in the state treasury, not otherwise appropriated, the sum of $11,750,000, or so much thereof as may be necessary, as determined by the Budget Section, to the permanent fund of the common schools for the purpose of effecting upon approval of the Budget Section the transfer of title of the Judicial Wing and State Office Building to the state of North Dakota.
2. House Bill No. 1036 appropriates any additional funds available to the State Potato Council as a result of increased assessments pursuant to the provisions of Section 4-10.1-09 of the North Dakota Century Code. Such additional funds shall only be expended upon approval of the Budget Section.
3. Senate Bill No. 2007 requires that the amount of the general fund appropriation to Lake Region Community College that is not expended as of July 1, 1982, shall only be made available to Lake Region Community College for the fiscal year beginning July 1, 1982, and ending June 30, 1983, upon approval of the Budget Section.
4. Senate Bill No. 2007 appropriates out of the general fund of the state treasury, $200,000, or so much thereof as may be necessary, to the Office of Management and Budget for the purpose of making a loan to Lake Region Community College to pay operating expenses during the year ending June 30, 1983. The director of the Office of Management and Budget shall make such loan funds available to Lake Region Community College only upon Budget Section approval.
5. Senate Bill No. 2011 requires the director of the Department of Human Services, while establishing the department on the state and regional level, to reduce the number of positions in the department by 10 employees by June 30, 1983. In addition, Senate Bill No. 2011 requires that the director periodically report to the Budget Section on the progress made in implementing the provisions of House Bill No. 1418 and the reduction in staff levels.
6. Senate Bill No. 2152 provides that the Department of Human Services, with the consent of the Budget Section, may terminate the energy assistance program should the rate of federal financial participation in administrative costs be decreased or limited to less than 50 percent of the total administrative cost, or should the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.
7. House Bill No. 1418 provides that the Department of Human Services, with the consent of the Legislative Council's Budget Section, may terminate the food stamp program should the rate of federal financial participation in administrative costs provided under Public Law 93-347 be decreased or limited, or should the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act.
8. 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.
9. 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 irregularities.
10. Section 15-10-18 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.
11. 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.
12. The 1981 Legislative Assembly urged state agencies and institutions not to exceed the 1979-81 level of expenditures for out-of-state travel during the 1981-83 biennium. House Bill No. 1003 directs the Office of Management and Budget to report to the Budget Section on expenditures by such units for out-of-state travel during the first year of the 1981-83 biennium including the personnel involved and the purposes of the travel.
13. The Budget Section is to review, prior to the 1983 Legislative Session, the executive budget for the 1983-85 biennium.

As of its last meeting, the Budget Section had not received any requests from the State Potato Council to expend additional funds available as a result of increased assessments or any requests from the Board of Higher Education regarding charges for nonresident tuition.

Also, the Budget Section had not received any requests from the Department of Human Services to terminate the energy assistance program or the food stamp program as a result of a decrease in the rate of federal financial participation.

As of its last meeting, the Budget Section also had not

received any reports by the Executive Budget Office of irregularities discovered during the preaudit of claims or any reports by the Office of Management and Budget on expenditures by state agencies for out-of-state travel during the first year of the 1981-83 biennium.

JUDICIAL WING AND STATE OFFICE BUILDING

House Bill No. 1006 appropriates $11,750,000 out of the lands and minerals trust fund to the permanent fund of the common schools for the transfer of title of the Judicial Wing and State Office Building to the state of North Dakota upon Budget Section approval.

On September 25, 1981, the Budget Section approved the transfer of title to the state of North Dakota, which included the transfer of $11,746,432.58 (the total construction expenditures as of this date) out of the lands and minerals trust fund to the permanent fund of the common schools. The transfer of title document approved by the Budget Section provides for the Board of University and School Lands, until the Judicial Wing and State Office Building is fully completed and accepted, to continue to act as the interest owner of the building and to continue to meet all obligations to the architects, engineers, and contractors involved in the construction. Once the building is fully completed and accepted, all responsibility and authority transfers to the Director of Institutions.

LAKE REGION COMMUNITY COLLEGE

Senate Bill No. 2007 requires the Lake Region Community College general fund appropriation not expended on July 1, 1982, to be made available to the college for fiscal year 1983, only upon approval of the Budget Section. Senate Bill No. 2007 also appropriates $200,000 to the Office of Management and Budget, upon Budget Section approval, for the purpose of making an operating loan to Lake Region Community College for fiscal year 1983. A six-member subcommittee was appointed to review information and make a recommendation to the Budget Section on these two items. The subcommittee members were Representatives Michael Unhjem, Chairman, Layton Freborg, and Charles Mertens; and Senators L.L. Naaden, Harvey Tallackson, and Kent Vosper.

The subcommittee met with college officials and toured the college facilities. Information presented to the subcommittee included the following:

1. A resolution adopted by the Devils Lake Public School Board on November 24, 1981, which provides for the board's acceptance of fiscal responsibility for the operation of Lake Region Community College for the 1981-83 biennium, beyond state aid available and a $200,000 state loan, and also recommends the inclusion of Lake Region Community College in a system of state-funded community colleges.
2. Actual and projected enrollment figures of the college. The actual end-of-third-week FTE enrollment for the 1981-82 academic year was 477. The college projected the FTE enrollment for the 1982-83, 1983-84, and 1984-85 academic years to be 540, 550, and 560, respectively.
3. The college's general fund budget for the 1979-81 and 1981-83 bienniums. The estimated revenue for the 1981-83 biennium is $3,261,026, which is a 4.2 percent decrease over the 1979-81 biennium. The estimated revenue for the 1981-83 biennium includes state general fund aid of $1,324,476. The estimated expenditures for the 1981-83 biennium are $3,644,520, which is a 7.6 percent decrease over the previous biennium.
4. An estimate of the additional funds required by Lake Region Community College for the 1981-83 biennium. The college projected a $383,494 deficit for the biennium. The proposed source of funds to cover this deficit was a $130,000 Devils Lake School District levy, a $53,494 loan from local sources, and a $200,000 loan from the state.
5. A projected general fund budget of the college for the 1983-85 biennium. The total estimated expenditures for the 1983-85 biennium are $4,575,000, which is a 25.5 percent increase over the previous biennium's estimate. The total estimated revenue includes state general fund moneys of $2,336,300, which is a 59.5 percent increase over the previous biennium.
6. A schedule of long-term debt of the college for the 1981-83 biennium. As of June 30, 1981, the college's long-term debt included $245,000 of general obligation bonds, $1,970,000 of revenue bonds relating to the dormitory/cafeteria, and $365,000 of revenue bonds relating to general operations. Total payments for the biennium will amount to $280,000, resulting in a total principal balance at June 30, 1983, of $2,300,000.
7. Lake Region Community College's audit report for the year ended June 30, 1981.

The subcommittee also was invited to attend the Higher Education Study Commission meeting in which Dr. Kent Alm presented the results of his higher education needs analysis study. In his report, Dr. Alm stated that he could not recommend major increases in state support for Lake Region Community College as currently organized, nor that it be brought into the state system of higher education. He also stated that there may be a continuing need for an institution in Devils Lake to provide instruction and training in vocational and technical skilled areas.

Since the Higher Education Study Commission had not yet made a recommendation concerning the operations of Lake Region Community College, the subcommittee concluded it would be inappropriate at this time to deny the college's request for the appropriation and operating loan for fiscal year 1983. The subcommittee recommended that the Budget Section approve both the appropriation and the operating loan to the college for fiscal year 1983.

Acting upon subcommittee recommendation, the Budget Section approved the general fund appropriation and the $200,000 operating loan for Lake Region Community College for fiscal year 1983.

DEPARTMENT OF HUMAN SERVICES

The Department of Human Services was created by House Bill No. 1418, effective January 1, 1982. Pursuant to this legislation, the Department of Human Services is to assume the functions, powers, and duties of the following governmental agencies:

1. Social Service Board of North Dakota.
2. Governor's Council on Human Resources.
3. Mental Health and Retardation Division of the Department of Health, including the State Hospital and any other institutions under the jurisdiction of the Mental Health and Retardation Division.
4. Division of Alcoholism and Drug Abuse of the Department of Health.
5. State Council on Developmental Disabilities.

Senate Bill No. 2011 requires the director of the Department of Human Services to report periodically to the Budget Section on the progress made in implementing the provisions of House Bill No. 1418 and the provi-

sion of Senate Bill No. 2011, which requires a reduction of 10 positions in the department by June 30, 1983.

The director of the Department of Human Services reported that the implementation of House Bill No. 1418 was proceeding quite well. The director reported that one of the first priorities was the establishment of eight new regional human service centers. House Bill No. 1418 requires the collocation of the mental health and retardation service units and area social service centers into eight regional human service centers. The department received a waiver of a federal ruling requiring vocational-rehabilitation programs to maintain their individual identities, thereby allowing the department to also include these programs in the regional human service centers. The director reported that the eight regional human service center directors have been appointed, as required by House Bill No. 1418.

The director reported a total budget for the Department of Human Services for the 1981-83 biennium of $380,419,869 and total FTE positions authorized of 1,556. He reported that rebudgeting of the eight human service centers for the biennium will result in a $3.1 million general fund savings and overall rebudgeting for the department will result in a general fund savings in excess of $6 million. He also reported that the department is expected to have 44 fewer positions on June 30, 1983, than it had at the beginning of the biennium.

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 state agencies, institutions, and departments, which license, inspect, or regulate private business activities or products. The reports indicate the collection for each type of service and the estimated cost of providing the service for fiscal year 1981. The reports are on file in the Legislative Council office.

The Legislative Council's interim Budget "C" Committee was assigned to conduct a study of the fees charged by the agencies and the study included a review of these reports. For further information on the study, please refer to the Budget "C" Committee report.

STATE BOARD OF HIGHER EDUCATION

Section 15-10-12.1 provides that the Budget Section is to review and act upon State Board of Higher Education requests for authority to construct buildings or campus improvements on lands 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.

Pursuant to Section 15-10-12.1, the Budget Section approved the following requests from the State Board of Higher Education:

1. Authority to accept a federal grant from the Department of Transportation for the construction of a facility at the University of North Dakota to train air traffic controllers. The estimated cost of the facility is $4,500,000. The source of funds includes a $4 million federal grant and $500,000 of private donations to equip the facility.
2. Authority to accept a $6,000 gift for the construction of a storage facility at Mayville State College.
3. Authority to accept a $750,000 gift for the construction of an entrance to the Winter Sports Building at the University of North Dakota.

STATUS OF STATE GENERAL FUND

At each of the Budget Section meetings, a representative of the Office of Management and Budget reviewed the status of the state's general fund.

A "shortfall" in estimated general fund revenues for the biennium was reported to the Budget Section. A large portion of this shortfall was anticipated in the oil tax revenues, primarily due to lower than estimated oil prices and production levels. In March 1982 a low and medium revised estimate of oil tax revenues was presented to the Budget Section. At its last meeting, the Budget Section heard that actual oil tax revenues were close to the March 1982 medium estimate. Following is a comparison of the original oil tax revenue estimate with the March 1982 medium revised estimates for all oil revenue funds (in millions):

5 Percent Oil and Gas Production Tax

	General Fund	Road Fund	Counties	Total
Original estimate	$149.4	$32.0	$51.9	$233.3
March 1982 "medium" revised estimate	83.8	25.9	41.8	151.5
Net reduction	$ 65.6	$ 6.1	$10.1	$ 81.8

6.5 Percent Oil Extraction Tax

	General Fund	School Aid Fund	Trust Fund	Total
Original estimate	$79.6	$159.1	$26.4	$265.1
March 1982 "medium" revised estimate	51.1	101.4	16.9	169.4
Net reduction	$28.5	$ 57.7	$ 9.5	$ 95.7

Oil Tax Revenues (5 Percent and 6.5 Percent)

	General Fund	School Aid Fund	Trust Fund	Road Fund	Counties	Total
Original estimate	$229.0	$159.1	$26.4	$32.0	$51.9	$498.4
March 1982 "medium" revised estimate	134.9	101.4	16.9	25.9	41.8	320.9
Net reduction	$ 94.1	$ 57.7	$ 9.5	$ 6.1	$10.1	$177.5

Revisions in estimated sales and income tax revenues were also reported; however, no official revised forecasts were available for these revenues at the last Budget Section meeting.

As of October 1982 it was reported to the Budget Section that a total general fund shortfall of $146 to $150 million was anticipated, with a general fund unobligated balance at the end of the biennium as low as $10 million.

BLOCK GRANTS

The Budget Section monitored the status of the new federal block grants created by the Omnibus Budget Reconciliation Act of 1981, which are as follows:

1. Alcohol, drug abuse, and mental health block grant.
2. Primary care block grant.
3. Preventive health and health services block grant.
4. Maternal and child health block grant.
5. Social services block grant.
6. Elementary and secondary education block grant.
7. Community development block grant.
8. Community services block grant.
9. Low income home energy assistance block grant.

The Budget Section received an analysis showing the federal categorical grants consolidated under each block grant, along with distribution formulas, matching provisions, required state procedures, transition provisions, transfer provisions, and other major features of the block grants. The four major state agencies involved in administering these block grants are the Department of Health, the Department of Human Services, the Department of Public Instruction, and the Federal Aid Coordinator Office. Each of these agencies informed the Budget Section of the potential impact on their operations, their plans to participate, and staff reductions necessary to operate within block grant funding limitations. The agencies all planned to begin administering the block grants at the earliest date allowed by the Act, which was generally October 1, 1981. Budget Section found that although the block grants provide more flexibility than categorical grants, there are still many state requirements or "strings" attached to them.

The Budget Section was informed of the public hearings required for many of the block grants, generally after the expiration of the first fiscal year in which the state receives an allotment. A summary of the public hearing requirements for each block grant is as follows:

Hearing to be conducted by:	Legislative Assembly	Executive Agency Unless Otherwise Designated by Legislative Assembly	None Required
Block Grant			
Alcohol, Drug Abuse, and Mental Health	X		
Primary Care	X		
Preventive Health and Health Services	X		
Maternal and Child Health			X
Social Services			X
Elementary and Secondary Education			X
Community Development		X	
Community Services	X		
Low Income Home Energy Assistance		X	

To accommodate the legislative hearing requirements, a resolution was passed during the November reconvened session authorizing the Budget Section to hold the necessary hearings during the interim.

In July 1982 the Budget Section conducted public hearings on the proposed federal fiscal year 1983 state plans for the following block grants:

1. **Community Services Block Grant** — This block grant, administered by the Federal Aid Coordinator Office, provides funds for a range of services and activities for the poor, particularly the elderly, regarding housing, health, nutritious food, and self-sufficiency. The Federal Aid Coordinator Office estimates it will receive $850,000 of federal funds under this program to be used during the fiscal year October 1, 1982, through September 30, 1983.
2. **Preventive Health and Health Services Block Grant** — This block grant, administered by the Department of Health, provides funds for preventive health services for individuals and families, especially those of a limited means, and for a variety of public health services to reduce preventable morbidity and mortality and improve quality of life. The Department of Health estimates it will receive $225,000 of federal funds under this program to be used during the fiscal year October 1, 1982, through September 30, 1983.
3. **Human Services Plan** — This block grant, administered by the Department of Human Services, is a consolidation of the alcohol, drug abuse, and mental health block grant, the social services block grant, and the child welfare services program. Funds received under this block grant may be used to establish and maintain programs to combat alcohol and drug abuse; to care for the mentally ill and to promote mental health; to establish and maintain programs to help residents achieve and maintain economic self-sufficiency; to prevent neglect, abuse, or exploitation of children and adults; to provide community-based care and services to persons leaving institutions; and to provide services to children

and their families. The Department of Human Services estimates it will receive not more than $8,261,000 of federal funds under this program to be used during the fiscal year October 1, 1982, through September 30, 1983.

4. **Low Income Home Energy Assistance Block Grant** — This block grant, administered by the Department of Human Services, provides funds to help eligible low income people meet the cost of home energy and to provide low cost residential weatherization or other energy-related home repairs for low income households. The Department of Human Services estimates it will receive up to $13,200,000 of federal funds under this program to be used during the fiscal year October 1, 1982, through September 30, 1983.

The Budget Section approved the federal fiscal year 1983 state plans for these four block grants as presented to the committee, except it was recommended that, to the extent allowed by existing state or federal law, the Federal Aid Coordinator Office amend the community services block grant plan to include funds for Region I of the state. The community services block grant plan included the allocation of funds to the existing community action agencies in Regions II through VIII of the state. Region I of the state does not have a community action agency.

The Budget Section also passed a motion recommending that state agencies which administer block grants created by the Omnibus Budget Reconciliation Act of 1981 submit two-year block grant plans as a part of their budget requests to the Legislative Assembly to assist in fulfilling the legislative public hearing requirements.

FEDERALISM INITIATIVE

The Legislative Council staff presented three reports to the Budget Section on President Reagan's federalism initiative program for federal fiscal year 1984, which was released in January 1982. This proposal included the assumption by the federal government of responsibility for the Medicaid program in return for the state's assumption of responsibility for the food stamp program and aid to families with dependent children (AFDC). President Reagan also proposed turning back 43 federal programs involving 124 grants to the state. A federalism trust fund of $28 billion would finance the program turnback and equalize gains and losses among states caused by the exchange of Medicaid for AFDC and the food stamp program. The reports included an analysis of the federalism trust fund, the fiscal impact of the Medicaid/AFDC-food stamp program exchange, and North Dakota's statutory basis for the federal programs proposed for turnback to the state and local governments. The Budget Section also received reports on the role of the National Conference of State Legislatures (NCSL) in the federalism initiative program, including NCSL policies which have been established concerning the proposal. Revisions have been made in the proposal since its initial release, including the elimination of the food stamp program from the Medicaid/AFDC exchange and revisions to the list of programs proposed for turnback to the states. Copies of the reports are on file in the Legislative Council office.

SOUTHWEST PIPELINE PROJECT

Senate Bill No. 2338 authorized and funded the Southwest Pipeline Project. The bill appropriated $983,000 ". . . to contract for preliminary designs for a water supply facility for supplementation of the water resources of Dickinson and the area of North Dakota south and west of the Missouri River for multiple purposes including domestic, rural water district, and municipal uses." Senate Bill No. 2338 further stipulated that the plan should utilize a pipeline delivery system and that preliminary design should be furnished to the Legislative Council on or before October 1, 1982.

To provide an opportunity for legislative input and to inform legislators of major issues related to the Southwest Pipeline Project, the State Water Commission made preliminary reports to the Budget Section on the status of the project. The reports covered the financial, legal, and engineering aspects of the project. The Budget Section was presented with cost estimates under various alternative capacity plans and intake sites. The estimated construction costs (based on July 1982 prices and excluding financing costs) range from $89,027,000 to $134,376,000, depending upon the capacity plan chosen. The proposed sources of funds to finance the project include the resources trust fund, direct legislative appropriation, and user capital repayment charges. The State Water Commission reported plans to negotiate as many water service contracts as possible prior to the 1983 Legislative Session to give the Legislative Assembly an estimate of the amount of guaranteed interest in the project. The contracts will be contingent upon legislative approval of the Southwest Pipeline Project.

TOUR GROUPS

During September and October 1982, 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 group minutes, with comments, observations, and recommendations, is available in the Legislative Council office and will be submitted to the Appropriations Committees during the 1983 Legislative Session. The members of each tour group and the institutions visited are as follows:

Tour Group No. 1 — Representative Michael Unhjem, Chairman

Membership:

Representative Michael Unhjem
Representative Richard Backes
Representative Ronald Gunsch
Representative David Koland
Representative Tom Kuchera
Senator Stella Fritzell
Senator L. L. Naaden
Senator Rolland Redlin
Senator Russell Thane

Institutions Assigned:

Bismarck Junior College
West Central Human Service Center
State Industrial School
State Penitentiary
State Farm
State Hospital
South Central Human Service Center
Valley City State College
State School of Science
Soldiers' Home

Tour Group No. 2 — Representative Vernon Wagner, Chairman

Membership:

Representative Vernon Wagner
Representative Robert Jacobsen
Representative Harley Kingsbury
Representative Olaf Opedahl
Representative Jim Peterson
Senator Kent Vosper
Senator Frank Wenstrom

Institutions Assigned:

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

Tour Group No. 3 — Senator Donald Hanson, Chairman

Membership:

Senator Donald Hanson
Senator Francis Barth
Senator Evan Lips
Senator David Nething
Senator Leland Roen
Senator Bryce Streibel
Senator Malcolm Tweten
Senator Jerome Walsh
Representative Layton Freborg
Representative Oscar Solberg
Representative Francis Wald

Institutions Assigned:

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

Tour Group No. 4 — Senator Jack Olin, Chairman

Membership (includes Budget "A" Committee members, which toured Grafton State School and San Haven):

Senator Jack Olin
Senator Perry Grotberg
Senator Robert Melland
Senator Wayne Stenehjem
Senator Harvey Tallackson
Representative Paul DuBord
Representative Aloha Eagles
Representative Brynhild Haugland
Representative Roy Hausauer
Representative Peter Lipsiea
Representative Lawrence Marsden
Representative Ruth Meiers
Representative Charles Mertens
Representative Corliss Mushik
Representative Kenneth Olafson
Representative Dagne Olsen
Representative Elmer Retzer
Representative Earl Strinden
Representative Kenneth Thompson

Institutions Assigned:

Grafton State School
San Haven
NDSU-Bottineau Branch
State Forest Service
Lake Metigoshe State Park
International Peace Garden
Camp Grafton
School for the Deaf
Lake Region Community College
Lake Region Human Service Center

OTHER BUDGET SECTION ACTION

The Budget Section reviewed and approved the format of the executive budget for the 1983-85 biennium as presented by the Office of Management and Budget. The budget format includes three levels of funding — a 90 percent base level, a current service level, and a program enhancement level. All current service and program enhancement requests must be ranked in priority order by the agencies.

The Budget Section reviewed and heard testimony regarding the appropriateness of applying financial eligibility criteria to the family subsidy program. The 47th Legislative Assembly allocated $200,000 for the family subsidy program, which provides financial resources to

the families of developmentally disabled children. The objective of the program is to enable developmentally disabled children to remain in or return to their family homes, thus avoiding or reducing the necessity of placement in a more restrictive institutional setting. Because of the limited appropriation, the Budget Section concluded it was appropriate to apply financial eligibility criteria to the program. The Budget Section expressed support for the criteria established by the Social Service Board for the 1981-83 biennium.

The Legislative Council staff presented reports on the unrestricted current funds of Bismarck Junior College, Lake Region Community College, and UND-Williston Center for the fiscal years ended June 30, 1980 and 1981.

The Budget Section heard a report by the Indian Affairs Commission on the status of implementing House Bill No. 1605, which appropriated $383,836.83 for alcohol and drug abuse education programs on the four major Indian reservations in North Dakota. It was reported that the programs were well accepted by the reservations and that funding to continue the programs during the next biennium will be requested.

This report presents Budget Section activities 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 will be submitted for distribution at a later date.

BUDGET "A" COMMITTEE

House Concurrent Resolution No. 3003 directed the Legislative Council to monitor the establishment of intermediate care facilities and services for developmentally disabled persons during the 1981-83 biennium. House Concurrent Resolution No. 3047 directed the Legislative Council to monitor deinstitutionalization and community service programs for developmentally disabled persons.

These studies were assigned to the Budget "A" Committee whose members were Representatives Lawrence Marsden, Chairman, Paul DuBord, Brynhild Haugland, Peter Lipsiea, Ruth Meiers, Corliss Mushik, Kenneth Olafson, Dagne Olsen, Elmer Retzer, Earl Strinden, and Kenneth Thompson; and Senators Perry Grotberg, Wayne Stenehjem, and Harvey Tallackson.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

MONITORING DEINSTITUTIONALIZATION AND THE ESTABLISHMENT OF INTERMEDIATE CARE FACILITIES AND SERVICES FOR THE DEVELOPMENTALLY DISABLED

Background

There are an estimated 3.4 million people in the United States and in excess of 8,300 in North Dakota who are developmentally disabled. There are currently 948 persons in institutions in North Dakota with the remainder of the developmentally disabled population living in communities. This committee was given the responsibility to monitor the deinstitutionalization plan approved by the 1981 Legislative Assembly and the development of community services to serve the developmentally disabled population.

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

1. **Deinstitutionalization** — Refers to the return to the community of 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 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. **Intermediate Care Facility for Developmentally Disabled (ICF/DD)** — A heavily supervised residence with house parents providing 24-hour supervision. Individualized programs of training are developed by a qualified mental retardation professional and consist of basic self-care and community living competencies. The exit competencies at this level are entering competencies for the community living facility (moderately supervised residence).
10. **Adult Group Home** — Designed to meet the needs of developmentally disabled individuals who can benefit from interaction of family living in a group home. These homes provide for the individual in the areas of self-help skills, social, behavior management, and other needs as identified in an individualized habilitation plan (IHP) in conjunction with the home providers. The homes are responsible for providing documentation of structured maintenance programs. Community resources are utilized wherever possible. The goal of the training home program is to allow individuals who are more substantially

handicapped, but do not require ICF/DD services to reside in a family setting.

11. **Community Living Facility (CLF)** — A moderately supervised residence of nonpermanent clients with houseparents responsible for main meal supervision and whose presence is required during nights and evenings. Individualized programs consist of more sophisticated social and community living skills development. This residence exit competencies are entering competencies for minimally supervised living.
12. **Minimally Supervised Living Arrangements (MSLA)** — "Minimally supervised living arrangements" consist of a community complex where the individual rents a self-contained unit with an available client advisor under contract who lives in the complex.
13. **Supported Living Arrangements (SLA)** — This program provides support and direction but does not interfere with the client's independence, but rather supports and shapes the client with the necessary skills for total independence and self-sufficiency. Support is provided by staff on an "as needed" basis, based on the individual's capabilities. The function of the supported living arrangement is to normalize living conditions and, as far as possible, to replicate home-style living as it exists in the community.
14. **Family Support Services** — Any activity provided through or in conjunction with a private nonprofit association, corporation, or facility utilizing state funds to provide the following:
    a. **Respite Care** — Service provided to the family constellation of a developmentally disabled individual which purchases short-term placement outside the home or care within the home.
    b. **Family Subsidy** — Financial assistance to families to cover the extraordinary financial obligations incurred when they keep a developmentally disabled member in the home.
    c. **Crisis Intervention** — Service provided to an individual in the community setting which will modify behavior in order to enable the individual to continue to participate in community-based programs.

The 1979 Legislative Assembly directed the Legislative Council to study deinstitutionalization programs for residents of the Grafton State School and San Haven. During the 1979-81 interim, the Legislative Council's Budget "B" Committee conducted the study and recommended a plan to the 1981 Legislative Assembly to provide community services for developmentally disabled persons.

The plan, as amended by the 1981 Legislative Assembly, provided a statewide program of deinstitutionalization with funding of $16.4 million, $10.9 million of which was from the general fund, for a 1981-83 biennium demonstration project. Details of the appropriation may be found in the table entitled "The 47th Legislative Assembly Deinstitutionalization Appropriation" later in this report. This plan included development of 100 new intermediate care facility (ICF/DD) beds (including 16 beds for the chronically mentally ill) and conversion of 100 existing beds to ICF/DD beds. These facilities were to be developed to accommodate to the extent possible transfers of eligible persons from Grafton State School and San Haven. An intermediate care facility is certified to have as its primary purpose the provision of health or rehabilitation services for persons with mental retardation receiving care and services under the Medicaid program. An ICF/DD facility receives federal Medicaid reimbursement for approximately 62 percent of its costs, under current reimbursement rates. The 1981 Legislative Assembly passed House Bill No. 1048 which requires the state to pay the nonfederal share of the cost of ICF/DD facilities. In addition, the project was to provide day activity and vocational development programs in the communities.

The 1981 Legislative Assembly also provided a $4 million appropriation from the lands and minerals trust fund to the Bank of North Dakota to be used as a revolving loan fund for the development of intermediate care facilities for the developmentally disabled.

Additionally the 1981 Legislative Assembly provided a "bill of rights" for the developmentally disabled contained in North Dakota Century Code Chapter 25-01.2. That chapter provides, among other things, developmentally disabled individuals with a right to treatment in the least restrictive appropriate setting, a right to protection from unlimited use of chemical and physical restraints, and a right to the development of an individualized habilitation plan. The plan must include goals and objectives for the developmentally disabled person and evaluation procedures to determine achievement of those goals and objectives.

The Legislative Assembly expressed its intent to reduce the combined population of Grafton State School and San Haven to the national average that exists in 1987. That population has been projected to be approximately 450. The following schedule compares the total number of residents and employees at the two institutions since 1970 and those planned through June 1989:

COMPARISON OF RESIDENT AND EMPLOYEE LEVELS AT THE GRAFTON STATE SCHOOL AND SAN HAVEN

	Residents	Employees
Fall 1970	1,487	729
Fall 1972	1,396	753
Fall 1974	1,227	790
Fall 1976	1,149	893
Fall 1978	1,114	860
March 1981	1,049	863
October 1982	978	1,096
June 1983 (projected)	900	1,192
Less placements	(255)	
June 1985 (projected)	645	1,404
Less placements	(200)	
June 1987 (projected)	445*	N/A
Less placements	(195)	
June 1989 (projected)	250*	N/A

* These are the court-ordered population levels.

The Association for Retarded Citizens (ARC) and parents of six developmentally disabled children filed suit in federal district court during September 1980, naming as defendants 13 state officials. The lawsuit, referred to as ARC v. Olson, requested injunctive and declaratory relief concerning practices and conditions existing at the Grafton State School and San Haven. The status of the case was reported to the committee during the interim by representatives of the Attorney General's office.

The federal judge on the ARC v. Olson case ordered on November 4, 1981, restrictions on the use of medication and prohibitions on corporal punishment, neglect, and abuse of residents at the institutions. He also ordered a skills and needs inventory be done for all residents to determine the type of residential facility needed by each resident and the services and daily programs needed for each individual. Also, the judge ordered the hiring of 125

additional staff at the institutions, including psychologists, nurses, direct care staff, and therapists.

The trial of the case was completed during May 1982. On August 31, 1982, the judge ordered the state to:

1. Provide a written individualized habilitation plan for each developmentally disabled class member.
2. Provide appropriate food, clothing, shelter, medical care, education, and habilitation for each class member.
3. Limit the use of physical and chemical restraints.
4. Continue to develop a service delivery system including, but not limited to, institutional services, family care, foster care, day care, respite care, crisis intervention, community residences, development centers, and work activity centers.
5. Limit entrance to Grafton State School only to cases where it can be demonstrated that there is no less restrictive appropriate setting available to the individual.
6. Develop community facilities to reduce the population at Grafton State School to not more than 450 by July 1, 1987, and not more than 250 by July 1, 1989.
7. Survey the developmental level and needs of the residents remaining at Grafton State School and determine the level, type, and location of additional services needed.
8. Comply with Title XIX regulations by July 1, 1985, and with ACMR/DD standards by July 1, 1987, at all facilities where any class member is residing or will reside.

Following the judge's August 31, 1982, order the defendants asked for relief from Nos. 6 and 8 above. Those items require compliance with Title XIX regulations by July 1, 1985, for the population at Grafton State School, a portion of which are planned to be released by July 1, 1987. The defendants believe that unless relief is obtained in regard to these points, it will be necessary to construct a building costing approximately $5 million to be used for only a two-year period. The judge denied the request and the defendants have appealed the case to the United States Court of Appeals for the Eighth Circuit.

Monitoring

The committee heard progress reports on deinstitutionalization and the development of community services including intermediate care facilities, as summarized below:

1. **Department of Human Services — Developmental Disabilities Division.**

   a. Services

   The department reported to the committee on the development of ICF/DD beds, and related community services. Details of the services available on October 1, 1982, and those included in the plan approved by the 1981 Legislative Assembly and the Department of Human Services to be available by June 1983 are detailed in the table entitled "Comparison of Available Day and Residential Community Services for the Developmentally Disabled."

   It was reported the development of ICF/DD beds has been slower than anticipated due to the time required for the planning and organization at the community level. As of October 1, 1982, 36 ICF/DD beds have been developed compared to the 184 beds included in the developmental disabilities plan. The department estimated a total of 178 ICF/DD beds and 16 chronically mentally ill beds will be available by June 30, 1983.

   It should be noted that some beds currently in the adult group home category will be converted to ICF/DD facilities during the remainder of the 1981-83 biennium.

   b. Placements

   The department reported on the effect of development of community facilities on the population of Grafton State School and San Haven.

   The following schedule details the placements made from the Grafton State School for the period July 1, 1981, through October 1, 1982:

GRAFTON STATE SCHOOL PLACEMENTS

Placement Type	
Adult group home	3
Basic care	35
Extended family care	1
Foster care	1
Intermediate care facility/nursing	1
Intermediate care facility/mentally retarded	5
Minimally supervised living arrangement	2
Parental home	5
Supported living arrangement	1
Transitional community living facility	6
Total	60

   c. Deinstitutionalization Budget

   The following schedule details the revised budget of $15.7 million, $10.9 million from the general fund, for the deinstitutionalization program. The Department of Human Services transferred approximately $725,000 of appropriation authority for other funds from the deinstitutionalization budget to the Department of Human Services to be used for Medicaid funding and vocational development funding. This transfer reduced the appropriation authority from $16.4 million to $15.7 million. Through August 31, 1982, the department has spent $4,474,938, of which $4,228,192 is from the general fund.

   The federal funds are being spent at a rate less than anticipated due to the limited number of ICF/DD beds eligible for Medicaid funds.

   At the October 27, 1981, meeting the committee expressed its concern that the delay in conversion of adult group home beds to ICF/DD beds could result in a deficiency appropriation request due to the large expenditure of general fund dollars rather than Medicaid dollars. At the last committee meeting the department said a deficiency request will not be necessary.

47TH LEGISLATIVE ASSEMBLY DEINSTITUTIONALIZATION APPROPRIATION*

Program	Revised Budget	Expended as of August 31, 1982
DD Council	$ 477,492	$ 209,399
DD administration	256,625	128,209
Training	246,531	24,712
Habilitation	76,488	37,932
Children's services	59,794	25,563
Audit	50,896	1,113
Medical administration	94,375	14,857
Grand Forks hostel	148,928	73,946
Case management	205,852	
ICR/MR	5,292,600	483,531
Acute medical	288,000	
Vocational evaluation	307,591	96,654
Vocational development	1,816,181	724,016
Transitional living — room and board	547,666	266,642
Transitional living — training	764,142	344,010
Day activity	313,950	123,886
Work activity	1,439,900	738,397
Adult group home	849,801	507,823
Minimally supervised living	365,000	70,465
Supported living arrangement	274,029	132,797
Family subsidy	360,000	106,463
Respite care	85,000	85,000
Infant development — screening	24,000	
Infant development — evaluation	200,000	12,117
Infant development	448,000	236,467
Transitional living — mentally ill	669,410	30,929
Total All Funds	$15,662,251	$4,474,928
Less Estimated Income	4,751,714	246,736
General Fund	$10,910,537	$4,228,192

*As adjusted by the Department of Human Services.

2. **Grafton State School and San Haven** — The institutions reported to the committee on program and capital improvements made during the biennium. Grafton State School has developed a unit approach which attempts to group residents by skill development level and services required. The 195 new positions provided by the 1981 Legislative Assembly and the 116 court-ordered positions have enabled the school to increase direct care staff and provide more educational and therapeutic services to the residents. Currently there are a total of 926 positions at Grafton State School (including 116 court-ordered positions) and approximately 760 residents. San Haven has 263 total positions and approximately 220 residents.

   The 1981 Legislative Assembly appropriated $16.1 million for capital improvements at the two institutions. It was reported those improvements will make Title XIX certified residential facilities available to approximately 258 residents by June 30, 1983.

3. **Health Facilities Division of the State Department of Health** — The division has the responsibility to inspect residential facilities and certify that they meet Medicaid requirements. Once certified the facilities become eligible for Title XIX federal funds at a reimbursement rate of 62 percent of actual cost.

   It was reported at the last meeting 36 of the 184 ICF/DD beds in the plan approved by the 1981 Legislative Assembly have been certified. The 148 beds remaining, with the exception of eight beds planned for Williston, should be completed by June 30, 1983. An additional 38 beds have been certified at San Haven with 250 more planned for certification at San Haven and Grafton State School by June 30, 1983.

4. **Bank of North Dakota** — Representatives of the Bank of North Dakota reported $2.4 million of the $4 million appropriation for the developmentally disabled loan fund has been formally committed to nonprofit organizations for construction of intermediate care facilities for developmentally disabled persons. The loans are limited to $300,000 each and have been made for 12 projects to date. An additional $1.3 million, for a total of $3.7 million, has been conditionally committed to by the Department of Human Services with loan applications in progress with the Bank of North Dakota.

5. **Community Providers** — The committee heard reports from community providers of developmentally disabled services. It was reported that obtaining financing for the startup costs associated with the development of community facilities was a problem in communities where no previous experience in operating residential and day service programs existed. Other community providers which had been in operation for a period of time reported good progress in meeting the requirements of the Developmental Disabilities Division, including Title XIX regulations and ACMR/DD standards.

6. **Special Education Division of the Department of Public Instruction** — The division reported to the committee on the costs associated with programs for trainable mentally handicapped and severely multiply handicapped students in public schools in North Dakota. It was reported educational costs were approximately $8,000 per student for trainable mentally handicapped students and $11,000 per student for severely multiply handicapped students in a Class A size school. The cost of education in a remote Class B school district was approximately $20,000 per student for a severely multiply handicapped student. The costs include training and therapy costs and do not include residential costs.

   The division reported that in-state boarding costs are funded by the Department of Public Instruction and out-of-state boarding costs are funded by the Department of Human Services. The department said a need exists for adequate funding of in-state boarding costs. It was reported representatives of the Department of Human Services, Department of Public Instruction, and Director of Institutions' office will meet to discuss the issue of boarding cost funding and will consider recommending statutory changes to the 1983 Legislative Assembly that will assist in the coordination of the handling of special education boarding costs for the next biennium.

7. **Tour of Institutions and Community Facilities** — Legislative Council staff toured several community

service provider facilities during the interim and reported to the Budget "A" Committee on the progress made in delivering the services outlined in the legislative plan. It was reported 178 of the 184 ICF DD beds in the plan were anticipated to be completed by June 1983.

During September 1982 members of the Budget "A" Committee toured Grafton State School and San Haven with Budget Section Tour Group No. 4. Committee members observed the capital improvements at the two institutions and heard reports on plans for future improvements. Committee members noted improvements in the comfort and education of residents have been made and commended institutional employees for their dedicated service.

1983-85 Biennium Plan for Developmentally Disabled Persons

The following schedule summarizes budget requests submitted by the Department of Human Services, Grafton State School, and San Haven for developmentally disabled services for the 1983-85 biennium and compares them to 1981-83 estimated appropriations:

DEVELOPMENTAL DISABILITIES
DIRECTOR OF INSTITUTIONS/HUMAN SERVICES
1983-85 BIENNIUM

	Funding			
	Total	General	Federal	Other
San Haven	$ 13,123,104	$ 7,619,138		$ 5,503,966
Grafton	55,261,645	39,009,938	$ 502,924	15,748,783
Total Institutional	$ 68,384,749	$46,629,076	$ 502,924	$ 21,252,749
Department of Human Services				
Community-based care	$ 17,040,652	$16,312,021	$ 728,631	
ICF/Grafton-San Haven	19,993,625	7,990,698	12,002,927	
ICF/Community care	10,070,402	4,065,423	6,004,979	
Regional office	3,686,355	3,007,324	385,697	$ 293,338
Central office	542,173	542,173		
Total Department of Human Services	$ 51,333,207	$31,917,639	$19,122,230	$ 21,546,087
Total Appropriation Request	$119,717,956	$78,546,715	$19,625,154	$ 21,546,087
Less Interagency Transfer				
San Haven	(5,393,605)			(5,393,605)
Grafton	(14,600,020)			(14,600,020)
Net Funding Requested	$99,724,331	$778,546,715	$19,625,154	$ 1,552,462
1981-83 Estimated Appropriations	72,227,489	48,733,198	4,751,714	18,742,576*
Increase (Decrease)	$ 27,496,842	$29,813,517	$14,873,440	$(17,190,114)

* Includes a $15 million transfer from the oil extraction tax fund created by Initiated Measure No. 6 approved in November 1980.

The 1983-85 biennial budget request will provide additional developmentally disabled community services. The development of the additional community services, including residential and day services, will allow for the placement of 255 developmentally disabled persons from the Grafton State School and San Haven by June 30, 1985. See the chart earlier in this report detailing the placements to be made through June 1989. The following schedule compares the services available on October 1, 1982, the services projected by the legislative plan, the services projected to be available on June 30, 1983, and those projected to be available on June 30, 1985, and identifies the services to be provided to the residents placed from the Grafton State School.

COMPARISON OF AVAILABLE DAY AND RESIDENTIAL COMMUNITY SERVICES FOR THE DEVELOPMENTALLY DISABLED

Service	Total Services Available October 1, 1982	Total Services in Original Legislative and Human Services Plan for the 1981-83 Biennium	Total Services Projected to be Available June 30, 1983	Total Services Projected to be Available June 30, 1985	Increase (Decrease) From June 1983 to June 1985	Services for Residents Placed From Grafton State School During 1983-85 Biennium
Day Services						
Adult day care	0	0	0	73	73	20
Developmental day activity	68	154	146	278	132	100
Developmental work activity	228	283	265	394	129	48
Vocational development	115	150	115	175	60	
Extended employment	9	40	19	161	142	
Residential Services						
Adult group home	93	82	1/	1/	1/	
ICF/DD — adult	36	184	178	323	145	145
Transitional community living	123	150	155	195	40	8
Minimally supervised living arrangement	27	53	159	291	132	7
Supported living	131	168	207	457	250	0
Adult family care	0	0	21	54	33	9
Domiciliary care — aged	0	0	0	100	100	8
Foster care — family	0	0	15	28	13	1
Foster care — group home	0	0	16	12	(4)	0
Extended family care — family	0	0	5	20	15	4
Extended family care — group home	0	0	2	18	16	1
ICF/DD — child	0	0	8	24	16	11
Family subsidy	125	102	127	229	102	
Infant development	306	511	511	481	(30)	
Respite care	232	217	201	314	113	
Long-term care 2/						61

1/ The adult group home is redefined and is more accurately reflected in other residential service categories.

2/ These placements will be in long-term care facilities not identified as state developmentally disabled services, including skilled nursing care facilities.

The Department of Human Services projects the additional residential and day services required for the 1983-85 biennium as follows:

SCHEDULE OF ADDITIONAL COMMUNITY SERVICES FOR THE DEVELOPMENTALLY DISABLED PLANNED DURING THE 1983-85 BIENNIUM

	Location	Funding
Region I		
1 — 8 bed ICF/DD	Williston	Bank of North Dakota
1 — 8 bed MSLA	Williston	Non-Bank of North Dakota
Region II*		
1 — 8 bed ICF/DD	Tioga	Bank of North Dakota
1 — 8 bed ICF/DD	New Town	Bank of North Dakota
1 — 8 bed MSLA	Stanley	Non-Bank of North Dakota
1 — 30 slot DDA/DWA	Stanley	Bank of North Dakota
Region III		
1 — 8 bed ICF/DD	Devils Lake	Bank of North Dakota
2 — 8 bed MSLA	Devils Lake	Non-Bank of North Dakota
1 — 8 bed TCLF	Devils Lake	Non-Bank of North Dakota

Region IV*		
1 — 8 bed ICF/DD	Grand Forks	Bank of North Dakota
1 — 8 bed ICF/DD	Grafton	Bank of North Dakota
1 — 8 bed ICF/DD	Park River	Bank of North Dakota
1 — 8 bed ICF/DD	Cavalier	Bank of North Dakota
1 — 30 slot DDA/DWA	Grafton/Park River	Bank of North Dakota
Region V		
3 — 8 bed ICF/DD	Wahpeton	Bank of North Dakota
1 — 30 slot DDA/DWA	Wahpeton	Bank of North Dakota
1 — 6 bed ICF/DD	Fargo	Bank of North Dakota
Region VI		
1 — 8 bed ICF/DD	Valley City	Bank of North Dakota
1 — 8 bed ICF/DD	Jamestown	Bank of North Dakota
1 — 8 bed MSLA	Jamestown	Non-Bank of North Dakota
1 — 12 bed TCLF	Jamestown	Non-Bank of North Dakota
Region VII		
1 — 32 bed MSLA	Bismarck	Non-Bank of North Dakota
4 — 8 bed ICF/DD	Bismarck/Mandan	Bank of North Dakota
1 — 8 bed TCLF	Bismarck/Mandan	Non-Bank of North Dakota
Region VIII		
2 — 8 bed ICF/DD	Dickinson	Bank of North Dakota
2 — 10 bed MSLA	Dickinson	Non-Bank of North Dakota
1 — 8 bed ICF/DD	Bowman/Hettinger	Bank of North Dakota
1 — 10 bed MSLA	Bowman/Hettinger	Non-Bank of North Dakota
1 — 30 slot DDA/DWA	Dickinson	Bank of North Dakota
1 — 30 slot DDA/DWA	Bowman/Hettinger	Bank of North Dakota
Total ICF/DD beds	166 beds — 21 facilities	
Total day service slots	150 slots — 5 facilities	
Total non-ICF/DD beds	112 beds — 11 facilities	

MSLA — Minimally Supervised Living Arrangement
TCLF — Transitional Community Living Facility
DDA — Developmental Day Activity
DWA — Developmental Work Activity

* If these facilities are not built in the rural communities mentioned they will be built in Minot in Region II and Grand Forks in Region IV.

The department recommends a $5,542,500 increase in the Bank of North Dakota developmentally disabled loan fund to assist in providing the funding for the additional facilities listed above.

The $68.4 million 1983-85 biennial budget request for Grafton State School and San Haven will allow the institutions to provide Title XIX certified beds for 469 of the 650 residents at the institutions on June 30, 1985, and will meet nonresidential programmatic Title XIX requirements for all residents at that time.

The capital improvements planned at the Grafton State School include $2 million for renovation of West and Wylie Halls, $3.7 million for utility tunnels, $2.4 million for renovation of Sunset Hall, and $1.2 million for a pedestrian tunnel. In addition, San Haven plans to spend approximately $800,000 to renovate building No. 2 to meet Title XIX requirements. Title XIX compliance will allow the two institutions to receive an estimated $12 million of Title XIX funds for the 1983-85 biennium.

Summary

State agencies, committee members, and individuals identified several areas of interest including areas needing future monitoring relating to deinstitutionalization and development of community services:

1. To ensure the educational needs of developmentally disabled children are met, adequate funding for boarding costs of special education students need to be available during the 1983-85 biennium.
2. To ensure the quality of community services is equal to that in the institutions, a monitoring of community services is necessary. This would include a monitoring of the organization of nonprofit organizations providing services and the quality and cost of community services. Currently the Grafton State School provides 21 different services to residents, and those services may not be available in all community areas of the state.
3. The state of North Dakota, to avoid overbuilding, should proceed cautiously with remodeling and construction at the Grafton State School and San Haven until the final institutional population is more certain.
4. Title XIX funds, projected to provide $6 million for community services and $12 million for institutional services, should be closely monitored to ensure these funds will be available.
5. The federal court requirement of reducing the institutional population to 250 by July 1, 1989, may be difficult to achieve.
6. Zoning restrictions placed on the site selection of congregate living facilities for housing developmentally disabled citizens may become a major obstacle to deinstitutionalization.
7. The availability of resources of the state to finance both institutional and community programs.

BUDGET "B" COMMITTEE

The Budget "B" Committee was assigned two study resolutions. Senate Concurrent Resolution No. 4071 directed the Legislative Council to conduct a study of the use of special funds and cash accounts maintained in the state treasury. House Concurrent Resolution No. 3077 directed the Legislative Council to monitor the University of North Dakota's planning for the establishment of a four-year medical education program in North Dakota.

Committee members were Senators F. Kent Vosper, Chairman, Robert Melland, Leland Roen, Bryce Streibel, and Frank Wenstrom; and Representatives Gordon Berg, Brynhild Haugland, Tish Kelly, Dorothy Moum, Joe Peltier, Verdine Rice, Oscar Solberg, and Vernon Wagner.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

MONITORING ESTABLISHMENT OF FOUR-YEAR MEDICAL EDUCATION PROGRAM

Background

Pursuant to House Concurrent Resolution No. 3077, the Budget "B" Committee monitored the University of North Dakota (UND) Medical School's planning for the establishment of a four-year medical education program in North Dakota. The program includes the establishment of the third year of the medical program in North Dakota during the 1983-85 biennium. The committee identified the following areas to be monitored:

1. Preparation of the curriculum for the third year of the Medical School.
2. Arrangement with medical institutions for instruction of third-year medical students.
3. Related costs of the third year in North Dakota for the 1983-85 biennium.

History of the University of North Dakota Medical School

A review of the UND Medical School 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.

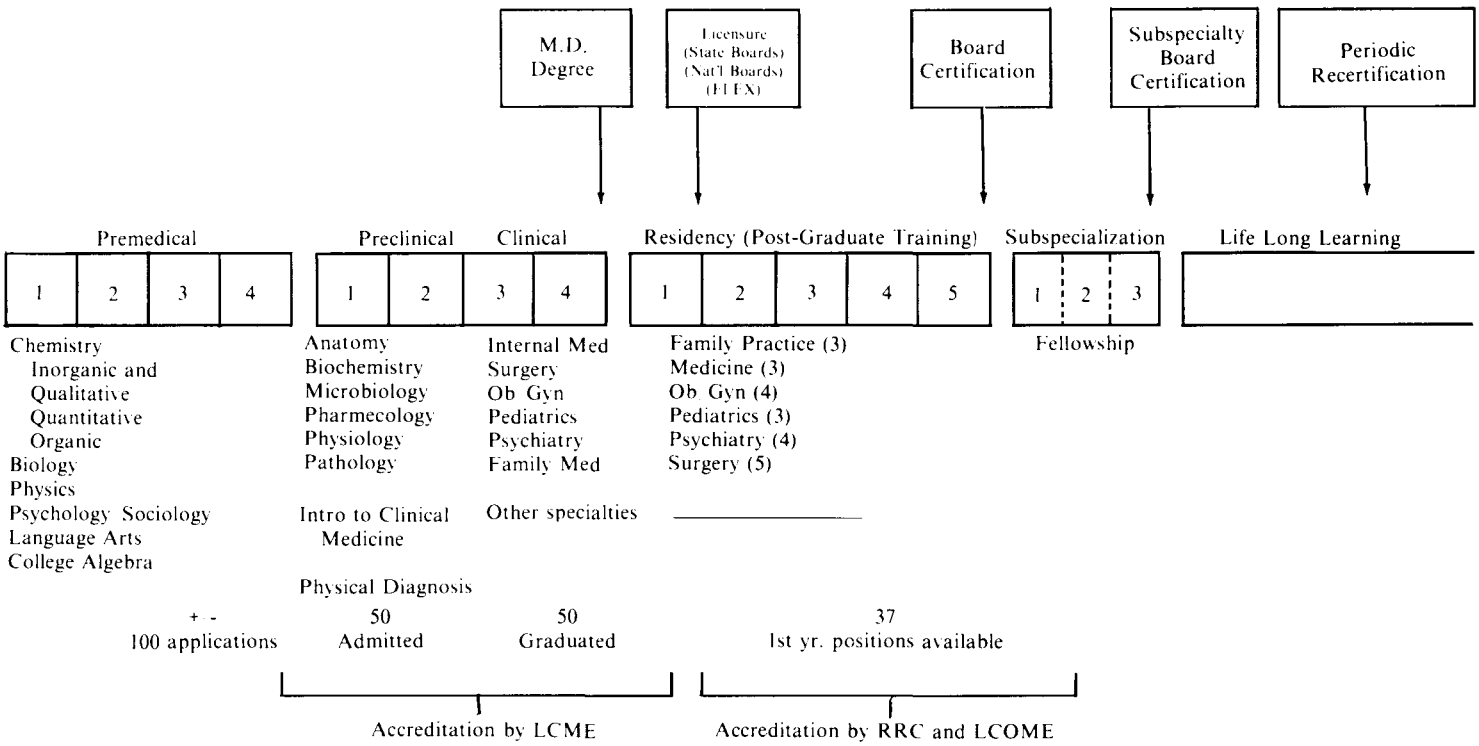
For many years, the UND Medical School received a portion of UND's regular appropriation until, in November 1948, state residents approved a statewide one-mill levy to support the Medical School. The proceeds from the one-mill levy were sufficient to fund the operation of the Medical School until 1967, when the Medical School requested an additional appropriation from the Legislative Assembly. Fiscal year 1982 collections not including personal property payback from the one-mill levy totaled $918,785.

The 1973 Legislative Assembly approved a 2-1-1 medical program. The 2-1-1 program provided for 40 medical students to attend medical school in Minnesota for the third year, and return to North Dakota to the four area health education centers (AHEC's) in Grand Forks, Fargo, Minot, and Bismarck for the fourth year. The 1981 Legislative Assembly approved a resolution recommending establishment of the UND Medical School third year in North Dakota and recommended that the State Board of Higher Education make the necessary changes to provide that the third year of the Medical School curriculum be taught in North Dakota beginning with the 1983-84 school year.

Testimony

The committee heard a progress report on the development of the four-year Medical School program at each meeting from representatives of the UND Medical School. It was reported that the Medical School program was given full accreditation in July 1981 for a period of four years. The students that entered the Medical School in the fall of 1981 were the first class to use the new curriculum. Medical School is entered after four years of premedical education. The medical education program consists of two years of preclinical training, two years of clinical training, and three to five years of residency training. The following chart presents an overview of the medical education process:

OVERVIEW
The Medical Education Process



During the interim, the Budget "B" Committee met at the Medical School on the UND campus in Grand Forks and the Medical School's Family Practice Center in Bismarck, giving members an opportunity to tour the Medical School facilities and to hear from and visit with UND Medical School faculty, staff, and students. It was reported that a proposed curriculum for five third-year clerkships had been developed. The five clerkships are psychiatry, pediatrics, obstetrics and gynecology, internal medicine, and surgery. The third-year clerkships will be taught at the Fargo and Bismarck AHEC's. The third-year clerkships are taught on a one-to-one basis by a licensed physician in a hospital or clinic setting. The clerks (students) also receive classroom instruction in the form of lectures, seminars, and small group discussions. It was reported that a pilot third-year program had begun during July 1982 for 10 clerks in Fargo. Beginning in 1984 there will be 50 medical student slots (excluding five students in the continuing INMED, or Indians into Medicine, program) in each of the four years of Medical School. There will be 37 state-funded residency slots available each year for the 50 graduates. The following is a schedule of the course of study for the third year and the implementation schedule:

THIRD YEAR

Course of Study

Internal medicine	— 12 weeks
General surgery	— 9 weeks
Orthopedic surgery	— 3 weeks
Ob/Gyn	— 8 weeks
Pediatrics	— 8 weeks
Psychiatry	— 6 weeks
Drug and chemical dependency	— 2 weeks
	48 weeks

Family medicine — 8 weeks (taught in the fourth year)

Implementation Schedule
Third Year in North Dakota

	Fargo	Bismarck
82-83	10	0
83-84	30	10
84-85	30	20

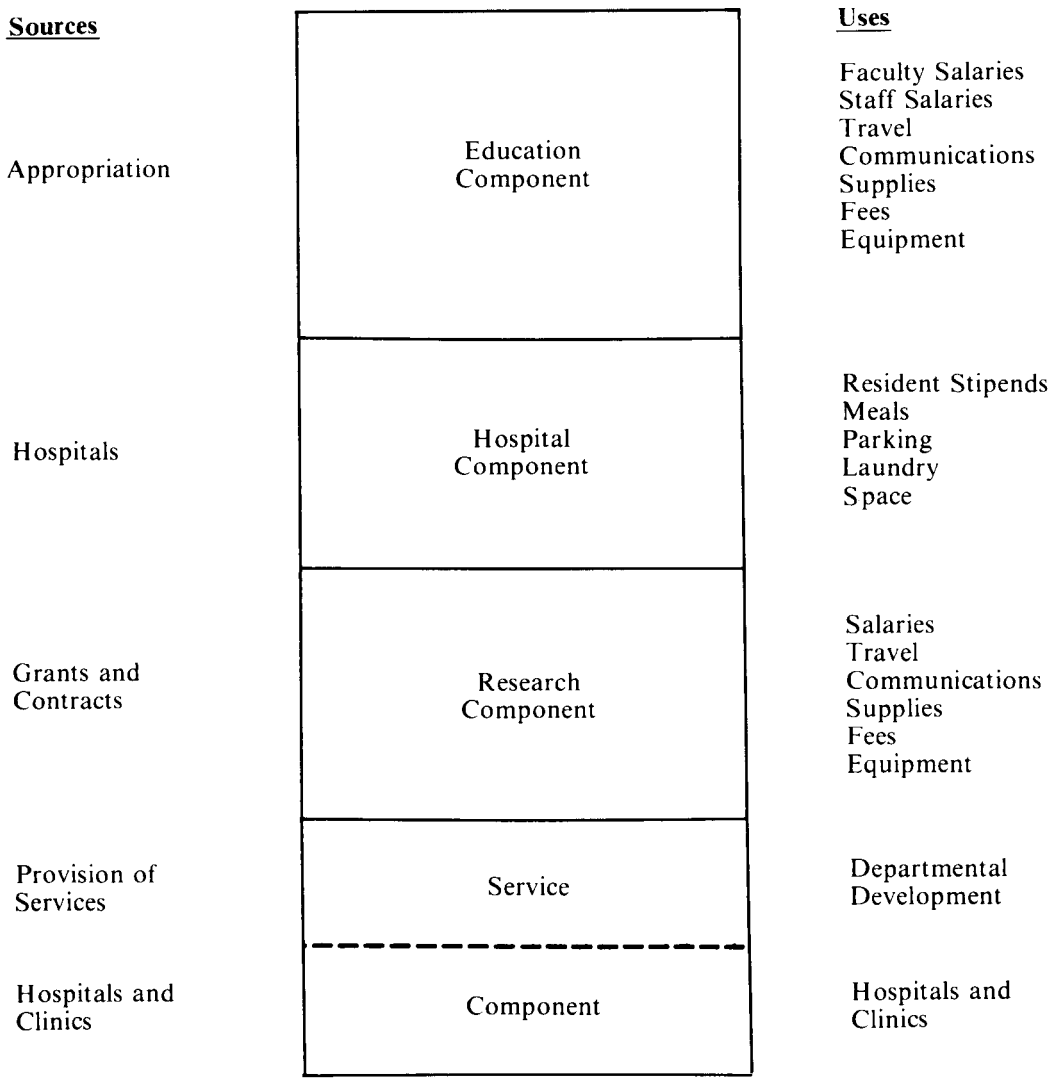
Information was presented regarding the family medicine portion of the fourth-year clerkship and family medicine residencies. Family medicine is taught at the four AHEC's in the state. It was also reported that the Medical School had met with the North Dakota Hospital Association's Council on Medical Education, and they will continue to meet quarterly in preparation for the third-year program. The relationship with the Hospital Association has been excellent which is important since the third-year program will be conducted in the hospitals.

Testimony was also received on the Office of Rural Health's (ORH) community assistance program. The ORH assesses the health care needs of a community upon request and also offers health manpower recruitment if this service is desired. It was reported that from March 1981 through January 1982, the ORH successfully recruited five physicians to rural North Dakota.

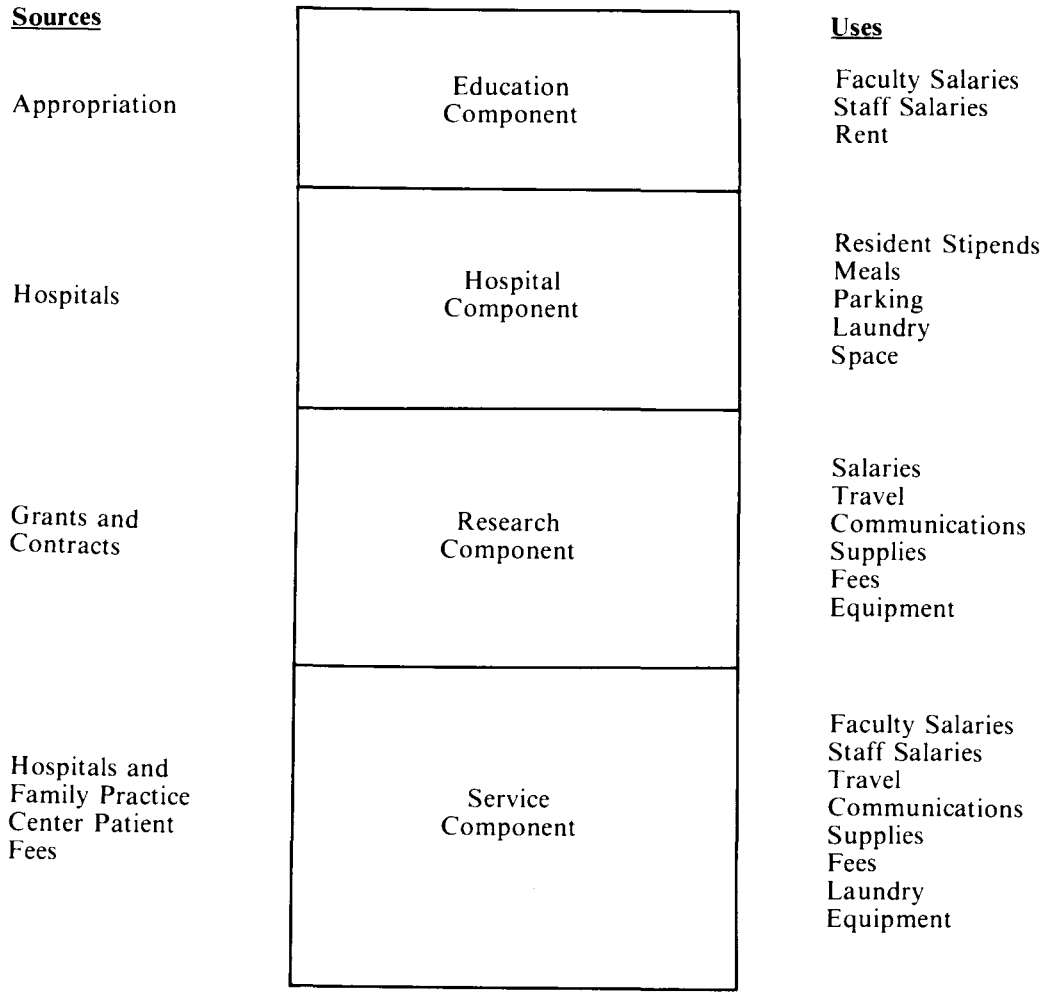
A member of the State Board of Higher Education testified that there is a need to clarify the role of the community within the Medical School program. The board member testified the relationship of the Medical School with the community is of great concern among physicians within the state. The board member questioned whether all of the residency programs being offered are necessary to have a program geared toward primary care physicians.

Representatives of the UND Medical School presented information on the Medical School funding sources for the clinical departments, including residencies. The following charts show the funding sources and uses:

FUNDING
CLINICAL DEPARTMENTS
INCLUDING RESIDENCIES



FUNDING
FAMILY MEDICINE RESIDENCY



It was reported by Medical School officials that it is planned that the third-year program will be taught in North Dakota for the same cost per student as at the University of Minnesota except for the cost of 10 additional students. There were 35 full-time basic science faculty during July 1982. The clinical faculty included 24 full time, 66 part time, and over 500 volunteer faculty. The development of the third-year program will result in the need for additional faculty, primarily in the clinical science area.

Representatives of the UND Medical School presented information on the UND Medical Center 1983-85 budget request which totals $41,497,132 and includes the School of Medicine (including allied health), nursing program, and residency programs. The general fund request equals $26,176,107, federal funding is $7,405,195, and other funds equal $7,915,830. The 1983-85 budget request is a $1,526,724 increase over the 1981-83 appropriation of $39,970,409. The general fund appropriation totaled $22,606,513, federal funds totaled $9,755,868, and other funds were $7,608,028. The basic tenets of the School of Medicine upon which the budget request is based are:

1. Fifty medical students in each class.
2. Fourteen hundred other students — undergraduate, nursing, and allied health.
3. Graduate programs in the basic sciences.
4. Residency programs in six fundamental clinical sciences with 37 first-year places.
5. Research opportunity for faculty, residents, and students.
6. Statewide with four campuses.
7. University-based, integrated into the community.
8. State need and primary care oriented.
9. Essential and desirable programs.
10. Maintenance of ongoing programs within legal and administrative realities.

It was reported that a request for an additional 12.25 FTE faculty was denied by the Board of Higher Education. These faculty positions are for support of the Medical School to complete the development of its new program. A proposal to reallocate funds within the Medical School has been developed. The reallocation could include the closure of one of the family practice centers and reducing the number of residency slots. A request for funding of the additional psychiatry and surgery residency stipends was also denied by the board. The state currently pays the educational component of the stipends for existing residencies and the hospitals charge a fee per bed for the service portion of the stipend.

Medical Center Loan Fund

The committee heard testimony on the medical center loan fund during the interim. The loan fund is a revolving fund, with funding provided from the one-mill levy provided by Section 10 of Article X of the North Dakota Constitution. Loans are granted to qualified applicants

for the completion of the third and fourth years of medical or dental study. On June 30, 1981, the cash balance in the loan fund was $155,995, and the outstanding loan balance was $634,438. Thirty-five awards from the loan fund were granted for the 1981-82 school year, which totaled $64,550. It was noted that if the one-mill levy is repealed in November 1982 the source of funding for the loan fund is eliminated.

Testimony revealed that a UND Medical School graduate has an average debt of $25,000 to $35,000. Federal funding of student loans is being reduced, and it is more difficult for third- and fourth-year students to receive financial aid since many use their eligibility in various financial aid programs during the first two years of school. Over 90 percent of the medical students receive financial aid at an average of $5,000 per year.

In regard to the medical center loan fund, some expressed the opinion that the forgiveness clause was a minor incentive in keeping physicians in rural North Dakota because most third-year students are not willing to make that commitment. It was reported that a nine percent interest rate is comparable to federal loans and the ability to collect loans becomes more difficult as interest rates increase.

Committee Consideration and Recommendations

After consideration of testimony and other information, the committee recommends a bill which makes the following changes to the medical center loan fund:

1. Expands the qualifications of loan applicants to include the second year of medical or dental study.
2. Increases the amount of loans from $2,000 to $4,000 each year.
3. Eliminates the $2,500 loans granted to students agreeing to practice within rural North Dakota.
4. Increases the interest rate from six percent to nine percent.
5. Eliminates the forgiveness clause for those students that practice in rural North Dakota.

In other committee discussion it was observed that to more completely show its operations, all revenue sources should be included in the medical center budget presented to the Legislative Assembly. It was noted that in the past the Legislative Assembly has included the other revenue sources in the appropriation bill. The budget coverage should give as comprehensive a view of government as possible. With a complete picture of proposed revenues and expenditures, items that are controllable can be detected and the full cost of services is reported.

As a result of its concern, the committee asked the Office of Management and Budget to include in the executive budget the expenditure of funds from all sources of revenue, including the $12,414,857 in funding available to the medical center from federal and other funding sources.

STUDY OF SPECIAL FUNDS AND CASH ACCOUNTS

Background

Pursuant to Senate Concurrent Resolution No. 4071, the Budget "B" Committee conducted a study of the use of special funds and cash accounts maintained in the state treasury. The resolution stated that in a period of declining revenues, it may be necessary to use the proceeds in some of these accounts to supplement general fund revenues. The committee identified the following as objectives of the study of special funds and cash accounts:

1. Consolidate funds with other special funds or the general fund.
2. Consider the feasibility of the Legislative Assembly receiving projections on fiscal support to political subdivisions.
3. Determine whether moneys in special funds are available to the Legislative Assembly to meet fiscal needs in other areas of state finance.

Special Funds and Cash Accounts Reviewed and Related Committee Recommendations

The committee reviewed and discussed numerous special funds and cash accounts including:

1. **Board of University and School Lands State Permanent School Fund**

All proceeds of public lands that have been granted, donated, or acquired for the support of the common schools in this state pursuant to the Enabling Act are maintained in a perpetual trust fund known as the state permanent school fund. The state tuition fund is the income fund for the common schools and may be expended for the exclusive use of the common schools. The estimated revenue of the state tuition fund for the 1981-83 biennium is $32,277,400.

Committee members commented that the state tuition fund payments are becoming a significant source of revenue for the schools and should be included as part of the funding for the school districts. The estimated amount available for distribution for the 1981-83 biennium was $32.3 million.

Recommendation. As a result of its concern, the committee asked the Office of Management and Budget to include in the executive budget the expenditure of funds from all sources of revenue including the funding available to the school districts from the state tuition fund.

2. **Oil and Gas Bonus Payments**

Measure No. 3 on the June 8, 1982, primary election ballot was passed by the voters. This measure amended Sections 1 and 2 of Article IX of the Constitution of the State of North Dakota. It provides that all bonuses, or similar payments, for mineral leasing on common school or institutional lands be deposited in the appropriate permanent trust fund. It also provides that the distribution of the state tuition fund is to be made as provided by law.

Previously, 50 percent of the bonus payments received on common school lands was distributed among the school districts based upon student population. Section 7 of House Bill No. 1092, as passed by the 1981 Legislative Assembly, limited the distribution of 50 percent of the oil and gas bonus payments to $16 million. For the biennium, $8.2 million of oil and gas bonus payments was distributed to the schools. The balance of collections from oil and gas bonus payments for the biennium will be deposited in the state permanent school fund.

3. **Lands and Minerals Trust Fund**

In 1977 the Legislative Assembly transferred certain possessory interests in real property belonging to or managed by the Bank of North Dakota to the Board of University and School Lands. All income from the

sale, lease, and management of these lands acquired by the board, and not belonging to other trust funds, is deposited in the lands and minerals trust fund. The principal and interest of the trust may be expended as the Legislative Assembly may provide.

ANALYSIS OF LANDS AND MINERALS TRUST FUND 1981-83 BIENNIUM

Lands and minerals trust fund unobligated balance — June 30, 1981		$37,402,144
Estimated receipts		16,000,000
1981-83 appropriations and authorizations:		
Purchase of Judicial Wing — State Office Building (HB 1006)	$11,746,433	
Geological Survey (HB 1030)	4,430,687	
School construction fund (SB 2092)	3,000,000	
Loans for facilities for developmentally disabled persons (HB 1049)	4,000,000	
Guaranteed loan program for beginning farmers (SB 2432)	2,000,000	
Transfer to the Industrial Commission (SB 2033)	104,358	(25,281,478)
Estimated unobligated balance — June 30, 1983		$28,120,666

Recommendation. The committee recommends a bill which transfers $25 million from the lands and minerals trust fund to the general fund upon the date of passage and approval of the bill. This transfer is intended to help alleviate general fund cash flow problems.

4. **Vietnam Bond Sinking Fund**

General obligation bonds of the state of North Dakota totaling $19 million were issued for the purpose of providing funds to pay adjusted compensation to North Dakota Vietnam veterans. The purpose of the sinking fund is for payment of the bonds issued and the bond interest. The last of the bonds will be retired in November 1986.

ANALYSIS OF THE VIETNAM BOND SINKING FUND CASH BALANCE 1981-83 BIENNIUM

Sinking fund cash balance — June 30, 1981		$5,965,775
Estimated receipts:		
Federal home loan mortgage note — principal and interest	$4,490,129	
Estimated interest earnings on cash balance	515,174	
Estimated surtax collections	1,382	5,006,685
Estimated authorizations and appropriations:		
General obligation bonds — principal and interest	$3,690,721	
National Guard tuition trust fund (HB 1420)	3,500,000	
P.O.W. license plates (SB 2289)	5,000	
National Guard history (SB 2207)	100,000	
Soldiers' Home capital improvements (HB 1014)	462,069	
Adjutant General: tuition waiver, local armory construction, capital improvements (HB 1023)	1,053,000	
Miscellaneous expenses	596	(8,811,386)
Estimated sinking fund cash balance — July 1, 1983		$2,161,074

5. **Vietnam Adjusted Compensation Fund**

Senate Bill No. 2271, as passed by the 1981 Legislative Assembly, provided that all unobligated moneys in the Vietnam adjusted compensation fund after July 1, 1981, be transferred to the veterans' postwar trust fund. A balance of $3,938,615 was transferred on August 24, 1981. A balance of $45,915.76 remained in the adjusted compensation operating fund on September 11, 1981.

Recommendation. The committee asked the State Treasurer to transfer the $45,915.76 remaining in the Vietnam adjusted compensation operating fund to the veterans' postwar trust fund.

6. **Highway Tax Distribution Fund**

Collections from motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes are deposited in the highway tax distribution fund. The revised estimate of total collections for the fund for the 1981-83 bien-

nium is $154,234,919. This is $6,097,000 less than the original estimate, which reflects the March 1982 revision in oil and gas production tax revenues. The fund is distributed 63 percent to the State Highway Department and 37 percent to the counties and incorporated cities.

7. **Oil Extraction Tax**

The oil extraction tax is an excise tax at a rate of 6.5 percent of the gross value of oil extracted. The initiated measure, as passed by voters at the November 4, 1980, general election, provided 45 percent of the revenues to be allocated to the general fund, 45 percent to the foundation aid program, and 10 percent to a special trust fund to be used for Grafton State School. This measure was amended by the 1981 Legislative Assembly to provide 30 percent of the revenues to be allocated to the general fund, 60 percent to the foundation aid program, and 10 percent to the resources trust fund, with the first $15 million appropriated to the Grafton State School.

The revised estimate of revenue for the 1981-83 biennium from the 6.5 percent oil extraction tax and the allocation of those funds, using the March 1982 "medium" scenario forecast, is as follows (in million dollars):

	General Fund	School Aid Fund	Trust Fund	Total
Original projection	$79.6	$159.1	$26.4	$265.1
Revised projection	51.1	101.4	16.9	169.4
Decrease	$28.5	$ 57.7	$ 9.5	$ 95.7

8. **Oil and Gas Gross Production Tax**

The oil and gas gross production tax is a tax of five percent of the gross value at the well upon oil and gas produced in the state. During the 1981-83 biennium the tax is distributed to the general fund, the producing counties, and to the townships and highway tax distribution fund. For taxes received between July 1, 1981, and June 30, 1983, the treasurer is to distribute an amount equal to 20 percent of the oil and gas production tax collected as follows:

a. To the townships an amount which, when added to the distribution from nonrefunded fuel tax claims under Section 57-50-01, will total $8 million.
b. To the highway tax distribution fund an amount which, when added to the sum distributed under the above paragraph, does not exceed $32 million.
c. To the state general fund, any amount over $32 million generated by the 20 percent of the tax collected.

The revised estimate of revenue for the 1981-83 biennium from the five percent oil and gas gross production tax and the allocation of those funds, using the March 1982 "medium" scenario forecast, is as follows (in million dollars):

	General Fund	Road Fund	Producing Counties	Total
Original projection	$149.4	$32.0	$51.9	$233.3
Revised projection	83.8	25.9	41.8	151.5
Decrease	$ 65.6	$ 6.1	$10.1	$ 81.8

9. **Township Road Funds**

House Bill No. 1365, as passed by the 1981 Legislative Assembly, provides for fuel tax refund claims to be reduced by one cent per gallon from July 1, 1981, through June 30, 1983. This one cent per gallon not refunded is transferred to the township road and bridge funds or to the appropriate county fund in the case of unorganized townships. Each township or county receives an amount based on the proportionate number of miles of township roads within the township or county as compared with the total number of miles of township roads in the state. It was reported that the inventory of township road miles in the state totaled 55,075. These funds are to be used for the construction or maintenance of township roads. When added to the distribution from the oil and gas gross production tax, the distribution would total $8 million. Originally, no township or county would receive any funds unless the township levied at least 95 percent of the mill levies authorized by law. If a township did not levy at the 95 percent level, the moneys the township would have been entitled to would be deposited in the highway tax distribution fund. It was reported that many townships did not qualify for the 1982 distribution because of this levy requirement. In November 1981 the Legislative Assembly removed the requirement that townships levy at the 95 percent level. The effect of this change is that the $8 million will be distributed to the townships. The estimated collections for the biennium are $500,000 from the one-cent nonrefundable motor fuel tax and $7.5 million from the oil and gas gross production tax. As of October 1982, $4 million had been distributed to the townships. The balance was to be distributed in the amount of $1 million each quarter.

Other Committee Action

The committee recommends a bill to fund state revenue sharing to political subdivisions directly from the general fund. Currently revenue sharing payments are made from a special fund. This recommendation requires a transfer of moneys in the state revenue sharing fund to the general fund, and a general fund appropriation of $5,460,000 for the last six months of the biennium to the political subdivisions upon the date of passage and approval of the bill. This bill is intended to help alleviate general fund cash flow problems. The 1981-83 state revenue sharing appropriation totaled $21,840,000.

The committee expressed interest in the Legislative Assembly receiving projections of state aid to political subdivisions, and that projections be available during the early days of the Legislative Assembly. The Legislative Council staff met with representatives of various state agencies to discuss the feasibility of the Legislative Assembly receiving these projections. The agency representatives agreed that a coordinated system of projecting fiscal support to political subdivisions is desirable, since there is a demand for this information. The agencies' recommendations toward developing a coordinated system are:

1. Preliminary inventory of present systems and further analysis of legislative and executive branch information needs in light of present and alternative system capabilities.
2. Develop a conceptual design.
3. Review the system requirements in different agencies.
4. Determine the cost of the project.

The committee encouraged agencies to be prepared to provide the 1983 Legislative Assembly with projections by political subdivisions which are compatible with the executive budget for the current and 1983-85 biennium. Projections for the homestead tax credit, state revenue sharing, personal property tax replacement, highway tax distribution fund, oil and gas gross production tax, state tuition fund, foundation aid program, cigarette tax, and insurance tax to fire departments were included in the request.

The committee expressed interest in the Legislative Assembly receiving projections of the homestead tax credit on a timely basis to ensure that the most current data is available when the Legislative Assembly considers making changes to the tax credit. It was noted that information regarding the credit is supplied to the State Tax Commissioner by the county auditors. There is no penalty if the counties certify the required information after the March 1 deadline, and counties often do not meet this deadline. The information provided by the counties may be added to the historical data base used to make projections, but problems in making projections would not be eliminated. The major problem in making projections occurs when changes in the eligibility requirements are made in the statutes, especially when the changes are retroactive. The 1981-83 homestead tax credit appropriation totaled $6,290,000.

To help meet its objective, the committee recommends a bill which changes the date that counties must certify homestead tax credit information to the State Tax Commissioner from March 1 of each year to February 10. The bill also provides for a reduction in the county's share of the payment if the county auditor does not file the required information by February 10.

BUDGET "C" COMMITTEE

The Budget "C" Committee was assigned two studies. House Concurrent Resolution No. 3070 directed a study of the Central Personnel Division and House Concurrent Resolution No. 3076 directed a study and review of the fees charged by state agencies, boards, and commissions to license persons, activities, and facilities. The committee was also assigned the responsibility of monitoring the status of major state agency and institution appropriations.

Committee members were Senators Russell Thane, Chairman, Clayton Lodoen, L.L. Naaden, and Jerome Walsh; and Representatives Serenus Hoffner, David Koland, Charles Mertens, Fred Nagel, Elaine Vig, and Vernon Wagner.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

STUDY OF THE CENTRAL PERSONNEL DIVISION

Background

House Concurrent Resolution No. 3070, which directed a study of the Central Personnel Division, states that the study is desirable because there has not been a comprehensive study of the division since its creation in 1975; the division should be studied to determine whether it is achieving its goals; new personnel system techniques may be available to promote equal pay for equal work; it may be possible to decrease the amount of paperwork required for personnel administration; the division's testing procedures should be reviewed to make sure they are current and appropriate; and the division job requirements should be reviewed to assure that qualified persons can be employed on a timely basis.

The Central Personnel Division was statutorily created by the 1975 Legislative Assembly. The statutory provisions for the Central Personnel System are primarily found in Chapter 54-44.3 of the North Dakota Century Code. The statutes state that the general purpose of this chapter is to create a Division of Central Personnel within the Office of Management and Budget (OMB) to establish a unified system of personnel administration for the classified service of the state based upon merit principles and scientific methods governing the position classification, pay administration, and transfer of its employees. The statutes further state that all appointments and promotions to positions in the state classified service shall be made without regard to sex, race, color, national origin, age, religious affiliations, or political opinions on the basis of merit and fitness. Appealable actions of state employees are listed under the rules published in the North Dakota Administrative Code.

The statutes create a five-member State Personnel Board composed of a constitutionally elected official who is the chairman of the board, a member appointed by the Board of Higher Education, a member appointed by the Governor, and two members elected by the classified state employees. The board must meet at least six times a year. The primary responsibility of the board is to foster and assure a system of personnel administration in the classified service of the state. The classified service includes all state employees except elected officials, board and commission members, administrative heads of departments required by law, officers and employees of the legislative and judicial branches of government, consultants, officers and faculty of the colleges and universities, and members and employees of occupational and professional boards. Specifically, the board is required to promulgate rules and hold hearings to perform properly its duties and functions, review and hear comments from any concerned individuals or departments on rules or modifications adopted by the division, and review any personnel action relating to pay ranges or job classifications.

The director of the Central Personnel Division is appointed by the director of OMB. The director of the division is to be experienced in personnel administration and have a knowledge of merit principles, goals, and their methods of operation. The duties of the director are to establish policies, rules, and regulations, subject to the approval of the State Personnel Board, including establishing and maintaining classification and compensation plans; establishing and maintaining a roster of all employees in the state classified service; assisting state agencies to develop personnel administration and employee training programs; and assisting state agencies to develop and implement agency grievance procedures and a statewide appeal mechanism. The division may enter into agreements with political subdivisions to furnish services provided that the political subdivisions reimburse the state for the cost of such services.

The statutes provide that all personnel and records of the North Dakota Merit System Council, which was established prior to the Central Personnel Division, are transferred to the Central Personnel Division. The North Dakota Merit System Council is to consist of the State Personnel Board and the director of the Central Personnel Division is the director of the Merit System Council. The merit system is required for most agencies which receive significant federal funds. Among agencies covered by the merit system are the Social Service Board (Department of Human Services), Job Service North Dakota, State Department of Health, Surplus Property Division, and the Purchasing Division of OMB.

Since House Concurrent Resolution No. 3070 indicated that a comprehensive review should be made of the Central Personnel Division, the study included a review of the department's compliance with legislative directives as stated in its budget requests and statutes; a review of the efficiency and effectiveness of the division's operations; a review of the techniques and surveys used for maintenance of classification and pay plan; a review of the division's use of current methods and practices in promoting efficient personnel administration; and a review of the statutes governing the operation of the State Personnel Board and Central Personnel Division.

Study by Council of State Governments — Findings and Recommendations

To assist in the review, the committee contracted with the Interstate Consulting Service of the Council of State Governments (CSG) to conduct a study of the Central Personnel Division. The CSG study team consisted of four members: two from the CSG office in Lexington, Kentucky; one personnel expert from the Division of Personnel Services, Topeka, Kansas; and one personnel expert from the Department of Administration, Salt Lake City, Utah. The states of Kansas and Utah were identified as having adopted some of the newest, proven procedures presently being used in state central personnel agencies.

Members of the CSG study team interviewed

employees of the Central Personnel Division as well as various agency administrators and personnel officers and conducted other research which they believed to be necessary. CSG presented its final report regarding the study of the Central Personnel Division to the committee at its October 1981 meeting. CSG listed the following as the most important recommendations in the report:

1. Restructure the State Personnel Board so it consists of lay citizens.
2. Transfer the policymaking responsibility of the State Personnel Board to the administrative structure of state government.
3. Clarify and perhaps expand the Central Personnel Division's role in strengthening and improving the classification program in nonmerit agencies.
4. The Central Personnel Division should conduct studies regularly to provide comparative data on benefits packages provided by private companies who compete with state government for employees.
5. Establish a job listing, recruitment, and referral service.
6. Provide the Central Personnel Division sufficient positions to hire a qualified selection psychologist or test specialist to update tests based on valid legal criteria.
7. Revise Section 54-44.3-12.2 of the North Dakota Century Code to vest the Central Personnel Division with the authority to require each agency to submit a step-by-step grievance plan.
8. Authorize the Central Personnel Division to establish a set of universal guidelines upon which performance measures are to be based. The Central Personnel Division should also have the authority to determine one best method for applying and administering the merit pay system.
9. Continue the development of an automated personnel information system.
10. The Central Personnel Division should be given the staff to develop and coordinate training programs for state employees.

CSG said implementation of all of these recommendations would require an increase in the Central Personnel Division staff of about eight full-time equivalent (FTE) positions, prioritized as follows:

1. 3 FTE — Classification and compensation.
2. .5 FTE — Employee relations.
3. 2 FTE — Recruitment and testing.
4. 1.5 FTE — Training.
5. 1 FTE — Benefits.

CSG said direct costs for implementing the recommendations would be approximately $175,000, and that the recommendations made in the report could be adopted in part or in total. CSG said implementation of some of the recommendations would require changes or additions to existing North Dakota statutes.

CSG reported that the composition of the State Personnel Board is highly unusual compared to other states, since in most states a board with similar duties is made up of people from the private sector. CSG said all of the present board members are state employees. Therefore, every policy approved by them has a direct effect on their own employment. CSG said the State Personnel Board is not necessary to establish personnel policy. It said there is still a need for the hearing of appeals, but that could be handled by a board composed of lay citizen members.

CSG reported that fundamentally the state's personnel system is in good order. It said the system appears to be providing for the hiring of good people, the retention of those people, and that the employees appear to be providing good performance. CSG said that the employee turnover statistics in North Dakota are not unreasonable.

Testimony by Others

The committee heard testimony from representatives of the following in regard to the CSG report and the personnel system: Central Personnel Division, North Dakota Public Employees Association (NDPEA), State Personnel Board members, Highway Department, Health Department, Social Service Board, and Job Service.

The director of the Central Personnel Division and representatives of the Highway Department, Health Department, Social Service Board, and Job Service were in general agreement with the recommendations in the CSG report.

The NDPEA and current State Personnel Board members expressed disagreement with the recommendation that the State Personnel Board should consist entirely of lay citizens. These representatives said the board should have at least two members that are state employees. Also, NDPEA said the board should not be limited to serving in only a grievance capacity but should also be involved in the policymaking function. NDPEA advocated a nonpartisan central personnel system under the control of a body or personnel board consisting of, possibly, the minority and majority leaders of the House and Senate.

Committee Recommendations

The committee recommends a bill relating to the structure and duties of the State Personnel Board and the duties of the director of the Central Personnel Division. Other than the proposed structure of the State Personnel Board and some other minor changes, the bill is based on the recommendations included in the Council of State Governments' report. The bill as recommended provides for the following:

1. The State Personnel Board would be restructured so that the Lt. Governor would serve as chairman and the other four members would be appointed by the Governor, with one of the four appointed members to be a state employee. The terms of the board members would be four years rather than six years. Existing language stating that "no member of the board may have held a position in a political party within four years immediately preceding the member's appointment to the board" would be deleted.
2. The primary responsibility of the State Personnel Board would be to hear and review grievances and appeals. The bill states that the board shall: "Hold hearings on appeals regarding grievances of permanent employees of the classified service, merit system applicants, or appointing authorities, that are filed for the following reasons:
   a. Disqualification of a merit system application.
   b. Objection to an employee classification or a group of classifications.
   c. Objection by an appointing authority to an assigned salary range.
   d. Objection to a disciplinary action that includes, but is not limited to, suspension, demotion, or dismissal.
   e. Discrimination because of sex, race, color, national origin, age, religion, political opinion or affiliation, or handicapped condition."
3. The policymaking responsibility of the State Personnel Board would be transferred to the Central Personnel Division, and additional duties would be

assigned to the Central Personnel Division director.
4. Each agency would be required to submit a grievance plan to the Central Personnel Division.
5. The Central Personnel Division would be required to designate a location at which a list of all job vacancies within the classified service may be obtained.

STUDY OF LICENSING FEES CHARGED BY STATE AGENCIES

Background

House Concurrent Resolution No. 3076 directed a study and review of the fees charged by state agencies, boards, and commissions to license persons, activities, and facilities. The reasons cited in the resolution for this study are because many occupations and professions are regulated by state boards or commissions and require a license to practice or engage in an occupation or profession, and because the license fees charged have been set piecemeal at many different times by legislative action without consideration of comprehensive criteria.

The resolution was introduced during the 1981 Legislative Assembly by the House Appropriations Committee because of the number of agencies which testified before that committee that their license fee structures were in need of revision.

Review of Fees Charged

The committee reviewed the fee structure of 17 agencies and departments of state government, giving each of the agencies an opportunity to testify regarding the costs and collections of each of the fees collected by them. Each agency was urged to make recommendations regarding the possible restructure of their respective fee schedules. The following agencies testified before the committee:

State Laboratories Department
Securities Commissioner
Department of Banking and Financial Institutions
Water Commission
Agriculture Department
Attorney General
Seed Department
Tax Department
Workmen's Compensation Bureau
Livestock Sanitary Board
Public Service Commission
Highway Department
Aeronautics Commission
Labor Department
Insurance Department
Health Department
Real Estate Commission

The committee determined that fees charged by professional boards and commissions were not intended to be included in the scope of the committee's study.

Committee Recommendations

The committee is recommending legislation to revise fees in instances where the cost of providing services is substantially different than revenues collected, except under the following circumstances:

1. Current fee charges are consistent with those of surrounding states.
2. The current fee structure is in the public interest, even though revenue collections are substantially less than the cost of service.
3. It is not possible to project with sufficient accuracy the future cost of providing services, even though it appears changes should be made.
4. Even though the cost of the service is less than the revenues collected, the level of service is not adequate to meet the needs of the industry being regulated and, consequently, a reduction in fees does not appear warranted.
5. The impact on the state general fund is such that a reduction in fees is not recommended or an increase in fees is recommended because of an apparent need for revenue during the next biennium.
6. The fees are currently under study by another interim Legislative Council committee.
7. The fee for a service no longer being performed can be eliminated.

Based on the guidelines listed above and the testimony of the various agencies, the committee is recommending bills to revise the fee amounts charged by the following agencies:

1. Securities Commissioner
2. Department of Banking and Financial Institutions
3. Agriculture Department
4. State Laboratories Department
5. Real Estate Commission
6. Public Service Commission

1. Securities Commissioner

The committee recommends a bill to revise the fee amounts charged by the Securities Commissioner. The changes that would be provided in the bill include the following:

a. Increase the minimum and renewal fee for securities from $75 to $100.
b. The sales report fee, for mutual funds having an indefinite amount registered, would be computed at 1/20 of one percent on sales for the reporting period, with a minimum of $100 and a maximum of $250.
c. Increase the exempt transaction filing fee from $50 to $100.
d. Increase the salesman license initial ($15) and renewal ($10) fee to $20.

The bill is based on the recommendations of the Securities Commissioner, who testified that the proposed changes would keep North Dakota's fees generally in line with the fees charged by other states. It is estimated that the proposed fee increases would result in approximately $98,700 of additional revenue during the 1983-85 biennium.

2. Department of Banking and Financial Institutions

The committee recommends a bill to revise the fee amounts charged by the Department of Banking and Financial Institutions. The changes that would be provided in the bill include the following:

a. Eliminate the examination fee for state-chartered banks of two and one-half hundredths of one percent (.00025) and enact a yearly assessment of one and one-quarter of one percent (.000125) paid by all state-chartered banks each year.
b. Enact an additional assessment on state-chartered banks of $100 per examiner day for visits, inspections, or examinations made in addition to regular examinations to promote safety and soundness.
c. Increase the trust company examination fee from $65 to $100 per examiner per day.
d. Increase the Bank of North Dakota examining fee from $65 per examiner day to $200 per examiner day.
e. Increase the maximum examination fee for credit unions from $10,000 to $15,000.

f. Increase the examination fee for North Dakota Central Credit Union from $100 per examiner day to $200 per examiner day.
g. Enact an additional assessment on state-chartered credit unions of $100 per examiner day for visits, inspections, or examinations made in addition to regular examinations to promote safety and soundness.

The bill is based on the recommendations of the Department of Banking and Financial Institutions. The department reported that the Bank of North Dakota currently pays an amount for their examination which is substantially less than other banks in the state. The department said the banking industry is leaning toward a per-hour per-examiner charge for bank examinations rather than a per-day charge. It is estimated that the proposed fee increases would result in approximately $289,644 of additional revenue during the 1983-85 biennium.

3. Agriculture Department

The committee recommends a bill to revise the fee amounts charged by the Agriculture Department. The changes that would be provided in the bill include the following:

a. Increase the fee for the recording and rerecording of brands from $5 to $30.
b. Increase the price of a brand book from $5 to $30. This provision would not take effect until July 1, 1985.

The bill is based on the recommendations of the Agriculture Department. It is estimated that the proposed fee increases would result in approximately $32,500 of additional revenue during the 1983-85 biennium.

4. State Laboratories Department

The committee recommends a bill to revise the fee amounts charged by the State Laboratories Department. The changes provided for in the bill include increases in the amounts charged for the following:

a. Prepackaged food vending machine licenses.
b. Registration for commercial feed distributors.
c. Livestock medicine registration.
d. Antifreeze inspections.
e. Economic poison inspections.
f. Commercial fertilizer inspections.
g. Mobile home park licenses.
h. Trailer park or campground licenses.

The bill would also eliminate the fees for egg dealer licenses but would continue to require registration of egg dealers.

The State Laboratories Department had recommended increases in all fees charged by their department. However, the committee does not recommend changes in fees charged for beverage licenses, petroleum products inspections, hotel or lodginghouse licenses, or restaurant licenses. It is estimated that the proposed fee increases would result in approximately $354,290 of additional revenue during the 1983-85 biennium.

5. Real Estate Commission

The committee recommends a bill to revise the fee amounts charged by the Real Estate Commission. The changes that would be provided in the bill include the following:

a. Increase in fees for new licenses, license renewals, changes of address, license transfers, and duplicate licenses.
b. Increase in fee for examination rewrites.
c. Establish a fee for initial examinations given to brokers and salespersons.
d. Establish a fee for each change of name for brokers and salespersons.

The bill is based on the recommendations of the Real Estate Commission. It is estimated that the proposed fee increases would result in approximately $75,854 of additional revenue during the 1983-85 biennium.

6. Public Service Commission

The committee recommends a bill to revise the fee amounts charged by the Public Service Commission (PSC). The bill would provide for increases in fees for nearly all of the inspections the PSC performs of weighing and measuring devices, such as livestock scales, vehicle scales, and gasoline and fuel oil meters. The bill is based on the recommendations of the PSC. It is estimated that the proposed fee increases would result in approximately $113,443 of additional revenue during the 1983-85 biennium.

Other Action

During committee discussion of the fees charged by the Highway Department, it was reported that commercial haystack movers must pay $15 for a seasonal permit fee, but that the vehicles used by commercial haystack movers are exempt from motor vehicle registration requirements.

The committee recommends a bill which would require the vehicles used by commercial haystack movers to be registered with the Motor Vehicle Department. The committee does not recommend a change in the $15 seasonal permit fee.

The committee also discussed North Dakota Century Code Section 54-06-04.1, which requires agencies that charge fees to prepare reports regarding those fees each fiscal year and to submit the reports to the State Auditor. It was suggested that it may be more informative if the agencies provided statistics regarding fees to OMB during the budget cycle rather than to the State Auditor.

The committee recommends a bill which would require agencies to provide information on fees with their biennial budget requests rather than file reports with the State Auditor. The reports on fees are to include information about the costs of providing each service and the fees charged for the granting or providing of such service, and are to be filed with OMB. The bill also would repeal Section 43-02.1-02(5) of the North Dakota Century Code, which presently requires the State Board of Accountancy to submit a biennial report to the Secretary of State. This provision is based on the recommendation of a State Board of Accountancy member, who testified that the provision would reduce board paperwork, and that other professional boards and commissions are not necessarily required to submit biennial reports.

During committee discussion of the fees charged by the Livestock Sanitary Board, it was reported that fee collections for auction market licenses are less than the cost of auction market inspections and the provision of licenses. The committee does not recommend a bill in this regard but requests that the Legislative Assembly be notified that costs exceed collections in the provision of auction market licenses and inspections.

MONITORING STATUS OF APPROPRIATIONS

Background

Beginning with the 1975-77 interim, a Legislative Council interim committee has been assigned the respon-

sibility of monitoring the status of major state agency and institution appropriations. The Budget "C" Committee was assigned this responsibility for the 1981-83 interim.

The committee's review focused on expenditures of major state agencies such as the institutions of higher education, the charitable and penal institutions, the appropriations for elementary and secondary education, and the appropriations to the Social Service Board (Department of Human Services) for medical and economic assistance. The committee also heard reports on the progress of major improvements at selected institutions, the status of the state's general fund, and the status of Senate Bill No. 2003, a deficiency appropriation bill passed by the 1981 Legislative Assembly.

Status of Appropriations of Major Agencies

To assist the committee in fulfilling its responsibility of monitoring the status of major appropriations, the Legislative Council staff prepared reports on the following:

- Overview of total expenditures and revenues at the higher education and charitable and penal institutions
- Heating fuel and electricity expenditures at the higher education and charitable and penal institutions
- Food expenditures at the charitable and penal institutions
- Highway Department revenues
- Foundation aid program
- Economic and medical assistance payments

The reports also addressed medical and communications costs at the various institutions.

At the August 1982 meeting, staff presented reports on the areas listed above for the period July 1, 1981, through June 30, 1982, which was the first year of the 1981-83 biennium. The reports included the following information:

1. Total expenditures at the institutions of higher education for the first year of the biennium were $117.9 million compared to estimated expenditures of $122.2 million. Total revenues during the same period were $29.4 million compared to estimates of $26.6 million.
2. Total expenditures at the charitable and penal institutions for the first year of the biennium were $55.7 million compared to estimated expenditures of $62.3 million. Total revenues during the same period were $9.6 million compared to estimates of $10.8 million.
3. Total heating fuel expenditures at the charitable and penal institutions for the first year of the biennium were $1.4 million compared to an estimated $1.7 million. Total heating fuel expenditures at the institutions of higher education for the year were $3.7 million compared to an estimated $4.7 million.
4. Total electricity expenditures at the charitable and penal institutions for the first year of the biennium were $241,520 compared to an estimated $248,137. Total electricity expenditures at the institutions of higher education for the year were $2,017,625 compared to an estimated $1,958,851.
5. Total food expenditures at the charitable and penal institutions for the first year of the biennium were $1.65 million compared to an estimated $2.09 million.
6. Total gasoline taxes distributed to the Highway Department for the first year of the biennium were $16.0 million compared to an estimated $14.6 million. Total motor vehicle registration fees distributed to the Highway Department for the year were $16.4 million compared to an estimated $16.0 million.
7. Total oil extraction tax collections for the period July 1, 1981, through June 30, 1982, were $112.7 million compared to original estimates of $140.3 million. The $64.0 million allocated to the foundation aid program is $16.8 million less than the original estimate of $80.8 million.
8. AFDC (Aid to Families with Dependent Children) payments for the period July 1, 1981, through June 30, 1982, totaled $14.86 million compared to February 1982 revised estimates of $14.92 million. Estimates prepared at the close of the 1981 Session for the same period totaled $17.98 million. Actual medical assistance payments for the first year of the biennium totaled $65.61 million compared to the revised estimates of $65.65 million. Estimates of medical assistance payments made at the close of the 1981 Session totaled $74.48 million for the same period.

Status of Major Improvements

During the interim the committee heard reports by the Director of Institutions regarding the progress of major improvements at the State Penitentiary, Grafton State School, and San Haven. It was reported that bids for nearly all of the projects were close to or under what was estimated, mainly due to the current economic climate.

Status of General Fund

During the interim the Budget "C" Committee and Budget Section heard reports by OMB regarding the status of the state's general fund. Please refer to the Budget Section report for a summary of OMB's reports.

Status of 1981-83 Deficiency Salary Appropriation

The committee heard a report by Legislative Council staff regarding the status of Senate Bill No. 2003, a deficiency appropriation bill passed by the 1981 Legislative Assembly. The bill provided for compensation increases of 10 percent to North Dakota state employees for the period January 1, 1981, through June 30, 1981.

It was reported that the moneys appropriated in Senate Bill No. 2003 were to be made available to the various executive branch agencies, institutions, and enterprises only after a determination by the director of OMB that such amounts were necessary to pay the amounts of additional compensation, in addition to the amounts provided in appropriation acts passed by the 1979 Legislative Assembly. In other words, the funds provided in Senate Bill No. 2003 could only be utilized after an agency had exhausted its salaries and wages line item appropriation for the 1979-81 biennium.

The report indicated that a number of agencies did not utilize the funds appropriated to them in Senate Bill No. 2003, but rather paid for the 10 percent special salary increases with the savings in their regular 1979-81 salary appropriation. Those savings resulted mainly from vacant positions and reductions in workload, which was information not available during the 1981 Legislative Session. Of the total $7.0 million of general fund moneys appropriated in Senate Bill No. 2003, it was estimated that $4.1 million was expended.

OTHER DISCUSSION

Future Availability of Coal for State Institutions

At the June 1981 meeting, OMB reported that the lack of bid participation for institutional coal requirements in the past several years has been a growing concern. OMB said it had contacted four major in-state coal companies early in 1981 and had found that most of their coal

production is committed to various power plants and sugar beet processing plants. OMB reported that with the current annual institutional coal needs estimated at over 132,000 tons, plus the additional requirements when other state institutions are converted to coal, the availability of coal for institutional and domestic usage could be a problem.

In response to OMB's concern, the committee invited coal company representatives to the August 1981 meeting to comment on the future availability of coal to state institutions. Representatives of the North Dakota Lignite Council, North American Coal Corporation, Consolidation Coal Company, Baukol-Noonan, Inc., and Knife River Coal Mining Company attended the meeting. It was the consensus of these representatives that North Dakota lignite will be available in ample quantities to meet the long-term requirements of the state of North Dakota.

BUSINESS OPERATIONS COMMITTEE

The Business Operations Committee was assigned three study resolutions. Senate Concurrent Resolution No. 4051 directed a study of the Sunday closing law in order to revise, modernize, and clarify the Sunday closing law. Senate Concurrent Resolution No. 4055 directed a study of the issues facing the continued viability of small businesses in this state. House Concurrent Resolution No. 3074 directed a study of the determination of premiums for workmen's compensation in this state, especially the provision limiting the employer's wage base for premium computation to $3,600.

Committee members were Senators Chester Reiten, Chairman, Jan Dykshoorn, Duane Mutch, I.E. Solberg, and Floyd Stromme; and Representatives Jim Brokaw, Dayle Dietz, Roger Koski, Thomas Matchie, Reuben Metz, Dan Olson, Burness Reed, and Donald Zimbleman.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. **THE COUNCIL DID NOT ADOPT THE REPORT. THE REPORT READ AS FOLLOWS:**

SUNDAY CLOSING LAW

Background

Sunday closing laws have a time honored place in American jurisprudence. These laws date back to as early as colonial times. North Dakota has had Sunday closing statutes since before statehood. Not long ago in much of the country most businesses were closed on Sunday. However, in the last two decades there has been a steady change in the effect of Sunday closing laws. Now about 10 states have no Sunday closing laws and most of the remaining states allow some kinds of businesses to operate on Sunday.

Sunday closing laws have been a fruitful source of litigation over the past 20 years. The United States Supreme Court held that Sunday closing laws have a valid secular purpose and states may pass Sunday closing laws as long as the laws do not unfairly discriminate among businesses and as long as the laws rationally relate to a constitutionally legitimate state purpose. See e.g., McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101 (1961); Two Guys from Harrison-Allentown, Inc., v. McGinley, 366 U.S. 582,81 S.Ct. 1135 (1961); and Braunfield v. Brown, 366 U.S. 599, 81 S.Ct. 1144 (1961).

In many states, Sunday closing laws have been judicially overthrown on the basis of the state constitution, not the federal constitution. For example, in a recent Vermont case, State v. Ludlow Supermarkets, Inc., 448 A.2d 791 (Vt. 1982), that state's Supreme Court considered Vermont's Sunday closing law, which allowed businesses with gross square footage not over 5,000 square feet to stay open. The court held that the law violated Vermont's state constitutional requirement of equal protection of the law by giving preference to one class of business — "small, locally owned retail stores" (Id., at 796). However, in other states with similar constitutional provisions, Sunday closing laws have been upheld. It is difficult to predict what decision any given court would make on the basis of state constitutional provisions. One important distinction is that Vermont's law had a fatal defect on its face — the preference for small businesses (Vt. Stat. Annot. Section 3352, quoted in Ludlow Supermarkets, Id., at 796). A recent study of the issue appears at 10 A.L.R. 4th 230.

A summary of the status of various state laws appears in a monograph "Blue Laws," Oregon Legislative Research, Portland, Oregon (1980). According to the Oregon study, nine states are "wide open" (no Sunday restrictions) and the other 41 states have some Sunday restrictions. However, of those 41, at least 17 states have certain broad exceptions, leaving 24 states with "general restrictions." This figure is probably lower now, as the Oregon report included Minnesota, Vermont, and Arkansas as having general restrictions. The restrictions have since been removed in those states.

There has been ever-increasing interest on the part of consumers and businesses to allow more openings on Sunday. This interest is especially keen along the Minnesota border; since more businesses are open Sunday in Minnesota many North Dakota customers cross the river to do Sunday shopping.

However, desire for wider Sunday opening is far from universal. Many church leaders addressed the committee pointing out the importance of Sunday as a common day of rest and recreation. It was pointed out that an important aspect of the general quality of life is protected by Sunday closings. Employees in businesses likely to be open on Sunday pointed out that there would be pressure on them to work on Sundays thus taking away what for many is the only day that can be substantially devoted to domestic activities.

For states that have partial exceptions in their Sunday closing laws, the exceptions take a variety of forms. The bases include kind of business, dollar volume of the business, ownership of the business, employment size of the business, and physical size of the business. In considering legislation on Sunday closing, the committee had before it variations on all these themes.

North Dakota Statutes

North Dakota's Sunday closing law appears in North Dakota Century Code Chapter 12.1-30. The chapter generally prohibits operation of normal business on Sunday and provides criminal penalties for violating its provisions. However, significant exceptions are provided. The exceptions are either for types of businesses or for types of products.

Thus, many essential businesses and types of businesses are allowed to operate on Sunday. Such businesses include hospitals, nursing homes, funeral homes, broadcast stations, manufacturing where seven-day operation is required, restaurants, hotels, and similar businesses where operation throughout the week is required (NDCC Section 12.1-30-03). Exceptions similar to these are found in almost every state that still has a Sunday closing law.

North Dakota law also excepts sales of certain kinds of items. These items include drugs and medicine, food for off-premises consumption, newspapers, gasoline, tires, emergency replacement parts for motor vehicles, cooking fuel, infant supplies, and stationery (NDCC Section 12.1-30-02).

Much confusion has arisen over whether the exceptions are to be read as modifying each other or as separate exceptions. If read as modifying each other, in order to sell the permitted items, a business would have to be on the list of excepted businesses. The other view is that the lists are additions to each other, and that a business otherwise required to be closed on Sunday could nonetheless sell the specific items listed. As a practical matter the law has been enforced in light of the latter interpretation.

Present law (NDCC Section 12.1-30-03(28)) allows Sunday operation of grocery stores operated by an "owner-manager who regularly employs not more than three employees" to operate the store. That provision has engendered much enforcement difficulty. In 1981 the North Dakota Supreme Court held that the provision could not be construed to prevent a corporately owned grocery store from operating on Sunday if the operator had more than a token ownership interest in the store (Rothe v. S-N-Go Stores, Inc., 308 N.W.2d 872, 876 (N.D. 1982)). Other enforcement difficulties center around accurately identifying the "owner-manager," whether the three employee rule means full-time employees only, whether a "full-time equivalent" standard could be used, and the result when the store is owned by more than one individual such as by a husband and wife. Would the second owner count against the three-employee limit? What about a store owned by 10 partners?

Objectives

In considering proposed legislation certain main objectives were sought by the committee. Since any bill approved by the committee has a high probability of being the subject of litigation, the committee was especially concerned that the bill pass constitutional muster.

Another vital objective was enforceability. For a Sunday closing law to work well, the law should be easily enforced. Enforcement is easiest when the applicable standard is based on a standard readily obvious to a police officer — such as type of merchandise sold or store size. Standards which require background research, such as ownership, or that require long-term surveillance, such as number of employees working during the week, are much more difficult to enforce.

Another critical objective was clarity. The committee believes the Sunday closing law should be clear and easily understood so that business owners may reliably and in good faith conform their conduct to the requirements of law.

Another objective was fairness. Since any line drawing is of necessity somewhat arbitrary, it is important the line drawing for exceptions to Sunday closing be fair. If a Sunday closing law is poorly planned, businesses not allowed to stay open on Sunday can suffer unfairly

compared to their counterparts who are allowed to stay open. The committee believes that the line should be drawn so as not to give an unfair competitive advantage to one class of business over another. Further, the line should not be drawn to give unfair protection to one class of business over another.

The committee was mindful of the mandate in the study resolution that the committee's work be directed toward "revising, modernizing, and clarifying" the Sunday closing laws. The committee believed that this was direction to keep, as much as practical, the intent of the present Sunday closing law. The direction to modernize the law would support some broadening of the exceptions to Sunday closing; it would not support a complete repeal.

Committee Consideration

The committee considered 11 bill drafts for possible alternatives on the Sunday closing issue, ranging from "wide open" to "total closure." Most discussion centered around bill drafts more to the center of the issue.

Other bill drafts would have:

1. Required the owner of a grocery store to own at least a one-third interest in the business and work there at least 40 hours a week.
2. Used a "shopping list" of 26 items for convenience stores.
3. Allowed unlimited operation of drugstores, gas stations, and grocery stores.
4. Allowed unlimited operation of grocery stores under a certain size, and of drugstores and gas stations.
5. Retained the present owner-manager standard and also required the owner-manager to work there at least 40 hours a week.
6. Allowed opening of grocery stores with at least 80 percent of the selling area used for edible items.
7. Used a different shopping list from No. 2.
8. Limited grocery stores to 80 worker hours on Sunday.
9. Allowed grocery stores of under 5,000 square feet to be open.
10. Allowed specific operations such as bait shops, flea markets, rummage sales, open houses, community festivals, and sale of fishing tackle. (In various of the above bill drafts.)

The committee recommends one bill which the committee believes follows closely the intent of present law, provides for a day which most people will be able to share as a day of rest and noncommercial activities, provides for availability of certain retail items on a seven-day basis, provides for easy enforcement, and will be more clearly interpreted and understood.

The bill would repeal North Dakota Century Code Section 12.1-30-02, which lists certain items that may be sold. This would end the controversy over whether the present lists of businesses and items are cumulative or disjunctive. Since the committee believes that the intent of the present law was to make the lists cumulative (i.e., a business has to be an excepted business and then can only sell the excepted items), the proposed bill clarifies this issue. It limits the sale of certain items on Sunday to grocery stores, convenience stores, minimarkets, drugstores, and motor vehicle service stations.

Thus, on Sunday, those businesses could only sell food products that are exempt from the sales tax, items on a list of 30 specifically identified items, and items peculiar to that kind of business (such as prescription drugs by drugstores). Other kinds of businesses, even though they may incidentally sell some of the 30 items, would not be allowed to stay open on Sunday (unless already allowed to stay open under present law).

By adopting sales tax exemption status as the test for the sale of food items, the bill would provide a readily ascertainable standard to determine which edible items may be sold by the businesses named above. It should be emphasized that the sales tax exemption status standard applies only for products that can be eaten by people. Other items would have to be on the list of 30 permitted items, regardless of sales taxability, to be sold on Sunday. The committee believes the bill will finally resolve the issue of whether small or large grocery stores can be open on Sunday. Ownership would no longer be the determinative issue.

The selection of businesses whose operation would be allowed on Sunday was intended to provide as much as possible for a common day of recreation yet provide availability of goods and services for which there is a significant demand for seven-day availability.

Minority Views

The committee approved the bill by a majority of one vote — 6 to 5. As the closeness of the vote implies, there was substantial opinion arguing against expansion of Sunday opening. In the view of the minority, expansion of Sunday opening would be an unwise move that would hurt an important element of the quality of life in this state, that would invade the privacy and sanctity of families on Sunday, and that would be especially harmful to people who would have to work on Sunday.

SMALL BUSINESS VIABILITY

Background

The definition of a "small business" depends on the activity engaged in by the business. However, using standards followed by the federal government in administering small business programs, it is clear that most business establishments in this state are "small businesses." Thus the continued viability of small business is of critical importance to this state.

Topics Considered

In accordance with the study directive, the committee solicited testimony from representatives of small business throughout the state. Among the topics discussed by witnesses were problems faced by small business in dealing with small claims court, in handling NSF (nonsufficient fund) checks, in dealing with suspected shoplifters, and in availability of MIDA (Municipal Industrial Development Act) bond financing.

The committee addressed these problems and recommends two bills that would help alleviate some of the problems.

One bill would amend North Dakota Century Code Sections 27-08.1-01 and 27-08.1-03 by increasing the jurisdictional amount in small claims court from $1,000 to $3,000. The bill would also allow a prevailing party to recover up to $100 of travel and related expenses in bringing or defending the small claims action. These changes are proposed in response to specific difficulties in the small claims system that were described to the committee.

Witnesses testified that many small businesses had to reduce their claim to the $1,000 limit to use the small claims procedure and save the expenses of going to court under traditional procedure. Also cited as a difficulty in the small claims process was the cost of travel. Since a small claims case must be brought where the defendant lives, many plaintiffs incur significant travel expenses, especially when the trial is postponed. Witnesses said sometimes travel expenses exceed the amount claimed, thus making it pointless to pursue the case. When the parties live in the county seat, traveling costs to court give no strategic advantage to either side. Thus the bill would require that the prevailing party have traveled at least 20 miles to court to qualify for the award of travel expenses.

The committee also recommends a bill that would change the law dealing with shoplifting. Presently a police officer cannot issue a summons to a suspected shoplifter unless the police officer saw the crime. Thus the merchant is required to make a special trip to the prosecutor's office to make a complaint and have a summons issued. The bill would amend Section 29-06-15 to allow the police officer to make the arrest or issue the summons if there is probable cause that the suspect committed theft in a retail or wholesale establishment.

The bill would also clarify what acts constitute the crime of shoplifting. It would amend Section 51-21-02 by specifically making deliberate price tag switching a crime; it would also clarify that concealment of merchandise by the shoplifter on a confederate would be a crime if the merchandise is taken past the last checkout point in the store.

The committee heard testimony on the NSF check problem, as witnesses suggested concepts that might help alleviate the NSF check problem. One concept frequently mentioned was suspension of checking account privileges of NSF violators. However, proponents of the concept were still trying to work out an effective method of carrying out the idea. They may ask that the Legislative Assembly consider a method during the session. Accordingly the committee makes no recommendation on this issue.

WORKMEN'S COMPENSATION PREMIUMS

Present law limits an employer's workmen's compensation wage base to $3,600 per employee. That is, an employer only has to pay for workmen's compensation insurance on the first $3,600 of an employee's salary, even if the potential liability of the Workmen's Compensation Bureau exceeds $3,600 per year for that employee.

Proponents of an increase in the wage base argued that the present provision imposes an unfair burden on employers with many part-time employees, particularly small businesses. These witnesses said the $3,600 level was established many years ago when $3,600 represented a reasonably typical annual salary. In the view of these witnesses, the wage base should be raised to a level closer to salaries prevailing now, thus spreading the payment burden more evenly among employers.

This issue has been before the Legislative Assembly during the last five sessions. In each session a bill failed that would have increased the wage base. Although the committee recognizes the need for a change in the wage base, in light of the historical failure of attempts to raise the wage base, the committee does not recommend any bill on the subject.

In discussion of the wage rate base issue, the committee heard testimony in favor of private workmen's compensation coverage. North Dakota is one of only three states with an exclusive state fund (adminis-

tered by state agency; employers not allowed to buy private coverage from an insurance carrier or to become self-insured). At the final committee meeting a bill draft was presented that would have allowed private coverage. The issue has been considered by the Legislative Assembly before. During the 1973-75 interim, the Legislative Council's Industry and Business "A" Committee studied the issue and concluded that establishing a private coverage system would not improve the efficiency of the workmen's compensation program. Furthermore, a proposal (1981 Senate Concurrent Resolution No. 4064) that the Legislative Council study feasibility of alternatives to the state fund was defeated in the 1981 Legislative Assembly. Accordingly the committee makes no recommendation on this issue.

EDUCATIONAL FINANCE COMMITTEE

The Educational Finance Committee was assigned two studies. House Concurrent Resolution No. 3029 directed a study, with the assistance of the Superintendent of Public Instruction, of the entire field of elementary and secondary school finance in North Dakota. Emphasis was to be placed on a comprehensive review of the foundation program, the concept of funding 30 percent of the cost of education by local school districts, the costs and distribution formulas for aid for education and transportation, the effect of Initiated Measure No. 6, which was approved by the electorate at the November 1980 general election, the possibility of implementing a method of evaluating teachers through a merit system, and the problems of financing special and vocational education.

Senate Concurrent Resolution No. 4062 directed a study, with the assistance of the Superintendent of Public Instruction, of the general subject of elementary and secondary education finance, with emphasis on identifying state-mandated costs of education and developing methods of providing state financial aid to support those costs. The committee consolidated the studies directed by House Concurrent Resolution No. 3029 and Senate Concurrent Resolution No. 4062.

Committee members were Senators Gary Nelson, Chairman, Phillip Berube, James Cussons, LeRoy Erickson, Evan Lips, Jack Olin, and Curtis Peterson; and Representatives Lawrence Dick, Serenus Hoffner, Carolyn Houmann, Franklin Huwe, Irven Jacobson, Kenneth Knudson, Herman Larson, Douglas Mattson, Walter Meyer, Alice Olson, Gayle Reiten, Orville Schindler, and Steven Swiontek.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

FINANCING OF ELEMENTARY AND SECONDARY EDUCATION

Background

The foundation program providing financial assistance to local school districts has been in effect in North Dakota since 1959, when the Legislative Assembly provided for a uniform 21-mill county levy and a supplemental state appropriation to ensure that districts would receive 60 percent of the cost of education from nonlocal sources. This initial scheme was adopted by the Legislative Assembly as it recognized that property valuation demographics and educational needs varied from school district to school district. The 1959 Legislative Assembly embraced the broad policy objective that some higher cost school districts in the state "must continue to operate regardless of future school district reorganization plans." Taking into account the obvious fiscal burdens suffered by the low-valuation, high per-pupil cost school district, the 1959 Legislative Assembly forged a system of weighting aid payments to districts to favor schools with lower enrollments and higher costs. This initial foundation program scheme also recognized that higher costs were incurred by districts providing high school education, and included a higher weighting factor for allocation of aid entitlement for districts operating high schools.

The foundation program remained essentially unchanged from 1959 until 1973, when the Legislative Assembly responded to a growing crisis in the field of school district finance in North Dakota. These 1973 changes in the foundation program made the funding scheme for public education more sophisticated, and state government assumed a proportionately greater share of financing education. The base support payment per pupil, which was and still is the amount used to determine the sum each school district will receive after the application of weighting factors, was increased from $260 to $540 per pupil. The flat weighting factor for all high schools was changed to provide four classes of high school weighting factors, and some adjustments were made in elementary school weighting factors. Another modification made by the 1973 Legislative Assembly was the reduction of the maximum mill levy for high school districts from 34 to 24 mills and the requirement that those districts with excess levies or unlimited levies reduce such levies. The 1973 changes came also at a time when the federal and state judiciary was concerned with the question of whether the level of spending for a child's elementary and secondary school education should depend upon the wealth of the child's school district. As the foundation program alterations were being made, the conviction of the Legislative Assembly was that the matter of financing public schools was a state responsibility, and that every effort should be made to provide the most equitable system of providing equal educational opportunity to all North Dakota students.

The provisions of the 1973 changes to the foundation program were due to expire at the conclusion of the 1973-75 biennium. The 1975 Legislative Assembly made permanent most of the basic modifications in the foundation program made in 1973. The 1975 Legislative Assembly increased the base payment amount from $540 to $640 per pupil for the first year of the 1975-77 biennium and to $690 per pupil for the second year. The 1975 Legislative Assembly also made further adjustments in the weighting factors used to calculate aid for elementary school programs, including a new classification for seventh and eighth grade pupils in recognition of higher costs associated with junior high school instruction. Another change in 1975 was fiscal protection given to school districts with declining enrollments with the provision that no district would receive less in foundation program payments for any year than that district would have received based upon its enrollment in the previous school year. As a result, districts with this enrollment profile were given a buffer period within which to adjust their fiscal circumstances and minimize traumatic revenue loss associated with declining enrollments. The increasing participation of the state in the financing of public school education in North Dakota continued, with the appropriation for the foundation program being increased from $118 million during the 1973-75 biennium to $153.4 million for the 1975-77 biennium.

The 1977 Legislative Assembly raised the base payment under the foundation program to $775 per pupil for the first year of the 1977-79 biennium and $850 for the second year, with the total appropriation for foundation payments, including those made for transportation, being $186.8 million.

The 1979 Legislative Assembly raised the base level per-pupil payments to $903 for the first year of the biennium and $970 for the second year, bringing the total foundation program appropriation to $208.4 million. An additional $1 million was appropriated by the 1979 Legislative Assembly for the funding of free public kindergarten during the second year of the 1979-81 biennium.

The next major development to affect educational finance occurred with the approval by the North Dakota

electorate of Initiated Measure No. 6 at the general election in November 1980. This measure imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax be used to make possible state funding of elementary and secondary education at a 70 percent level. Prior to that time, state funding of public school education had been only an unwritten objective of recent years, modifying the 60 percent goal which had been set when the Legislative Assembly created the foundation program in 1959.

With the electorate having approved of the concept of public education being funded at a 70 percent level by the state, the 1981 Legislative Assembly amended the text of the initiated measure to provide that 60 percent of the oil extraction tax revenues be allocated to the school aid program. The Legislative Assembly, however, did not alter the aspiration expressed in the original language of the initiated measure that the cost of education in North Dakota be funded 70 percent by the state. The matter of how this goal of funding 70 percent of the cost of education was to be accomplished was left an open question.

Measure No. 6 also precipitated another change in the structure of the foundation program by providing for a tax credit which made the 21-mill levy inapplicable to all but the owners of extremely high valuation properties. Measure No. 6 allowed that the property tax revenue lost to school districts because of that credit would be made up by additional state foundation aid appropriations. Rather than continue to maintain the 21-mill county levy in its significantly modified form, the 1981 Legislative Assembly eliminated the levy altogether, and committed an increase in state education aid to compensate districts for all revenues which would have been derived from the levy and to bring the state funding contribution closer to the aspirational 70 percent level expressed in Measure No. 6. The foundation program appropriation in 1981 was $388.7 million. Aside from this modification, however, the 1981 Legislative Assembly did not undertake to overhaul the state school aid program as such, recognizing that any profound change in the mode of financing education would be best accomplished after extensive study by an interim committee.

Two concurrent resolutions were passed by the 1981 Legislative Assembly addressing the need for a comprehensive review of the foundation program within the context of the 70 percent goal expressed in Measure No. 6. In House Concurrent Resolution No. 3029, the following considerations were cited as a basis for the need to study thoroughly the existing and potential future funding schemes for the provision of state education aid:

1. The delivery of educational services being impacted by declining enrollments, inflation, and other factors causing increased unit costs for schools.
2. The prior commitment of the Legislative Assembly and federal legislation and court decisions to the effect that the state has an obligation to provide an equal educational opportunity for all students.
3. Contemporary educational requirements necessitating changes in academic programs, with increased emphasis placed on transportation and special programs bringing greater pressure on school district budgets.
4. A need to study the financial effect on school districts of large industrial plants, both those subject to property taxes and those subject to taxes in lieu of property taxes, including a study of deductions from foundation program payments from taxes received from such plants and other sources of revenues.
5. Oil development and the present and future impact which the passage of Measure No. 6 will have on school districts.

Senate Concurrent Resolution No. 4062, like its counterpart passed by the House, also directed a comprehensive study of the financing of elementary and secondary education in North Dakota. This resolution, however, directed that the study focus on the substance of Measure No. 6 and its statement of intent that state education aid equal at least 70 percent of the funds required to meet the cost of education. Senate Concurrent Resolution No. 4062 drew attention to the fact that the foundation program had provided payments to school districts on the basis of educational cost per pupil since the program's inception in 1959.

Referring to this long-established method of calculating foundation aid to districts on the basis of educational cost per pupil, Senate Concurrent Resolution No. 4062 provided that now within the context of the 70 percent funding concept expressed in Measure No. 6, the appropriate definition of educational cost per pupil is subject to differences of opinion. The fundamental objectives of the study described in this resolution, therefore, were:

1. The evolution of a scheme for the financing of elementary and secondary education in North Dakota which would comport with the 70 percent state education aid funding aspiration expressed in Measure No. 6.
2. In the development of such an education aid funding system, either determination of that which constitutes "educational cost per pupil," if a modification of the existing scheme is opted for, or a rejection of the per-pupil funding concept with the coincident proposition of a new method for funding elementary and secondary education in North Dakota.

Committee's Study of Alternative Forms of Public School Funding in North Dakota

In response to the directives contained in both House Concurrent Resolution No. 3029 and Senate Concurrent Resolution No. 4062, the committee began a study of the finance of elementary and secondary education given the Measure No. 6 aspiration that the state fund education at a 70 percent level. A fundamental consideration surrounding the study from the outset was the Legislative Assembly's desire to ensure to the greatest extent possible fair and equitable access of all public school students to state financial resources. This intent to strive for an equal educational opportunity for students in various school districts had to be addressed within the context of the reality that districts differ greatly in profile. School districts are disparate in terms of assessed property valuation within their boundaries and also in terms of the costs that they incur in their provision of education. Districts with high costs on a per-pupil basis do not necessarily have high assessed property valuations to absorb those high costs and the converse is true as well. Further complicating the study was the need to consider the variance between school districts in terms of the education programs they offer.

In undertaking its study, the committee considered its overall objective to be the development of a school aid funding concept which would provide an optimum quality of education to students in districts of all profiles while ensuring fairness from district to district in the degree of local participation in school financing. The committee began its work by addressing the existing system of school funding from a critical perspective, receiving testimony and information from varied sources.

It was recognized that the existing school funding system would require modification so that the state would

fund 70 percent of the cost of education. Although the present system had been altered slightly by the 1981 Legislative Assembly in response to the passage of Measure No. 6, state school aid payments to districts averaged only 68 percent of the cost of education during the first year of the biennium.

In addition, the existing system of school funding was subjected to substantive criticism in testimony and documentation received by the committee. This criticism was directed specifically at purported funding inequities whereby districts spending similar amounts per pupil and having similar assessed valuations were not levying similar amounts in property taxes to raise the portion of their cost of education. The essence of this criticism was that the present system encourages some districts to levy millages much smaller than their spending levels and assessed valuations would seem to justify.

The Present System

The critique of the existing system of distributing state educational aid to school districts was directed toward the concept of providing foundation program money to districts on a per-pupil basis. Under the present scheme, North Dakota Century Code Section 15-40.1-06 provides that it is the intent of the Legislative Assembly to support elementary and secondary education on the basis of the "educational cost per pupil." The statutory language states that in determining this educational cost per pupil, three types of costs are not to be considered by the Legislative Assembly:

1. Expenditures for capital outlay for buildings and sites or debt service.
2. Expenditures from school activities and school lunch programs.
3. Expenditures for the cost of transportation, including the cost of schoolbuses.

Without considering these three types of school district expenditures, the Legislative Assembly in each session designates specific dollar amounts to be the educational support "per-pupil" for each year of the following biennium. These respective dollar figures are in turn multiplied times the weighting factors contained in Sections 15-40.1-07 and 15-40.1-08 which vary depending upon the number of students registered in a district and whether those students are elementary school students or high school students.

The state education aid to which each school district is entitled is derived by subtracting from the product of the educational support dollar amount and the appropriate weighting factors the dollar amount which a 20-mill levy would raise based on the assessed property valuation of each school district. The subtraction of the amount which would be raised by a 20-mill levy in each district is the equalization mechanism in the present system of school funding in North Dakota. With this equalization factor, as a school district with a high property valuation would produce a greater dollar amount from this hypothetical 20-mill levy than would a low valuation district, the high valuation district would receive a lesser amount in state payments per pupil than a low valuation district, assuming both districts were of similar size.

The underlying assumption justifying application of this equalization factor is that the high valuation district is in a better position to raise locally a portion of its total cost of education than is a district with a low assessed property valuation. As this hypothetical 20-mill levy causes the amount of state aid paid to a district to be decreased, the premise is that the high valuation district will and should pay a greater portion of its overall cost of education.

Critics of the existing per-pupil basis for funding public school education in North Dakota submitted that the equalization mechanism contained in the present system has the effect of being a state subsidy of choices made on the district level in such areas as local property tax millage rate, teacher to student ratio, and administrative expenses. Those criticizing the existing system of funding maintained that school districts in North Dakota which make essentially the same expenditures on their school programs and have similar profiles in terms of assessed valuation are often under the present per-pupil funding scheme levying widely disparate millages. The proponents for a departure from the present system stated that the existing scheme greatly favored the low cost school district which provides the minimum course and program offerings staffed by the lowest paid teachers and staff, while proportionately penalizing the high cost, high valuation school district.

Critics of the present system also called attention to the fact that even with the equalization mechanism of the hypothetical 20-mill levy, many low cost, low valuation school districts have been able to operate their school programs by relying almost solely on state foundation aid and levying extremely low property tax millages. The critics stated that in the instances of a few school districts, no local property tax was levied to support their schools. The essence of the criticism of the existing school funding system, therefore, was that it encourages some school districts to make little or no levy commitment for public education at the local level, while causing high cost, high valuation school districts to levy proportionately higher millages in relation to such districts' assessed property valuations per pupil in their schools.

A related criticism of the present system was that the per-pupil basis for funding education contains no provision to take into account the individual cost profiles of each district. Although the system addresses in general terms differing costs inherent in the operation of elementary schools as compared with high schools, and differing costs associated with the operation of different sizes of schools, actual costs of education sustained by individual districts are not taken into account by the existing funding formula. Proponents for a change in funding system advocated a school funding scheme which would not penalize a district for offering broader course selections and hiring more experienced teachers and staff.

A final criticism with respect to the present per-pupil based funding system was the assertion that the weighting factors in Sections 15-40.1-07 and 15-40.1-08, which are designed to account for differing costs associated with the operation of different types and sizes of schools, are no longer reflective of cost data compiled by the Department of Public Instruction.

Although the committee spent much of its time examining a new school funding concept to be known as the "70-30 concept," the committee did hear proposals to retain the basic structure of the present system but to make certain changes in it. The first such proposal was for the weighting factors in Sections 15-40.1-07 and 15-40.1-08 to be modified so as to reflect cost data of school districts by type compiled by the Department of Public Instruction. A second proposal to alter the existing system was to add a provision to the scheme which would ensure that school districts would maintain a minimum local levy and maintain a minimum local dollar expenditure. This proposal was in response to the criticism heard by the committee that the current system permitted some districts to make minimal efforts at the local level to assist in the funding of their school programs. A final proposal to modify the existing scheme

was for the increase of the present equalization device of the 20-mill equalization factor, which serves to affect the amount of state aid received by a district on the basis of that district's profile in terms of assessed property valuation. Under this final proposal, the equalization mechanism would be in the form of a hypothetical mill levy of greater than 20 mills which, when applied to the total cost of education for all districts in the state, would account for 30 percent of that total cost, representing an equalized 30 percent local share of the cost of education.

During the course of its study, however, the committee did not direct the preparation of any bill draft which proposed to modify the existing per-pupil based system of providing state education aid to school districts in North Dakota.

70-30 Funding Concept

In response to the expressed criticism of the present per-pupil basis for funding elementary and secondary education, the committee from an early point in its study devoted considerable time to the development of an alternative school funding scheme. The committee was particularly concerned with the criticism that the existing funding system could permit school districts to inordinately rely on state education aid while failing to make a serious local commitment to the funding of their school programs.

The committee saw its objective to be the development of a funding system which would more legitimately equalize the school finance burden among all of the districts in the state, but which would nevertheless give fair treatment to districts with different valuation and educational cost profiles. The task that the committee saw for itself was the forging of a public school funding scheme which would reduce the present inequities in school funding distribution among districts and address the aspiration expressed in Measure No. 6 that the state assume 70 percent of the cost of education in North Dakota schools.

This new approach in funding schools came to be known as the "70-30 concept," after the percentage objective in funding that it was directed to achieve, and was incorporated in a bill draft which the committee considered for much of the interim.

The 70-30 concept bill draft contains a very different method for calculating state education aid entitlements for individual school districts, taking into account the costs of education incurred by each school district. This was a significant departure from the formula of the present system, in which the Legislative Assembly establishes specific dollar amounts to be the educational support "per pupil" for each year of the following biennium. Under the existing system, the "per-pupil" dollar amounts contained in Section 15-40.1-06 and the weighting factors contained in Sections 15-40.1-07 and 15-40.1-08 are made applicable generally to school districts by general type. The present funding formula does not take into account the particular costs incurred by individual school districts, and thus does not consider the peculiar educational needs which a district might have. The 70-30 concept bill draft formula for determining school district entitlement, however, is based specifically on each school district's fiscal experience from the previous year.

The 70-30 concept bill draft funding formula begins by determining the "adjusted cost of education" for each school district. This adjusted cost of education is determined by taking the gross expenditures of a school district for the preceding school year and subtracting the following items:

1. Expenditures for capital outlay for buildings and sites, or debt service.
2. Expenditures from school activities and school lunch programs.
3. Expenditures for the cost of transportation, including the cost of schoolbuses.
4. Expenditures from state funds paid to the district for vocational education pursuant to Chapter 15-20.1 and for special education pursuant to Chapter 15-59.
5. Expenditures from distributions from the state tuition fund as provided for in Chapter 15-44.
6. All expenditures from federal funds except expenditures from funds designed to compensate districts in lieu of property taxes.

The first three items listed above to be subtracted from a school district's gross expenditures for the previous year were the three types of expenditures which are referred to in the existing provisions of Section 15-40.1-06 as criteria not to be taken into account in determining the dollar amount for per-pupil support under the present system. As they are included in the 70-30 concept bill draft, they refer in each instance to the specific expenditures of these types for each district, while under the existing funding formula, they are considered in general terms by the Legislative Assembly as it sets the per-pupil dollar amount.

The rationale for subtracting the second three items listed above is based on the concept that these latter three types of fund sources are not the type which should influence the amount that a school district should receive in state educational support. These fund sources accrue to school districts independent of the basic aid provided under the foundation program, and thus it was reasoned that they should not be used to build the base for a district's allocated funding.

The fourth and fifth items to be subtracted involved funding to school districts outside of the foundation program for the provision of vocational education, special education, and the payment of tuition expenses. As the basic education aid to districts is not intended to provide support for these types of expenses, the 70-30 concept bill draft provides for them to be subtracted from a district's gross expenditures.

The sixth item of subtraction, those expenditures made by a district from federal fund expenditures from money designed to compensate districts in lieu of property taxes, was included in the 70-30 concept draft on the rationale that revenue coming to districts from federal programs designed to provide additional or enriched programs should not influence the amount of foundation aid a district would receive. In addition, although the language in the 70-30 concept bill draft makes only general descriptive reference to federal programs which are or are not designed to compensate districts in lieu of property taxes, the committee reviewed the specific federal programs which were considered to be in lieu of property taxes, and thus which would not be included in the subtraction process. Those programs were:

1. The waterbank program for wetlands preservation (16 U.S.C. Subsection 1301 et seq.)
2. An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain (30 U.S.C. Subsection 181 et seq.)
3. The Taylor Grazing Act (43 U.S.C. Subsection 315i and 315j)
4. An Act to provide assistance for local educational agencies in areas affected by federal activity (20 U.S.C. Subsection 236 et seq.)

When school district expenditures from all the above-mentioned six funding sources have been subtracted

from each district's gross expenditures for the preceding school year, the resulting figure is known in the 70-30 concept bill draft as the district's "adjusted cost of education." The draft further provides that the "educational support" for each year of the following biennium for a district shall be the adjusted cost of education times an adjustment factor to account for the effect of inflation from the base year to the first year of the biennium and from the first year of the biennium to its second year. The amount of "educational support" for a school district as calculated pursuant to this procedure represents the dollar amount equal to 100 percent of the total cost of education of the district.

As the aspiration of Measure No. 6 was for the state to provide 70 percent of the cost of education on a statewide basis, the 70-30 concept bill draft contains an equalization factor designed to address both this Measure No. 6 consideration and the need to provide fair treatment to districts with different cost and assessed property valuation profiles. This mechanism in the 70-30 concept bill draft provides for the computation of a 30 percent equalization factor to be used as the basis for determining each district's state funding entitlement.

In response to the criticism with respect to the 20-mill hypothetical levy equalization factor of the existing per-pupil basis for funding education, the 70-30 concept bill draft contains an equalization factor designed to treat districts of varying valuations and costs in a more equitable manner. The 70-30 concept equalization mechanism is determined as follows:

1. The total of all school districts' adjusted costs of education for the previous fiscal school year is multiplied by the inflation adjustment factor. The product of this calculation is known as the estimated statewide cost of education for the current school year.
2. This estimated statewide cost of education for the current school year is then multiplied by 30 percent, with the resulting product reflecting an amount equal to 30 percent of the estimated statewide cost of education for the current school year.
3. Based on the total valuation of all taxable property in the state for the previous year, the mill levy necessary to raise the dollar amount derived according to step 2 of this process is multiplied by the latest available taxable valuation of each school district. The product obtained from this calculation is known as the "equalized 30 percent local share."

To arrive at the state school aid funding entitlement for a district, that district's equalized 30 percent local share is subtracted from the district's adjusted cost of education as that dollar amount would be adjusted by application of the inflation factor.

The equalization factor of the 70-30 concept bill draft, therefore, determines a 30 percent local school funding responsibility through a formula applied to each district's adjusted cost of education. In calculating the 30 percent local share, however, the equalization of that factor is determined by including the elements of the total estimated statewide cost of education and the total valuation of all assessed property in all of the state's school districts. Through the use of this equalization mechanism, the 70-30 concept bill draft in its funding distribution formula seeks to treat school districts with differing cost and property valuation profiles in a fairer manner by taking into account the essential factors relating to equalization — district educational costs and the assessed property valuations of districts. In addition, as the equalization process in the 70-30 concept is derived on the basis of statewide figures, no school district would have to levy more than the hypothetical millage which would be necessary to raise a dollar amount equal to 30 percent of the estimated statewide cost of education as adjusted by the inflation factor. Based on a calculation performed by the Department of Public Instruction using figures from the 1980-81 school year, this would have meant that for that period, no district would have had to levy more than 68.6 mills for instruction to arrive at its 30 percent local share of the cost of education. Under the 70-30 approach, districts would still be free to levy a greater amount for instruction and thus would be able to raise the level of local expenditures on education with the intention of eventually raising the amount of state education aid which the district would receive.

Proponents of the 70-30 concept maintained that the central strengths of the approach are in the most comprehensive equalization mechanism and the fact that it considers each district's own expenditure levels in the determination of the amount of state education aid which that district will be granted.

These very features of the 70-30 concept, however, prompted criticism from others. The most commonly made point by those disapproving of the 70-30 approach was that the scheme was structured such that it could reward high spending school districts. It was argued that under this funding concept, with a district's prior expenditure level providing the base for allocation of state education aid, the district which would have spent the most on education would receive a correspondingly large payment in state aid. Critics of the 70-30 concept stated that the system would penalize school districts which have been operating on extremely restrictive budgets and which have given cost control a high priority. Related to this argument was the contention by some that the 70-30 concept favors districts which have high costs derived from the employment of experienced or advanced degree teachers or the offering of a greater variety of programs and more educational services.

The committee also heard the criticism that the 70-30 concept through its equalization mechanism and its reliance upon a district's previous year's expenditures would fail to proportionately benefit school districts characterized by low property valuations and low costs of education, and also districts with high property valuations and low instructional costs. The committee was told by representatives of the Department of Public Instruction, however, that implementation of the 70-30 concept found in the bill draft would not be inequitable to low valuation-low cost or high valuation-high cost districts. The department representatives emphasized that based on figures taken from the 1980-81 school year (the most recent year for which such information was available), no school district would have had to levy to raise its 30 percent equalized local share under the 70-30 concept to a level of more than 68.6 mills to receive the state aid share and account for 100 percent of its cost of education.

Others told the committee that if the 70-30 concept was adopted, a few school districts would find themselves receiving much less funding than they would have received under the existing per-pupil based formula. Department of Public Instruction representatives acknowledged that some districts would indeed be allocated less in state educational support than they would have received under the present system. In response to this possibility, the committee included in the 70-30 concept bill draft a section which creates a general school emergency fund in the amount of $10 million. The purpose of this fund was to provide additional state education aid to districts satisfying all of the following requirements:

1. In financing its programs for the current school fiscal year, the district must be levying a millage of at least 10 percent above the state average for school districts as computed by the Superintendent of Public Instruction.
2. The district must be expending 70 percent or more of its budget on instruction.
3. The district must have a staffing ratio within the ratios established by the Superintendent of Public Instruction.
4. The district must be approved by the Department of Public Instruction.
5. The district may not have exceeded any annual budgetary increases allowed by law.

This emergency fund section was intended to provide the protection for school districts which would suffer lost allocations of state education aid if the 70-30 concept was implemented but which would nevertheless be levying at high levels compared to the state average. This provision was not intended to bail out districts which would not be making a local mill levy effort in funding their school programs which would be commensurate with the average local mill levy on a statewide basis. Some question was raised before the committee by representatives of the Department of Public Instruction as to whether the requirement that a district spend 70 percent of its budget on instruction was a reasonable one upon which to condition eligibility for supplementary state educational funding. The department representatives said that if the 70 percent level were retained, only a handful of districts would qualify, as it is now highly usual for a school district to be committing as much as 70 percent of its budget to instructional costs. The representatives stated that the floor level for district expenditures on instruction costs for the purposes of this relief provision should be set at a level below 70 percent. They added that in addition, the term "budget" in this context should be defined to delineate clearly which district budgetary expenditures should be included in the determination of whether or not a district spends a certain percentage of that budget on instruction.

If the above-listed five criteria were satisfied by a particular district, that district's request for additional state education aid out of this emergency fund would be reviewed and the supplementary funding amount determined by the Superintendent of Public Instruction. Some committee members expressed concern that the language of the 70-30 concept bill draft proposed to create this emergency fund left too much discretion in the Superintendent of Public Instruction with respect to the determination of the amount of additional education to which each petitioning school district would be entitled. Other committee members maintained that while this section might have to be refined to provide more standards for this delegation of legislative authority to an administrative entity, the concept of providing for emergency supplementary state school aid for districts which would experience decreases in funding was a sound one. Proponents of the 70-30 concept stated that this emergency fund mechanism would make available funding relief to school districts which were committed to reasonable local mill levy efforts in the financing of their school funding system should not be designed to help dislow levels of expenditures on education might not be proportionately benefited by implementation of the 70-30 concept. The view was expressed, however, that a state school funding system should not be designed to help districts which would not be willing to help themselves by levying legitimate local levies to finance good programs.

During the course of its study of the 70-30 concept, the committee also heard testimony to the effect that as the formula makes use of a school district's previous year's expenditures in determining that district's funding entitlement for the current year, some sort of provision should be contained in the 70-30 concept bill draft to make additional funding available to districts with significant enrollment increases from one year to the next. In response to this concern, a provision was included in the bill draft to make additional state educational aid available to school districts with sudden enrollment increases. Under the draft scheme, school districts with enrollments of 200 students or fewer could apply to the Superintendent of Public Instruction to have their state aid funding entitlements recomputed if they experienced enrollment increases of 25 percent or greater. Districts with enrollments of greater than 200 students could apply to the Superintendent of Public Instruction for a recomputation of their entitlements if they experienced enrollment increases of 10 percent or more. The distinction made in this provision between districts with enrollments of fewer than 200 students and those with more than 200 students was in response to research undertaken by the Department of Public Instruction. The data from the department study showed that costs of providing instruction began to increase appreciably for those in the smaller category of school districts when they experienced enrollment rises of 25 percent or more, and for the larger classification of districts when they would encounter increases of 10 percent or greater. A representative of the Department of Public Instruction told the committee that the underlying assumption in setting these percentage levels was that most districts are able to handle minor increases in enrollments without suffering significant fiscal burdens. The department representative said that the underlying assumption in setting these percentage levels was that most districts are able to handle hardship as a result of sudden increases in student population.

Another subject discussed by the committee was whether a "cap" or ceiling should be placed on the millage which a school district could levy to raise its local portion of its cost of education. The committee decided, however, that the 70-30 concept bill draft should not contain any such mill levy limitation at this time because the subject was one which more properly should be considered by the Legislative Assembly itself during the forthcoming session.

After placing principal emphasis on the development of the 70-30 funding concept for the duration of its study, the committee voted on the matter of whether to recommend the bill draft to the Legislative Council. At its last meeting, the committee deadlocked on an 8-8 vote and thus makes no recommendation concerning the 70-30 concept.

Classroom Unit Funding Concept

At an early point during its study, the committee considered as one option in developing a new school aid funding formula the concept of funding education on a classroom unit basis. Under the classroom unit funding concept, funding allocations to a school district would be calculated pursuant to the number of classroom units which the particular district would have. The number of such units would be determined by the size of student population, the number of students in kindergarten, elementary and high school programs, and the number of students in special and vocational education programs.

Although the committee had decided at an early stage to pursue the 70-30 funding concept and not the class-

room unit funding approach, the committee considered a bill draft which reflects a scheme for funding public education in North Dakota on the basis of classroom units. This draft incorporated some features of the classroom unit funding systems in South Dakota and Wyoming and also original provisions designed to address the unique problems of funding education in North Dakota. The directive to prepare this bill draft came at the committee's next to last meeting, however, and the committee saw the draft for the first time at its final session.

The Superintendent of Public Instruction appeared at the last committee meeting in support of the classroom unit funding concept, saying that its implementation would promote economy and efficiency in the operation of district educational programs. Others told the committee that the classroom unit funding concept could have many of the same inequitable effects found in the present per-pupil based formula, with the approach of funding education on a per-pupil basis merely being replaced by funding on a per-unit basis. After hearing brief commentary on the classroom unit funding concept expressed in the bill draft, the committee declined to consider it further, stating that the vast majority of time during the study had been devoted to developing the 70-30 concept, and that there was not sufficient time left at that point to fully examine the classroom unit approach.

Mill Levy Consolidation

Another subject studied by the committee was the prospect of simplifying and consolidating the school district mill levy process. Some 15 separate school district mill levies are provided for in 10 different chapters of the North Dakota Century Code. Of these distinct levies, 13 are governed by specific maximum levels ranging from a limit of one mill to a ceiling of 40 mills. The remaining two levies are constrained only by the stipulation that they be sufficient to raise moneys necessary to operate specific programs. In addition, eight of these levies may be imposed by board action alone while the other seven require approval by the voters of a particular school district prior to being implemented. As a further complication, of those levies which require voter approval, some must be favored by a mere majority of votes cast while others must receive elector approval by a 60 percent margin or better.

In looking to simplify this diffused school district mill levy situation, the committee saw as its objective a consolidation and simplification of the mill levy process so as to facilitate accounting and auditing procedures at the district level and to reduce confusion on the part of the electorate in levy votes. The committee in considering the subject of mill levy consolidation took into account the initiation of a new school district accounting system developed over the biennium by the Department of Public Instruction.

The following levies which contribute to the general operation of a school district were identified as part of the general fund group under the department's new accounting system: general fund levy, high school tuition levy, high school transportation levy, recreation levy, Social Security levy, library levy, communications levy, teachers' retirement levy, special education levy, kindergarten levy, vocational education levy, school rental levy, unemployment compensation levy, insurance reserve levy, and schoolbus levy.

Proponents of the mill levy consolidation concept stated that with some form of simplification of the levy process, accounting at the district level would be made much simpler and districts would be able to invest funds raised for the various mill levy purposes in a much more flexible manner prior to the time that such moneys would be used for their specific applications. The Superintendent of Public Instruction told the committee that with 15 separate mill levies, each levy must be maintained as a separate fund, and thus must be audited individually at comparatively great administrative cost. The committee was also told that auditors from the Department of Public Instruction had suggested that legislation be proposed to remedy the present confusing situation by reducing the number of mill levies. School administrators appearing before the committee uniformly praised the general concept of consolidation of the 15 mill levies.

The committee initially considered the following three alternative approaches in the simplification and consolidation of school district mill levies:

1. Consolidation of all of the 15 district mill levies listed above into a single fund to be known as the general fund with no limitation on the amount of the millage or money which could be raised by this single large levy.
2. Consolidation of the mill levies into only two fund group levies — the general fund levy and the retirement fund levy. Included in the general fund group under this option would be the following funding purposes: general fund, high school tuition, high school transportation, recreation, library fund, communications, special education, kindergarten, vocational education, school rental, unemployment compensation, insurance reserve, and schoolbus acquisition and operation. Included in the retirement fund group under this approach would be only the Social Security and teachers' retirement fund levy. Under this retirement fund levy, the moneys raised by it would be used solely to pay the particular school district's matching contribution for these personnel expenses.
3. The third alternative consisted of consolidating the school district levies into two fund groups differentiated on the basis of whether the levies could be imposed by school board action alone or whether they would require voter approval for implementation. These two fund groups would be as follows:

   General Fund Levy: This general fund levy would have to be approved by the electorate of the school district, and would include within its levy purposes the following functions which now are in the form of separate school district mill levies requiring voter approval: general fund, recreation, communications, vocational education, library fund, kindergarten, and schoolbus acquisition and operation.

   Special Fund Levy: This special fund levy could be imposed by the district school board without voter approval, and would include within its levy purposes the following items which now are in the form of separate school district mill levies which may be initiated by board action alone: high school tuition, high school transportation, special education, Social Security, teachers' fund for retirement, school rental, unemployment compensation, and insurance reserve.

The committee almost immediately rejected the first of these three alternatives on the rationale that with a single large levy being presented to a school district electorate, there would be less accountability on the part of the district administration for expenditures in the various subject areas. The committee then considered bill drafts

which would reflect alternatives 2 and 3 as they are referred to above.

Department of Public Instruction representatives said that while under Alternatives 2 and 3, some 15 school district mill levies would be reduced to two large levies, there would still be a high degree of accountability for moneys raised and spent for the listed purposes under each fund. While money from these two large levies could be commingled in a single bank account, it would still be necessary that accurate records of receipts and expenditures be maintained so as to preserve the integrity of each of the fund allocations.

Recommendation

The committee recommends a bill expressing the third alternative in which the present 15 school district levies would be consolidated into a general fund levy and a special fund levy. The general fund-special fund approach to mill levy consolidation offers the advantages of being a more comprehensive and flexible concept when placed in operation at the district level, and of being a concept which would retain the present requirements for levy purposes needing either electorate approval or mere board action for implementation.

Under the bill the new general fund levy would include seven mill levy purposes for which there are now separate school district levies. As was stated above, some of these present levies require voter approval by a bare majority while others require a favorable vote by a 60 percent margin or better.

Addressing this disparity the committee maintained the distinction made in existing law between districts having total populations in excess of 4,000 and those with populations below that level. The bill provides that the aggregate amount that a school district may levy for general purposes, with the exception of the Fargo School District, may not exceed the amount which would be produced by a levy of 70 mills, but that a distriact with a population of greater than 4,000 may levy any millage beyond 70 mills that was approved by a majority of the district electorate. For districts with populations below 4,000, however, a levy for general purposes beyond the 70 mill plateau must be approved by 55 percent of those voting on the proposed millage.

State Aid for Schoolbus Transportation

In response to the directive contained in House Concurrent Resolution No. 3029, the committee also reviewed the present formula through which state aid is granted to school districts for schoolbus transportation costs.

The fundamental criticism with respect to the existing bus transportation funding formula was that it tended to encourage school districts to purchase unnecessarily large buses with which to transport their students. Under the present system, districts have been compensated on the following basis during the 1981-83 biennium:

1. For schoolbuses with capacities of 16 passengers or less which transport students who live outside the incorporated limits of the city in which the school the pupil is enrolled is located, 34 cents per mile during the first year of the biennium and 38 cents per mile for the second year.
2. For schoolbuses with capacities of 17 or more passengers, the sum of 68 cents per mile for the first year of the biennium and 76 cents per mile for the second year.

In addition to these per-mile bases for compensation, school districts are also entitled to payments amounting to 19 cents per day for each public school pupil living outside the city limits who is transported to and from school in district buses.

Department of Public Instruction representatives and others testified to the effect that under this current schoolbus transportation formula, state funding was being wasted in the sense that school districts were purchasing unnecessarily large buses. As a means of addressing this problem, the committee developed an alternative funding formula based on the concept of giving block grants to districts for schoolbus transportation. This approach is based on the number of students transported within a school district on the basis of the number of students in the district per square mile.

The committee heard testimony that a schoolbus transportation funding formula based completely on student population density within a district would adversely impact districts which had route structures in which their buses were traveling large numbers of miles on a per-student basis. The committee was told that districts could be transporting students many miles in proportion to students-per-square-mile density if geographical or road limitations made that type of practice necessary.

To decrease the potential adverse impact that a switch to a density-based schoolbus transportation funding formula might cause, the committee arrived at an approach which incorporated features of the existing per-pupil per-mile scheme and also the density-based concept studied by the committee as a means of developing a more efficient transportation funding system. Even with this proposed new schoolbus transportation formula being based on a student transported per mile factor in addition to a student population density factor, the committee heard from representatives of school districts whose average miles traveled per student was high in comparison with the state average. These administrators stated that there should be some provision in the bill to provide for supplemental state schoolbus transportation aid for districts experiencing serious impact from implementation of the new formula.

Recommendation

The committee recommends a bill containing a new schoolbus funding system. Districts would receive approximately two-thirds of their state aid funding entitlement on the basis of the number of students they transport on a per-mile basis. The bill compensates districts at the level of 49 cents per mile for schoolbuses transporting students living outside the incorporated limits of the city in which the school the student is enrolled is located. The bill contains no funding distinction in this per-pupil per mile portion of the allocation formula for smaller buses or larger buses.

In addition to this allocation to districts based on the basis of students transported per mile, the new formula in the bill contains the density-based portion of the funding distribution scheme. This density-oriented portion provides approximately one-third of the regular schoolbus transportation allocation to which districts would be entitled. This part of the formula provides that districts in addition to their per-pupil per-mile grant are also entitled to an annual payment on the basis of each transported student on the basis of the number of students each district has compared to the total square mileage area of the district. Under the formula, the number of transported students for which a district would be entitled to compensation would be calculated by dividing the number of transported students by the number of square miles in the school district.

Under the system expressed in the bill, districts would

be entitled to a payment per transported student on the following basis:

Number of Transported Students Per Square Mile	Amount Per Student
.0001 to .0999	$247
.1000 to .2999	195
.3000 to .3999	180
.4000 to .4999	166
.5000 to .5999	142
.6000 to .6999	126
.8000 to .9999	116
1.0000 to 1.4999	93
1.5000 and greater	60

In response to this concern, the bill includes a provision to offer relief to high mileage and high transportation cost districts. The provision allows that if a school district's miles traveled per student figure exceeds the state average miles traveled per student figures by 10 percent or more, the district may apply to the Superintendent of Public Instruction for supplementary schoolbus transportation funds. To preclude the possibility of districts looking to this supplementary transportation funding provision as the source of windfall additional funding, the bill includes safeguarding language. The bill provides that the total of any supplementary schoolbus transportation funds received by a district, when added to its regular transportation aid, may not exceed 80 percent of its transportation expenditure for the previous fiscal year as reported in its annual financial statement submitted to the Superintendent of Public Instruction.

Mill Levy Authorization for Reorganized School Districts

Another subject of study by the committee was a difficulty which is being experienced in elector approval of school district reorganization plans. According to testimony, it is now not uncommon in North Dakota for in a proposed reorganized district to approve the reorganization plan in one election and then fail to approve a mill levy for the reorganized district at a subsequent mill levy election.

The committee adopted the position that as the funding mechanism for a reorganized school district is an indispensible aspect of the operation of a reorganized district, the mill levy proposed for the new district should be voted on at the same time as the reorganization plan.

Recommendation

The committee recommends a bill which changes the mill levy approval procedure in the case of a reorganized school district. Under the bill, the county reorganization committee must first determine the amount of funding which would be necessary to meet the expenses of the proposed reorganized district. The proposed mill levy would then be submitted to the state reorganization committee (the State Board of Public School Education) as part of the proposed reorganization plan. If the proposed mill levy and the remainder of the proposed reorganization plan is approved by the state committee, it is to be included as part of the reorganization plan submitted to the electorate of the proposed new school district as is provided in Chapter 15-53.1. The bill also contains a provision stating that mill levies submitted as part of a reorganization plan approved by the voters of the new school district shall not be subject to any other mill levy limitations provided for by law.

This bill would eliminate the present set of circumstances whereby voters would approve a school district reorganization plan and then later fail to approve a mill levy for the new district.

WAHPETON INDIAN SCHOOL FINANCIAL SITUATION

In the spring of 1982, the Bureau of Indian Affairs of the U.S. Department of the Interior announced that it planned to close the Wahpeton Indian School at the conclusion of the 1981-82 school year. In response to this development the chairman of the Legislative Council assigned the committee a study of the alternatives available for the continued operation of the Wahpeton Indian School.

Members of the legislative leadership and representatives of the Governor's office and the Department of Public Instruction testified before the committee. The consensus at one point during the past summer was that some way of keeping the school open through the current academic year should be found.

By early fall, however, United States Senator Mark Andrews informed the committee Secretary of the Interior James Watt assured that the federal government would continue to fund the school and keep it in operation through the 1982-83 school year. The committee heard testimony, however, that continued funding of the school would be doubtful after the current school year.

In an effort to engage in factfinding with respect to the fiscal and physical plant circumstances at the school, the committee chairman appointed a subcommittee to study the Wahpeton Indian School situation and to report its findings to the committee. Senator Curtis Peterson was appointed chairman of the subcommittee, while its other members were Senator LeRoy Erickson and Representatives Steven Swiontek and Walter Meyer.

The subcommittee reported to the committee in September that the student population at the school had increased from 255 students as of June 1982 to 300 beginning this fall. The cost of operating the school on a per-student basis had declined from $4,750 at the conclusion of the last school year to $3,960 this fall because of the increase in the institution's student population. In reference to the financial support which the school presently receives, all funding of the school now comes from the Department of the Interior, and no state foundation aid payments are made to support the educational programs there.

The subcommittee reported that in its view, if funding for the school is not continued beyond the 1982-83 school year, a mix of state funding sources could be explored whereby North Dakota, Minnesota, and other states sending students to the school would contribute funding. Although the present federal funding at the level of $1.6 million probably could not be reached with this alternative joint state funding approach, teachers' salaries and other expenses would be lower and with the prospect of a greater number of students attending the school, the cost per student would be correspondingly lower.

The subcommittee reported that essentially four types of funding alternatives had been discussed in anticipation of the eventual end to federal funding of the institution and that if this type of alternative approach was opted for, all four sources of funding would in all likelihood have to be relied upon. The subcommittee reported that those alternative funding sources could be:

1. North Dakota foundation program payments using a special factor to take into account the special costs

and unique nature of the program offered at the Wahpeton Indian School.

2. Funding contribution from other states which would send students to Wahpeton. Of these, the greatest contributing other state would be Minnesota, which currently sends 124 students to the school.
3. Funding contribution from Indian tribes sending students to the school.
4. Funding derived from other federal grant sources.

The subcommittee concluded in its report to the committee that the 48th Legislative Assembly should continue to study funding alternatives which would enable the Wahpeton Indian School to continue to operate in the event that funding from the Department of the Interior would cease. The committee, however, took no action on the subcommittee recommendation.

FINANCE AND TAXATION COMMITTEE

The Finance and Taxation Committee conducted studies in three areas as directed by the Legislative Council. House Concurrent Resolution No. 3059 directed a study of the formula for distributing the oil and gas gross production tax, with emphasis on the adequacy and equity of distribution and methods of allocating the funds in order to meet more closely local needs resulting from oil and gas development. Senate Concurrent Resolution No. 4083 directed a study of the productivity method of assessing agricultural land as developed by individuals at North Dakota State University and possible adaptation of the method to assessments of other types of real property. In addition to these studies, the chairman of the Legislative Council directed the committee to study the assessment of platted lands for property tax purposes.

Committee members were Representatives Alvin Hausauer, Chairman, Ronald Anderson, Ralph Dotzenrod, Layton Freborg, William Goetz, Steven Hughes, Tish Kelly, Harley Kingsbury, Tom Kuchera, Walter Meyer, Alice Olson, Mike Timm, Wilbur Vander Vorst, and Joseph Whalen; and Senators Mark Adams, Francis Barth, William Heigaard, Shirley Lee, Don Moore, Ron Quail, Malcolm Tweten, and Stanley Wright. Senator Ralph Christensen, prior to his death in April 1982, and Senator Frank Shablow, prior to his death in July 1981, were members of the committee.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

DISTRIBUTION OF PROCEEDS OF OIL AND GAS GROSS PRODUCTION TAX

Background — State Taxation and Distribution

Two separate taxes are imposed on oil produced in North Dakota. The oil extraction tax, created by an initiated measure approved in 1980, is imposed at a rate of 6.5 percent of gross value at the well of oil produced. The oil extraction tax, North Dakota Century Code (NDCC) Section 57-51.1-02, is not imposed on natural gas. The oil and gas gross production tax, NDCC Section 57-51-02, initially imposed in 1953, is a tax of five percent of gross value at the well of oil and gas produced. The distribution of the proceeds of the five percent gross production tax was the subject of the committee's study.

As enacted in 1953, the oil and gas gross production tax was a tax of 4.25 percent of gross value at the well of oil and gas produced within the state. In 1957 the rate of the tax was increased to five percent of gross value at the well. The proceeds collected from the gross production tax increased from $306,000 in fiscal year 1954 to over $76 million in fiscal year 1982 (which ended June 30, 1982).

From July 1, 1957, to July 1, 1981, the distribution formula for proceeds of the gross production tax remained the same. During that time the first one percent of gross value at the well of oil and gas produced was credited to the state general fund. After deduction of the first one percent the balance was distributed:

1. Of the first $200,000, 75 percent went to the producing county and 25 percent to the state general fund.
2. Of the next $200,000, 50 percent went to the producing county and 25 percent to the state general fund.
3. All remaining revenue was divided 25 percent to the producing county and 75 percent to the state general fund.

The 1981 Legislative Assembly amended the distribution formula in NDCC Section 57-51-15 by passage of House Bill No. 1529. This amendment did not change the disposition of the first one percent of gross value at the well of oil and gas produced which is credited to the state general fund. Remaining revenue is distributed:

1. Of the first $1 million, 75 percent goes to the producing county and 25 percent to the state general fund.
2. Of the next $1 million, 50 percent goes to the producing county and 50 percent to the state general fund.
3. All remaining revenue is distributed 25 percent to the producing county and 75 percent to the state general fund.

The overall effect of this amendment is to give each producing county $600,000 per year more than prior to 1981 if that county generated $2.5 million or more in annual tax revenue from the oil and gas gross production tax.

The 1981 Legislative Assembly also passed House Bill No. 1365 which amended NDCC Section 57-51-15 relating to the distribution of the first one percent of gross value at the well of oil and gas produced for the period July 1, 1981, to June 30, 1983. After June 30, 1983, the first one percent collected as gross production tax will be credited to the state general fund. The amendment provides that for the 1981-83 biennium the State Treasurer shall first distribute an amount which, when added to the amount distributed to townships from nonrefunded motor vehicle fuel and special fuels taxes, will result in a total distribution to townships of $8 million for the biennium. The treasurer next distributes an amount which, when added to the $8 million distributed to townships, does not exceed $32 million for the biennium, which amount is distributed to the highway tax distribution fund. Any amount over $32 million generated during the 1981-83 biennium is to be credited to the state general fund.

Another change in distribution made by 1981 House Bill No. 1529 is a cap, or maximum, upon revenues which producing counties may receive from the gross production tax for each year of the 1981-83 biennium. The caps are based on the population of the county and increase in the second year of the biennium. At the close of fiscal year 1983 these caps will expire and revenues to producing counties will have no ceiling absent further action by the 1983 Legislative Assembly. The amounts allocated to a county which exceed the cap imposed are instead deposited in the state general fund. The maximum amount which a producing county may receive in fiscal year 1983 (July 1, 1982, to June 30, 1983) is:

1. For counties with 3,000 or less population — $3,800,000.
2. For counties with population from 3,001 to 5,999 — $4,000,000.
3. For counties with 6,000 or more population — $4,500,000.

1981 House Bill No. 1529 also changed the manner in which revenues received by a county are to be allocated within the county. Prior to 1981, NDCC Section 57-51-15 provided for allocation of 40 percent of county revenues to the county road and bridge fund, 45 percent to school districts within the county, and 15 percent to incorporated cities within the county. After the 1981 amendment county revenues are distributed 45 percent to the county general fund, 35 percent to the school districts within the

county, and 20 percent to the incorporated cities within the county. House Bill No. 1529 also imposed caps upon revenues which may be received by school districts and cities. School districts are limited to a maximum of 70 percent of the county per-pupil cost times the number of pupils in attendance or in the school census, whichever is greater, unless the district has an average daily attendance or school census fewer than 400, in which case that district may receive up to 120 percent of the county average per-pupil cost times the number of pupils in attendance or in the school census, whichever is greater. Incorporated cities may not receive a distribution exceeding $500 per capita in any fiscal year. Amounts exceeding the caps for school districts or cities revert to the county general fund.

Testimony

The committee received testimony from several groups relating to distribution of proceeds of the oil and gas gross production tax. No testimony was received relating to the rate of the tax or to distribution of proceeds within the county. All testimony received related to division of oil and gas gross production tax revenues between the state and the counties.

Information provided by the State Treasurer's office showed distribution of the proceeds under the formula contained in 1981 House Bill No. 1529. Only Billings and McKenzie Counties exceeded their respective cap levels in fiscal year 1982. Billings County exceeded its $3.2 million cap for fiscal year 1982 by $3,723,458.96 and McKenzie County exceeded its $4 million cap level for fiscal year 1982 by $118,439.57. Total production tax collected in fiscal year 1982 was $76,043,772.30 with the state share being $57,235,730.19, or 75.3 percent of total tax revenues, and 17 counties shared the remaining $18,808,042.11.

Available statistics for North Dakota indicate that drilling activity has not peaked in the state. Gross production tax revenues are lower than projected in 1980 and the lower production totals are attributable to decreases from the larger oil fields in the state. Oil production in the state has not actually declined but has not increased as much as projections made in 1980 anticipated, and the decline in production may be slowed or reversed by new discoveries and opening of new oil fields in the state.

The Finance and Taxation Committee conducted a joint tour with the Transportation Committee to view oil impact areas of western North Dakota. The committees met with county and city officials in the area and toured oil production rigs and plants in the Little Knife oil field. Representatives of McKenzie County said oil traffic accounts for 45 percent of the traffic on their county roads and a Highway Department survey listed 152 of the 208 bridges in the county as deficient. City officials said they are experiencing financial difficulty in providing all governmental services including law enforcement personnel, water, sewer, landfills, recreation, and traffic control due to rapid population increases caused by oil field activity. School officials said many students must be bussed from oil fields and expansion of school facilities is necessitated by greatly increased enrollment and these factors place great financial demands on school budgets. All of the public officials expressed the opinion that increased revenues are needed by local government to offset costs relating to impact from oil production.

The Energy Development Impact Office distributes oil and gas impact grants. The office was appropriated $10 million by the 1981 Legislative Assembly for grants to oil development impacted political subdivisions during the 1981-83 biennium. The office received 198 grant applications from 70 different political subdivisions in 18 counties which totaled $54 million for the first grant round in which only $5 million was available. The office does not approve applications for funds unless there is a demonstrated negative impact from oil exploration or production. The impact office director said it is apparent from reviewing grant requests that there is a need for more revenue to deal with impact from oil and gas production. The director suggested that, in addition to grants for oil impact, a loan fund for oil impact should be created using funds from the state's share of receipts under the Federal Mineral Leasing Act. A loan fund is available for coal impact and a loan fund would work well administratively in conjunction with the oil impact grant fund.

A representative of the Roosevelt-Custer Regional Council for Development testified that the gross production tax distribution formula passed by the 1981 Legislative Assembly had been favorably received by the political subdivisions of southwestern North Dakota but caps on county revenues should be increased by 50 percent.

Representatives of the North Dakota Association of Counties said the cap rate on county revenues should be increased and should be based on oil production rather than county population. Some counties face increased costs due to production in neighboring counties from which they receive no revenue. Association representatives suggested that a means should be developed to deal with impact to counties having no oil production. Association representatives recommended that revenues exceeding county caps should be appropriated to the Energy Development Impact Office rather than being deposited in the state general fund.

Several members of the Association of Oil and Gas Producing Counties testified that increased revenues to political subdivisions from the distribution formula passed in 1981 are welcome and needed but additional revenues are still required to combat problems from oil impact. School expansion must be funded locally. Costs of furnishing all governmental services have increased. Road degradation from oil industry traffic is a major concern and road maintenance is a substantial budget expense. Political subdivisions are providing the services enjoyed by persons in the oil and gas industry, which produces great revenue for the state, and the local subdivision should receive more assistance from the taxes generated by the industry. Due to these considerations, the Association of Oil and Gas Producing Counties presented four recommendations to the committee:

1. Caps on county revenues from the oil and gas gross production tax should be increased by 10 percent.
2. Funding for the oil impact grant fund through the Energy Development Impact Office should be increased to $20 million.
3. An oil impact loan fund should be created and administered by the Energy Development Impact Office with initial funding of $20 million with funds to come from the state's share of revenues from the Federal Mineral Leasing Act.
4. Part of the first one percent of the five percent gross production tax should go to a grant fund used for construction or repair of roads or bridges in oil and gas impacted counties.

Recommendation

The committee considered two bill drafts dealing with distribution of revenues from the oil and gas gross production tax.

Information provided to the committee, based on fiscal year 1982, indicated that revenues in excess of county caps would total approximately $7 million for the 1981-

83 biennium. Based on these figures, it was projected that a 10 percent increase in county caps would decrease revenue to the state general fund by $1.5 million for the 1983-85 biennium and that amount would be distributed to producing counties. Distributing amounts exceeding present caps to the oil impact grant fund would decrease revenue to the state general fund by $7 million, or $5.5 million in conjunction with a 10 percent increase in caps.

The committee recommends a bill to increase caps on county revenues by 10 percent over the cap level for fiscal year 1983 and to make the increase effective for the 1983-85 biennium. Committee members said oil production impacted counties need more revenue and deserve a bigger share of revenue from the oil and gas gross production tax.

The committee does not recommend a bill to dedicate revenues exceeding county caps to the oil impact grant fund. Several reasons were cited by committee members for opposing this concept including opposition to dedicated funds, preference for legislative appropriation after reviewing the state fiscal situation, and that the revenue to the oil impact grant fund would not be sufficient under this approach.

ASSESSMENT OF PLATTED LANDS

Background

1981 Senate Bill No. 2323 provided by amendment to NDCC Section 57-02-01 that platted lands could not be classified as agricultural lands for assessment purposes. For this reason platted lands without residential status would fall into the commercial property classification, subject to higher property taxes. After adjournment of the 1981 Legislative Session, considerable attention was directed toward the exclusion of platted lands from the definition of agricultural property and the resulting higher property taxes on platted lands. Complaints from owners of platted lands that they received an undue tax burden by the definition of agricultural lands prompted the Legislative Council chairman to direct the committee to investigate the assessment of platted lands for property tax purposes.

Testimony

Representatives of the North Dakota Realtors Association said that not allowing platted lands to be assessed as agricultural land is detrimental to city planning processes. They pointed out that cities need to plan improvements to raw land well in advance of construction and platting land provides for orderly development. Platting land is simply the act of filing a plan with the county register of deeds and no change in the physical surface of the land or no change from agricultural use of the land needs to be made. The actual use of the land was recommended as the determining factor in assessment classification.

Officials from the city of Grand Forks testified that Grand Forks has encouraged developers to plat large tracts of land for future development and these tracts of land may continue to be farmed for many years and should retain an agricultural assessment status. Grand Forks officials said persons who had platted lands at the request of the city to aid in city planning for development should not be penalized by being forced to pay higher taxes.

A representative of the North Dakota Stockmen's Association testified that platted lands were deliberately excluded from the agricultural lands classification. This was done to protect farmland because when land is platted its market value exceeds its productivity value and it is no longer intended for agricultural use.

Interim Legislative Action

When the Legislative Assembly reconvened in November 1981, House Bill No. 1671 was passed into law. The bill amended subsection 11 of Section 57-02-01 to provide:

> "Agricultural property" means unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals.

This definition provides that lands platted after Senate Bill No. 2323 became law are not to be assessed as agricultural property. Lands which were platted and assessed as agricultural property prior to Senate Bill No. 2323 may continue as agriculturally assessed property unless a change of use occurs.

Subsequent to passage of House Bill No. 1671 the committee received no further testimony requesting change in the assessment of platted lands except representatives of the State Tax Department said it would be useful to statutorily define when a change of use from agricultural use occurs.

Study Result

The committee makes no recommendation for additional legislation relating to assessment of platted lands. The committee considered a suggestion to define when a change of use of agricultural land occurs but the committee chose to retain the current provision that only raising agricultural crops or grazing farm animals constitutes an agricultural use of land. The committee was satisfied that the November 1981 amendment allows land platted prior to passage of Senate Bill No. 2323 to remain in the agricultural assessment classification. Persons subsequently platting land are put on notice by the law that the land will not be assessed as agricultural property.

PRODUCTIVITY METHOD OF PROPERTY VALUATION

Background

Senate Bill No. 2323, as passed by the Legislative Assembly in 1981, created four classifications of real property in North Dakota. Of the four real property classifications, only agricultural land is to be valued according to its productivity value. Senate Concurrent Resolution No. 4083 directed a study of the system of assessing agricultural land using productivity as developed by individuals at North Dakota State University, with emphasis on its possible adaptation to assessments of other types of real property.

Agricultural property is assessed at 10 percent of its true and full value. True and full value of agricultural land is equal to its agricultural value, which is in turn defined to be the capitalized average annual gross return. NDCC Section 57-02-27.2 directs the Agricultural Economics Department of North Dakota State University to calculate the average agricultural value per acre of land for each county according to the formula contained in that section. Section 57-02-27.2 provides that annual gross return is determined by use of crop share or cash rent data and for cropland means 30 percent of annual gross income produced. For grazing lands annual gross return means 50 percent of annual gross income potential if the land were used to grow hay. Annual gross return is also referred to as the landowner's share of returns and is a percentage based upon calculations to reflect the return

to the landowner after deduction of the cost of production and other factors.

NDCC Section 57-02-27.2 provides that average annual gross return is calculated using a weighting formula. From the most recent six years' annual gross returns, the high and low years are discarded. The remaining four years are then weighted and averaged. The highest of the four years is multiplied by four, the second highest multiplied by three, the next highest multiplied by two, the low year is added, and the sum of these totals is divided by 10. For 1981, 1982, and 1983 the average annual gross return is capitalized at 7.5 percent to obtain true and full value. After 1983 the average annual gross return is to be capitalized by a five-year average of the gross Federal Land Bank mortgage rate of interest for North Dakota. The use of this interest rate is significant due to great increases in interest rates since passage of Senate Bill No. 2323.

Prior to December 1 of each year the Agricultural Economics Department of North Dakota State University must certify the capitalized average annual gross return per acre statewide and for each county to the State Tax Commissioner. The Tax Commissioner then provides each county director of tax equalization the estimate for the county. Prior to February 1 of each year, the county director of tax equalization adjusts the county average based upon relative values of lands in each assessment district and provides all county assessors with an average value for their assessment district. Each local assessor is then responsible to determine the relative value of each assessment parcel in the district.

Due to the fact that Senate Bill No. 2323 drastically restructured property assessment in the state it was not known what resulting effects would be on county tax bases. Since political subdivisions were limited by law to a maximum levy in mills against taxable value of property in the taxing district, and the effect on taxable value of the changes in Senate Bill No. 2323 was not known, it was necessary to ensure that tax bases did not fluctuate wildly across the state due to changed valuations. For this reason Senate Bill No. 2323, as amended by House Bill No. 1374, provided protection for taxing districts and taxpayers by providing that each taxing district may levy in 1981 and 1982 the same amount in dollars as that taxing district levied the prior year plus an additional seven percent. This allowable seven percent increase is subject to various adjustments. This budget protection is effective only through 1982.

Testimony

Since the Agricultural Economics Department at North Dakota State University developed the productivity method of assessing agricultural land and the department is charged by NDCC Section 57-02-27.2 with the responsibility for determining land values for the state, the committee made several requests of the Agricultural Economics Department for information relating to the study. The department presented extensive testimony to the committee relating to operation of the valuation formula and the projected effects of suggested adjustments to the formula. The department determines average value per acre for each county by using gross returns at the county level. This figure is multiplied by 30 percent for cropland and 50 percent for grazing land and then divided by the capitalization rate to arrive at the average value per acre for the county. These values are certified to the State Tax Commissioner and serve as the basis for assessment of agricultural land in the state.

A representative of the department told the committee that a 30 percent landowner's share for cropland is questionable since it is not reflective of all producers' situations within the state. Producers of row crops such as potatoes and sugar beets face higher production costs than producers of other crops and calculations placed the proper landowner's share for sugar beet and potato land at approximately 20 percent, which more accurately reflects the costs involved in growing those crops. Counties in the Red River Valley had increases in valuation of over 25 percent after passage of Senate Bill No. 2323 and reducing the landowner's share for sugar beet and potato lands would reduce the increase those counties experienced.

A department representative said it is necessary to build a better data base to use in valuing agricultural lands. More information is needed on livestock acreage, cash rents, and soil surveys. Cash rent data is a poor valuation tool because cash rent data is incomplete, difficult to obtain, and unreliable due to the fact that rents rise and fall rapidly. The department representative believes farmland valuation should eventually be based on soil survey information. Soil survey methods recognize about 200 soil types and it would be possible to relate dollar valuations to soil types although the method would not be foolproof since irrigation, fertilization, and other efforts can produce a crop greater than the soil type would indicate. Soil surveys for the state will not be completed until approximately 1990 and state financial assistance was suggested as a means to expedite the process.

The committee explored alternatives to use of a five-year average of the Federal Land Bank interest rate as a capitalization rate. Alternatives considered were an implied market rate, derived market rate, mortgage equity method, and component method. Any capitalization rate utilized should not be fixed but rather tied to market rates to reflect risks faced by producers. While a free market rate is a desirable capitalization rate, there is presently no perfect market rate available for use. A one percent change in the capitalization rate would make substantial changes in property valuation. Under present law the capitalization rate for 1984 will be about 10.5 percent, an increase of three percent over the current 7.5 percent rate. The Federal Land Bank interest rate, which will determine the 1984 capitalization rate, is historically high at present. Use of a 10-year average or 10-of-12 year average of the Federal Land Bank interest rate would tend to reduce the capitalization rate by averaging in lower years' rates.

At the committee's request, the Agricultural Economics Department made the following findings regarding proposed changes in the valuation formula for agricultural land:

1. **Reducing the landowner's share of gross returns for grazing lands from 50 percent to 40 percent.** The 50 percent presently used as the landowner's share for grazing land was not based on survey data and is subject to criticism. Reducing the landowner's share to 40 percent lowers the valuation of agricultural land statewide, with the greatest reductions occurring in western counties where more lands are devoted to grazing use. The overall reduction statewide would be minimal. The 40 percent landowner's share may be a more realistic figure than the current 50 percent used to value grazing lands.
2. **Eliminating the weighted average of gross returns.** The weighting scheme was initially justified on the basis of its ability to respond readily to the upward trend of gross farm receipts during the 1970's. Weighted averages tend to reduce year-to-year variability of valuations. The weighting formula is not

geared to respond quickly to decreases in gross returns. Substituting a simple average for the weighted average would result in lower valuations across the state and allow potentially greater variability of land values from year to year. Effects of removing the weighting factor will vary from county to county due to differences in production levels. The greatest reductions in valuation are expected to occur in the eastern part of the state where gross returns are higher per acre.

3. **Setting the capitalization rate at 7.5 percent permanently rather than allowing it to be computed as a multiyear average of the Federal Land Bank interest rate.** An ideal capitalization rate is one which is determined by the market and is free to fluctuate. A market determined rate would reflect changing opportunity costs of investing in earning assets. This would create a logical relationship between productivity value of farmland and values of other assets in the same risk class. Unfortunately, the Federal Land Bank interest rate is very high by historical standards and is likely to remain high. The effect of setting the capitalization rate at 7.5 percent would be neutral in the sense that all counties would be affected in the same relative proportion. A fixed capitalization rate could result in shifts in the property tax base among the four classes of property from year to year. Setting the capitalization rate on a permanent basis invalidates the concept of productivity value of farmland because, without a capitalization rate, realized income will be the sole determinant of land value. A representative market capitalization rate translates the prospective income generated from farmland into a value which reflects the purchasing power of the earning asset in the future. If the capitalization rate is not representative of the opportunity cost of investing in farmland, the resulting estimate of the value of the farmland is not indicative of the productive value of the resource. The higher the capitalization rate, the lower the resulting land value.

The State Tax Department prepared a considerable amount of information at the request of the committee. Regarding the allowable seven percent budget increase for political subdivisions under Senate Bill No. 2323, representatives of the department said this increase is purely discretionary and it is the responsibility of local officials to determine the appropriateness of the budget increase and the taxpayer protection appears to be working. The department suggested a change in adjustments to the allowable seven percent budget increase which would deduct amounts included in earlier budgets due to approval by voters of temporary mill levy increases if the temporary increase has expired. It is specified that such approved increases may be added to budgets but it is not clear whether they are to be deducted from budgets when the time period of approval expires. The law provides that the seven percent budget increases will expire after 1982 and taxing districts will revert to mill levy limitations rather than dollar value limitations. Reverting to mill levy limitations will cause some taxing districts to experience great reductions in allowable budget amounts because of reduced tax bases.

The Tax Department calculated shifts in assessment by classification of property as a result of passage of Senate Bill No. 2323. From 1980 to 1981 statewide agricultural property had a three percent increase in tax paid, commercial property had a two percent increase in tax paid, residential property had a three percent decrease in tax paid, railroad property had a 19 percent decrease in tax paid, and utility property had a two percent decrease in tax paid. The significant decrease in tax paid on railroad property was caused by federal regulation mandating that the state reduce assessments to the level of locally assessed commercial property and that personal property of railroads not be taxed since other personal property in the state is not taxed.

Valuation of property, other than agricultural property, by productivity methods is very difficult. To do so it is necessary to identify an income stream for the property and it is virtually impossible to do this accurately. Commercial property presents different problems than agricultural property since many more factors must be considered in determining productivity of commercial property. In addition, a capitalization rate for other property is difficult to establish since other property depreciates while agricultural property does not. As far as is known, no other states have articulated a suitable statutory formula for valuation of nonagricultural property according to productivity methods. Local assessors presently consider productivity as one factor in valuation of commercial property but productivity was not recommended as the sole valuation tool for nonagricultural property.

The Tax Department calculated the effect of reducing the landowner's share for grazing land from 50 percent to 40 percent for selected counties. Effects of this change would be minimal in eastern North Dakota counties where most agricultural lands are devoted to crop production. In western North Dakota, where more lands are used for grazing, assessed values of agricultural lands in five selected counties would decrease from two percent to five percent. It was estimated that the change would cause a statewide decrease in valuation of agricultural lands of less than two percent.

An assessor from Mountrail County testified that inequities were caused by a 50 percent landowner's share for noncropland. Grazing land is valued nearer to market value than cropland due to the 50 percent landowner's share and a 30 percent landowner's share for noncropland was suggested as more appropriate.

Representatives of the Red River Valley Sugar Beet Growers Association testified that agricultural lands in the Red River Valley had been burdened with an inequitable portion of tax increases caused by Senate Bill No. 2323. Association representatives suggested that the landowner's share for valuation of sugar beet land should be between 14 percent and 16 percent rather than the 30 percent landowner's share provided in Senate Bill No. 2323. This suggestion is supported by cash rent and crop share data currently available and by the fact that costs of production are higher for sugar beets than for other crops. Elimination of the weighting formula for valuation of cropland was suggested and a simple average was preferred to the weighted average because the weighting formula does not respond fairly to a down market. Association representatives said the Federal Land Bank interest rate is not a suitable capitalization rate due to current dramatic increases in the interest rate. They testified that cash rents should be used as a valuation tool for agricultural lands and pledged its support to assist in gathering cash rent data.

The North Dakota Stockmen's Association supported elimination of the weighting factor and elimination of the use of the Federal Land Bank interest rate as a capitalization rate for valuing agricultural lands. A simple average of returns would be preferred to a weighted average and a market determined capitalization rate is desired but must have a reasonable basis. The association recommended

that a temporary capitalization rate should be set for the 1983-85 biennium at a rate higher than the current 7.5 percent. The association would support a 40 percent landowner's share for grazing land only if reliable data supports that percentage. A representative of the association said use of the hay equivalent to value grazing lands is inequitable since the price of hay goes up and down drastically and may bear an inverse relationship to the productivity of the land in some years.

The North Dakota Farm Bureau expressed concern with suggested changes in valuation of agricultural land. A representative of the Farm Bureau said that organization does not support a permanent seven percent budget increase for taxing districts, does not support a 7.5 percent capitalization rate, and would only support a 40 percent landowner's share for noncropland if data supports such a change. The Farm Bureau urged caution in making changes to the valuation formula.

The North Dakota League of Cities suggested that the tax shifts to urban property should be kept in mind as a result of decreases in assessed values of farmland because reduction of value of farmland necessarily shifts a higher tax burden to urban property and assessment shifts to city property should be avoided because city property is already assessed at a higher percentage of market value than is farm property.

A representative of the Greater North Dakota Association testified that that organization supported Senate Bill No. 2323 in 1981 with the understanding that study would be done to determine the relationship between valuation of agricultural land and city land. The association expressed hope that the legislature will give the new assessment system an opportunity to work.

The Association of Counties testified that the seven percent allowable budget increase in dollars for taxing districts was included in Senate Bill No. 2323 due to changes in tax bases caused by changed valuation of property. A spokesman for the association said if counties are forced to go back to mill levies as a basis for budgeting some counties will have seriously reduced tax revenues. Local governments face serious financial problems already and the seven percent increase in dollars of taxes levied was recommended for extension.

Interim Legislative Action

At the reconvened legislative session in November 1981, House Bill No. 1672 was passed into law. This bill amended Section 57-02-27.2 by providing that the annual gross return, or landowner's share, for land used for growing sugar beets or potatoes is 20 percent, rather than the 30 percent provided in 1981 Senate Bill No. 2323. This change was given only temporary status and is effective only for the taxable years 1982 and 1983.

Recommendations

The committee makes no recommendation for extension of productivity type valuation to property other than agricultural property. Information provided to the committee indicates that exclusive use of productivity valuation for nonagricultural land would omit many factors properly includable in assessment calculations. Testimony pointed out that productivity is commonly used by assessors in the state as one component of calculating valuation for nonagricultural land. The committee was informed that productivity valuation of nonagricultural land is much more complicated than productivity valuation of agricultural land and may lead to inaccuracy and inequity.

The committee recommends a bill to extend the allowable seven percent budget increase for taxing districts. The bill provides that each taxing district may levy the same amount in dollars as that taxing district levied the prior year plus seven percent subject to adjustments provided in the bill. The allowable levy is to be reduced or increased to account for property deleted from or added to the tax rolls. The levy may be increased for mill levies authorized by law but not used in the prior year and increased for new or increased mill levies authorized by the Legislative Assembly. The levy may be increased to reflect new or increased mill levies authorized by the electors of the taxing district and the levy will be reduced to reflect expiration of any temporary mill levy increase approved by the electors of the district. The provisions of the bill supersede all applicable mill levy limitations otherwise provided by law except irrepealable taxes to pay bonded indebtedness and the one-mill state medical center mill levy. The bill differs from the provisions presently in effect in that present law excepts school districts with unlimited mill levies and home rule cities. The bill makes school districts and home rule cities subject to a maximum seven percent budget increase by not providing for their exception from the budget limitation. The committee approved this limitation for school districts and home rule cities to extend taxpayer protection through budget limitations to all political subdivisions. This bill is recommended since the present provision expires at the end of 1982 and, without further legislation, taxing districts will revert to mill levy limitations rather than limitations based on actual dollars levied. Reversion to mill levy limits would greatly reduce budgets of some political subdivisions while others would be able to increase budgets. The bill would retain the present balance among budgets of taxing districts while allowing annual discretionary seven percent budget increases.

The committee recommends a bill relating to valuation and assessment of agricultural lands. The bill amends NDCC Section 57-02-27.2 by making the following changes:

1. Annual gross return for cropland used for growing sugar beets and potatoes means 20 percent of annual gross income produced. This is present law effective through 1983 and would be made permanent by the bill.
2. Annual gross return for grazing land means 40 percent, rather than the present 50 percent, of an amount determined to be the annual gross income potential of the land if used to grow hay.
3. The weighting factor used to calculate average annual gross return is eliminated and replaced with a simple average of annual gross returns from four of the last six years, the high and low years being discarded.
4. The capitalization rate for valuation of agricultural lands for the years 1983, 1984, and 1985 will be 7.5 percent. Present law provides for a 7.5 percent capitalization rate through 1983 and thereafter the capitalization rate would be determined by the five-year average of the Federal Land Bank mortgage rate of interest for North Dakota. The bill provides that, in years after 1985, the capitalization rate would still be determined by a five-year average of the Federal Land Bank mortgage rate of interest for North Dakota.
5. The bill has an effective date of January 1, 1984.

The committee found from testimony offered that the productivity method of valuation of agricultural lands generally functions well but requires adjustments made by the bill. The committee was informed that the landowner's share, or annual gross return, for sugar beet and potato lands is more equitable at a 20 percent rate due to

high costs of production and other factors associated with those crops and the bill continues this rate. The bill reduces the annual gross return, or landowner's share, for grazing lands from 50 percent to 40 percent of gross income potential since the tax burden on grazing land is higher than its relative value would indicate. The bill eliminates use of the weighting factor to calculate average annual gross return because the committee found that weighting does not adequately respond to downtrends in production returns. The bill provides for continued use of a 7.5 percent capitalization rate through 1985. The bill does not provide for use of this fixed capitalization rate permanently but the committee found that the current high Federal Land Bank interest rate is not a suitable basis for the capitalization rate and no suitable market determined rate is available for use.

FINANCIAL INSTITUTIONS COMMITTEE

The Financial Institutions Committee was assigned two study resolutions. Senate Concurrent Resolution No. 4042 directed a study of state statutes and regulatory procedures with respect to state-chartered financial institutions, especially as those provisions mesh or conflict with laws applicable to federally chartered institutions. Senate Concurrent Resolution No. 4078 directed a study of state statutes establishing maximum interest rates chargeable on commercial transactions and the feasibility and desirability of changing some of the rates or enacting a comprehensive usury statute.

Committee members were Senators Clayton Lodoen, Chairman, Stella Fritzell, William Parker, Rolland Redlin, Marvin Sorum, and Frank Wenstrom; and Representatives Kelley Boyum, Aloha Eagles, Roger Hill, David Kent, Roger Koski, Bruce Larson, Walter Meyer, and Michael Unhjem.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

COMMITTEE ACTION

The committee solicited testimony and suggestions from representatives of financial institutions, regulatory agencies, other affected industries, and the general public. The committee met six times during the interim and directed the preparation of 19 bill drafts addressing issues raised by the study resolutions as well as issues that arose during the interim. The committee recommends seven bills.

FINANCIAL INSTITUTIONS REGULATION

Banking is an industry that is thoroughly regulated. Numerous federal and state laws and rules govern the industry; sometimes these requirements are inconsistent. Other regulatory conflicts arise as to the privileges allowed the various financial institutions. With aggressive solicitation of depository resources by entities outside the traditional banking industry (i.e., external competition) it is becoming apparent that less importance is attached to whether a financial institution has a state charter or a federal charter, or whether it is a bank, a savings and loan, or a credit union (i.e., internal competition). However, it is important that financial institutions in this state be able to compete effectively for deposit resources and in turn make those resources available to North Dakota farmers, other businesses, and home buyers.

Coordination of Truth-in-Lending Provisions

An important example of the problems presented by conflicting regulations imposed at the state and federal level is the conflict that arises under truth-in-lending laws. Truth-in-lending laws are designed not to regulate interest rates but to provide meaningful and consistent disclosures to consumers of the critical elements of a loan transaction. The most important disclosure is of the effective interest rate, called "annual percentage rate." Various other information, such as number and size of payments, total finance charge, etc., must also be provided. See 15 U.S.C. Sections 1601-1667e and North Dakota Century Code (NDCC) Section 51-13-02.

Although at one time the federal and state truth-in-lending requirements were identical, since the last session of the Legislative Assembly, Congress changed the federal requirements. As a result North Dakota lenders are required to make two disclosures — one that complies with federal requirements and one that complies with state requirements.

Witnesses testified to the difficulties presented by this situation. Among these are confusing information on the disclosure form, conflicting terminology used under the two regulatory schemes, and the inability to obtain, from forms suppliers, forms that comply with both federal and state requirements.

State Banking Board Membership

Most state-chartered financial institutions are regulated by the State Banking Board. The Commissioner of Banking and Financial Institutions is the chairman of the board. In addition, the board has six members appointed by the Governor. Of the six members, three must have executive experience in a state "bank" (any association, firm, or corporation engaged in the business of banking (NDCC Section 6-01-02(2))), one in a national bank, and one in a state-chartered savings and loan association. The sixth member is from the public at large. However, there are no state-chartered savings and loan associations. Therefore, it will soon become impractical to find prospective members of the board who have experience that meets the present requirement.

State and Federal Charter Privileges

The study resolution directed that the committee study the extent of regulatory overview and duplication between state and federal regulations. Present law allows state-chartered banks, credit unions, and savings and loans to perform functions allowed to their federally chartered counterparts (NDCC Sections 6-03-38, 6-06-06(11), and 7-02-14). However, the provisions allowing federal privileges are not standard and may cause confusion. The committee believes similar language should be used for the various kinds of institutions.

Credit Union Loan Limits

Present law establishes limits on loans that financial institutions may make to one borrower. This prevents the fiscal integrity of a financial institution from being compromised by the failure of just one borrower.

For "banking associations" (any bank except a national bank or trust company), the limit is 25 percent of unimpaired capital and surplus (NDCC Section 6-03-60). For savings and loans the limit is based on the loan on one piece of property. The limit is on a sliding scale ranging from $5,000 (association's assets do not exceed $50,000) to $15,000 (assets $300,000 to $500,000) and finally to three percent of assets (assets over $500,000) (NDCC Section 7-04-16).

In credit unions, the limits range from 10 percent of assets for smaller credit unions (assets not over $50,000) down to three percent of assets for larger credit unions (assets over $300,000) (NDCC Section 6-06-12).

When the present law was passed there were few credit unions with over $300,000 in assets. There are now a number with assets far in excess of that figure. The committee believes the loan limits should be adjusted for larger credit unions to bring the limits closer to those imposed on other financial institutions of similar size.

Recommendations

The committee recommends the following bills which deal with the uniformity of regulation of financial institutions:

Coordination of Truth-in-Lending. The committee recommends a bill to solve the problem of conflicting truth-in-lending regulations by allowing the lender to comply with federal truth-in-lending disclosure requirements instead of complying with state requirements. This would not relieve the lender from the duty to comply with state regulations governing matters other than truth-in-lending disclosures. The bill would also retain present law for those rare instances where a transaction is not governed by the federal truth-in-lending law but would be governed by the state truth-in-lending law. Compliance with federal regulations became mandatory in October 1982 so the problem of conflicting federal and state requirements dates from October 1982. The committee recommends that action be taken to solve the problem as quickly as possible, so the bill contains an emergency clause.

State Banking Board Membership. The committee recommends a bill to remove the requirement that one of the members of the State Banking Board have had experience in a state-chartered savings and loan association. The vacated slot would be used to increase the complement of representatives from state-chartered banks from three to four members. The total membership of the board would not change.

State and Federal Charter Privileges. The committee recommends a bill to standardize the language allowing state-chartered banks, credit unions, and savings and loan associations to engage in activities permitted by their respective federally chartered competitiors, subject to approval of the State Banking Board or the State Credit Union Board as appropriate.

Credit Union Loan Limits. The committee recommends a bill to change the loan limits for credit unions by lowering the present three percent ceiling for credit unions whose assets exceed $500,000. The bill would lower the limits for these larger credit unions, again on a sliding scale, with a 1.5 percent limit imposed on credit unions whose assets exceed $5 million. In the view of the committee, the bill brings the loan limits applicable to credit unions more closely in line with loan limits applicable to other financial institutions of equivalent size.

INTEREST RATES

Interest rates were a topic of concern during the last Legislative Assembly. The Legislative Assembly added a provision allowing "late payment charges" of up to 18 percent per year (NDCC Section 13-01-14). It also increased the general usury limit from eight percent to 5.5 points above the rate paid on United States treasury bills (NDCC Section 47-14-09); for savings and loans, it substituted the new usury rates for the former 12 percent ceiling applied to those institutions (NDCC Section 7-02-04); and for retail installment contracts, it substituted the new usury rate for the former 18 percent ceiling (NDCC Section 51-13-03). Finally, it directed further study of the issue of interest rates in Senate Concurrent Resolution No. 4078. The issue became even more vital during the interim as rates rose to very high levels even as the committee studied whether allowable interest rates on commercial transactions should be unified or increased.

Variable Rate Loans

Among the important recent developments in the banking industry is the advent of variable rate loans, especially for mortgages. Until recently the traditional home mortgage was a long-term, fixed-rate transaction, typically for 25 or 30 years. Under a traditional loan normally the payments would be the same throughout the life of the loan with the principal of the loan being amortized over its life. Significant increases in interest rates paid by lenders to their own depositors made the making of traditional loans unprofitable and highly risky. As a result many lending institutions now issue loans whose interest rates may be adjusted during the loan's life. Typically the interest rate is changed a number of times, the change being dictated by fluctuation in a reference index, such as interest paid on treasury bills. One consequence of such a loan is that future payment amounts are not known when the loan is made.

Revolving Charge Account Interest

A revolving charge account is one in which the consumer makes occasional purchases and the balance in the account "revolves" around the level of purchases and payments. It differs from a retail installment sale in that the latter is typically for a single purchase of a "big ticket" item such as a car or a major appliance and where, by definition (NDCC Section 51-14-01(4)), the seller takes a security interest (power to repossess when buyer does not repay loan) in the property that is bought.

Present law limits the interest a retail seller may charge on a revolving charge account to 18 percent per year, or 1.5 percent per month (NDCC Section 51-14-03). Also, present law does not explicitly permit the charging of a fixed minimum fee when the monthly balance is very low. Representatives of retailers who sell merchandise under revolving charge accounts testified that the present limit of 18 percent is too low. Witnesses testified that the effective cost to retailers of lending money on revolving charge accounts is more in the range of 20 to 22 percent per year. It was pointed out that the losses must be made up in higher retail prices for merchandise generally. The committee believes the ceiling should be eliminated to more fairly allocate the cost of credit to credit customers.

Late Payment Charges

Present law limits "late payment charges" to 18 percent a year (1.5 percent a month) (NDCC Section 13-01-14). A "late payment charge" is defined as one imposed when the parties did not originally intend an extension of credit but the account has been unpaid for at least 30 days. For much the same reasons mentioned as to revolving charge accounts, testimony suggested that the present 18 percent limit should be raised.

Recommendations

The committee recommends the following bills which deal with issues covered in the interest rate study:

Variable Rate Loans. The committee recommends a bill to explicitly authorize the making of variable rate loans by various financial institutions. The bill would specifically authorize banks, credit unions, and savings and loan associations to make these loans.

Revolving Charge Account Interest. The committee recommends a bill to repeal the present limit of 18 percent per year on revolving charge accounts. On the expectation that competition will serve as an effective ceiling, no new limit would be imposed. The bill would also authorize charging a minimum finance charge on accounts with small balances at the end of the billing period.

Late Payment Charges. The committee recommends a bill to increase the rate that may be charged as a late payment charge. However, since by definition a late payment charge arises only when the seller did not intend to extend credit and presumably the parties did not discuss credit terms, the effect of competition in imposing a ceiling cannot be counted on as much as in the case of

retail installment charges. Accordingly, the bill would increase the present limit on late payment charges to 21 percent a year, or 1.75 percent a month.

OTHER ITEMS CONSIDERED BY THE COMMITTEE

During the interim the committee considered many other bill drafts which it does not recommend. However, some of the bill drafts dealt with topics which, in the view of the committee, justify explanation.

Bank Examination Fees

The committee considered two bill drafts which would have changed the examination fees applicable to various banks. One bill draft would have increased the bank examination fee charged to the Bank of North Dakota from the present $65 a day to $200 a day. The committee did not recommend the bill draft because the Legislative Council's Budget "C" Committee is recommending a bill which would have an identical result. This committee supports the change recommended by the Budget "C" Committee.

Due-on-Sale Clauses

During the interim a number of cases arose in courts of other states testing state statutes prohibiting due-on-sale clauses in home mortgages. A due-on-sale clause is a clause which requires the mortgage to be repaid when the home is sold. This effectively prevents a seller from allowing the buyer to assume a mortgage at a rate which is lower than that prevailing when the new sale is made. Most mortgages presently in effect have those clauses. North Dakota law is silent on due-on-sale clauses. However, a case decided by the North Dakota Supreme Court during the interim gives rise to the inference that such clauses are permitted when there is no statute prohibiting the clauses. Northwestern Federal Savings v. Tennes, 315 N.W.2d 296 (N.D. 1982). Northwestern hinged on whether a federally chartered savings and loan could rely on federal regulations allowing the clauses (12 C.F.R. 545.8-3(f)). The curt implied, however, that absent a state law prohibiting the clauses, the clauses are neither an illegal restraint on alienation (power to sell one's property) nor a violation of the state law prohibiting acceleration (demand for full payment of loan) unless the lender has good faith fear of the borrower's default (NDCC Section 41-01-18).

The committee considered a bill draft which would have explicitly authorized due-on-sale clauses. However, as a result of the outcome of Northwestern and other court cases, the committee decided it was unnecessary to recommend a bill authorizing due-on-sale clauses.

Bank Mergers and Consolidation

Another issue considered by the committee was bank mergers and consolidations. A recent nationwide trend has been toward mergers and consolidations of small banks. A significant impact of this trend arises when a locally owned bank is bought by an outside bank. There is concern by some that this diminishes the availability of loans to local borrowers. The committee considered three bill drafts relating to bank holding companies (companies that own a number of banks). Two bill drafts would have prohibited further expansion of bank holding companies while another bill draft would have allowed further expansion. The committee heard much testimony on both sides of the issue. However, the committee concluded more dialogue and discussion are needed on this important issue which had not been explicitly assigned to the committee for study. Therefore, the committee makes no recommendation on this issue.

Tax Exemptions

At its final meeting, the committee considered a bill draft which would have exempted, from the state income tax, interest received from North Dakota banks, up to a limit of $2,000 for individuals and $4,000 on joint returns. The present limits are $200 and $400, respectively (NDCC Section 57-38-01.2). Although the committee thinks it is a sound idea to encourage investing in North Dakota banks and that allowing an income tax exemption may be an effective way of encouraging such savings, the committee makes no recommendation on this issue because the committee was unable to obtain an estimate of the fiscal effect of this change before its last meeting.

The committee considered a bill draft which would have exempted, from the tax on banks and trust companies, income received by the bank from sale of all MIDA (Municipal Investment Development Act) bonds with a ceiling of investment in the bonds of 10 percent of an institution's total investment portfolio. Present law limits the exemption to income only from MIDA bonds issued for hospitals and similar health care facilities (NDCC Section 57-35-04). Since this bill draft was also presented for the first time at the committee's last meeting, and since no estimate of the fiscal effect was available, the committee also makes no recommendation on this bill draft.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Garrison Diversion Overview Committee originally was a special committee created in 1977 by House Concurrent Resolution No. 3032 and recreated in 1979 by Senate Concurrent Resolution No. 4005. In 1981 the 47th Legislative Assembly enacted North Dakota Century Code (NDCC) Section 54-35-02.7 which statutorily creates the Garrison Diversion Overview Committee. The committee is responsible for legislative overview of the Garrison Diversion Project and related matters and for any necessary discussions with adjacent states on water-related topics.

In addition to the statutory duty of general legislative overview, House Concurrent Resolution No. 3072 directed the committee to study the financing of the Garrison Diversion project through any feasible combination of revenue sources, to allow the continuation and completion of the project.

North Dakota Century Code Section 54-35-02.7 directs that the committee consist of the floor leaders and their assistants from the House and Senate, the Speaker of the House, the President Pro Tempore of the Senate selected at the end of the immediately preceding legislative session, and the chairmen of the House and Senate standing Committees on Natural Resources. Those committee members were Senators Rolland Redlin, Chairman, Francis Barth, Shirley Lee, L.L. Naaden, David Nething, and Russell Thane; and Representatives Richard Backes, Richard Kloubec, William Kretschmar, Corliss Mushik, Jim Peterson, and Earl Strinden.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

LEGAL ISSUES

In discharge of its responsibilities of legislative overview the committee was briefed on several occasions. Legal counsel for the Garrison Diversion Conservancy District informed the committee throughout the interim on the progress of the litigation surrounding the project. The last report was received in March 1982. Following is a discussion of the lawsuits and their status through October 15, 1982:

1. Audubon Litigation. National Audubon Society, Inc., v. Watt, No. 76-0943, United States District Court for the District of Columbia.
   a. This action, initiated in May 1976, was based on several environmental claims for relief. The state and Garrison Diversion Conservancy District intervened the following year.
   b. Audubon and Secretary of the Interior Andrus signed a stipulation in 1977 which, in effect, administratively deauthorized the Garrison Diversion Unit. Secretary Andrus agreed that he would stop construction of the Garrison Diversion Unit until a new environmental statement was prepared and Congress reauthorized the unit. That agreement, however, is no longer an obstacle to continued construction. On May 7, 1982, the United States Court of Appeals for the District of Columbia declared "that, even if the Stipulation and Order initially was valid and binding upon both parties, the parties' obligations were subsequently discharged under an implied condition when Congress did not adopt legislation regarding the Garrison project despite a reasonable opportunity to do so."
   c. The favorable Court of Appeals decision leaves only two claims pending before the United States District Court (Judge Richey): (1) that continued construction of the Garrison Diversion Unit would violate the "substantive" provisions of the National Environmental Policy Act, and (2) that continued construction of the Garrison Diversion Unit would be inconsistent with the Interior Secretary's trust responsibilities for the National Wildlife Refuge System.
   d. The state and the Garrison Diversion Conservancy District recently moved to dismiss the claims remaining before the district court. However, action on the motion has been temporarily postponed to allow settlement discussions concerning the remaining two claims. The judge ordered a status conference on October 15 in Washington, D.C.
   e. There are no injunctions or other court orders in this case which would hinder construction of the Garrison Diversion Unit.
2. South Dakota Litigation. James River Flood Control Association v. Watt, No. 81-1012, United States District Court for the District of South Dakota.
   a. The 1981 complaint alleges that (1) the 1974, 1976, and 1979 impact statements are defective because they do not address, in the detail considered necessary by the James River Flood Control Association, impacts of the Garrison Diversion Unit on the James River in South Dakota, and (2) the phased implementation plan of the Garrison Diversion Conservancy District is a plan which requires congressional approval.
   b. The trial concluded on May 18 at which time Judge Porter issued a preliminary injunction against further development in the West Oakes area. The United States and the Garrison Diversion Conservancy District, however, were successful in their efforts to have the injunction vacated by the Court of Appeals. The Court of Appeals declared that "no individual landowner would sustain immediate or irreparable harm by allowing construction because the initial operation of the project will not begin until 1987."
   c. The National Audubon Society, Inc., has provided significant assistance to the James River Flood Control Association as a "friend of the Court" even through Audubon is still involved in the District of Columbia litigation.
   d. There are no injunctions or other court orders in this case which would hinder construction of the Garrison Diversion Unit.
3. Waterfowl Production Area Easement Litigation. State of North Dakota v. United States of America, No. 81-773, United States Supreme Court.
   a. The United States, at the request of the Department of the Interior, challenged the 1977 state laws (NDCC Sections 20.1-02-18.1 and 20.1-02-18.2) governing the acquisition of wetland easements by the Fish and Wildlife Service. Governor Link and Governor Olson have withheld their approval of fee and easement acquisitions by the Fish and Wildlife Service until, amog other things, mitigation and enhancement problems for the Garrison Diversion Unit are resolved.
   b. The United States District Court (Judge Van

Sickle) and the Court of Appeals have ruled that the state laws were invalid to the extent they conflicted with the acquisition of easements by the Fish and Wildlife Service for waterfowl production areas and that the Governor's consent is not necessary for fee and easement acquisitions of waterfowl production areas.

c. The United States now admits that a state's governor may refuse to permit the acquisition of waterfowl production area easements by the Fish and Wildlife Service. However, the United States continues to maintain that the state gave its consent to such acquisitions in 1961 and that the consent cannot now be withdrawn.

d. Oral arguments before the United States Supreme Court were scheduled for November 2, 1982. Attorney General Wefald was scheduled to argue for the state of North Dakota.

e. The requirement for gubernatorial consent was contained in the 1961 Wetlands Loan Act (16 U.S.C. 715k-5). This Act, which has been extended several times since 1961, expires in 1983; legislation will be introduced, and field hearings are contemplated in early 1983.

4. Federal Energy Regulatory Commission Proceedings. In the Matter of the Western Area Power Administration of the Department of Energy, FERC Docket No. ER82-5031-000.

a. Tri-State Generation and Transmission Association, Inc., and others have petitioned the Federal Energy Regulatory Commission for hydroelectric rate relief. They contend that the Western Area Power Administration (WAPA) has violated federal regulations by basing its proposed power rate increase for Pick-Sloan power on estimated costs of future projects planned for ultimate development of the Pick-Sloan Missouri Basin Program.

b. The Garrison Diversion Conservancy District has intervened in the proceedings. The district's position is that power revenues for the Pick-Sloan must be allocated for the ultimate development of the one million acre Garrison Diversion Unit.

5. Energy Transportation Systems, Inc., (ETSI) Litigation. The states of Missouri, Iowa, and Nebraska along with the Kansas City Southern Railway Company, the Sierra Club, and elements of the National Farmers Union have filed complaints with the United States District Court for the District of Nebraska concerning the ETSI project in South Dakota (a proposed slurry pipeline to transport coal from Wyoming to the southeast United States). These plaintiffs allege, among other things, that only the Secretary of the Army can authorize appropriations from the Missouri River (thereby threatening the 3.145 million acre-foot water permit for the Garrison Diversion Unit), that the Secretary of the Army could not authorize further diversions from the Missouri River because it would adversely affect navigation and other downstream uses of Missouri River water, and that ETSI-type diversions are not authorized for the mainstem reservoirs.

The Attorney General is analyzing the complaints and will soon determine the appropriate state response concerning the lower Missouri River Basin challenge to upstream use of the Missouri River.

6. Litigation Concerning the Bed of Devils Lake.

a. 101 Ranch v. United States of America, No. A2-81-89, United States District Court for the District of North Dakota (NE Division).

(1) The 101 Ranch and persons who claim to own land on the bed of West Bay, Devils Lake, have filed a quiet title action to determine ownership of approximately 11,000 acres of the lake. The claim is to the land which the board of directors, Garrison Diversion Conservancy District, conveyed to the United States in 1971 as payment for certain costs related to the Garrison Diversion Unit.

(2) The state and the Garrison Diversion Conservancy District have intervened in the action.

(3) The district court (Judge Benson) has already determined that the state acquired the bed of Devils Lake as an incident of statehood. The court has also recently ruled that the meander line is the ordinary high water mark (i.e., the meander line was the boundary between private upland and public lakebed at the time of statehood).

(4) The ultimate issue has not yet been submitted to the court: have the claimants acquired title to the bed of the lake below the meander line from the state since statehood? It is expected that this issue will be addressed by the court in early 1983.

(5) There are no injunctions or other types of court orders in this case which would hinder construction of the Garrison Diversion Unit.

b. Cox v. Kurtz, No. 11844 (Northeast Judicial District).

(1) The summons and complaint were filed on September 30, 1982.

(2) The plaintiffs claim, as owners of a lot in the Oak Way Subdivision (the shoreward side of the lot is the meander line), that they are the owners in fee simple of certain land between the meander line and the shoreline. The defendants claim a portion of the same land.

(3) The state and the Garrison Diversion Conservancy District filed a motion to intervene in the action.

(4) Accompanying the motion to intervene is an answer and counterclaim. The counterclaim asserts that the disputed land is land owned by the state, held in trust for the people of the state, and managed by the Garrison Diversion Conservancy District. The counterclaim requests that the court declare that both the plaintiffs and the defendants have no valid claims to any lands below the meander line.

c. Park District of the City of Devils Lake v. Garcia, No. 11536 (Northeast Judicial District, August 20, 1982).

(1) This is a property dispute between the park district and David Garcia concerning a small tract of land riparian to Creel Bay and near Camp Grafton.

(2) The complaint was dated November 3, 1978. It did not name the state or the district and the complaint was not served upon the state or the district.

(3) The trial was held September 10, 1981,

before Judge Neumann. The judgment declared that David and Estelle Garcia "are the owners in fee simple" of a tract between the meander line and the shoreline.

(4) The park board has appealed the decision to the North Dakota Supreme Court.

(5) The state and the Garrison Diversion Conservancy District have filed a motion for leave to file an amicus curiae brief.

d. State of North Dakota and the Garrison Diversion Conservancy District v. Burlington Northern.

(1) Burlington Northern recently abandoned the rail line between Devils lake and Warwick. The right of way crosses the west side of Camp Grafton, the Narrows, and the east side of Mission Bay; it is located below the meander line in four separate areas in Ramsey and Benson Counties.

(2) The Garrison Diversion Conservancy District has written to Burlington Northern requesting a release of any claims they may have to the right of way and requesting restoration of the right of way (this is especially important at the Narrows because of the exposed pilings). Burlington Northern has never responded.

(3) A quiet title action will soon be filed against Burlington Northern.

UPDATES ON PROJECT

Updates concerning the Garrison Diversion Project were received from representatives of the Garrison Diversion Conservancy District, Bureau of Reclamation, Governor's office, State Water Conservation Commission, and members of the public.

According to the chairman of the Garrison Diversion Conservancy District Board of Directors, the policy of the board toward the project has been that there is only one authorized plan — the 250,000 acre unit plan that led to the signing of the master contract between the United States and the conservancy district. North Dakota and the conservancy district have proposed a phased development of the 250,000-acre project, and it appears the Department of the Interior agrees with that approach. It remains the policy of the district to not take prime farmland for mitigation and to buy only from willing sellers.

Representatives from the Bureau of Reclamation updated the committee on construction activities and plans for the expenditure of available funds. Upon lifting the injunction, construction was scheduled to begin on the Oakes pumping plant. Should additional funds become available construction on the Oakes test area, New Rockford Canal, and Lonetree Reservoir and Dam would be undertaken.

Bureau representatives indicated a number of sessions had been held with the Canadian officials to discuss Canadian fears the Garrison Diversion Project will harm Canadian waters. The state of North Dakota has recommended phased development which is consistent with recommendations in the report of the International Joint Commission that those features which affect Canada not be built at this time. The bureau representative took the position that the commitment the United States had to Canada has been met.

The committee also received an update from a representative of the Governor's office concerning the mitigation issue and the management plans required by House Bill No. 1609 (NDCC Section 20.1-02-18.3). That section requires the Secretary of the Interior and the Governor to prepare a management plan for any land or interests in land which may be acquired for migratory bird reservations. Secretary of the Interior Watt and Governor Olson appointed a six-member team with state and federal members to develop an acceptable mitgation plan for the project's first phase of 85,000 acres. Once the mitigation issue is resolved the wildlife management plan required by House Bill No. 1609 can be developed. (Projected completion date for the mitigation plan is late December 1982.)

Possible alternative financing, federal-state cost sharing for the entire project or state funding for smaller water supply projects, was discussed. The testimony concerning alternative financing for the Garrison Diversion Project indicated the funding may be difficult to obtain and may not be necessary with the cooperation shown by the present administration. Problems would also exist for state funding because of the federal investment which would have to be retired in some manner or a special dispensation would have to be granted by Congress to use the facilities already built.

The committee held a public hearing at which comments from representatives of groups with diverse views on the Garrison Project were received and discussed.

Most of those testifying were in favor of the project for many reasons, including:

1. Receiving a return from the federal government for everything the state has given for the Garrison Diversion Project.
2. Increased production from irrigation.
3. The need for an adequate supply of water to many North Dakota cities.

Objections were based on whether (1) one farmer should have to give up land for the benefit of another, and (2) loss of land for mitigation.

BIOTA STUDY

A member of the North Dakota House of Representatives presented the committee with copies of a proposal for a literature study concerning transfer of disease, fish eggs, and biota to Canadian waters by means other than project waters. The committee met briefly in Fargo in a joint meeting with the board of directors of the Garrison Diversion Conservancy District. The proposal for a literature study was presented to the board members and the board agreed to do the study. The study is presently underway.

TOURS

The committee toured several features of the project. The committee assembled in Bismarck to review a movie concerning the construction and benefits of the Garrison Diversion Unit. The committee toured the Snake Creek pumping station, which pumps water from Lake Sakakawea into Lake Audubon. The committee also traveled along the McClusky Canal and observed the test fish screen and Brekken and Holmes Lakes. The committee continued its tour by observing the land which would be under water after construction of the Lonetree Reservoir.

The committee attended several sessions in Fargo of the Greater North Dakota Association including one entitled "Water — An Assured Supply."

The committee attended a Garrison Diversion Conservancy District board meeting at its headquarters in Carrington, North Dakota.

INSURANCE CODE REVISION COMMITTEE

The Insurance Code Revision Committee was assigned Senate Concurrent Resolution No. 4069, which directed a study and revision of the insurance laws. In addition to the study, the committee received the report of the automobile insurance rating study conducted pursuant to Senate Concurrent Resolution No. 4018.

Committee members were Representatives Royden Rued, Chairman, John Crabtree, Dayle Dietz, Arvid Hedstrom, and Francis Wald; and Senators Phillip Berube, Perry Grotberg, Evan Lips, Harvey Tallackson, and Stanley Wright.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

INSURANCE CODE REVISION STUDY

The study resolution directed a comprehensive revision and renumbering of the insurance laws, specifically North Dakota Century Code Title 26, with emphasis on appropriate technical and grammatical changes. The revision was to avoid, to the extent possible, substantive recommendations or changes.

Revised Title Structure

The committee reviewed the subject areas of Title 26. The title covers duties and regulatory authority of the Commissioner of Insurance, life insurance, accident and sickness insurance, corporate structure and activity, casualty insurance, and miscellaneous insurance matters. Although the title may have been arranged in a logical order at one time, additions to the title have resulted in a barely recognizable structure.

The committee determined that a revised insurance title should follow an organizational structure of seven subject areas in the order given: (1) Commissioner of Insurance; (2) insurance companies; (3) "state" insurance companies; (4) insurance premiums and rates; (5) insurance agents and sales; (6) contracts of insurance; and (7) insurance coverage.

The committee identified the laws that would fit within each subject area. Due to the number of laws involved, the committee revised one subject area at a time. The result is a revision of the first four subject areas.

Insurance Code Revision Recommendations

The committee recommends two bills — a main Insurance Code revision bill and a housekeeping Insurance Code revision bill.

The main revision bill proposes to enact the first part of a new Title 26.1. It contains the provisions enacting the first four subject areas of the revised insurance title, and it repeals the provisions from which it was derived.

The appendix to this report cross-references the proposed North Dakota Century Code sections contained in the main revision bill to the existing code provisions.

The housekeeping Insurance Code revision bill makes the changes necessary throughout the North Dakota Century Code if the main revision bill is enacted. The housekeeping revision bill eliminates numerous references to insurance company investments, which are covered by the proposed Section 26.1-05-19. The bill also corrects cross-references to reflect the new provisions of Title 26.1. Finally, the bill amends Section 6-05-01 to allow an existing surety company to continue its operation under the provisions of Chapter 6-05 which are proposed for repeal by the main revision bill.

Nonsubstantive Changes

The study resolution directed the revision effort to emphasize technical and grammatical changes. These changes included updating terms, eliminating duplicate or obsolete provisions, eliminating redundant language, consolidating related provisions, using "shall," "must," and "may" in accordance with proper drafting principles, and neutralizing gender references. In addition, a general definition of Commissioner of Insurance was added, and administrative procedures were standardized to make use of North Dakota Century Code Chapter 28-32, the Administrative Agencies Practice Act.

Substantive Changes

The study resolution directed that the revision effort avoid, to the extent possible, substantive changes. The committee received testimony and recommendations from the Commissioner of Insurance, National Association of Independent Insurers, Reinsurance Association of America, Blue Cross of North Dakota, Blue Shield of North Dakota, and other interested parties. The committee recognized that substantive changes would have to be made to accomplish certain technical revisions. In addition, it was determined that minor, noncontroversial changes would be included within the revision effort.

Substantive changes included items such as certain fees, surplus requirements, filing requirements, and procedural requirements.

The following table lists the proposed North Dakota Century Code sections which may be considered to be substantively changed and describes the type of change:

Proposed NDCC Section	Change
26.1-01-04	Consolidation of several sections, with service of process filed in the commissioner's office and not returned to the plaintiff and with the recovery of a fee left to the court's discretion
26.1-01-07(13)	Fee increased
26.1-01-07(14)	Fee changed to recover examination cost
26.1-02-02	Annual certificate changed to perpetual certificate
26.1-02-20	Reinsurance with insurance company meeting North Dakota standards
26.1-02-21	New section on treatment of reinsurance upon insolvency, liquidation, or dissolution
26.1-04-03(1) and (12)	Misrepresentation as an unfair practice expanded
26.1-04-12	Procedural provisions deleted
26.1-04-13(1)	Penalty expanded
26.1-04-14	Penalty increased
26.1-04-18	Procedural provisions deleted
26.1-05-07	Register of deeds filing requirement deleted

26.1-05-23	Securities deposit date changed and list in lieu of deposit allowed
26.1-05-25	Securities list in lieu of deposit allowed
26.1-05-27	Securities deposit certificate date changed
26.1-07-01	Reinsurance identified as reinsurance under an assumption agreement
26.1-07-16	New section establishing an offset provision for treatment of reinsurance proceeds
26.1-10-04	Forms approved by the Commissioner of Insurance
26.1-10-11	Criminal penalty classified
26.1-11-07	Reciprocity established for countersignature requirement
26.1-12-04	Register of deeds filing requirement deleted
26.1-12-05	Register of deeds filing requirement deleted
26.1-12-08	Surplus requirements standardized
26.1-12-27	Surplus requirements standardized
26.1-13-04	Register of deeds filing requirement deleted
26.1-13-33	Register of deeds filing requirement deleted
26.1-16-07	Register of deeds filing requirement deleted
26.1-17-01	Definitions reflect consolidated, comprehensive chapter
26.1-17-03	Bylaws filed with Commissioner of Insurance and all health service corporations to file with the commissioner
26.1-17-04	Membership requirements for board of directors
26.1-17-06	Contract authority added
26.1-17-07	New section on corporate authority
26.1-17-09	Surplus requirement expanded
26.1-17-16	Optometric contract language requirement standardized with medical and dental service contract requirements
26.1-17-25	Contingency reserve maximum added
26.1-17-30	Investments subjected to insurance company investment requirements
26.1-17-33	Procedure clarified
26.1-20-02	Surplus requirements standardized
26.1-20-04	New section on limitation on risks
26.1-21-18	Judgment required for recovery
26.1-23-05	Notice given to the Commissioner of Insurance and to the Attorney General instead of to the Highway Commissioner

Deleted Provisions

During the study, testimony indicated that several provisions of the insurance laws were unnecessary, duplicative of other provisions, or in conflict with other provisions. The deleted provisions and the rationale for deletion are depicted in the following table:

Section Numbers	Rationale for Deletion
6-05-19 through 6-05-24; 6-05-30 through 6-05-33	Obsolete and duplicative — subject matter covered by insurance company provisions
Chapter 26-09.1	Duplicates proposed Chapter 26.1-04
26-17.1-50	Unnecessary — subject matter included in proposed Section 26.1-11-07
26-18-01	Unnecessary — eliminated due to standardization of provisions
26-21.1-14	Duplicates Section 1-02-20
26-27.1-01	Unnecessary — adds no substance to statutes
26-27.2-01	Unnecessary — adds no substance to statutes
26-30-01	Unnecessary — adds no substance to statutes
26-30-02	Duplicates proposed Sections 26.1-01-01 and 26.1-02-01
26-32-04	Unnecessary because of proposed Section 26.1-20-04
26-37-09	Conflicts with Rule 12 of the North Dakota Rules of Civil Procedure

Study Recommendation

The committee's revision effort completed the first four of the proposed seven subject areas of Title 26.1. The recommended bills replace 657 sections with 538 sections. Approximately 353 unrevised sections remain in Title 26.

The committee recommends a concurrent resolution directing a Legislative Council study of the insurance provisions in Title 26 that were not revised during the 1981-83 legislative interim. The study is to emphasize appropriate technical and grammatical changes and is to reflect the type of changes made by the revision conducted during the 1981-83 legislative interim. To the extent possible, substantive changes are to be avoided.

AUTOMOBILE INSURANCE RATING STUDY REPORT

Senate Concurrent Resolution No. 4018 requested the Commissioner of Insurance to study insurance rates and rating procedures for automobile drivers under 25 years

of age. The chairman of the Legislative Council designated the committee as the appropriate interim committee to receive the report of the results of the study.

The report pointed out that differentiation among various risks involves a kind of discrimination. The factors of age, sex, and marital status are generally used in determining auto insurance rates and if any factor is eliminated, discrimination of a different sort would result. The committee accepted the report by the commissioner.

PERFORMANCE AUDIT RECOMMENDATIONS

The State Auditor conducted a performance audit of the office of the Commissioner of Insurance in 1980. The committee received the auditor's recommendations and reviewed the auditor's findings. The committee took no action concerning the recommendations.

APPENDIX
CROSS-REFERENCE TABLE FOR REVISED INSURANCE PROVISIONS

Proposed NDCC Section	Present NDCC Section
26.1-01-01	26-16.1-01; 26-21.2-01; 26-23-01; 26-24-01; 26-27.3-02; 26-38-01; 24-40-02
26.1-01-02	26-01-01
26.1-01-03	26-01-02
26.1-01-04	26-09-06; 26-09-08; 26-12-30; 26-16-05; 26-21.1-10; 26-21.2-03
26.1-01-05	26-01-02.1
26.1-01-06	26-01-02.2
26.1-01-07	26-01-04
26.1-01-08	26-01-16; 26-07-14.1; 26-10-13.1; 26-12-32; 26-12-41; 26-21.1-12; 26-21.2-13; 26-26-21; 26-27-22; 26-27.1-26; 26-27.2-25; 26-28-18; 26-30-04.1; 26-38-27; 26-38-28
26.1-01-09	26-01-03
26.1-01-10	26-07-17
26.1-02-01	26-07-01; 26-37-02; 26-37-11
26.1-02-02	26-01-06
26.1-02-03	26-07-10
26.1-02-04	26-01-13; 26-01-14
26.1-02-05	26-37-01
26.1-02-06	26-37-02
26.1-02-07	26-37-03
26.1-02-08	26-37-04
26.1-02-09	26-37-05
26.1-02-10	26-37-06
26.1-02-11	26-37-07
26.1-02-12	26-37-08
26.1-02-13	26-37-10
26.1-02-14	26-37-12
26.1-02-15	26-37-13
26.1-02-16	26-37-14
26.1-02-17	26-37-15
26.1-02-18	26-37-16
26.1-02-19	26-37-17
26.1-02-20	26-05-03
26.1-02-21	none
26.1-02-22	26-07-15
26.1-02-23	26-07-11
26.1-02-24	26-07-13
26.1-02-25	26-01-15; 26-37-18
26.1-03-01	26-07-03
26.1-03-02	26-07-04
26.1-03-03	26-10-02
26.1-03-04	26-10-03
26.1-03-05	26-10-04
26.1-03-06	26-10-05
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26.1-07-16	none
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26.1-18-07	26-38-07
26.1-18-08	26-38-08
26.1-18-09	26-38-09
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26.1-25-02	26-28-02;
	26-29-02
26.1-25-03	26-28-03;
	26-29-03
26.1-25-04	26-28-04;
	26-29-04
26.1-25-05	26-28-05;
	26-29-05
26.1-25-06	26-28-06;
	26-29-06
26.1-25-07	26-28-07;
	26-29-07

Proposed NDCC Section	Present NDCC Section
26.1-25-08	26-28-08;
	26-29-08
26.1-25-09	26-28-09;
	26-29-09
26.1-25-10	26-28-10;
	26-29-10
26.1-25-11	26-28-11;
	26-29-11
26.1-25-12	26-28-12;
	26-29-12
26.1-25-13	26-28-13;
	26-29-13
26.1-25-14	26-28-14;
	26-29-14
26.1-25-15	26-28-15
26.1-25-16	26-28-16;
	26-29-15
26.1-25-17	26-28-18;
	26-29-17
26.1-25-18	26-28-17;
	26-29-16

JUDICIARY COMMITTEE

The Judiciary Committee was assigned four studies. Senate Concurrent Resolution No. 4045 directed a study of constitutional and statutory provisions and procedures for Senate confirmation of gubernatorial appointments. Senate Concurrent Resolution No. 4021 directed a study of the need for the creation of statutory rights and responsibilities for emancipated minors, and for the creation of necessary judicial remedies. Senate Concurrent Resolution No. 4001 directed a study of the extent of the jurisdiction of the district and county courts over trusts, equitable matters, and provisional remedies. House Concurrent Resolution No. 3058 directed a study of guardianship and conservatorship laws and commitment proceedings affecting developmentally disabled persons. The committee was also assigned responsibility by the Legislative Council for statutory and constitutional revision.

Committee members were Representatives Pat Conmy, Chairman, Charles Anderson, Kelley Boyum, Moine Gates, Roger Hill, Carolyn Houmann, William Kretschmar, Thomas Matchie, Dan Olson, Earl Pomeroy, Burness Reed, Craig Richie, Neil Romfo, Jim Sorum, and Janet Wentz; and Senators Hal Christensen, Raymon Holmberg, Harry Iszler, Herschel Lashkowitz, Marvin Sorum, Wayne Stenehjem, and Floyd Stromme.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

GUBERNATORIAL APPOINTMENTS

An unusually large number of gubernatorial appointments were presented for Senate confirmation during the 1981 Legislative Session due to the change in administration. The executive appointments subject to Senate confirmation in North Dakota include:

1. Commissioner of Banking and Financial Institutions
2. Securities Commissioner
3. Board of Higher Education
4. Postsecondary Education Commission
5. Board of Public School Education
6. Director of Institutions
7. Council on the Arts
8. State Historical Board
9. Multistate Tax Commission
10. Energy Development Impact Office Director

The study resolution directed that the study be conducted with a view toward ensuring that confirmation is required only for policymaking positions.

The committee received testimony indicating that the Governor would support legislation which would delete confirmation requirements for minor positions, but would oppose any legislation which would add appointed officials to the group subject to Senate confirmation. The objection to making any additional appointments subject to confirmation was that it would encroach on the power of the executive branch of government under the separation of powers doctrine.

The committee considered but does not recommend a bill to require the Governor to submit the nominee for State Highway Commissioner to the Senate for confirmation. The Committee decided not to enlarge Senate confirmation authority at this time.

The committee recommends a bill which removes Senate confirmation requirements for appointees to the Postsecondary Education Commission, Board of Public School Education, Council on the Arts, State Historical Board, and Multistate Tax Commission. These appointments were considered nonpolicymaking positions not requiring confirmation.

The responsibilities of these appointees are:

1. Postsecondary Education Commission
   The commission coordinates planning of postsecondary education as requred in Title XII of the Higher Education Act of 1965, conducts inventories of and studies with respect to all public and private postsecondary educational resources in the state, and establishes task forces to study, survey, or otherwise contribute the best available expertise from the institutions, interest groups, minorities, and segments of the society most concerned with a particular aspect of the commission's work.
2. Board of Public School Education
   The board acts as the governing agency for the vocational division and for the Division of Independent Study. The board has final approval or disapproval of school consolidation, school construction loans, and high school tuition appeals.
3. Council on the Arts
   The council is responsible for stimulating and encouraging the study and presentation of the performing and fine arts and public interest and participation in them. The council also distributes funds made available by the National Endowment for the Arts to public and private nonprofit institutions engaged in artistic and cultural activities. The council also administers the North Dakota cultural endowment funds.
4. State Historical Board
   The board preserves and interprets historical materials, sites, and artifacts; conducts historical research; assists public and state agencies on historical matters; disseminates historical information; and aids in the formation and growth of county and local historical societies. The board administers 53 historic areas throughout the state, the state museum in Bismarck, and seven branch museums; serves as trustee for the state in the general administration of the International Peace Garden; has jurisdiction over the Heritage Center; and has custody and control of the former executive mansion.
5. Multistate Tax Commission
   The commission administers the Multistate Tax Compact, which facilitates proper determination of state and local tax liability of multistate taxpayers including the equitable apportionment of tax bases and settlement of apportionment disputes.

EMANCIPATED MINORS

Emancipation is the legal process by which a child is released from the control and authority of his parent. Emancipation should be distinguished from attainment of the age of majority. Reaching majority results in removal of all disabilities of minority. Emancipation normally removes those disabilities inherent in the parent-child relationship.

Emancipation is primarily a judicial doctrine. It arose at an early stage in American judicial history when courts began encountering lawsuits in which it would have been unfair to uphold the traditional distinction between the rights of adults and minors. The typical case involved a father who had agreed to allow his child to work and to keep his own earnings and who later sued the child's

employer for the child's wages. Confronted with such situations, the courts began to reason that the father had "emancipated" the child, therefore, ending his right to the child's earnings. The courts were also faced with lawsuits concerning support of the minor, intrafamily torts, and diversity jurisdiction cases. Eventually, the courts began to recognize other circumstances as giving rise to an emancipation:

1. Marriage of a minor, with or without parental consent, is usually deemed sufficient by itself to emancipate the child. Unless and until the marriage is annulled, the marriage effects the minor's emancipation from his or her parents upon the theory that the child by marrying undertakes a status inconsistent with parental control and liability. Kirby v. Gillian, 28 S.E. 2d 40.
2. Again on the theory that the minor has assumed a status inconsistent with parental authority and control, the general rule is that the minor's entrance into the military service will effect emancipation from the parents. LaVoice v. LaVoice, 214 A.2d 53.
3. The courts have in recent years found a child emancipated where the child has attained a high degree of independence and self-sufficiency generally shown by a combination of factors such as a separate residence, freedom from parental discipline, independent employment, and agreement between parent and child. In these cases whether a child has been emancipated must be determined largely on the particular facts and circumstances of each case. In re Riihr, 184 N.W. 2d 22.

In the last 10 years approximately 10 states have enacted laws which provide for the emancipation of minors who have been living separate and apart from their parents. North Dakota has no law emancipating minors. A number of sections in the North Dakota Century Code (NDCC), however, do delineate certain rights of and limitations upon minors.

Bills concerning the rights and responsibilities of emancipated minors have been introduced into the last three legislative sessions but either failed to pass or were withdrawn. The interim Judiciary "B" Committee in 1977 recommended an Emancipated Minor Act to the Legislative Council which became House Bill No. 1055. The bill contained only one section which provided that emancipated minors were deemed as adults for entering into any contract or for entering into any transaction respecting property or their estate. An emancipated minor was defined as a self-supporting person 16 years or older who was (1) married, divorced, or separated from his spouse, or (2) living apart from his parents or guardian. The bill passed the House 92 to 6. It failed to pass the Senate 2 to 42.

A more comprehensive version of an Emancipated Minor Act was introduced during the 1979 Session. That bill provided methods by which a minor could become emancipated, established a procedure by which a minor could have a court find him emancipated, and declared the rights of an emancipated minor. House Bill No. 1598 passed the House 75 to 22 and failed in the Senate 4 to 44. House Bill No. 1544, nearly identical to House Bill No. 1598, was introduced in the 1981 Session. It was withdrawn from further consideration before any committee hearings were held because it was introduced in response to an apparent problem which was later resolved.

The purpose of the study was to evaluate the need for emancipation of minors under circumstances allowing careful consideration of all sides of an emotional issue. Testimony concerning the need for the creation of statutory rights and responsibilities for emancipated minors was received from juvenile supervisors, representatives from the Department of Human Services, the Department of Public Instruction, and other interested persons.

A representative for the juvenile supervisors estimated that approximately 100 to 150 cases of this type occur annually in the state. Reasons expressed in favor of providing statutory rights and responsibilities for emancipated minors included: it would improve the ability of minors to make contracts; give the courts guidelines in deciding emancipation cases; and aid emancipated minors in getting an education in any school district in which they want to live. Proponents also suggested the scope of the bill be extended to remove these minors from the jurisdiction of the juvenile court and to recognize the emancipation of minors which have moved to North Dakota after emancipation in another state.

Reasons expressed for opposition to the emancipation of minors included: interviews with high school counselors and police officers indicated there was no need for this type of legislation; teenagers need the stable influence of the family and measures dealing with parent-child conflicts should be aimed at strengthening the families; and rarely are 16 year olds mature enough to manage their own affairs.

The committee makes no recommendation on legislation relating to the emancipation of minors. Concerns expressed by the committee in deciding not to recommend a bill included:

1. Treating a poor home life by emancipating the minor would be a form of social neglect.
2. Emancipation would relieve parents of responsibilities they should have.
3. Larger school districts may have to assume responsibility for emancipated minors who wish to move to those districts out of their parents' homes.

JURISDICTION OF THE NEW COUNTY COURTS

At the 1976 primary election, the voters of North Dakota approved a new judicial article to the state constitution. Article VI 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 1981 Legislative Assembly passed House Bill No. 1060, the result of the work of the Legislative Council's 1979-81 Judiciary "A" Committee, which reorganized the county court system as a step toward executing the new constitutional provision.

The statute (NDCC Chapter 27-07.1) provides for the establishment of a single county court in each county. Presently there are three types of county courts--the county court, the county justice court, and the county court of increased jurisdiction--with differing degrees of jurisdiction. 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 was 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 were reenacted in the bill to apply to the new county courts.

A county court of any county established under this chapter 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 NDCC Chapter 25-03.1.
7. Any other cases, except juvenile proceedings pursuant to NDCC 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 provisions of House Bill No. 1060 concerning the new county courts are effective January 1, 1983. The Legislative Council's Judiciary "A" Committee during the 1979-81 interim believed several questions remained concerning the new county courts' jurisdiction and therefore recommended the resolution for further study of the matter.

The committee considered whether the new county courts should have:

1. Jurisdiction over equity matters with particular attention given to the remedies of claim and delivery of property, attachment, garnishment, and forcible detainer.
2. Concurrent jurisdiction with district courts over all types of trusts.

The committee received written comments and testimony from a number of district judges and judges of the couty courts with increased jurisdiction around the state.

The committee recommends a bill which:

1. Makes it clear that the actions for claim and delivery of property, attachment, garnishment, and forcible detainer within certain dollar limitations are within the jurisdiction of the county court. The committee concluded that these actions may have already been included in the jurisdiction of the county court but it decided to clarify that fact.
2. Changes all references in the North Dakota Century Code from the term "forcible detainer" to "eviction" and from "notice to quit" to "notice of intention to evict." The committee recommends this change to provide more modern terms and to make the statutes more clearly understood.
3. Gives county courts concurrent jurisdiction with district courts over trusts. The committee recognized that all county court judges must be law trained and could handle this type of case. The committee determined the change would provide a convenience to the people in the county since there is easier access to a county judge than a district judge.

GUARDIANSHIP OF DEVELOPMENTALLY DISABLED

Background

North Dakota Century Code Section 25-04-13.1 provides that the superintendent of the Grafton State School is, without the benefit of a court hearing, the guardian of any resident who does not otherwise have a guardian appointed by a court and whose parents do not elect to retain their natural guardianship. Under that section the superintendent of Grafton State School retains guardianship of most Grafton residents even when they are transferred to group homes.

The superintendent presently serves as guardian of 923 residents at the Grafton State School and San Haven (of those there are 175 residents on community placement for whom the superintendent is still guardian). At the Grafton State School 79 residents have court-appointed guardians and 10 at San Haven do. Parents have retained natural guardianship of 110 residents at the Grafton State School and 20 at San Haven. There are 18 native American residents for whom the United States Bureau of Indian Affairs maintains guardianship. Catholic Family Services and Lutheran Social Services have guardianship of 15 residents.

The 1981 Legislative Assembly passed Senate Bill No. 2253 which provides certain specified rights to which developmentally disabled persons are entitled. Section 3 of the bill (NDCC Section 25-01.2-03) provides that no developmentally disabled person is presumed to be incompetent or can be deprived of any right solely because of admission to or residence at an institution or facility or solely because of receipt of services for developmentally disabled persons.

North Dakota Century Code Chapters 30.1-26 through 30.1-29 (part of the Uniform Probate Code) provide procedures for the appointment of a court-ordered guardian of an incapacitated person. A guardian appointed under these chapters is empowered to make nearly all important decisions on behalf of the individual the guardian is serving (a plenary or full guardianship).

The committee recognized that two areas were important to examine:

1. Whether NDCC Section 25-04-13.1 giving the superintendent automatic guardianship over the residents of Grafton was constitutional and whether it conflicted with the bill of rights (Senate Bill No. 2253) for the developmentally disabled passed during the 1981 Legislative Session.
2. The type of guardianship needed by the increased numbers of developmentally disabled persons in community programs.

Committee Consideration and Testimony

A subcommittee, composed of Senator Wayne Stenehjem, and Representatives Burness Reed, Dan Olson, and Earl Pomeroy, was appointed to work with staff and interested persons on proposed solutions to the guardianship issue. The subcommittee had discussions with representatives from the Protection and Advocacy Project, Department of Human Services, Coalition for Disabled Persons, Developmental Disabilities Council, Director of Institutions' office, Attorney General's office, group homes, and others.

The major suggestions made during those discussions were:

1. There is a conflict of interest in the supervisor of a facility serving as guardian of the residents.
2. The requirement that parents must affirmatively act to relinquish guardianship of their minor children at Grafton would be an improvement over present law.
3. Family and friends of developmentally disabled persons, as well as other interested persons, could probably be recruited as guardians, especially if training is made available.
4. A public guardianship program might be administered by the Department of Human Services through regional or county centers. The program might be limited to recruitment, coordination, and education of guardians.
5. A hearing mechanism is important to ensure due

process. In the majority of cases, hearings would probably not be lengthy and complicated.

6. The need for guardianship could be among the items considered by the professional team which helps determine the individual habilitation plan for developmentally disabled persons.
7. The need for a guardian or a guardian with plenary powers should not be assumed in all cases of developmental disability but should be related to the individual's course of conduct.
8. A mechanism is needed for payment of attorney fees incurred in processing guardianship papers for persons without sufficient income.
9. A public foundation or trust might be established to provide funds for guardianship expenses.
10. There is a need for education for guardians concerning their responsibilities.

After consideration of all the suggestions, the committee decided it wanted to accomplish the following points:

1. Remove the superintendent's automatic guardianship of Grafton State School residents.
2. Provide for a type of guardian that could have less than full responsibility for an individual.
3. Provide for appointment of guardians for Grafton State School residents within the present statutory framework.
4. Provide provisions for guardianship education and payment of costs.

In furtherance of those goals the committee recommends a bill which:

1. Amends NDCC Section 25-04-13.1 to delete provisions making the superintendent of Grafton State School automatic guardian of the residents at Grafton. The superintendent would continue to be guardian until July 1, 1985, of any resident of Grafton State School for which he is guardian on July 1, 1983, except if otherwise provided by court order or the resident is discharged. During that time, however, the superintendent may renounce his guardianship of any resident. The guardianship of minors, unless an alternative guardian has been appointed by a court, will revert to the minor's parents. On July 1, 1985, the section will be repealed and the superintendent will not be guardian for any resident unless so appointed by a court.

   A legislative intent section in the bill expresses the desire of the Legislative Assembly that the superintendent of Grafton State School use the two-year period provided in the bill to divest himself of statutory guardianship granted pursuant to Section 25-04-13.1. The committee indicated that should be done through renunciation when the superintendent decided guardianship was not necessary and through seeking a court-appointed guardian when guardianship was necessary.
2. Establishes a limited type of guardianship and conservatorship.
3. Provides that the individual habilitation plan team must determine whether an individual needs a guardian when developing the individual habilitation plan.
4. Requires the state's attorney in the county where the guardianship proceeding takes place to represent the petitioner, upon the petitioners request, in the hearing.
5. Establishes an order of priority for payment of the costs of the guardianship hearings.
6. Provides that a designated person from an agency, institution, or nonprofit group may act as a guardian of an incapacitated person only if:
   a. No one else can be found to serve as guardian;
   b. The employee does not provide direct care to the proposed ward; and
   c. The court makes a specific finding the appointment presents no substantial risk of conflict of interest.
7. Requires the regional human service centers to provide information concerning guardianship to persons interested in becoming or who are guardians.

CONSTITUTIONAL AND STATUTORY REVISION

Technical Corrections Act

The committee recommends a bill which makes technical corrections to the North Dakota Century Code. The bill eliminates inaccurate or obsolete name and statutory references and superfluous language, recognizes legislative and Supreme Court rules and orders, and replaces unclassified penalties with proximate equivalents. This bill should complete the technical corrections of the North Dakota Century Code begun by the 1979 Legislative Assembly.

Initiative, Referendum, and Recall Petitions

The committee recommends a bill that provides specific forms to be used for initiative, referendum, or recall petitions; and the form of the required affidavits which must be executed by the circulators and be attached to each copy of the petition. The bill also requires that the names of at least five sponsors of a recall be on the petition. An identical bill (House Bill No. 1231) passed during the 1981 Legislative Session did not become effective because of an irreconcilable conflict with another bill.

Penalties for Hindering Law Enforcement

The committee recommends a bill which amends NDCC Section 12.1-08-03(2) which concerns the penalties for hindering law enforcement. Present law makes hindering law enforcement a Class C felony if the actor (1) knows of the conduct of the other and the conduct constitutes a Class A or Class B felony, or (2) knows that the other has been charged with or convicted of a crime and the crime is a Class A or Class B felony. Otherwise hindering law enforcement is a Class A misdemeanor. Murder was classified by the 1979 Legislative Assembly as a Class AA felony without adding that classification to this subsection. A reference to Class AA felony has been added to this subsection.

Terrorizing

The committee recommends a bill which amends NDCC Section 12.1-17-04 which defines the crime of terrorizing. The section contains two subsections which provide two different circumstances under which the crime may be charged. The language relating to intent presently applies only to subsection 2 but was apparently intended to apply to the entire section. The bill amends the section to make the intent language apply to both subsections.

Minimum Prison Terms for Armed Offenders

The committee recommends a bill that amends NDCC Section 12.1-32-02.1 which provides for a mandatory four-year minimum prison term for being armed when committing a felony. The section is amended to make it clear the section applies even when being armed is an element of the offense for which the offender is convicted. The bill is in response to concerns expressed by a district court judge that there is a conflict between Section 12.1-32-02.1 and any penalty statute in which being

armed is an element of the crime. The making of a robbery from a Class C to Class B felony because of the use of a gun is a special statute. The mandatory four-year sentence statute is a general statute covering all crimes. Ordinarily where a general statute and a special statute are in conflict, the general statute is superseded by a special statute. There was concern this type of conflict existed in this case.

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 Legislative Assembly 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 auditors 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 Lt. Governor Ernest Sands, other committee members were Representatives Richard Kloubec, Theodore Lang, Lawrence Marsden, and Olaf Opedahl; and Senators L. L. Naaden, Bryce Streibel, Harvey Tallackson, and Jens Tennefos. Senator Frank Shablow was a committee member prior to his death in July 1981. The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

During the interim, the State Auditor and independent accounting firms presented 78 audit reports. An additional 93 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. Senate Concurrent Resolution No. 4073 directed a review of the changes being made to the state accounting system and to indirect cost reimbursement procedures. Because of interest shown in state employee's utilization of aircraft and the directives of Senate Concurrent Resolution No. 4070, which called for a study of the use of aircraft in North Dakota state government, a study of the utilization of aircraft by state government and the feasibility of a state aircraft pool was assigned to the committee by the Legislative Council chairman.

REVIEW OF CHANGES TO THE STATE ACCOUNTING SYSTEM

Background

During the 1979-81 interim, the Legislative Audit and Fiscal Review Committee was directed to conduct a study of the state's accounting and financial reporting system. The committee recommended a bill to the 1981 Legislative Assembly to provide for the revision of the system by assigning the responsibility for such revision to the director of the Department of Accounts and Purchases (now the Office of Management and Budget (OMB)). The bill also included a $1 million general fund appropriation to OMB to revise the system.

The 1981 Legislative Assembly, in Senate Concurrent Resolution No. 4009, directed OMB to "take such action as may be necessary within the limits of legislative appropriations to develop an accrual accounting system for the state of North Dakota, 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 of North Dakota" and further directed OMB to "within the limits of legislative appropriations develop an indirect cost allocation plan relating to federal funds received by state agencies and institutions."

In House Bill No. 1001 the 1981 Legislative Assembly appropriated $1 million to OMB for the purpose of revising the state's accounting system.

Senate Concurrent Resolution No. 4073 was passed by the 1981 Legislative Assembly to provide for a review of the changes being made to the state accounting system during the 1981-83 interim. The review was assigned to this committee.

OMB Progress Reports

During the interim, OMB presented progress reports to the committee regarding changes being made to the accounting system.

At a meeting early in the interim, OMB reported the hiring of two professional accountants to serve as the core for an accounting system project team. OMB later hired another full-time accountant and utilized the services of a number of individuals from other state agencies for the accounting project. It was reported that extensive revisions were to be made to the accounting system. Some of the reasons listed by OMB as justification for the revision were to provide accrual information to the federal government, bonding companies, and others who are requesting it; provide agencies and institutions with accrual information to help them better manage expenditures and status of appropriations; provide program managers with better information; and provide the State Treasurer with information necessary for proper cash management, especially in regard to the investment of state funds.

OMB reported the hiring of Peat, Marwick, Mitchell and Co., an international accounting firm, as a consultant to the accounting system project team. The firm was hired to provide technical assistance in complex data processing applications and in other complex areas of the project.

OMB reported it planned to devote the first five months of the accounting system project to the basic conceptual design of the system. It was reported that the new system will be an accrual-based system that will be in compliance with generally accepted accounting principles for state government. Also, the independent accounting systems of other agencies such as the institutions of higher education, Job Service, Mill and Elevator Association, and the Bank of North Dakota will be capable of interfacing with the new system.

At the February 1982 meeting, OMB reported it plans to meet its goal of having the core accounting system in place and operational by July 1, 1983, and that the implementation plan includes the selection and use of a pilot agency to test the system, beginning in the fall of 1982.

OMB reported it plans to develop and implement the core system within its $1 million appropriation, but that additional funds may be necessary for refinements or improvements to the system. OMB said features such as personnel management and position control would not be developed without additional funds.

OMB reported that the new accounting system will improve the identification of indirect costs, and could lead to greater indirect cost reimbursement for the state. Funds for OMB to develop an indirect cost allocation plan during the 1981-83 biennium were deleted by the 1981 Legislative Assembly.

At the June 1982 meeting, OMB presented the following planned timetable for the accounting system project:

July 1981 — January 1982 — Prepare requirements definition and conceptual design

February 1982 — Fall 1982 — Detail design, programming of core system, system testing, preparation of accounting and reporting manuals

January 1983 — June 1983 — Training of agencies and conversion

July 1, 1983 — Implementation (contingent on funding)

1983-85 Biennium — (contingent on funding) Interface with Highway Department, continued programming of reporting features, possible fixed asset system interface, preparation of statewide financial statements (first statements planned for fiscal year ending June 30, 1984)

OMB also presented proposed new sections of law and proposed amendments to existing statutes which it reported are necessary for implementation and operation of an accrual fund accounting system in accordance with generally accepted accounting principles for governmental units.

At the final meeting, held in October 1982, OMB reported it still plans to have the new accounting system operational by July 1, 1983. A conservative estimate given by OMB was that the cost of implementing and operating the new system for 1983-85 would be approximately $1.5 million above the cost of continuing the present system.

Other Discussion

In regard to the effectiveness of the new accounting system, OMB reported that a recent $35 million bond issue of the state received a AA bond rating. This is a good rating and resulted in a lower interest rate to the state. OMB reported that the fact that North Dakota is working on an accrual accounting system and plans to implement the system soon was a key factor in obtaining a good rating from the bond rating companies.

The Legislative Council staff presented a report regarding the possible changes to audit reports and financial statements as a result of the accounting system project. Possible changes are as follows:

1. Financial statements will be prepared on a statewide fund basis instead of a departmental basis.
2. Financial statements will be prepared on an accrual and modified accrual basis, whichever is appropriate for each fund.
3. Departmental audit reports will be issued, but they will no longer include a balance sheet or a statement of changes in fund balance. The reports will include statements of revenues, expenditures, and appropriations, and an internal control report.

Recommendations and Requests

The committee recommends a bill relating to the implementation and operation of the accrual accounting system. The bill creates three subsections relating to the duties of the director of OMB and one subsection relating to the duties of the State Treasurer, and amends four existing sections of the North Dakota Century Code.

The additional duties of the director of OMB as stated in the bill would be that he "provide for the maintaining of accounting records which will identify the revenues and expenditures of the state in accordance with the requirements of the state's central accounting system; provide for expenditures from general and special fund appropriations to be made in accordance with the requirements of the state's central accounting system; and may provide for federal fund receipts and disbursements to be deposited and disbursed from a state federal fund in accordance with the requirements of the state's central accounting system."

The additional duty of the State Treasurer would be that he "keep a record of all revenues and expenditures of state agencies and all moneys received and disbursed by the treasurer in accordance with the requirements of the state's central accounting system."

OMB stated the new subsections and other amendments were necessary for the implementation and operation of an accrual fund accounting system in accordance with generally accepted accounting principles for governmental units.

The committee by motion expressed its support of the accounting system project and recommends the system be completed and implemented to make it operational for state government and the Legislative Assembly.

At its final meeting, the committee requested OMB to estimate the cost and feasibility of establishing a position control reporting system, in conjunction with the accounting system. OMB is to report its findings to the committee members or the Appropriations Committees of the 1983 Legislative Assembly.

STUDY OF THE UTILIZATION OF AIRCRAFT BY STATE GOVERNMENT AND THE FEASIBILITY OF A STATE AIRCRAFT POOL

Background and Purpose

Prior to the February 1982 meeting, the Legislative Council chairman assigned a study of the utilization of aircraft by state government and the feasibility of a state aircraft pool to the committee. The study was proposed for the purpose of developing a method to increase the efficiency of state employee travel by utilizing aircraft when it would be cost effective. Senate Concurrent Resolution No. 4070, as passed by the 1981 Legislative Assembly, also called for a study of the use of aircraft in North Dakota state government to find the most efficient method of using aircraft in conducting state business. The feasibility of an aircraft pool was also the subject of a study conducted during the 1969-71 interim by the Legislative Council's Committee on Budget.

Staff Report — Agency Responses to Questionnaires

At the request of the committee, the Legislative Council staff prepared a report in regard to the aircraft study and presented the report at the June 1982 meeting. Information in the report was obtained by means of question-

naires sent to all state agencies and institutions, through research of written materials, and in personal interviews with representatives of various state agencies, institutions, and charter aircraft companies.

The report showed that questionnaires were sent to 76 state agencies and institutions to obtain:

1. An inventory of all aircraft owned or leased by the various agencies and institutions and the operating costs and utilization of such aircraft.
2. An inventory of state-owned or leased aircraft potentially available for use in a state aircraft pool.
3. The extent of utilization by state agencies of chartered aircraft, personal aircraft, and state-owned or leased aircraft operated by other state agencies.
4. An estimate of potential use of an aircraft pool.

In general, the questionnaire responses revealed the following:

1. A small number of agencies provide personnel transportation by using state aircraft operated by another state agency. A majority of this type of travel is done by the Governor, who utilizes the aircraft operated by the Highway Department.
2. About one-third of the agencies responding utilized chartered aircraft at some point during the fiscal year ended June 30, 1981.
3. Nearly all of the agencies indicated they would use an aircraft pool if it were cost effective. Other agencies indicated they would simply not utilize air travel.
4. Very few agencies have employees that use personal aircraft on state business.

The report stated that six agencies and institutions are operating (as of March 31, 1982) 61 state-owned or leased aircraft, 11 of which were indicated as being available for use in an aircraft pool. The six agencies operating aircraft and the number of aircraft each operates are as follows:

1. Aeronautics Commission	1
2. Game and Fish Department	2
3. Highway Department	2
4. Highway Patrol	2
5. North Dakota State University	1
6. University of North Dakota	53
Total	61

It was reported that most of the 61 aircraft are utilized for special purposes such as law enforcement, airport inspections, wildlife surveys, training, and research.

Representatives of the six agencies listed above as well as representatives of private aircraft charter companies testified before the committee in regard to the aircraft study. It was the consensus of these representatives that it would be beneficial to the state to increase its utilization of aircraft for the purpose of state employee travel.

Aircraft Study Group Appointed

The committee appointed a study group and directed it to "develop a method or plan to maximize the utilization of aircraft by North Dakota employees during the course of state employee travel." Appointed to the study group were the Lt. Governor and one representative each from the Highway Department, the University of North Dakota's Center for Aerospace Sciences, and the private aircraft charter companies.

Study Group Recommendations

The study group presented a resolution to the committee recommending the establishment of an aircraft pool and urging state departments, agencies, and institutions to increase the efficiency of employee travel by utilizing aircraft whenever it is economical. The study group reported that the intention of the resolution is not to establish a full-scale aircraft pool, but to encourage greater utilization of aircraft in instances where time and money can be saved. It was further reported that the resolution encourages private charter travel if state aircraft is unavailable and that the development of an automated system for scheduling aircraft travel is essential to implement the intentions of the resolution.

Committee Recommendations

The committee recommends a resolution recommending the establishment of an aircraft pool and urging state departments, agencies, and institutions to increase the efficiency of employee travel by utilizing aircraft whenever it is economical.

Some of the other provisions of the resolution are that the Highway Department, Aeronautics Commission, Game and Fish Department, and institutions under the direction of the Board of Higher Education make their aircraft available for use by other state departments, agencies, and institutions and that the Highway Department, in cooperation with the University of North Dakota's Center for Aerospace Sciences and the Central Data Processing Department, assume the responsibility for administrative arrangements and the scheduling of the use of such aircraft; that the Highway Department provide services in obtaining charter aircraft for state agencies and institutions when state aircraft are not available; that each agency administrator be responsible for knowledge of the procedures regarding aircraft travel as established by the Highway Department, and that aircraft travel be utilized whenever it is economical; that all state departments, agencies, and institutions render full cooperation to the Highway Department in the operation of a central aircraft pool; that the University of North Dakota's Center for Aerospace Sciences, in cooperation with the Highway Department and Central Data Processing, be encouraged to establish an automated system to be used as an efficient means of scheduling aircraft travel by state employees; and that the Legislative Audit and Fiscal Review Committee monitor the progress of the utilization of aircraft by state departments, agencies, and institutions during the 1983-85 interim.

STATE AUDITOR

Expanded Scope Reviews

During the interim, the committee heard reports from the State Auditor regarding expanded scope reviews performed by the auditor in three areas:

1. Federal fund management and indirect cost allocation.
2. Food stamp program, with emphasis given to the program as it relates to migratory workers.
3. Right-of-Way Division — Highway Department.

1. Federal Fund Management and Indirect Cost Allocation

The State Auditor's report recommended a grants management administrator position be established in OMB. The report further stated that a grants management administrator would bring about uniformity in grant accounting methods and indirect cost recovery, provide the necessary data and training needed by departments to prepare their indirect cost rates, and assist agencies and institutions in the preparation, submission, negotiation, and monitoring of their indirect cost plans.

2. Food Stamp Program

The State Auditor's review of the food stamp program

gave emphasis to the program as it relates to migratory workers. The State Auditor said the review was a cooperative effort with the food stamp office of the North Dakota Department of Social Services, and that the State Auditor's office was also assisted by the staff of the Walsh County Social Service Board.

The State Auditor's report stated that from the results of the audit, significant problems appear to exist in Walsh County regarding violations and abuses by some migrant households of the food stamp regulations promulgated by the United States Department of Agriculture. It was noted that multiple violations were found in 44 percent of the case files reviewed. The report also stated that problems may exist in other migrant influx counties in addition to Walsh County, and that the abuses and violations are not peculiar to North Dakota.

The State Auditor recommended that copies of the report be filed with the following, to alert them to the report findings and to encourage further investigation:

1. Inspector General, United States Department of Agriculture.
2. United States General Accounting Office.
3. Congressional agricultural committees.
4. United States Department of Justice.
5. North Dakota State Tax Department.
6. United States Department of Labor.
7. Community Services Administration, United States Department of Commerce.

The committee encourages the State Auditor to file copies of the report with the organizations listed above as recommended by the auditor.

3. Right-of-Way Division — Highway Department

The State Auditor's review of the Right-of-Way Division reported a gradual decrease in the acquisition of land for right of way in recent years. The decrease in right-of-way acquisition was reportedly due to a reduction in federal and state funding, the completion of the interstate highway system, and near completion of major state primary highway system construction. The report recommended improvement in the area of right-of-way property management, specifically in the disposal of excess right-of-way properties and in seeking reimbursement for state expense incurred when selling such excess properties. The State Auditor reported that the audit work was performed at the request of the State Highway Commissioner, and the objective of the audit was to evaluate the efficiency of the Right-of-Way Division in its acquisition and management of right-of-way properties.

The committee accepted the report for filing and decided no further action was necessary.

Major Audits and Recommendations

The State Auditor presented audit reports of major agencies and reports containing major recommendations to the committee. Among those presented were reports on the Health Department, Insurance Department, State Treasurer, Workmen's Compensation Bureau, and Motor Vehicle Department.

The committee heard presentations from representatives of the Health Department and Insurance Department regarding the progress of those agencies in the implementation of the auditor's recommendations.

The committee asks the State Auditor to conduct the fiscal year 1982 audit of the Motor Vehicle Department as soon as practicable.

Responses to Audits and Committee Recommendations

In accordance with a request of this committee from the previous interim, the audit reports presented by the State Auditor included a section which contained the audited agencies' written responses to the various audit recommendations. The request was made due to a concern of the committee that some agencies were not complying with the auditor's recommendations.

The committee reinforced committee action of previous interims that requested the State Auditor to determine whether agencies have complied with the auditor's recommendations within six months after a report has been accepted by the committee.

The committee asks the State Auditor to prepare a report in regard to agencies that have not implemented his recommendations prior to his six-month followup review, and that the report be available for the Appropriations Committees of the 1983 Legislative Assembly. The committee also requests the Legislative Council staff have audit reports of the various agencies readily available for use by the Appropriations Committees.

Operating Fund

The State Auditor discussed a recent release by the United States Office of Management and Budget, which established a new approach to audits of federal aid programs. The new approach calls for state and local governments to obtain a single organizationwide audit that encompasses all grants. The auditor reported that this could result in a one-third increase in the workload of his auditing staff.

The State Auditor proposed that he be authorized to perform his duties on an operating fund concept, since his office will be eligible to receive federal funds if it performs audits of federal moneys.

The committee recommends a bill providing for the creation of an operating fund to be used by the State Auditor in the performance of his duties.

Audit of the State Auditor's Office

North Dakota Century Code Section 54-10-04 requires the Legislative Assembly to provide for an audit of the State Auditor's office. The Legislative Council contracted with Eide Helmeke & Co., certified public accountants, for such an audit for the biennium ended June 30, 1981. The firm presented its audit report at the committee's February 1982 meeting.

STUDY OF THE MANAGEMENT OF STATE-OWNED MOTOR VEHICLES

State Auditor Report

At the June 1981 meeting, the State Auditor presented a report regarding his study of the management of state-owned motor vehicles. The report indicated a need for a centralized management system, or motor pool, for state-owned vehicles. The State Auditor said a motor pool does not necessarily mean a central storage area for vehicles. He said it means a centralized management concept for purchasing, replacing, repairing, maintaining, and utilizing state-owned vehicles in the most economical and efficient manner.

The State Auditor said some of the weaknesses made evident during the review of the management of state-owned vehicles were:

1. There is no central agency responsible for monitoring transportation requirements and maintaining complete records on those requirements.
2. There is no central agency which could provide service and guidance to all state agencies in the utilization, operation, and servicing of state-owned vehicles and the utilization of privately owned vehicles for state purposes.

3. There is a need for detailed record keeping at the state and agency level.
4. There is a need for improvement in accounting for the operating costs of state-owned vehicles.

The State Auditor said the significant growth in the number of state-owned vehicles over the past years and the ever-increasing cost of vehicles and of fuel and related operating costs makes it imperative that the Governor and the Legislative Assembly establish a centralized management system to guide its fleet operation. He said the state of North Dakota does not maintain a central inventory record of its vehicles. Therefore, his office compiled its inventory data based on the records of the insurer of state vehicles. According to those records, the state owns 2,275 vehicles, of which 920 are being used by the Highway Department, 591 by the eight colleges and universities, and 764 by 44 other state agencies. He estimated the total current market value of the 2,275 vehicles to be $11.8 million.

In addition to the recommendation that the state establish a central vehicle management system, the State Auditor's report on state-owned vehicles suggested that the state:

1. Substantially improve the procedure for cleaning and preparing used cars for sale at auction.
2. Sell approximately 100 of the 351 vehicles which are 1969 models or older, assuming it would not affect the mobility of state employees.
3. Establish a downsizing policy (i.e., a policy to buy smaller cars, or cars with smaller engines) for purchase of vehicles.

Letter to State Agencies and Institutions

On December 28, 1981, in an effort to derive some immediate benefit from the auditor's report, the Lt. Governor, as chairman of the committee, sent a letter to all state agencies and institutions operating motor vehicles. The letter requested agencies and institutions to adequately clean and prepare their vehicles prior to selling them at auction, and asked them to establish a downsizing policy, i.e., to consider small vehicles or vehicles with smaller engines when planning future vehicle purchases.

Recommendations

The committee recommends a bill relating to the management of state-owned motor vehicles. The bill is in four sections, and provides for the following:

Section 1. A new section which would provide for the Highway Department to be responsible for the cleaning and minor repair of state-owned motor vehicles prior to the sale of those vehicles by the state. The Highway Commissioner has the option of cleaning vehicles within his department or contracting with other departments or private companies for the cleaning and minor repair of vehicles.

Section 2. An amendment to North Dakota Century Code Section 39-01-02 which would delete the requirements of painting on each front door and would authorize agencies to use decals on the motor vehicle to identify them as state owned.

Section 3. A new section which would provide for the Office of Management and Budget to establish a central vehicle management system to regulate the acquisition, operation, maintenance, management, and disposal of motor vehicles.

Section 4. A new section which would provide for the Office of Management and Budget to adopt purchase guidelines with respect to the acquisition of motor vehicles.

Other Considerations

OMB representatives informed the committee that they plan to meet with the Governor prior to the 1983 Legislative Assembly to discuss items such as aircraft utilization, the potential of a state central travel bureau, and the bill relating to motor vehicle management as recommended by the committee. The Governor's Management Task Force, in its report dated August 1982, has recommended that a motor vehicle management function be created within the Highway Department.

At its October 1982 meeting, the committee asked the Game and Fish Department to prepare a report regarding the department's motor vehicle ownership and usage. The committee asks the Game and Fish Department to present the report at the 1983 Legislative Assembly to the Appropriations Committee before which it first appears.

OTHER ACTION AND DISCUSSION

Writeoff of Accounts Receivable

At its October 1981 meeting, the committee heard a report pursuant to Section 25-09-02.1 of the North Dakota Century Code relating to the writeoff of accounts receivable. The report by the State Hospital for the year ended June 30, 1981, indicated that $1,729,583 of accounts receivable had been written off. The committee passed a motion accepting the report.

Public Service Commission

At the October 1981 meeting, the State Auditor presented the audit report of the Public Service Commission (PSC). In regard to the PSC's strip mining and reclamation fund, the auditor suggested that Section 38-14.1-39 of the North Dakota Century Code be amended to delete the requirement for depositing all permit application fees in that fund, but that the provision for depositing performance bond forfeitures in the fund be retained.

The PSC asked for legislative approval to deposit all funds presently in the strip mining and reclamation fund into the general fund, and also recommended that all future collections except bond forfeitures which are presently being deposited in the reclamation fund as authorized by Section 38-14.1-39 be deposited in the general fund.

The PSC reported the balance in the surface mining and reclamation fund on June 30, 1980, as approximately $267,000. It was reported that the entire amount consists of permit application fees, since there as yet have been no performance bond forfeitures.

The committee recommends a bill which provides for permit application fees to be deposited in the general fund; performance bond forfeitures to continue to be deposited in the surface mining and reclamation fund; and for the amount in the surface mining and reclamation fund which relates to permit application fees that have been deposited in the fund to be transferred to the general fund on July 1, 1983.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Legislative Council is directed by North Dakota Century Code Section 54-35-11 to make all necessary arrangements, except for the hiring of legislative employees to work during the regular session, to facilitate the proper convening and operation of the Legislative Assembly. This responsibility, including the review of legislative rules and procedures, was assigned to the Legislative Procedure and Arrangements Committee.

The committee was directed to supervise the renovation of the legislative wing of the State Capitol authorized by House Bill No. 1003 (1979) and Senate Bill No. 2002 (1981). The committee received periodic reports and provided direction to the architects and contractors for the various phases of the renovation project.

In addition to making preparations for the 1983 Legislative Session, the committee made the necessary plans and arrangements for the historic reconvened session in November 1981.

Senate Concurrent Resolution No. 4060 directed a study of the fiscal note process, including the need for changes in rules, statutes, and administrative procedures used to carry out the fiscal note process.

The Legislative Council directed the committee to review House Bill No. 1452 (1981) relating to the powers of the Committee on Public Employees Retirement Programs. The Legislative Council also directed the committee to approve guidelines for the use of the legislative chambers and the placement of permanent displays in Memorial Hall pursuant to NDCC Section 54-35-02(8).

Committee members were Representatives Richard Backes, Chairman, William Kretschmar, Corliss Mushik, Jim Peterson, Oscar Solberg, Earl Strinden, and Vernon Wagner; and Senators Francis Barth, Donald Hanson, David Nething, Rolland Redlin, and Russell Thane.

The committee obtained the assistance of Mr. Leo Leidholm, Secretary of the Senate, and Mr. Roy Gilbreath, Chief Clerk of the House. The committee held 10 meetings during the interim.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

RENOVATION OF THE LEGISLATIVE WING AND ELECTRONIC VOTING MACHINES

The 1977 legislation authorizing the 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 architect to develop plans for renovating the legislative wing and other portions of the Capitol which were made available for the legislative branch. At that time, agreements were made under which the "large hearing room" required by the 1977 legislation would be located in the new office building and several new committee rooms were made possible on the ground floor of the Capitol by moving the Legislative Council staff to the offices vacated by the Supreme Court on the second floor.

The 1979 Session appropriated funds for construction of an elevator connecting the ground floor with the top floor of the Supreme Court library, for the renovation of the House and Senate chambers to recarpet both and to provide built-in filing cabinets, as well as the removal of four desks of each side of the House chamber to provide additional access to House members' seats.

During the 1979-81 interim, the space renovation plans adopted during the previous interim were updated. As a result of that study, Senate Bill No. 2002 was introduced in the 1981 Legislative Session. As introduced, that bill provided for appropriating $2,075,000 for remodeling the three levels of the legislative wing and the former Supreme Court area, new electronic voting machines, electronic bulletin boards, and the necessary access conduits. Senate Bill No. 2002 was amended during the 1981 Session to reduce the appropriation to $1,875,000. Of this amount, $675,000 was appropriated from the state general fund and $1,200,000 was appropriated from the capital building fund. The capital building fund was created by the Enabling Act passed by Congress which dedicated certain lands, the proceeds of which can only be spent for public buildings for legislative, executive, and judicial purposes.

One of the highest priorities of the committee was the provision of additional space for standing committee hearing rooms. In the plans adopted during the two previous interims, all 12 committee rooms would have been located on the ground floor. However, the committee authorized the permanent allocation of what previously was known as the Traill Room to the Governor for use as a conference room. Consideration was given to the remodeling of a large women's lounge on the ground floor into a legislative committee room, but the committee abandoned those plans in favor of using the former Supreme Court hearing room on the second floor as a standing committee room.

Another high priority of the committee was to make all areas of the legislative wing accessible to the handicapped. The Senate balcony and the top floor of the former Supreme Court library were made accessible by the construction of an elevator with funds appropriated in 1979. However, the House balcony continued to be inaccessible. The committee approved the construction of an elevator between the House chamber and the House balcony by converting a former janitor's closet off the House chamber into an elevator shaft. In addition, a chair lift was installed on the steps leading to the Large Hearing Room to make this area accessible to the handicapped.

Members of the press have traditionally been provided space behind the Senate chamber. As the space needs of the press increased, a room off the Senate balcony was allocated to the media in recent years. As the space immediately behind the Senate is necessary for leaders' offices, and to provide space more conducive to the needs of the press, a press room and a press studio have been provided on the ground floor. The press room includes a private office for the Associated Press and a small room for members of the permanent press corps, as well as a common area with study carrels for additional members of the press. The room is provided with audio hookups to both the House and Senate chambers. In addition, a press studio is provided for interviews by the electronic media. To accommodate members of the press covering floor sessions, new press desks in the balcony of each house were approved. Members of the press were consulted on

all phases of the construction effort as it related to press facilities.

There has long been a need for better facilities for members of the Legislative Assembly to meet the increased demands of their offices. The renovation plan approved by the committee includes two legislative study rooms which include study carrels with telephones and which provide an informal setting for legislators to conduct their work when not otherwise occupied. A small doctor-of-the-day room is adjacent to one of the study rooms.

To improve the appearance of the ground floor hallway, the vending machines will be removed to a small adjacent room. A public coat check room has also been provided off the ground floor hallway. The bill room has been enlarged and will now be used as a joint bill-journal room.

The legislative telephone area which previously was located on the west end of Memorial Hall will now be located in a room east of the Senate chamber. Telephone clerks will take messages from constituents using a toll-free number, and legislators may return those calls from a number of locations. In addition to the telephone room and the legislative study rooms, telephones will again be provided on the floor of the House and Senate. Additional public telephones have been provided on the east and west sides of the ground floor and in phone booths off the hallway leading from Memorial Hall to the legislative telephone room.

Legislative leaders will be provided offices with separate reception areas for their secretaries and interns. The Speaker of the House will have an office and reception area in the west House balcony. The Chief Clerk of the House will have a small office adjacent to the Speaker's office and the Secretary of the Senate will have a small office between the Senate chamber and the legislative study room to the west of the Senate chamber.

Committee clerks will have offices off the Senate balcony, as will the joint steno pool. A joint supply room is provided to the east of the Senate chamber. The Senate Conference Room off the Senate chamber will no longer be used as a standing committee room but will be available to members of that chamber for special meetings. The House of Representatives will also have a conference room in the east House balcony. Chamber desks have new veneer tops, replacing the formica which had been used to cover them for many years.

Committee rooms will have both names and numbers. The committee approved the names and new numbering schedule. A new floor plan for the legislative wing is attached as Appendix "A".

The electronic voting systems in both chambers had last been updated over 10 years ago and many of the component parts are no longer manufactured. Improved technology had resulted in the obsolescence of the equipment, and any breakdown would have created a major crisis because of the lack of replacement parts. In addition, the installation of new conduit systems under both chambers to allow access to all desks for telephones, voting systems, sound systems, electrical outlets, and future computer terminals, made this the ideal time to install new voting equipment because the old conduits had to be removed. A contract was entered with Daktronics, Inc., of Brookings, South Dakota, for new electronic voting systems, including computer interfacing and high speed printers for both chambers. The committee approved necessary renovations to the front desks in both chambers to accommodate the new equipment. In addition, at its last meeting the committee approved raising the Speaker's platform in the House chamber to improve eye contact between the Speaker and members on the floor.

The committee approved the replacement of unsightly bulletin boards which previously were used to announce committee schedules in Memorial Hall with new electronic computer terminals which will be located in a circular information kiosk. The dissemination of information will be vastly improved with the new kiosk and terminals. Additional terminals will be located on the ground floor.

FISCAL NOTES

Senate Concurrent Resolution No. 4060 directed the Legislative Council to study the fiscal note process, including a review of the propriety of using rules or statutes to effectuate the process and the need for changes in rules, statutes, or administrative procedures used to carry out the process.

Joint Rule 501 requires all bills and resolutions introduced in either house having an effect of $5,000 or more on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, to have a fiscal note attached. This rule has remained virtually unchanged since 1965.

Fiscal notes are prepared by the state agency or department responsible for collecting or expending the revenues affected by the legislation. Each agency to which a request for a fiscal note is made is required to state in writing the fiscal impact in dollar amounts of the bill or resolution being considered. If unable to provide specific information on the fiscal impact of the measure, the agency is to make an estimate according to the information available or to provide a statement that the information is not available. The rule provides five days in which to provide the required information. Fiscal notes are read by the Secretary of the Senate or the Chief Clerk of the House, as appropriate, at the time the measure is to be voted on.

During the 1981 Session, 284 bills were identified by the Legislative Council staff as requiring fiscal notes out of 1,098 introduced bills. Thirty-six state agencies, representing all three branches of state government, were requested to provide fiscal notes. Eighty of these bills were tax bills for which the State Tax Department was requested to provide fiscal notes. Many other requests for fiscal estimates or amended fiscal notes are prepared by state agencies.

In recent years there has been one attempt to expand the legislative rules to require fiscal notes on bills impacting political subdivisions and two attempts to accomplish this by statute. The most recent attempt was during the 1981 Session when Senate Bill No. 2224 was introduced. That bill would have required fiscal notes on legislative measures and administrative rules causing a fiscal impact on counties and cities.

These efforts to expand the fiscal note process to include political subdivisions have been unsuccessful, either because of the estimated costs or concern about the practicality of obtaining accurate information concerning the effect of measures on political subdivisions. Although most states now have a process for requiring fiscal notes on bills affecting the states, not nearly as many require them for bills affecting political subdivisions. Part of the problem in obtaining this information is that there are over 3,000 taxing districts in this state. There is no state agency charged with compiling the kinds of data on these taxing districts upon which to base fiscal notes.

Several problems were identified with the existing fiscal note process. Some legislation, although having a

fiscal impact, is not conducive to the fiscal note process because no agency has the data upon which to provide the information. A lack of understanding of the existing fiscal note process has resulted in some confusion regarding the information required. Concern was expressed that the existing procedure, because it mandates action by agencies of other branches of government, would more appropriately belong in statutes.

The committee concentrated its attention on the policy issue of whether fiscal notes should be required on measures affecting political subdivisions. Because the financing of public schools is largely dependent upon state appropriations, fiscal notes are provided on bills relating to the foundation program. Most of the attention for fiscal notes on bills affecting political subdivisions relates to those measures which affect counties and cities. Representatives of the League of Cities and the Association of Counties urged approval of a rule or statute requiring fiscal notes on measures affecting those political subdivisions. Although testimony before standing committees frequently relates to the cost to political subdivisions of proposed legislation, it was reported this information often is not repeated on the floor. As no state agency has the responsibility for compiling information on many aspects of political subdivision activity, committee members expressed concerns over the cost of attempting to obtain fiscal notes on legislation affecting the political subdivisions. The possibility of having the associations representing political subdivisions provide the fiscal notes was rejected by the committee because the associations are private organizations which lobby and have a vested interest in the legislation affecting their members. Concern was also expressed regarding the problems with gathering sufficient information relating to many political subdivisions in a very short period of time.

The committee concluded it is desirable to obtain the best information available when considering legislation. The committee recommends a proposed joint rule to require fiscal notes for bills impacting county and city governments, but in those cases in which no state agency has primary responsibility for compiling and maintaining the necessary information, a statement to that effect would be attached to the measure. The intent is to put the Legislative Assembly on notice of potential impacts. This rule change would not result in the creation of any new data which is not now available, but would provide for the dissemination of fiscal information which is available. The committee intends that this notice of potential impact will generate floor discussion, at which time testimony from private individuals and organizations could be repeated, but that the private information would not be presented on a formal fiscal note form. Committee members expressed the view that the recommended rule represents a compromise and is the best that can be done without a large expenditure of money to generate data.

REVIEW OF POWERS OF RETIREMENT COMMITTEE

The Legislative Council directed the committee to review the statutory changes made by the 1981 Legislative Session relating to the Committee on Public Employees Retirement Programs for consistency with the mission and authority of the legislative branch.

The Retirement Committee was created in 1977 to study and report on measures and proposals affecting public employees retirement programs. This legislation has been codified as NDCC Sections 54-35-02.3 and 54-35-02.4. Among other features, this legislation provided that a legislative measure affecting the public employees retirement programs could not be introduced in either house unless accompanied by a report from the committee. The law provides for a thorough review of retirement proposals, including an actuarial review.

House Bill No. 1452, passed by the 1981 Legislative Assembly, provides that the committee has sole authority to determine whether legislative measures fall within the jurisdiction of the committee. In addition, the 1981 amendments provide that standing committees cannot consider retirement measures unless accompanied by a report from the committee. A provision of the 1981 law also provides that any legislation enacted in contravention of the provisions of the statute is invalid and of no force and effect and any benefits provided shall be reduced to the level current prior to enactment.

Concerns expressed regarding the 1981 amendments include the view that the Retirement Committee would have veto power over legislative action. Committee members expressed agreement with the objective of maintaining fiscally sound retirement programs, but the view was expressed that it is imperative that the Legislative Assembly maintain its ability to act and that individual legislators not be hindered in the introduction of legislation. In addition, the 1981 amendments attempted to control future legislative action, and only a constitutional amendment can bind future Legislative Assemblies. Court decisions in other states are nearly unanimous in holding that a legislative enactment cannot be declared invalid because of failure to follow guidelines established by previous legislative sessions. The Legislative Assembly cannot by statute bind or restrict itself or its successors. Therefore, the validity of legislation would not be impaired if the procedures were not followed.

The committee recommends a bill to amend NDCC Section 54-35-02.4, relating to the powers and duties of the Committee on Public Employees Retirement Programs. The bill would delete those portions of the current law which attempt to render invalid any legislation enacted which does not meet the requirements of this section. In addition, the language intended to prohibit introduction of bills not accompanied by reports from the committee and the language providing the committee has sole authority to determine its jurisdiction would be deleted. Language requiring measures and amendments to measures affecting public employees retirement programs to be submitted to the Retirement Committee would be retained. Language clarifying the requirement that measures must be submitted to the Retirement Committee before being placed on the calendar would be inserted. The bill would also clarify the requirements for assigning or referring bills to the Retirement Committee by making it clear the Legislative Council makes assignments during the interim and either the presiding officer or chairmen of standing committees make the referrals and rereferrals during legislative sessions.

RECONVENED SESSION PREPARATIONS

The committee made the necessary arrangements for the historic reconvened session of the Legislative Assembly in November 1981. The reconvened session was made possible by the passage of Senate Concurrent Resolution No. 4033 (1981). Pursuant to that resolution, the Legislative Council called the Legislative Assembly back into continued regular session beginning November 16, 1981, for the purpose of considering reapportionment legislation. The necessary census data had not been available in time for consideration by the regular 1981 Session.

Among the preparations for the reconvened session, the committee approved an employment plan and a telephone plan. In addition, arrangements were made for the printing and mailing of daily journals.

GUIDELINES FOR USE OF CHAMBERS AND PERMANENT DISPLAYS

As the result of a recommendation by the committee during the last interim, the 1981 Legislative Assembly passed legislation providing the Legislative Council with the authority to control the use of the legislative chambers and permanent displays in Memorial Hall. The preparation of guidelines was delegated to the committee by the Legislative Council.

Statutory control over the State Capitol traditionally has rested with the Director of Institutions. A tradition had developed in which the Director of Institutions would consult with the Legislative Council staff whenever a request for the use of legislative chambers was received. However, there was no statutory or policy basis for the Legislative Council staff to make decisions concerning the appropriateness of usage of the chambers.

The committee approved guidelines for the use of legislative chambers and displays in Memorial Hall. A copy of the approved guidelines is attached as Appendix "B". The guidelines were adopted in October 1981, and as the guidelines regarding permanent displays in Memorial Hall require annual review of such displays, the committee reviewed the permanent displays currently in Memorial Hall in September 1982. The committee approved retaining the two statues but voted to relocate the Liberty Bell.

LEGISLATIVE RULES

The committee used questionnaires sent to all members of the 1981 Legislative Assembly to solicit ideas for rules requiring change. In addition, the committee reviewed all rules of both houses to identify differences between the two chambers' rules.

The committee recommends the amendment of House Rule 102 to provide that no member shall be absent during an entire day without obtaining leave from the House. The rule now provides that such leave must be obtained from the Speaker. This change makes the House rule consistent with the comparable rule in the Senate.

The committee directed its staff to prepare several other rules amendments to make available to the rules committees of both houses. Most of these changes are intended to make the rules of the two houses uniform.

MISCELLANEOUS ADMINISTRATIVE MATTERS

The committee recommends the continuation of the legislative internship program. However, as the preparation of the journals will now be performed on computers which will be accomplished through cooperation between the desk forces and the Legislative Council staff, it will no longer be necessary to hire a bill status reporter for each house. The internship program will have 16 instead of 18 interns. Although the bill status reporters have usually been undergraduate students, all of the other interns have been either law school students or graduate school students from the two universities. The committee also approved the hiring of an intern director. Instead of each house hiring two journal proofreaders, the Legislative Council will employ two additional proofreaders and each house will employ one journal page to be responsible for reviewing each day's journal.

The committee approved the continuation of the legislative tour guide program, under which the Legislative Council staff hires a tour guide to coordinate high school tours of the Legislative Assembly during sessions. Also approved was the hiring of persons to screen applicants for legislative employment prior to the 1983 Session.

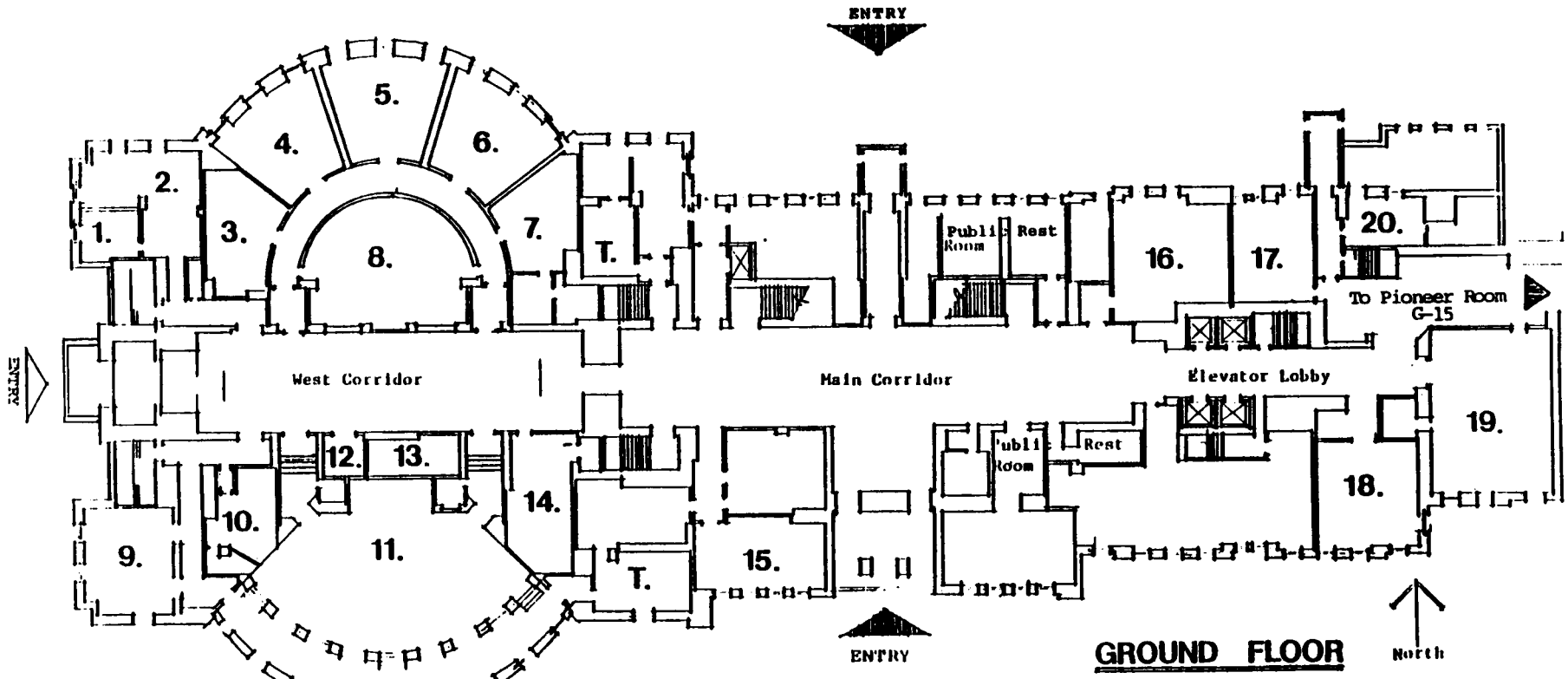
The committee authorized the Employment Committees to hire someone to operate the bill room prior to the convening of the 1983 Session. This practice, begun in 1979, permits the opening of the bill room prior to the convening of the regular session and permits the early distribution of prefiled bills.

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the North Dakota Supreme Court for the State of the Judiciary Address during the first week of the 1983 Session.

The committee approved an increase in the honorarium paid chaplains from $6 to $25 per day. Committee members expressed the opinion that the smaller amount was inadequate and adjustments had not been made through the years to reflect inflation.

The agenda for the 1982 organizational session was approved by the committee. The agenda includes new panel discussions featuring members of the press and lobbyists to discuss their respective roles in the legislative process.

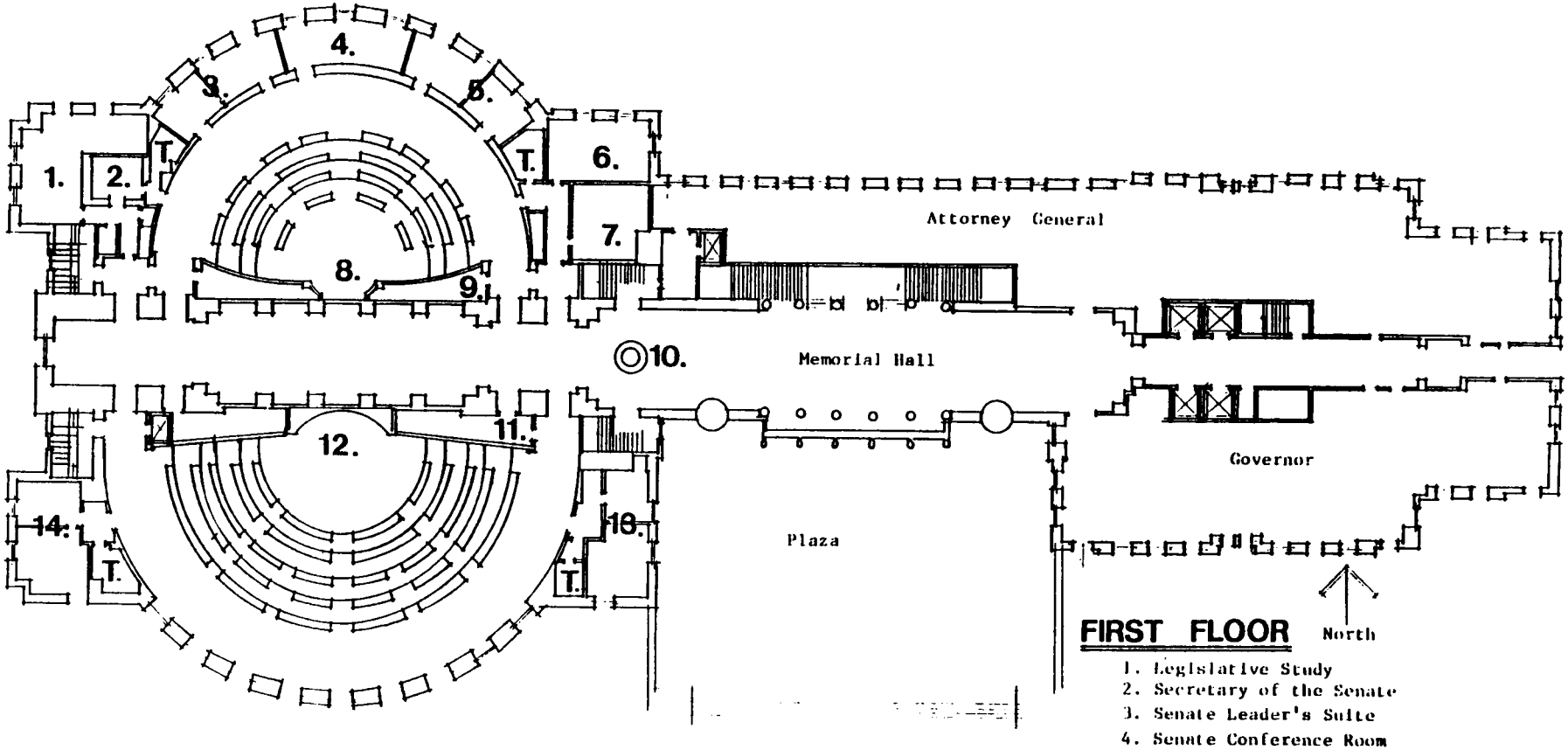
The unwieldy and unsightly bill books provided each legislator will be replaced by catalog racks to hold all bills, resolutions, calendars, and journals. To improve the dissemination of information concerning sessions, the committee aproved the mailing of bills, bill status reports, and journals to selected libraries.



GROUND FLOOR

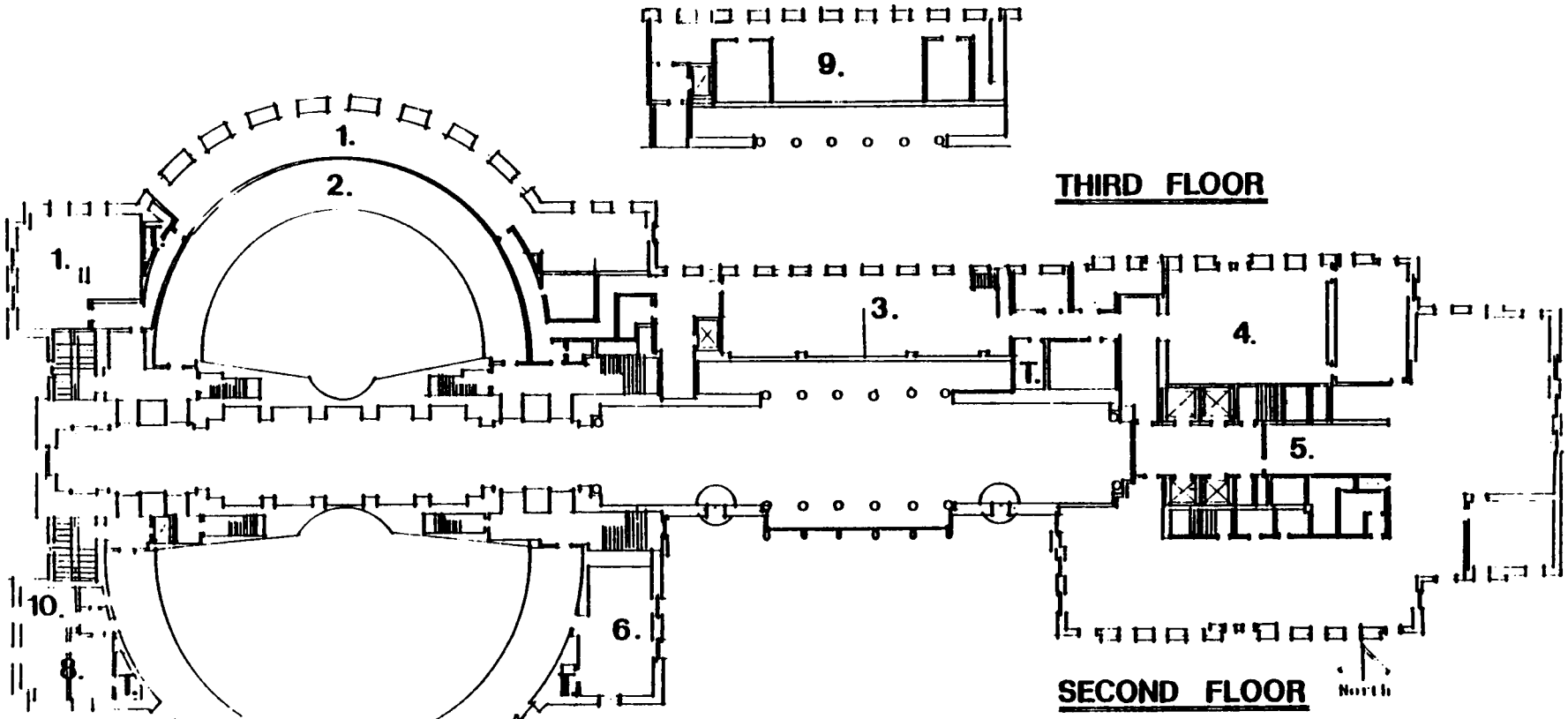
1. Doctor's Exam Room
2. Legislative Study
3. Roosevelt Park Room G-1
4. Fort Union Room G-2
5. Peace Garden Room G-3
6. Fort Totten Room G-4
7. Press Room G-5
8. Joint Bill & Journal
9. Fort Lincoln Room G-9
10. Press Studio G-8
11. Dakota Room G-7
12. Vending Area
13. Public Coat Room
14. Lewis & Clark Rm. G-6
15. Missouri River Rm. G-10
16. Harvest Room G-11 (Senate Appro.)
17. Red River Room G-12
18. Sakakawea Room G-14
19. Rough Rider Room G-13 (House Appro.)
20. Mail Room

APPENDIX "A"



FIRST FLOOR

1. Legislative Study
2. Secretary of the Senate
3. Senate Leader's Suite
4. Senate Conference Room
5. Senate Leader's Suite
6. Legislative Phone Room
7. Joint Supply Room
8. Senate Chambers
9. Senate Pages
10. Information Kiosk
11. House Pages
12. House of Representatives
13. House Leader's Suite
14. House Leader's Suite



1. Committee Clerk/Stenographer's Area
2. Senate Balcony
3. Legislative Council Library
4. Prairie Room G-15
5. Legislative Council Suite
6. House Conference Room
7. House Balcony
8. House Speaker's Suite
9. Legislative Data Processing
10. Chief Clerk of the House

APPENDIX "B"

GUIDELINES FOR USE OF LEGISLATIVE CHAMBERS AND DISPLAYS IN MEMORIAL HALL, NORTH DAKOTA STATE CAPITOL

USE OF LEGISLATIVE CHAMBERS

1. The first priority for the use of the legislative chambers is for the legislative branch of state government, including the Legislative Assembly, the Legislative Council, and any committees, subcommittees, or other entities of the legislative branch.
2. During legislative sessions, the chambers of the Senate and the House of Representatives may not be used by any groups or organizations other than entities of the legislative branch mentioned in Part 1 above.
3. When the Legislative Assembly is not in session, the chambers of the Senate and the House of Representatives may be used by other groups and organizations, subject to the following requirements:
   a. The planned function is an educational activity or a memorial for a person who has served in an elective national, state, or legislative office, or is sponsored by a governmental entity.
   b. The planned function will not interfere with the business or activities of the legislative branch.
   c. The sponsor of the planned function arranges with the Director of Institutions for janitorial services, lighting, audiovisual installations, heating or air conditioning, and other appropriate services or equipment.
   d. No other suitable facilities are available on the Capitol grounds.
   e. The sponsor of the planned function assumes full responsibility for the care of the chambers, will see that no food or beverages are brought into the chambers, and will leave the chambers in the condition they were in prior to the planned function.
   f. Prior approval is obtained from the Legislative Procedure and Arrangements Committee, or, if time does not permit the obtaining of approval from the Legislative Procedure and Arrangements Committee, approval may be obtained from the director of the Legislative Council or his designee.

PERMANENT DISPLAYS IN MEMORIAL HALL

1. No permanent displays shall be placed in Memorial Hall without the prior written approval of the Legislative Procedure and Arrangements Committee.
2. No permanent displays shall be placed in Memorial Hall unless the following requirements are met:
   a. The display commemorates or has some relationship to the legislative branch of state government, or to a historical phenomenon or event of significance to this state or nation.
   b. The display will not disrupt or interfere with legislative use of Memorial Hall.
   c. The sponsors of the display assume all risks involved in connection with the display.
3. Statues, busts, or portraits which have been authorized by the Legislative Procedure and Arrangements Committee shall be considered "permanent" displays, and the committee shall review all permanent displays annually to determine the need for placement in other suitable locations. All other displays shall be considered nonpermanent and may be allowed for periods of thirty days or less.
4. For purposes of these guidelines "Memorial Hall" means that portion of the main hallway on the first floor of the State Capitol from the west wall to the brass columns to the east of the double stairway.

NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned two studies. Senate Concurrent Resolution No. 4047 directed a study of the organization, powers, government, fiscal affairs, boundaries, dissolution, and general rules of irrigation districts to determine any statutory amendments and improvements that may be necessary to provide for workable organization and subsequent operation of irrigation districts under current technologies and conditions. House Concurrent Resolution No. 3065 directed a study of the jurisdictional boundaries of water resource districts and the selection of the management of such districts to determine the most effective and efficient method to provide for the management of the water resources of the state at the local level on a watershed basis.

Committee members were Representatives Richard Kloubec, Chairman, Gordon Berg, Jim Brokaw, John Crabtree, Lawrence Dick, Moine Gates, Lyle Hanson, Alvin Hausauer, William Kretschmar, Clarence Martin, Douglas Mattson, Jack Murphy, Glenn Pomeroy, Orville Schindler, Elaine Vig, and Joseph Whalen; and Senators Chuck Goodman, Shirley Lee, Bonnie Miller Heinrich, Donald Moore, Gary Nelson, Ron Quail, and Rolland Redlin. Senator Ralph Christensen was a committee member prior to his death in April 1982.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

IRRIGATION DISTRICTS

North Dakota ranks about 39th or 40th among the states in the number of acres irrigated in this country. There are over 26 million cultivated acres within the state and although an estimated 2.5 million acres are irrigable, only 210,000 acres are being irrigated. About 40,000 acres are irrigated by flooding or other surface irrigation methods, while 170,000 acres are irrigated by sprinkler systems. About one-half of the acres being irrigated are supplied by ground water and the remainder are supplied by surface water.

Currently irrigation is allowed both on an individual and on an organized basis. Individuals may apply for a water right for the purpose of private irrigation. Irrigation districts are formed for the purpose of establishing uniform irrigation practices and water resource development projects to increase irrigation capacities. North Dakota has approximately 22 irrigation districts.

Individual irrigators are subject to the laws governing appropriation and proper use of water. Irrigation districts are also subject to these laws but must also comply with the statutory mechanisms for governance of the district. Irrigation districts may establish irrigation projects and fund them by assessment of the benefited areas within the district.

The state's original irrigation laws were adopted in 1917 and were directed toward regulation of gravity or flood irrigation utilizing surface water. These laws have only been amended on a piecemeal basis since their adoption.

The study was not made under any circumstances or problems which demanded immediate attention and solution but, rather, out of a need for workable irrigation district laws to avoid problems in the future because of the significant increase in water permits for irrigation in recent years.

The resolution directed the committee to consult with a citizens advisory committee of irrigators and other persons to be mutually appointed by the chairman of the Natural Resources Committee and the North Dakota Irrigation Association.

The citizens advisory committee met and, working closely with Water Conservation Commission staff, developed an irrigation bill draft which was submitted to the Natural Resources Committee. The bill draft amended existing irrigation law in four different areas. First, it recognized and incorporated current irrigation technology into the irrigation district laws primarily in the areas of pipeline, sprinkler irrigation systems, and ground water sources. Second, it attempted to improve the procedure for organizing irrigation districts and the operation procedures of irrigation districts. Third, it attempted to make the voting and election requirements for irrigation districts more efficient and workable. Fourth, it made general housekeeping and technical amendments to modernize the language of the irrigation district laws. The proposed changes were suggested to aid the operation of existing districts and to facilitate the establishment of future districts.

Testimony received from the State Engineer, Irrigation District Association, and Water Resource Districts Association indicated that since the emphasis in irrigation has shifted to sprinkler irrigation systems rather than surface methods, it is necessary for existing laws to be modernized to facilitate efficient and wise use of the limited water resources of this state. Testimony indicated that modernization is necessary because existing irrigation laws make no reference to such modern irrigation methods as pipelines, sprinkler irrigation systems, and ground water supplies. In addition, existing law is not broad enough in its scope to cover new problems associated with well drilling, pipeline construction, and, in general, the potential problems associated with a possible large scale increase in irrigation in this state.

Recommendation

The committee recommends a bill which would amend those sections in North Dakota Century Code Title 61 relating to irrigation districts. The recommended bill makes the following major changes:

1. Recognizes and incorporates current irrigation technology into existing law primarily in the areas of pipeline, sprinkler irrigation systems, and ground water sources. This modernizes the law to apply to technologies not in existence when the irrigation laws were first adopted.
2. Differentiates between the election procedures where an irrigation district receives all or a portion of its water supply from a federal reclamation or irrigation project and where the irrigation district has a private source of water. If the irrigation district receives water from a federal reclamation or irrigation project, the number of votes allowed to an elector would be the same as under current law, i.e., one vote for each 20 irrigable acres owned within the irrigation district with a maximum of eight votes. If the irrigation district has a private source of water, the elector may cast one vote for every 20 irrigable acres with a limit on the maximum number of votes equal to 35 percent of the total possible votes in any district election. This distinction must be made because individuals who receive water from a federal

project may not irrigate more than 160 acres while, if the water is from a private source, no such limitation exists.

3. Modernizes the notice provisions to require that the public notice for elections and official acts of the irrigation district board be published once each week for two consecutive weeks in the newspaper of general circulation where the district is located and in the official newspaper of each county in which the district is located. This change brings the notice provision in the irrigation laws in line with other notice statutes in this state.
4. Provides for additional advance time between the time notice of an election is publicized and the election itself and the advance time for a candidate for the office of district director to file with the State Engineer. This change allows greater preparation time before an election.
5. Provides for a minimum five-member board of directors of an irrigation district. Current law allows the possibility for a three-member board. This change allows better representation and solves other problems associated with a small board.
6. Includes noncontiguous lands within the irrigation district. This clears up the legal question as to whether or not noncontiguous land may be within an irrigation district.
7. Compensates the members of the election board for an irrigation district election in an amount fixed by the board of directors of the irrigation district. Existing law provides compensation at $10. This change allows greater flexibility for the irrigation district board.
8. Compensates each of the directors of the irrigation district board in an amount set by the board of directors of the district. The compensation may not exceed that compensation provided for members of the Legislative Council. Existing law provides compensation in the amount of $25 per day. This change modernizes allowed compensation.
9. Provides construction bonds for performance of project contracts in an amount equal to the contract price. This change eliminates the obsolete $50,000 limitation on the amount of the bond under existing law.
10. Provides that the irrigation board has a duty to provide a water supply only in the amount that can be applied beneficially to the lands in the district and in an amount that does not interfere with the rights of senior appropriators. Existing law requires the board to run the irrigation system at full capacity in times of high water without interfering with other appropriators. This change limits use of water to that amount which can be beneficially used without waste and limits the restrictions on use to those with senior rights.
11. Limits the eminent domain powers of irrigation districts to require that an alternative water supply of equal quantity and comparable quality be offered to a water user whose water rights have been condemned. This change treats more equitably persons whose water rights have been condemned.
12. Allows payment of irrigation liabilities from special assessments or water charges or a combination of both. Existing law allows payment of liabilities from assessments on real property and from water charges. This change allows more fiscal flexibility and specifies the proper method of assessment.
13. Allows district tax assessors to consider other factors in determining benefits received by a tract or subdivision within an irrigation district other than the number of irrigable acres. This change allows a greater number of factors to be used in valuation of assessable land in the district, which allows a more equitable valuation.
14. Increases the ability of an irrigation district to borrow additional funds if the levy of the annual assessment is insufficient for the district's liabilities. The increase is from 50 cents per acre to $1 per acre for irrigable lands within the district. This change increases the taxing power of the district to pay assessment deficiencies.
15. Establishes a Class A misdemeanor penalty for the unlawful use of water and waste. Existing law does not establish a penalty for unlawful use and waste of water.
16. Establishes elections for the district board in alternate years rather than every year to save time and expense.

WATER RESOURCE DISTRICT STUDY

During the 1979-81 interim the Legislative Council's Natural Resources Committee studied water management in the state. The issue was whether the management of water principally on a local level by water management districts and legal drain boards was the most effective and efficient method of providing local water management and, if not, what steps should be taken to provide such water management. That committee's study report noted that water could be more effectively managed on the local level if the duties of legal drain boards and the water management districts were combined and if the managing entities had jurisdictional boundaries along watershed lines. The committee's report noted that special election of a water resource district's board of managers was preferable to appointed managers. That committee recommended a bill which established the water resource districts, combining the functions of drain boards and water management districts. It also recommended hydrological boundaries and election of managers.

In 1981, the 47th Legislative Assembly substantially amended the committee's recommended bill. The amended bill eliminated the concept of hydrological boundaries, unless approved by the 48th Legislative Assembly which, in effect reinstated political boundaries for the districts. It also eliminated the provisions for election of district managers rather than appointment.

House Concurrent Resolution No. 3065 directed a study of the jurisdictional boundaries of water management districts and the selection of management of the districts. The study was conducted with the cooperation and assistance of the Water Conservation Commission, State Engineer, North Dakota Water Management Districts Association, and North Dakota Association of Counties.

North Dakota Century Code Section 61-16.1-03 directs the State Engineer to establish proposed boundaries focused on hydrological patterns and to report to the Legislative Council or a designated interim committee. The State Engineer submitted these proposed boundaries to the committee for its consideration and review.

Testimony received by the committee from various water resource districts indicated little support for reorganization of water district boundaries along watershed lines or for the election, rather than appointment, of water managers. Based on this information the commitee addressed the problem of how water resource districts

could solve water problems common to a river basin or region by examining possible amendments to existing joint water resource board statutes rather than a reorganization of existing water resource district boundaries.

The Water Management Districts Association appointed a committee of water managers to develop proposals for improving existing laws relating to the establishment of joint water boards. Testimony from that entity indicated that there are four joint water boards in the state with a potential fifth in the Souris River Basin.

Testimony showed that three basic problems face joint boards. First, not all water resource boards in a region are required to participate in the formation and operation of a joint board. The difficulty in solving common problems in an area is increased if not all the water resource districts cooperate. Second, it is difficult to obtain unanimous approval of all county commissioners within a joint board for a necessary mill levy. Third, if only a portion of a water district lies within the joint board area, a tax levy by the joint board must be levied over the entire district and not just the joint board area. The committee reviewed the proposed changes in the joint board statutes submitted in bill draft form by the committee of water district managers. The bill draft contained the following major changes:

1. Provided that upon petition of three-fourths of the water resource districts which are located entirely or partially within a river basin or region to the State Engineer, the State Engineer could issue an order establishing a joint power river basin or region. Public hearings were to be held on that question. The State Engineer would determine that the joint board is necessary to resolve a significant common water resource problem. The State Engineer would delineate the boundaries of the joint board river basin or region. All water resource districts which were located entirely or partially within the river basin or region were required to comply with the order and become a member of the joint board. Any district failing to comply with the order of the State Engineer would not be eligible to receive any state fund authorized by North Dakota Century Code Title 61.
2. Allowed the districts which are parties to a joint board agreement to provide for the payment of the expenses and obligations of the joint board by the levy of an ad valorem tax not to exceed two mills on the real property of each member district. The county commissioners would have been required to levy the tax.
3. Limited the area subject to the levy to that portion which lies within the joint board area.

The committee received testimony from the County Commissioners Association indicating these problems with the bill draft:

1. The provisions for the process and guidelines for the designation of the boundaries of a proposed joint powers board were too vague and left too much discretion with the State Engineer, the entity who decides what those boundaries are.
2. The provision by which water resource districts were forced to comply with a State Engineer order for the establishment of a joint powers board was unacceptable. There should be an incentive to join rather than a mandate and penalty for failure to comply.
3. There may be a constitutional problem in allowing one county to mandate a tax levy in a neighboring county.
4. The requirement for a tax levy requested by the joint board was unacceptable. Elected officials should have the final decision whether a tax should be levied.

The committee makes no recommendation as the result of its study. The committee found that the proposed water resource district bill draft should have been drafted with more input from the County Commissioners Association. The committee recommended that the bill draft be returned to the Water Resource Districts Association where the problems noted can be resolved in conjunction and in consultation with the County Commissioners Association.

POLITICAL SUBDIVISIONS COMMITTEE

The Political Subdivisions Committee conducted studies in five areas. Senate Concurrent Resolution No. 4068 directed study of the effect of state protection of pay and status of public employees who are members of the National Guard. Senate Concurrent Resolution No. 4074 directed study of the feasibility and desirability of revising statutes which relate to more than one political subdivision. The Legislative Council chairman assigned the committee the responsibility of studying methods to provide for the coordinated development of local correctional facilities in the state, a study of antitrust liability of cities in the state, and a study of charitable gambling.

Committee members were Senators Raymon Holmberg, Chairman, Phillip Berube, William Heigaard, Clayton Lodoen, Chester Reiten, and Stanley Wright; and Representatives L.E. Berger, Rosie Black, Kelley Boyum, Pat Conmy, Ralph Dotzenrod, James Gerl, Orlin Hanson, Steve Hughes, Irven Jacobson, Tish Kelly, Kenneth Knudson, Theodore Lang, Gordon Larson, Reuben Metz, Marshall Moore, and Janet Wentz. Senator Frank Shablow was a committee member prior to his death in July 1981 and Senator Marie Tierney resigned her Senate seat during the interim.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

STATE PROTECTION OF THE PAY AND STATUS OF PUBLIC EMPLOYEES WHO ARE IN THE NATIONAL GUARD

North Dakota Century Code (NDCC) Section 37-01-25 protects the pay and status of public employees who are members of the National Guard while they are on National Guard duty. Political subdivisions in the state have questioned the cost and desirability of the policy of providing compensated leave to public employees while engaged in activities of the National Guard. 1981 Senate Concurrent Resolution No. 4068 directed study of the effects state protection of pay and status of public employees has on the membership of the National Guard with emphasis on the cost of providing compensated leave for public employees and the feasibility and desirability of governmental entities employing persons who are members of the National Guard.

Background

NDCC Section 37-01-25 was enacted in 1935. As originally enacted, the statute applied only to members of the National Guard and provided for a 30-day leave of absence without loss of pay or status as a public employee. In 1939 the statute was amended to include members of the officers reserve corps of the United States. The statute was amended in 1941 to include public employees who were drafted or who volunteered for service in the armed forces. In 1945 the statute was amended to provide that the 30-day leave of absence was applicable to public employees if they had been in the continuous employ of the state or a political subdivision of the state for 90 days immediately preceding the leave of absence. The 1945 bill also created Section 37-01-25.1 to provide for reinstatement of returning servicemen to former positions and made violations of the sections a misdemeanor punishable by a $500 fine and 90 days' imprisonment. Except for stylistic changes, Section 37-01-25 is the same as it was subsequent to the 1945 Legislative Assembly, Section 37-01-25 presently provides:

Officers and employees of state or political subdivisions in national guard or federal service to retain status for period of active service. All officers and employees of this state or of a political subdivision thereof who:

1. Are members of the national guard;
2. Are members of the armed forces reserve of the United States of America;
3. Shall be subject to call in the federal service by the President of the United States; or
4. Shall volunteer for such service, when ordered by proper authority to active noncivilian employment, shall be entitled to a leave of absence from such civil service for the period of such active service without loss of status or efficiency rating. If such persons have been in the continuous employ of the state or political subdivision for ninety days immediately preceding the leave of absence, the first thirty days of such leave of absence shall be without loss of pay.

The comparable federal statute, 5 U.S.C. 6323, provides that a federal employee or an employee of the District of Columbia is entitled to leave of absence without loss of pay, time, performance, or efficiency rating for active duty or engaging in field or coastal defense training as a member of the reserve of the armed forces or the National Guard. Leave of absence accumulates at a rate of 15 days per fiscal year and may not exceed 15 days at the beginning of any fiscal year. The leave of absence may be extended to 22 days per year without loss of pay if the employee is performing military aid to enforce the law or engaged in full-time military service. A federal employee or employee of the District of Columbia is also entitled to leave with pay for each day of a parade or encampment, but in this case the military pay is credited against civilian pay.

Testimony

Senate Bill No. 2327 was introduced in the 1981 Legislative Assembly at the request of the North Dakota League of Cities. That bill would have amended NDCC Section 37-01-25 by providing that public employees whose military pay is less than their civilian pay would be compensated for the difference between their military pay and their civilian salary for the first 15 days of leave of absence due to military duty in any one calendar year. The bill was not passed by the 1981 Legislative Assembly.

Representatives of the North Dakota League of Cities said they recognize the value of the National Guard. The League of Cities supports the National Guard and does not wish to undermine the National Guard's effectiveness. They said the objective of the League of Cities is to make payment levels for military leave of absence fair to the cities and to National Guard personnel.

North Dakota League of Cities representatives believe there is a surplus of city employees in the National Guard. They said this can cause problems for cities during emergencies when city employees are called to National Guard service and cities can have scheduling problems in providing for leave of absence for employees called to National Guard duty. The cost to cities of providing full pay during National Guard leave of absence for employees was described as too high for cities. Concern was expressed that providing full pay for public employees during leave of absence for National Guard duty is unfair to employees in private businesses who do not receive full pay for leave of absence during National Guard duty.

The North Dakota League of Cities recommended

three options for action relating to the study of leave of absence for public employees who are National Guardsmen:

1. Repeal present law which allows full pay during leave of absence. Local and state options would be allowed in setting policy for leave of absence for employees who are in the National Guard.
2. Amend present law by removing political subdivisions from the statute to allow political subdivisions the option regarding leaves of absence for employees who are in the National Guard.
3. Amend present law by changing the maximum number of days of leave from 30 to 15 and providing that public employees who are National Guard members would be paid the difference between their National Guard salary and their regular salary while on leave of absence for National Guard duty.

A North Dakota National Guard spokesman testified that the National Guard only survives with community and employer support and anything that affects employer support is a jugular issue to the Guard. National Guard representatives said communication between the Guard and employers can resolve problems in scheduling and if an employer notifies the Guard that an employee is needed the Guard will exempt that person from the call to duty.

Representatives of the National Guard reported that $3 is put into the state treasury for every $2 taken from the state treasury for National Guard purposes, the National Guard generates over $100,000 per year in each of 30 North Dakota communities, and there is no way to calculate the value of the National Guard to communities in North Dakota when disaster strikes. They said the National Guard provides training for public employees and performs community projects which save communities contracting costs. National Guard representatives told the committee the National Guard does not cost North Dakota, but rather, it pays the state to have the National Guard.

National Guard representatives reported that over 90 percent of the cost of the National Guard is paid for by the federal government and that more money comes into a community than goes out for support of the National Guard.

The National Guard conducted a poll of employers in private business. The poll showed that 65 percent of employers do not charge leave of absence for National Guard duty or training against vacation time. Support of the National Guard in the private sector in North Dakota is slightly higher than the national average.

During 1981 there were only four people who used over 15 days of leave of absence for National Guard duty. These persons were instructors at National Guard camp and used over 15 days of leave of absence only with permission from their employers.

The National Guard Association of North Dakota delivered a resolution to the committee stating: "Federal and state laws which mandate military leave for public employees who are members of the National Guard are an essential element of the Guard's recruiting and retention program. The laws ensure a stronger National Guard, establish a goal for private employers, and provide a partial reimbursement for citizen soldiers who leave their home and family when ordered to active duty. The North Dakota National Guard Association urges the Legislative Assembly and Congress to continue their support for the existing programs of military leave to public employees."

The Reserve Officers Association of the United States delivered to the committee a resolution endorsing the continuation of the present military leave statutes of the state of North Dakota and urging executive and legislative officials of North Dakota to support this position.

Recommendation

The committee recommends that no change be made in current law regarding paid leave of absence for public employees who are National Guard members. The committee recognizes the importance of employer support to the National Guard. The committee found that the cost of paid leave of absence for public employees for National Guard duty does not outweigh the benefit of the National Guard to the state and the political subdivisions of the state.

REVISION OF STATUTES REFERRING TO POLITICAL SUBDIVISIONS

Senate Concurrent Resolution No. 4074 stated that revision of various provisions relating to political subdivisions or incorporation of these provisions into a single title or chapter could help to clarify those provisions. The resolution directed study of the feasibility and desirability of revising all statutes which relate to more than one political subdivision. The committee took the position that the resolution intends only nonsubstantive changes in law relating to political subdivisions.

The committee found that the scope of the study could encompass virtually the entire North Dakota Century Code. The phrase political subdivision is used in 232 separate sections. The words county and city appear together in 474 sections. The words township and city appear together in 173 sections. The word municipality appears in 646 sections. Committee members agreed that revision of all statutes relating to political subdivisions could not be accomplished during the interim. The committee determined that it would be necessary to focus on specific areas requiring revision.

The committee investigated Century Code usage of various terms describing political subdivisions. The committee found numerous terms employed to refer to the various political subdivisions of the state. The term political subdivision is defined 13 times in the Century Code and no two definitions are identical. Many of the terms which refer to political subdivisions have varying definitions in different chapters. However, circumstances sometimes require varying definitions in some chapters of the Century Code.

The committee reviewed mill levy limitations which are applicable to more than one political subdivision. Mill levy limitations are scattered throughout the Century Code. The State Tax Department prepares a guide to locate mill levy limitations each biennium for use by local officials. The committee concluded that sections containing mill levy limitations should be amended by moving the mill levy limitations to a single section and leaving an internal reference to the new section within the language of the existing section. Chapter 57-15, entitled "Mill Levies and Limitations," was determined to be the appropriate chapter for placement of all mill levy limitations relating to political subdivisions.

Recommendation

The committee makes no recommendation for revision of definitions describing political subdivisions. The differing usages of definitions within the Century Code is required by surrounding circumstances within any particular chapter. The present usage of definitions referring to political subdivisions adequately provides for understanding since definitions are used for the purposes of a single chapter.

The committee recommends a bill which creates 13 new sections to NDCC Chapter 57-15 and amends 91 sections which relate to tax levies and limitations of political subdivisions. The bill amends sections outside of Chapter 57-15 which provide mill levy limitations. In sections amended, the mill levy limitation is removed and placed in Chapter 57-15 and the amended section is reenacted with insertion of an internal reference to the new Century Code section where the mill levy limitation can be found. This bill will ease confusion in locating mill levy limitations applicable to political subdivisions. The bill is intended to make no substantive change in mill levy limitations by rearranging mill levy limitations for ease of location.

COUNTY AND CITY JAILS STUDY

The committee was asked by the North Dakota Association of Counties to request authority from the Legislative Council to study the development of local jail facilities. Association representatives said a study was needed to provide direction to counties and cities in implementation of jail standards adopted by the Attorney General in 1981. Major improvements to local jails are necessary and the financial impact may be quite severe in some areas. Pursuant to this request, the committee asked for and received direction from the chairman of the Legislative Council to study county and city jails, state jail rules adopted by the Attorney General, and goals recommended by previous legislative committees with the objective of providing for coordinated development of correctional facilities statewide.

Background

Concern about the state of jail facilities in North Dakota led to a Legislative Council study during the 1977-79 interim. As a result of that study, the Council recommended House Bill No. 1044 to the 1979 Legislative Assembly, relating to local jails. Four major problem areas were addressed by the bill. State law prior to 1979 mandated that each county establish and maintain a jail. In practice, several counties had closed their jail facilities prior to 1979. The bill enacted NDCC Section 12-44.1-02 which provides flexibility to counties and cities to combine for purposes of operation of jails. Prior to 1979 jail rules were to be established by the district court for each judicial district which resulted in several sets of jail rules. The 1979 study report recommended that jail rules be established by the Combined Law Enforcement Council, which has since been absorbed by the Attorney General's office. Prior to 1979, jails were to be inspected by county commissions, which was rarely done. The Combined Law Enforcement Council had statutory authority to inspect jails but no authority to require governing bodies to correct deficiencies. Present law, as recommended by the committee in 1979, allows the Attorney General power to petition the district ourt for corrective action against noncomplying jails, including closure of the facilities. The fourth major problem addressed by the bill was a lack of law relating to city jails. Present law applies to city jails as well as county facilities.

The bill created NDCC Chapter 12-44.1. This chapter provides for establishment, maintenance, operation, and grading of local jails. Section 12-44.1-24 requires the Attorney General to adopt rules and regulations establishing minimum standards for the construction, operation, and maintenance of public or private juvenile detention centers, county and city jails, and regional correction centers. Section 12-44.1-06 provides three grades of jail facilities. Grade 1 jails may hold prisoners for up to one year, grade 2 jails may hold prisoners for up to 30 days, and grade 3 jails may hold prisoners for up to 90 hours.

Pursuant to NDCC Section 12-44.1-24, the Attorney General adopted North Dakota Administrative Code Article 10-05, effective November 1, 1981, providing minimum standards for jails in the state. The rules provide comprehensive coverage of operation of jails and include provisions relating to required facilities, juvenile detention, jail construction and renovation, supervision and security, inmate health care, safety, sanitation, food service, reading and legal materials, prisoner exercise and recreation, religious practices, disciplinary procedure, officer training, jail inspections, and other matters deemed relevant by the Attorney General. The Attorney General's office conducted inspections of all jails in the state and provided local officials with a report indicating required improvements to meet the jail standards as adopted.

Testimony

Representatives of the Association of Counties reported that counties are faced with great expenses to bring their facilities up to standards set by law. County representatives expressed many concerns relating to the jails study. County officials are uncertain how to proceed because they are uncertain whether the state will build satellite correctional facilities or supervise establishment of regional correctional centers. They hesitate to undertake the expense of construction of new facilities if the facility will be made obsolete in the future by construction of regional facilities by the state. County officials are uncertain how to proceed with multicounty agreements for operation of jail facilities. Major expenditures have been mandated by the state for local jails and state assistance is needed because local government is already faced with financial difficulty.

Daily jail and inmate maintenance expenses eventually exceed the expense of jail construction. The jail rules require additional staff to supervise jails, increased expenses for food, and other daily expenses which burden local government. Per diem charges for holding prisoners from other counties are $28 in Burleigh County, $20 in Cass County, $25 at the Lake Region jail facility, and $20 in Ward County. Officials said these charges do not cover the total cost of holding a prisoner for a day.

A county that holds prisoners for neighboring counties must estimate the number of prisoners from other counties and rely on that estimate in construction and operating budgets. If participating counties back out of these arrangements because of lower per diem charges available in another county, the county relying on revenue from prisoners from participating counties will be in a difficult position. County officials recommended state control of per diem rates charged by county jails to prevent price wars in per diem charges.

County representatives suggested that the state should provide counties per diem payments to cover the cost of holding prisoners in county jails. They recommended that per diem payments be provided for all prisoners, without regard to the reason for incarceration. Association of Counties spokesmen said per diem payments should be made to the county responsible for the prisoner rather than the county holding the prisoner since some counties must pay other counties to hold their prisoners. A county representative said he had undertaken a tour of other states to view their local jails and saw many newly constructed jails which were closed. Although money to construct these facilities had been raised, the daily cost of operating the facilities had proven to be too high to

maintain the facilities. Representatives of counties said state financial assistance is required to handle operating costs. They said the state sentences prisoners to county jails for violation of state laws and the state has mandated minimum standards for county jails so the state should be prepared to assume at least a portion of the cost of holding these prisoners.

County representatives said they do not favor the satellite jail facility concept recommended by the Legislative Council's State and Federal Government "B" Committee during the 1979-81 interim. Construction of satellite facilities by the state would not be complete for several bienniums and counties are under time pressure to invest in improvement of their facilities. If counties spend millions of dollars to improve their facilities only to find their facilities obsolete in 10 years due to construction of state facilities, it would be a waste of state and county funds. County representatives would prefer to upgrade local jails with state assistance rather than have the state invest substantial amounts in construction of satellite jail facilities.

County representatives informed the committee of their concerns with the jail rules. Small population counties cannot afford the expense of building and operating jails to meet the standards. These small counties will be forced to transport prisoners to other counties and the committee was asked to remember this expense in committee recommendations. County officials said the jail rules do not leave enough discretion to local officials in construction and operating a jail. The committee was requested to review the rules to determine whether more flexibility may be incorporated. The rules' requirement for a secure outdoor recreation area was said to be difficult to meet due to location of present jails and facilities available in counties.

The Association of Counties and the North Dakota Sheriffs Association recommended that grade 2 jails be allowed to hold prisoners for up to 90 days rather than the present 30-day limit and that grade 3 jails be allowed to hold prisoners for up to 96 hours rather than the present 90 hours since 96 hours is a full four-day period. Approximately two-thirds of the prisoners held in county jails are pretrial detainees. Only about one percent of prisoners are held for more than 90 days, and if counties are allowed to hold the rest of the prisoners for up to 90 days, many counties can avoid the major expense of converting to a grade 1 jail. This change could also reduce the burden on the State Penitentiary since counties would be able to hold prisoners who might otherwise have to be sent to the State Penitentiary. County representatives asked the committee to bear in mind impact of changes at the local jail level on the state prison system. Officials said Williams County would have sent 30 more prisoners to the State Penitentiary in 1980 if the Williams County jail had been a grade 2 jail. County officials said they would like some assurance that standards for grades of jails will remain the same in the future. They said if a county undertakes the expense of improvement to make their jail a grade 2 facility and then the standards for grade 2 jails are increased, a great deal of effort and county expense will have been wasted.

Association of Counties representatives said there is no question of whether to spend the money to upgrade county jails since improvements have been mandated by state law. The only question is whether the counties or the state will pay the cost for needed improvements. Increased taxes on the state or county level will be needed to fund the required improvements. County representatives suggested that an increased tax on alcohol might be an appropriate source of revenues for jail improvement and maintenance because the majority of incarcerations in local jails are related to the consumption of alcohol.

The Association of Counties recommended three funding methods for state assistance to counties for jail purposes including a grant program, low-interest loan program, and per diem expenses for holding prisoners in local jails. Grants and loans would be used for capital outlays to meet jail standards. State assistance in the form of per diem payments was requested because operating costs of local jails are a very significant expense and these costs have grown substantially due to imposition of new minimum standards for jail operation.

A representative of the North Dakota Sheriffs Association testified that a state satellite jail system may create problems in sentencing. Some judges allow work release programs for inmates of county jails and this option would not always be available in satellite facililties due to travel requirements of inmates.

A representative of the Director of Institutions' office testified that remodeling of the State Penitentiary does not include increased bed space and the Penitentiary is now operating at near capacity. He said anything that affects populations of jails on the local level will have an impact on the state jail system.

The overwhelming majority of persons incarcerated in local jails is held for less than three days. Only a small percentage is held for more than 90 days. Crowding in the State Penitentiary may increase the number of persons held for longer periods in county jails. If counties become the recipients of inmates for up to one-year sentences, then the state responsibility is shifted to counties and the expense, not only for jail construction, but also for maintenance for county facilities, should be shifted to the state according to testimony from the North Dakota State's Attorneys Association.

The warden of the State Penitentiary suggested that the state and the counties work together on jail problems. There is presently a space problem at the State Penitentiary. In April 1982 there were 349 prisoners at the State Penitentiary. At that time there were only 20 available bed spaces at the State Penitentiary and State Farm.

Seventeen county jails in the state hold 89 percent of county prisoners. These jails are the Attorney General's priority areas for inspection in hopes that these jails can be brought up to standards quickly. The county or city operating a jail informs the Attorney General's office what grade jail it wishes to maintain and jail inspections are then based on standards for that grade of jail. After inspections are completed, the Attorney General's office informs local officials what improvements must be made to bring the jail into compliance with the standards for that grade jail.

There are 45 county jails and 10 city jails in the state and all jails have been inspected at least once by the Attorney General's staff. Several jails in the state require substantial upgrading to bring them into compliance with the jail rules. Jails in LaMoure, Kidder, and Wells Counties and the city jail in Kenmare have been closed recently. None of these jails were closed by the Attorney General's office. The jails were closed by decision of governing bodies after receiving reports from the Attorney General of what improvements were needed to bring the jails up to standards.

The Attorney General said variances would be granted to allow noncomplying conditions to exist temporarily in cases where hardship may result. However, the variances will not be allowed indefinitely, and no variances will be allowed from fire safety requirements.

The Attorney General reported that the jail rules adopted as minimum standards for North Dakota jails

were the result of extensive research of state and federal case law, federal jail standards, and other relevant sources. The rules are intended to be consistent with federal case law, federal jail standards, and other relevant sources. The rules are intended to be consistent with federal case law regarding minimum standards which must be met in incarceration of prisoners. The Attorney General does not wish to be placed in the position of defending the state against a class action civil rights lawsuit regarding North Dakota's jails. The Attorney General will require compliance with the jail rules.

The Attorney General will recommend legislation to the next legislative session for state funding to local jails based on a per-day cost of inmate housing. The Attorney General said the state should share in the cost of housing prisoners because violators of state law are being held in county facilities at county expense.

The Attorney General said it is his opinion, based on case law, that 90-day facilities should be required to have outdoor recreation areas and contact visitation areas. He said the jail rules would be amended, unless the Legislative Assembly directs otherwise, to include these requirements for grade 2 jails if grade 2 jails are allowed to hold prisoners up to 90 days.

The cost to the state of providing a per diem payment of $20 to counties for holding felony prisoners in county jails was researched. Calculations based on available data estimated that 46.6 percent of days served in county jails are pretrial or postsentence days attributable to felonies. Applying this percentage to the 1981 statewide average daily population in county jails of 187 yields an average daily felony population of 87 in county jails. At a cost of $20 per day for 87 felony prisoners, the state would pay counties $1,270,200 for a biennium, assuming prisoner population remain at 1981 levels. The calculations were based on felony prisoners because felony violations are generally tried in district court, which is presently funded by the state, and the committee chose this as the division point between state and county financial responsibility.

Recommendations

The committee makes no recommendation regarding construction of state satellite correctional facilities. Although such facilities were recommended by an earlier legislative study, the committee found that the concept is not favored by county officials. County officials recommended that overlapping of state and county facilities should be avoided and improvement of county facilities is a goal which could be met in the shortest time period.

The committee recommends a bill to increase the time period for which grade 2 jails may hold prisoners from 30 days to 90 days and to increase the time period for which grade 3 jails may hold prisoners from 90 hours to 96 hours. Testimony presented to the committee was that some counties could operate as grade 2 jails if allowed to hold prisoners for up to 90 days, and thus avoid the considerable expense of renovation to meet grade 1 jail standards. The committee also took notice of potential effects on the State Penitentiary, and allowing grade 2 jails to hold prisoners up to 90 days rather than 30 days should minimize impact on State Penitentiary population. The increase to 96 hours for grade 3 jails will allow holding prisoners in these facilities for four full days. The bill provides that grade 2 and grade 3 jails do not need to provide outdoor recreation areas, contact visitation areas, or exercise rooms separate from day rooms. This provision is in response to the Attorney General's opinion that these requirements should be added for 90-day facilities unless legislation provides otherwise. The committee received testimony that counties are presently upgrading facilities to meet grade 2 jail standards, and increased standards may nullify those efforts.

The committee recommends a bill providing for creation of a fund for six percent interest loans for county and city jails to be administered by the Attorney General with a general fund appropriation of $3.9 million. The amount of the appropriation is taken from 1981 Senate Bill No. 2086 recommended by the State and Federal Government "B" Committee based on study of the needs of local jails. The committee did not approve a matching grant program which was considered. A loan program was preferred over a grant program since need will more likely be reflected in borrowing funds rather than applying for grant funds. The bill provides that loan funds are available for construction and renovation of jails or other programs necessary to meet standards imposed by state jail rules, so counties that do not maintain a jail will be eligible for loans. The bill directs the Attorney General to manage distribution of the loan fund, adopt rules for the program, provide assistance to political subdivisions applying for loans, ascertain compliance with loan criteria and jail standards prior to and after loan approval, and establish biennial priorities for disbursement of loan funds.

The committee recommends a bill for state payment to counties of per day costs for housing inmates. Payments will not be made for all prisoners in county jails and these payments will not cover the entire cost of holding a prisoner. The bill provides that the Attorney General shall make annual payments to counties of $20 for each day a prisoner is held in county jail either after being bound over to district court for trial or after being sentenced to a county jail by a district court. The district court level was selected as an appropriate division point between state and county financial responsibility since the state assumed funding responsibility for district courts in 1981. It is consistent with that policy for the state to contribute to the cost of holding persons in jail who are awaiting trial in district court or who have been sentenced by a district court. The bill provides that the payments shall be made to the county responsible for the cost of incarceration of a prisoner. This provides financial assistance whether the county holds prisoners in its own jail or transports prisoners for detention in other county facilities. Counties will not be reimbursed by the state for holding prisoners from other counties but will have to reach agreements for reimbursement with the county of origin of the prisoner.

ANTITRUST IMMUNITY OF POLITICAL SUBDIVISIONS

The committee studied the ramifications of the United States Supreme Court decision in the case of Community Communications Company, Inc., v. City of Boulder, Colorado, 102 S.Ct. 835 (1982). This is the most recent of a line of Supreme Court decisions regarding the state action exemption from federal antitrust laws. The state action exemption originated in the Supreme Court decision in Parker v. Brown, in 1943, which provided that certain actions of states are immune from antitrust challenge under the Sherman Antitrust Act. The court in Boulder found municipal ordinances to be in violation of antitrust laws where the ordinances prohibited a cable television company from expanding its operations. The city argued that its status as a home rule city under state law extended state immunity from antitrust laws to the city but the court disagreed. The court ruled that unless challenged action constitutes action of the state itself in

its sovereign capacity, or unless it constitutes municipal action in furtherance or implementation of clearly articulated and affirmatively expressed state policy, the action is not covered by the state action exemption. The court held that a grant of home rule powers is not a sufficient expression of state policy regarding the challenged action. Although the Boulder decision involved municipal action regarding cable television franchising, it is clear from the decision that antitrust liability may attach to any municipal action unless the action is in furtherance or implementation of clearly articulated and affirmatively expressed state policy. Antitrust liability exposure may embroil cities in litigation from challenges to exercise of any municipal power.

Testimony

The North Dakota League of Cities expressed concern about potential antitrust liability in all municipal regulatory actions. The League of Cities hoped to provide the committee with model legislation to extend the state exemption from antitrust liability to municipalities but no model legislation was found. The National League of Cities has concentrated its efforts on federal rather than state legislation in hopes of obtaining antitrust exemption for cities. The North Dakota League of Cities requested legislation to extend the immunity of the state of North Dakota to the cities of North Dakota in all municipal actions.

Recommendation

The committee recommends a bill to provide that all immunity of the state from the provisions of the Sherman Antitrust Act is extended to any city or city governing body when acting within the scope of the grants of authority contained in North Dakota Century Code sections granting powers to cities, home rule cities, or city governing bodies. The bill provides that when acting within these grants of authority a city or city governing body is presumed to be acting in furtherance of state policy. The statutory powers delegated to cities are assumed to be a statement of state policy that those matters be handled by city officials.

CHARITABLE GAMBLING STUDY

Background

Until the primary election in September 1976, the Constitution of North Dakota prohibited gambling in any form. The voters of the state approved the 1976 amendment to Section 25 of Article XI of the Constitution of North Dakota which leaves to the Legislative Assembly the decision on the bounds of legalized gambling. Subsequent legislation has defined the limits of games of chance permitted.

The 1977 Legislative Assembly passed House Bill No. 1264 which provided certain forms of legalized games of chance through June 30, 1979. It allowed nonprofit veterans, charitable, educational, religious, and fraternal organizations, civic and service clubs, and public-spirited organizations to conduct games of chance. Games of chance allowed were bingo, raffles, pull tabs, tip jars, and punchboards. The entire net proceeds of these games of chance were to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses. The bill gave the Attorney General licensing authority over organizations conducting games of chance.

1979 House Bill No. 1215 extended authorized gambling in the state until June 30, 1981. Using the 1977 law as a basis, the bill added sports pools to the list of games permitted. The bill also allowed college fraternities and sororities to conduct raffles and bingo upon application and approval by city government. In 1979 the tax on games of chance was increased from three to five percent of the eligible organizations' adjusted gross proceeds. In 1980 the state received $408,370 in general fund revenue from the tax. Another change made by the 1979 law allowed organizations eligible to conduct gambling but not licensed by the Attorney General's office to use net proceeds for direct benefit.

In 1981 the Legislative Assembly enacted House Bill No. 1277. This bill added twenty-one (blackjack) to the list of games of chance allowed and empowered the Attorney General to adopt necessary rules to govern operation of games of chance. The bill provided that wagers would be limited to $2 in blackjack games and only two blackjack hands may be played by one player. The 1981 bill revised the taxation of games of chance by providing that the state's five percent share would come from the net proceeds of gaming rather than from the adjusted gross proceeds. Total expenses for games of chance allowed to be retained by eligible organizations were set at 35 percent of the adjusted gross proceeds. The 1981 bill was not a temporary measure and was thus codified as NDCC Chapter 53-06.1.

Chapter 53-06.1 changed licensing requirements for eligible organizations. Under the 1979 law, eligible organizations which maintained a building for use of members and guests were required to obtain a license from the Attorney General's office. Any other eligible organization was required to apply to the governing body of a city or county for a license. Under Chapter 53-06.1, the Attorney General licenses all eligible organizations except those desiring to conduct raffles or bingo in which the primary prize does not exceed $1,000 and the aggregate does not exceed $2,000. Applicants licensed by the Attorney General are now given a Class A or a Class B license. A retail alcoholic beverage dealer may obtain a Class A license if the dealer maintains a building for use of members and guests. Otherwise Class B licenses must be obtained. Class A licensees are limited to one location for conducting games of chance. Class B license applicants must obtain a permit for a proposed site for conducting games of chance from the governing body of the city or county before making license application to the Attorney General. There is no limit of the number of sites upon which Class B licensees may conduct games of chance. Under Chapter 53-06.1, city and county governments receive no revenue from games of chance other than a fee for approval of Class B license sites of $10 per site.

Due to rapid growth of charitable gambling, the Legislative Council chairman directed the committee to study issues relating to operation of games of chance. The study was directed to be limited to the appropriate scope of charitable gambling, the appropriate level of enforcement of the gambling statutes provisions, the appropriate level of taxation, and the appropriate portion of the proceeds to be devoted to charitable purposes.

Testimony

Representatives of several organizations favoring charitable gambling in the state presented testimony. The committee heard testimony from representatives of the Red River Human Services Foundation, North Dakota Beverage Dealers Association, Centre, Inc., Council of Clubs, Cystic Fibrosis Association, Cystic Fibrosis Foundation, Fargo Convention and Visitors Bureau, Prairie Public Television, Fargo-Moorhead Civic Opera Company, a blackjack dealers school in Las Vegas, and

several fraternal organizations. Representatives of these groups were unanimous in their support for the committee's study of existing law relating to games of chance. Views and concerns expressed by representatives of these groups included:

1. Receipts from games of chance are an important source of revenue for charities. Charitable organizations are able to furnish greater services due to the availability of revenues from games of chance.
2. The share of gaming proceeds organizations may retain for expenses should not be increased from the present 35 percent limitation because the bulk of funds generated by games of chance are to go to charitable purposes.
3. An appropriation should be provided to the Attorney General's office and funds should be made available for local law enforcement, for enforcement of games of chance rules and law. Increased enforcement efforts are needed. The revenue from the tax on games of chance should be used for enforcement purposes, not as a revenue source for the state.
4. There is no validity to arguments that only bingo and raffles were meant to be approved by voters on the constitutional amendment in 1976. There was no mention of bingo and raffles on the ballot in 1976.
5. Charitable gambling in the state has been of benefit to hotels, restaurants, bars, and other businesses and helps cities to attract convention business.
6. Charitable gambling creates jobs.
7. There are not as many problems with charitable gambling as may appear to exist from media coverage.
8. Limitations on minors gambling and Sunday gambling, and hours restrictions on gambling should be imposed.
9. No restrictions should be placed on sending the proceeds of charitable gambling out of state because some disease research is only conducted at out-of-state facilities.
10. Gambling activity growth will level off as the novelty wears off of legalized gambling.
11. Local government should control site approval for games of chance.
12. Rent paid to sites by Class B licensees should be controlled to prevent bidding wars for desirable locations.
13. Organizations conducting games of chance must refine internal controls to prevent loss of funds.
14. An Internal Revenue Service ruling that gaming activity is an unrelated business and income from this activity is subject to income tax must be reversed. If this tax ruling stands, a great deal less money will be available to charities from charitable gambling.
15. Penalties for cheating in games of chance should be the same as the penalties provided for other types of theft.
16. Law enforcement needs more training to detect cheating in games of chance.

The North Dakota League of Cities expressed appreciation of state law and Attorney General's rules which allow cities the freedom they have to regulate charitable gambling. The League of Cities made the following recommendations:

1. Local work permits should be required for all persons actually connected with the handling of gambling activities relating to blackjack and tip jars.
2. A $500 general gambling tax for each license to conduct games of chance, a $200 license fee for each table for blackjack, and annual license fees based on the payoff of tip jars should be imposed with revenues to go to cities and counties for law enforcement purposes.
3. Operation of games of chance should be limited to the premises of licensed liquor establishments except for bingo and raffles.
4. Auditing of books of organizations conducting games of chance should be done by the Attorney General's office.
5. The tax on charitable gambling proceeds should be increased to seven percent with two percent being returned to the siting authority.
6. Definitions of organizations eligible to conduct games of chance and charitable uses of proceeds of games of chance should be refined.

Representatives of the American Lutheran Church testified that their organization opposes gambling, whether legal or illegal, but supports the study. They expressed concern about gambling because of its possible effect on the quality of life in North Dakota. They said charitable gambling sets a poor example for young people, is destructive to family life, and creates a need for increased taxes for law enforcement. Church representatives asked the committee for efforts to control and restrict the growth of charitable gambling.

The State Director of Vocational Education testified that the department is responsible for licensing blackjack dealer schools. Licensing of these schools by the Attorney General's office was suggested. Reasons given for transferring the licensing authority include the basic responsibility of licensing gaming in the Attorney General's office and the Attorney General's knowledge of games of chance. The director said the department lacks the expertise to license blackjack dealer schools.

Second quarter statistics for 1982 show a 10 percent growth in charitable gaming compared to a 12 percent growth for the first quarter of 1982. This indicates that the growth of charitable gaming appears to be slowing down. The number of Class A and Class B permits is also down at present from earlier totals.

The Attorney General recommended that approval of accounting procedures for organizations involved in charitable gambling should be through the Attorney General's office and enforcement of the rules of charitable gambling should also be a responsibility of the office. The Attorney General said the office is understaffed to regulate charitable gambling at present but the office has investigated every complaint received relating to charitable gambling. The Attorney General recommended that an appropriation be made to provide for a larger staff to handle enforcement of regulations and auditing related to charitable gambling and that the appropriation be made available as soon as possible in 1983 to allow hiring and training of staff to speed entry of new employees into the enforcement field. The estimated cost of enforcement through the Attorney General's office is approximately $1 million for the first year of the 1983-85 biennium and approximately $600,000 for the second year of the biennium. These calculations do not include increases for raises or inflation and do not include funds for monitoring a work card system for persons involved in conducting games of chance. The Attorney General's office has no appropriation for enforcement of charitable gambling regulation and the staff for enforcement of charitable gambling consists of three persons. The Attorney General said the office is seriously understaffed in attempting to enforce rules for 352 sites operating games of chance and in providing training for local law enforcement agencies. Revenues from the state's five percent tax on charitable gambling proceeds would cover

the costs involved in enforcement by the Attorney General's office.

The Attorney General recommended that restrictions be placed on bingo and raffles operations because these are increasing in volume in the state. The Attorney General recommended a work card system for persons employed in games of chance and legislation dealing with cheating in games of chance and penalties for cheating. The Attorney General recommended that cities be given power to limit the number of blackjack tables on any particular site and to limit the number of sites for any licensee.

Statistics provided to the committee by the Attorney General's office indicated that net proceeds earned for the fiscal year ended June 30, 1982, totaled approximately $11,400,000. For that period gaming tax collected by the state for deposit in the state general fund totaled $923,813.

Recommendation

The committee recommends one bill which is a consolidation of several bill drafts relating to the regulation of the conduct of games of chance. The bill places limitations on hours during which games of chance may be conducted and persons who may play games of chance, allows regulations by cities and counties of the number of blackjack tables per site and number of sites per organization within their jurisdiction, establishes a permit fee to be paid to siting authorities for blackjack tables, increases site approval fees to siting authorities, redefines public-spirited organizations, requires acceptance of $1 wagers in the game of blackjack, and provides for a graduated tax on the proceeds from games of chance with payment of a portion of the tax collected to the siting authority.

The bill redefines public-spirited organizations by requiring that such organizations must have been in existence within this state for two years prior to conducting games of chance. This requirement was omitted from the present definition of public-spirited organization although other eligible organizations are required to have been in existence in this state for two years prior to licensing.

The bill increases the license fee paid to governing bodies for site approval from $10 to $150. This increase is due to the cost of local law enforcement and granting site approval.

The bill provides that eligible organizations must pay an annual permit fee of $20 to the siting authority for a permit for each blackjack table on each site where games of chance are conducted by the license holder. This permit fee allows local government more revenue from games of chance to provide for enforcement of games of chance laws.

The bill provides limitations on hours and participation in games of chance. Persons under 21 years of age may not participate in the games of pull tabs, jars, punchboards, twenty-one, or sports pools. Persons under 21 years of age would still be eligible to participate in games of bingo or raffles. The bill provides that games of chance conducted on premises where alcoholic beverages are dispensed may be conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the political subdivision. Raffles and bingo conducted on premises where alcoholic beverages are not dispensed may be conducted on Sundays and holidays.

The bill provides that a wager of $1 must be accepted in the game of blackjack. Present law provides only that a maximum wager is $2. Several organizations in the state have established a rule that only $2 wagers are accepted. Committee members said that $1 wagers should be accepted in any blackjack game to maintain the recreational aspect of blackjack.

The bill provides for a city or county to regulate the number of blackjack tables allowed on any site within its jurisdiction and to regulate the number of sites allowed to any single eligible organization.

The bill provides for a graduated tax on adjusted gross proceeds received by licensed eligible organizations based upon quarterly proceeds earned by an eligible organization at the following rates:

1. On adjusted gross proceeds not in excess of $10,000 per quarter, a tax of five percent.
2. On adjusted gross proceeds in excess of $10,000 and not in excess of $100,000 per quarter, a tax of seven percent.
3. On adjusted gross proceeds in excess of $100,000 and not in excess of $200,000 per quarter, a tax of 15 percent.
4. On adjusted gross proceeds in excess of $200,000 per quarter, a tax of 40 percent.

The Attorney General is required to pay the first two percent of adjusted gross proceeds collected as tax under this provision to cities and counties in proportion to the tax collected from eligible organizations conducting games of chance within the city, for sites within city limits, or within the county, for sites outside city limits. The remaining tax collected is to be deposited in the state general fund. Only earnings above the bracket amounts are subject to the higher rate of tax. The graduated tax is intended to discourage large-scale gambling activities by organizations.

REAPPORTIONMENT COMMITTEE

House Concurrent Resolution No. 3061 directed the Legislative Council to study and develop a legislative reapportionment plan or plans to be reported as soon as possible during the legislative interim or to the 48th Legislative Assembly. The chairman of the Legislative Council appointed the members of the Reapportionment Committee, following the makeup provided in Joint Rule 305. The chairman directed the committee to study and select one or more reapportionment plans for consideration by the 1981 reconvened Legislative Assembly.

Committee members were Senators Jack Olin, Cochairman, Donald Hanson, Raymon Holmberg, Don Moore, and Harvey Tallackson; and Representatives William Kretschmar, Cochairman, Ronald Anderson, Brynhild Haugland, Alvin Hausauer, Irven Jacobson, Bruce Larson, and Lawrence Marsden.

The committee completed its work on October 16, 1981. The report of the committee was submitted to the Legislative Council at a meeting of the Council in October 1981. The report was adopted for submission to the continued Forty-seventh Legislative Assembly.

BACKGROUND

In 1980 the Legislative Council contracted with the Bureau of Governmental Affairs, University of North Dakota, for a computer-assisted legislative reapportionment capability. Professor Floyd Hickok, a geographer at the University of North Dakota, was assigned that work. Professor Hickok was instructed by the Legislative Procedure and Arrangements Committee in 1980 to devise a plan which did not cross the Missouri River.

PLAN REQUIREMENTS

The committee received information that indicated:

1. The United States Supreme Court has not clearly ruled what population deviation would be allowed in a state legislative plan. A three-layered standard for population equality appears to be developing. For a plan with up to a 10 percent deviation, the burden of proof may rest more on the challenger to show that there is invidious discrimination against a racial or political group. For a plan with a deviation of 10 percent to 16.5 percent, the burden may rest on the state to show that the plan is needed to implement a rational state policy. Any plan with an overall range of 16.5 percent or higher appears to be unjustifiable.
2. If the Missouri River is not crossed and the population deviation is kept within 10 percent, a 47- or 53-district plan would best serve both the east and west sides of the river.
3. A 53-district plan would result in the least disruption of existing lines. A district could be added in the three parts of the state with the most population growth--the Fargo area, the Bismarck area, and the area west of the Missouri River.

The committee instructed Professor Hickok to develop a plan for the committee based upon the following criteria:

1. The plan should have 53 districts.
2. The plan should retain as many districts in their present form as possible.
3. No district could cross the Missouri River.
4. The population variance should be kept below 10 percent.

Professor Hickok presented a report in which the state was divided into 11 blocks. Under this approach each block could be divided into districts completely independent of how other blocks are divided. Each block was composed of one or more complete counties and divided evenly into new districts. Each block corresponded to a group of existing districts with only minor boundary changes. The report presented a number of alternatives for dividing most blocks. There were a possible 27,468 different combinations among the alternatives presented.

The smallest district proposed in Professor Hickok's report was 11,590 (5.89 percent under the ideal district size of 12,315). The largest proposed district was 12,815 (4.06 percent over the ideal size). If both of these districts were used in the same plan, the overall population deviation would be 9.95 percent — under the goal of 10 percent deviation.

PUBLIC INPUT

A copy of Professor Hickok's report was mailed to every legislator and every district chairman in the state. The committee invited alternative suggestions to Professor Hickok's plans, either through testimony or correspondence. Anyone presenting alternatives to the committee was requested to stay within the criteria Professor Hickok was required to follow.

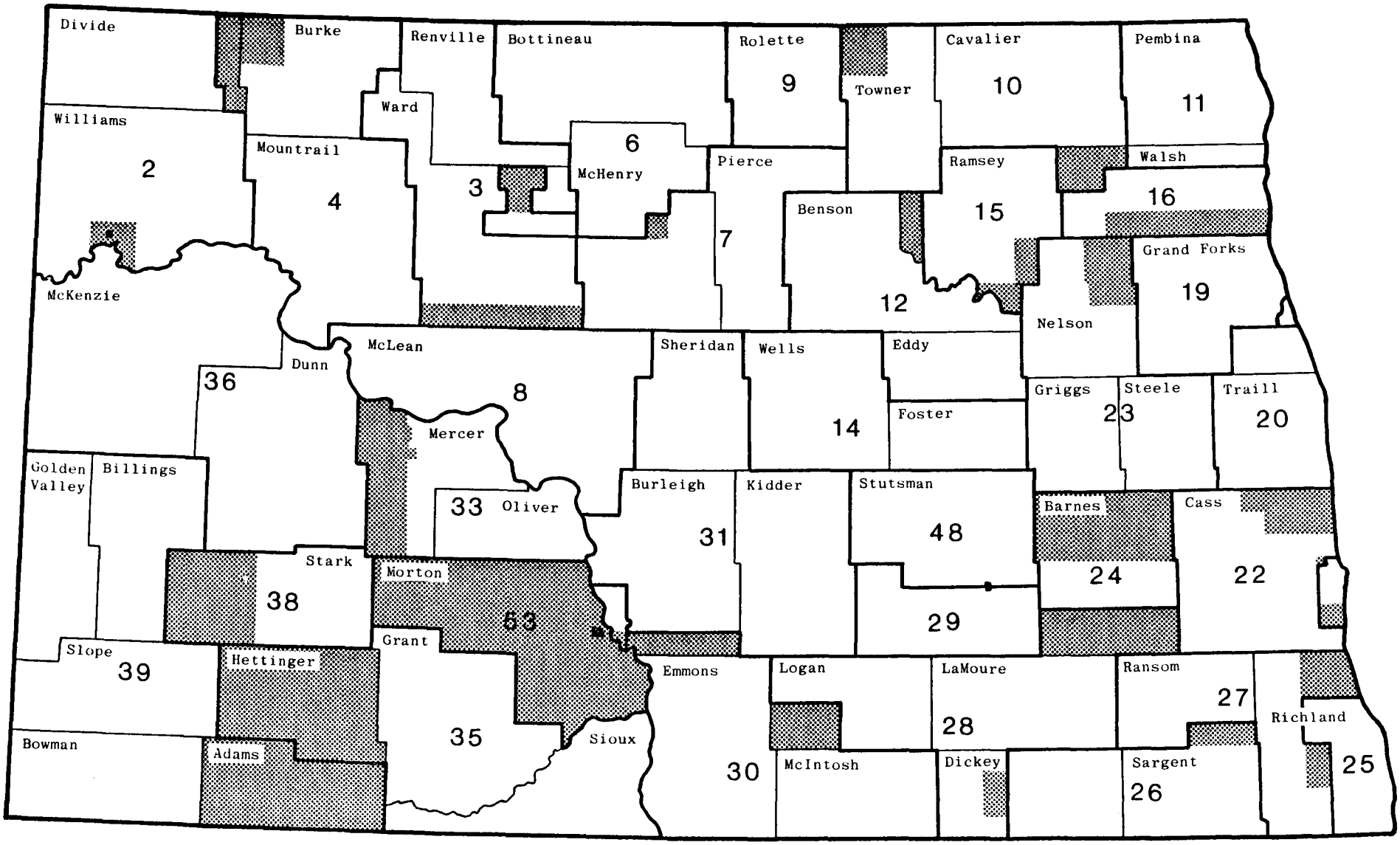
Two public input meetings were held at which a number of alternatives to Professor Hickok's plans were presented.

COMMITTEE RECOMMENDATION

The bill draft recommended by the committee incorporates parts of Professor Hickok's plans and many of the plans presented as alternatives to the committee. With one exception, the plan does not cross any block lines. The plan adopted by the committee contains 53 districts; has a population variance of 9.93 percent; provides for two multisenator districts, one in Grand Forks and one in Minot; and has no district which crosses the Missouri River. The recommended bill draft also:

1. Provides for the staggering of terms of senators. Senators in even-numbered districts are allowed to serve out their terms except in those districts with over a 25 percent increase in population.
2. Provides for reorganization of political parties after reapportionment.
3. Provides for county commissioners to serve out their terms if they continue to be elected in the same manner — either at large or in districts — as elected at the last election. If two holdover commissioners are placed in the same district, an election must be held in that district.

LEGISLATIVE DISTRICTS AS PROPOSED BY THE REAPPORTIONMENT COMMITTEE



RECORDS MANAGEMENT COMMITTEE

House Concurrent Resolution No. 3051 directed a study of records management and public printing policies of state government, including the role of the Secretary of State as State Records Administrator, agency records management practices, and use of storage space. Senate Concurrent Resolution No. 4076 directed a related study of the extent of, and means for reducing, governmental paperwork in the state. The studies were assigned to the Records Management Committee.

Committee members were Representatives Oscar Solberg, Chairman, Orlin Hanson, Dean Horgan, Herman Larson, Burness Reed, Verdine Rice, and Michael Unhjem; and Senators Donald Hanson, Bonnie Miller Heinrich, L.L. Naaden, and Wayne Stenehjem.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

BACKGROUND

The Records Management Act was adopted by the 1961 Session of the Legislative Assembly. Codified as North Dakota Century Code Chapter 54-46, the Act authorized the Secretary of State, as State Records Administrator, to establish standards and procedures of effective records management for all executive branch agencies and to provide similar assistance as requested to the legislative and judicial branches. Agencies were to develop schedules of retention periods for all records; destruction or other disposition was subject to review by the administrator in consultation with the agency head concerned.

Concern with the legal and historical significance of state records led in 1971 to inclusion of the Attorney General and a representative of the State Historical Society in the chain of review prior to disposition. Also in 1971 the Legislative Assembly created the Central Microfilm Unit and placed that related program in the Secretary of State's office. Legislation adopted in 1977 mandated the position of State Archivist and designated the Historical Board as the official state archives. The archivist then replaced the previously designated representative of the Historical Society in the disposition phase of records management.

Records management has been limited in its effectiveness by inadequate space and staff and particularly by the lack of a central facility for storage and reference of inactive state records, according to opinions expressed in testimony at several legislative sessions since 1961. The lack of such a facility has meant that agencies must devote high-cost office space and personnel time to maintaining records which are needed infrequently but cannot yet be destroyed.

Along with the growth of concern about the cost of maintaining existing records is the parallel concern with the volume of information requests state government makes of its own agencies and others--requests that often lead to still more records. The National Federation of Independent Business (NFIB) played an important role in Congress' attempt to manage federal paperwork, enactment of the Federal Paperwork Reduction Act of 1980 (P.L. 96-511). The group is urging states to follow the federal government's lead by assessing their own systems.

MEETINGS AND TESTIMONY

The committee held five meetings during the interim. Testimony revealed that activity in records management varies widely among state agencies. Of those that are active, the Records Management Division under the control of the Secretary of State has helped some develop systematic programs; others have used outside sources or developed expertise within the agency itself. A problem frequently noted was the inability of the small records management staff to work with all agencies needing help. The Secretary of State testified that the lack of a records center, besides forcing less efficient use of office space, probably leads to microfilming records which are not suitable, simply to reduce the space needed for storage. Another problem noted was the delay in records destruction due to the process of individual review.

To enhance its understanding of the issues, the committee called on Dr. Mark Langemo of the University of North Dakota Department of Business and Vocational Education. A recognized lecturer on records and office management, Dr. Langemo briefed the committee on relevant concepts and trends and pointed out potential benefits of a comprehensive paperwork management program. His recommendations for strengthening the program are:

1. North Dakota needs a full-time professional "records manager" who is the State Records Administrator with the function of directing records management in North Dakota state government and who reports directly to the Governor.
2. North Dakota needs an "Information and Records Management Advisory Board" consisting of a designated records officer from each state agency and whose functions should include participating in statewide information and records management planning and implementation.
3. "Information and records management programs pay for themselves many times over in both direct and indirect savings." The Information and Records Manager should be ultimately responsible for development and presentation of budgets and justifying requests for funding the information and records management program to the Legislative Assembly.
4. Numbers of staff persons necessary to plan and implement a statewide information and records management program will probably not need to be increased over present levels — at least on a long-term basis.
5. The citizens of North Dakota deserve to know that cost-effective, well-planned, and professionally managed information and records management is a priority of their leaders.

The benefits of the records management program proposed by Dr. Langemo are:

1. Increased effectiveness of individual legislators, administrators, and support personnel.
2. More rapid services to people within the state.
3. Less "administrative information handling" to free time for planning and management.
4. More accurate and timely information as a basis for legislative and administrative decisions.
5. Increased office productivity and greater return on investment.
6. Save working time of present personnel and slow the rate of hiring more people.
7. Strict compliance with federal and state information legislation.
8. Centralized administration of the records management function.
9. Standardization of systems, procedures, methods,

technologies, service, and personnel training needs.
10. Minimize training-learning time for new legislators, administrators, and support personnel.
11. More rapid retrieval, distribution, use, storage, and disposition of information.
12. Less misplaced information and greater file integrity.
13. Implementation and use of standardized storage and retrieval systems (standardization filing systems).
14. Full utilization of the potential of micrographics.
15. Standardization of equipment and uniform approaches for selecting and implementing technologies.
16. Selection of appropriate media (paper, micrographics, electronic) and appropriate applications for each media.
17. Centralized control over inactive records.
18. Controlled retirement (disposition or archival retention) of all records.
19. Organized forms, reports, and directives management, reduction in numbers of forms, improved forms designs, and lower forms costs.
20. Appropriate utilization of word processing to assist in the performance of records management functions.
21. Savings of space and more effective utilization of space.
22. More specific and clear-cut position and job descriptions which clarify information processing responsibilities.
23. More consistent cost-benefit analyses in the planning of records and information systems.
24. Delineation and clarity in the roles of the "information professionals" (accounting, records management, data processing, word processing, reprographics and printing, telecommunications, and other systems personnel).

The committee also received information concerning records management and paperwork reduction programs in other states. The North Dakota chapter of NFIB urged consideration of legislation similar to that adopted by the Indiana Legislature which created a forms management program. Mr. Edwin Howell, Director of the Indiana Commission on Public Records, reported to the committee on the development of that program. He said the state of Indiana has saved substantial sums of money by simplifying and standardizing forms, reducing reporting requirements where possible, and consolidating forms purchase and distribution procedures.

TASK FORCE

Pursuant to committee motion, the staff worked with representatives of several state agencies in a task force which reviewed current statutory provisions. The group discussed possible ways of improving records management and agreed that the involvement and support of top administrators is an essential element. Concern was expressed that the combined records management and microfilm operations were not adequately staffed to provide agencies with the necessary services and training.

A bill draft containing recommendations of the task force was prepared and presented to the committee. Its primary proposals for change were (1) definition of a record; (2) relocation of records management functions from the Secretary of State's office to the Office of Management and Budget; (3) establishment of a center for inactive records; (4) a records coordinator within each agency; and (5) a committee approach to approval of record retention and disposition schedules. This bill draft was presented to the committee and was the basis for the bill referred to later in this report to implement the committee's recommendations regarding records management. In a letter dated August 5, 1982, Governor Allen Olson asked that if the committee planned to submit a bill changing the location of the records management function, that it be transferred to the Office of Management and Budget. The committee recommends in recommendations presented later in this report, however, that the person in charge of the records management function report directly to the Governor because of the importance of the function.

SURVEYS

Two surveys were conducted during the course of the study. The first involved contact with 56 state agencies in the Bismarck area regarding the extent of micrographic reproduction of records. About half indicated at least some use of microfilm, and the survey showed that at least three agencies have a greater investment in micrographics equipment than does the Central Microfilm Unit. Under present statutory authority, the Secretary of State has discretion to permit agencies to obtain services from other facilities. He could also transfer certain agency equipment to the Central Microfilm Unit if deemed necessary.

The Legislative Council staff conducted a survey on forms of the State Health Department, State Highway Department, Department of Human Services, Job Service North Dakota, Secretary of State, State Laboratories, Tax Department, and Workmen's Compensation Bureau to collect information for the Records Management Committee.

The estimated number of different forms used by each of these agencies is State Health Department — 878; State Highway Department — 1,300; Department of Human Services — 942; Job Service North Dakota — 1,000; State Laboratories Department — 150; Tax Department — 370; and Workmen's Compensation Bureau — 140.

The survey included a questionnaire and a review of selected forms used by these agencies. The form samples were reviewed for standardization of design, duplication of information requests by other state agencies, and possible consolidation of forms within an agency.

In evaluating the form samples for standardization of design, several forms design principles from the "Forms Management Manual" of the state of Indiana were used. The principles used and the evaluation results are:

1. CAPTIONS — They are short versions of questions or instruction. They help provide better management information with less effort. Good captions:
   a. Provide answers in less time.
   b. Reduce training for employees.
   c. Reduce or eliminate the need for detailed procedural instructions.

   Comment: In general, the forms that were reviewed had good captions. Occasionally abbreviations were used that are unique to a certain occupation or industry and are not easily understood by persons outside of these occupations or industries.

2. INSTRUCTIONS — Most forms should be self-instructing. Only items that need explanation should have instructions, and they should be located so as to be seen by the user as needed. It is almost always wrong to have fill-in instructions on the bottom of a form or on the back.

Comment: All of the agencies included in the survey had some forms with fill-in instructions placed on the bottom or back of the form. This procedure is not as efficient as placing the instructions so as to be seen by the user as needed.

3. CAPTION PLACEMENT — There are many ways of arranging the captions and related fill-in space on a form. The box design or upper left caption (ULC) style is better because:
   a. Captions become secondary after the data is entered.
   b. No writing space is used up by the caption.
   c. Typewriter tab stops are easier to set up.
   d. Captions are not hidden by typewriter mechanism during fill-in.
   e. It is easier to provide the proper amount of space for each entry.
   f. It allows for a smaller, more compact and efficient space for the entry of data.

Comment: The box design or ULC style is not used to a great extent by most of the agencies. The box design may not be appropriate for all types of forms, such as form letters, but it should be used to a much greater extent for the benefit of both the agency and the user.

4. FORM TITLE — Every form, regardless of size or quantity, should have a title descriptive of its purpose.

   Comment: Most of the forms that were reviewed had titles. However, the titles were not always descriptive of the forms purpose and occasionally, forms did not have a title.

5. FORM NUMBER — Every form should be given a number in order to maintain an inventory and control tool.

   Comment: Five of the agencies numbered most or all of their forms. One agency had some forms numbered and two agencies did not number their forms.

The following is an example of a form from Indiana to illustrate these design principles:

RECORDS DESTRUCTION NOTIFICATION

SFCN-16

INSTRUCTIONS:

1. *Please type or print in ink.*
2. *Refer to Records Measurement Table at right to convert records to cubic feet when recording quantity destroyed.*
3. *Forward completed notification to address below.*

COMMISSION ON PUBLIC RECORDS
407 INDIANA STATE LIBRARY
140 N. SENATE AVE.
INDIANAPOLIS, INDIANA 46204

RECORDS MEASUREMENT TABLE

1 Archives box (10"x12"x15" inside) = 1 cu. ft. of records
1 Letter size file drawer=1½ cu. ft. of records.
1 Legal size file drawer=2 cu. ft. of records.
1 No. 11 Record transfer box=2 cu. ft. of records.

1 Linear foot of 8½"x14" documents = 1 cu. ft.
1 Linear foot of 8½"x11" documents = 4/5 cu. ft.
1 Linear foot of tab cards = 1/6 cu. ft.
1 Linear foot of 3"x5" cards = 1/9 cu. ft.

Agency	
Division	
Record Series No.	Volume Destroyed in Cu. Ft.
Record Series Title	
Item No.	Date of Records
Method of Destruction	Date of Destruction
Agency Records/Forms Coordinator Signature	

There did not seem to be a significant amount of duplication in requests for information by these agencies. There is a potential for consolidating forms within some of the agencies; however, consolidation of two or more forms into one will reduce printing costs, storage space, and time spent in processing forms. Although the review included only seven state agencies, it found examples indicating a need for improvement in forms management in state government.

RECOMMENDATIONS

The committee recommends one bill to the Legislative Council. The proposal submitted by the task force was amended and expanded to provide for a comprehensive records management program which also includes forms management. The bill creates an independent information management agency with a director appointed by the Governor. Existing records management functions currently supervised by the Secretary of State are transferred to this new agency.

Decisions concerning the retention and disposition of state records are to be made by the Committee on Information Management, consisting of the Governor, Attorney General, State Auditor, and Secretary of State, or their designated representatives, and State Archivist. Each agency is to designate a records coordinator to carry out the program in the agency and serve as the agency's liaison with the Office of Information Management. The bill with some exceptions defines a record as something that contains data or information in any form and recorded in any manner except preliminary drafts. notes, or memoranda which are not retained in the ordinary course of business. A form means any document designed to record information and containing blank spaces and which may contain headings, captions, boxes, or other printed or written devices to guide the entry and interpretation of the information.

Also design and revision services are to be provided for forms that do not meet established standards. All forms are to be reviewed for purposes of standardization, consolidation, or elimination where possible. The bill provides that, unless a waiver is obtained, executive branch agencies must submit any proposed new or revised forms to the Office of Information Management for approval. The office should assist the agency with any recommended revisions to forms to design them as well as possible.

Another new aspect of the program is the operation of a records center for storage and retrieval of inactive state records. The committee recommends that the Director of Institutions provide suitable space for a state records center.

At its last meeting the committee considered adding a policymaking function to the duties of the Committee on Information Management and to add one member of each house of the legislature to that committee; however, no action was taken to include such a provision in the bill.

FISCAL IMPACT

The estimated cost during the 1983-85 biennium of implementing the recommendations are:

Forms management		$181,833
Micrographics	$139,017	
Less revenue	59,140	79,877
Records center		222,640
Total		$484,350

These amounts include $100,000 for rental of 10,000 square feet of space for the records center. If the space is provided in the Capitol without cost by the Director of Institutions, the estimated cost should be reduced by this amount. The appropriations for the 1981-83 biennium for the records management function including micrographics is $344,291. The state records manager estimates that the value of space which could be used for other purposes upon the establishment of a records center is $599,400 per year.

RETIREMENT COMMITTEE

North Dakota Century Code (NDCC) 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. Section 54-35-02.4 provides:

1. The committee on public employees retirement programs shall consider and report on those legislative measures and proposals over which it takes jurisdiction and 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. To carry out its responsibilities, the committee, or its designee, is authorized to:
   a. Enter into contracts, including retainer agreements, with an actuary or actuarial firm for expert assistance and consultation.
   b. Call on personnel from state agencies or political subdivisions to furnish such information and render such assistance as the committee may from time to time request.
   c. Establish rules for its operation, including the submission and review of proposals and the establishing of standards for actuarial review.
3. The committee may 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.
4. A copy of the committee's report concerning any legislative measure shall, if that measure is introduced for consideration by a legislative assembly, be appended to the copy of that measure which is referred to a standing committee.
5. A legislative measure affecting a public employees retirement program shall not be introduced in either house unless it is accompanied by a report from the committee. A majority of the members of the committee, acting through the chairman, shall have sole authority to determine whether any legislative measure affects a public employees retirement program.
6. Any amendment made during a legislative session to a legislative measure affecting a public employees retirement program shall not be considered by a standing committee unless it is accompanied by a report from the committee on public employees retirement programs.
7. Any legislation enacted in contravention of the provisions of this section shall be invalid and of no force and effect, and any benefits provided under such legislation shall be reduced to the level current prior to enactment.

Committee members were Representatives Robert Martinson, Chairman, Rosie Black, Irven Jacobson, and Gordon Larson; and Senators James Cussons, James Dotzenrod, and Ron Quail.

In addition to its statutory responsibilities, the committee had two studies assigned to it. House Concurrent Resolution No. 3078 directed a comprehensive study of judicial retirement in North Dakota. House Concurrent Resolution No. 3012 directed a study of the Highway Patrolmen's Retirement System, to include a review of the actuarial standards and soundness of the system, the funding mechanism of the system, the benefits provided by the system, and the coverage of the system with emphasis on the feasibility of expanding the system to cover other law enforcement personnel.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

JUDICIAL RETIREMENT STUDY

House Concurrent Resolution No. 3078 directed a study of judicial retirement in the state. Two separate retirement plans apply to the North Dakota judiciary. One, the closed Judges' Retirement System (JRS) covers judges appointed or elected prior to July 1, 1973. The other, the Public Employees Retirement System (PERS) covers judges appointed or elected on or after July 1, 1973.

The JRS plan provides a benefit of one-half final salary payable beginning at various combinations of age and years of service, the earliest being age 65 after 20 years of service. After retirement, benefits are adjusted by an amount equal to one-half of any increase in the salary applicable to the position the retired judge held. This, in effect, is a cost-of-living adjustment. If a judge becomes disabled, his salary is continued for the remainder of his term followed by a benefit equal to one-half of his final salary. Disability is determined after petition to the Supreme Court and upon a two-thirds majority vote of Supreme Court and district court judges.

The PERS plan provides a benefit of 1.04 percent of final average salary times the number of years of service. Final average salary equals the average of the highest salary for any 60 consecutive months of the last 120 months of employment. The benefit is payable at age 65 and a reduced early retirement is payable at age 55 after 10 years of service. After retirement, benefits may be adjusted as deemed necessary by the Legislative Assembly. A member who becomes disabled receives a disability benefit equal to 60 percent of final average salary reduced by Social Security disability benefits and by workmen's compensation. Disability is determined by Social Security disability standards.

The committee approached the assigned study in terms of the following basic issues:

1. What is an adequate benefit after a full career of service?
2. What age and service requirements should be established before unreduced retirement benefits become payable?
3. When should benefits vest?
4. Should there be mandatory retirement?
5. What type of benefit formula should be adopted?
6. Should there be a benefit maximum?
7. What type of survivor's benefits should be available?
8. What type of disability benefits should be available?
9. Should there be cost-of-living adjustments?
10. What level of contribution should be established for the state and judges?
11. Should membership be compulsory or voluntary?
12. Should a judge get retirement credit for nonjudicial public service?

In conducting its study, the committee solicited and received testimony from members of the North Dakota Supreme Court and district courts, the administrators of the Public Employees Retirement System, the Martin E.

Segal Company — the actuary for the committee, and members of the North Dakota Bar.

The testimony indicated that policy decisions would have to be made in two areas. First, whether or not to encourage mid-career members of the legal profession to leave private practice to assume positions on the bench, and second, whether or not retirement should be encouraged after a certain age or number of years of service. The committee adopted a policy that encouraging experienced mid-career attorneys to assume positions on the bench would be more in the public interest than a policy of favoring young, inexperienced attorneys on the bench. The committee also adopted a policy that the public interest is better served if older judges are given an incentive to retire after 20 years of service. The purpose served by this policy is that some measure of turnover is desirable to allow new ideas into the system.

After consideration of the testimony received, the committee recommends a bill which provides as follows:

1. Normal retirement benefits for all Supreme Court and district court judges currently under the Public Employees Retirement System are the sum of the following:
   a. Three percent of final average salary multiplied by the first 10 years of judicial service.
   b. Two percent of final average salary multiplied by the second 10 years of judicial service.
   c. One percent of final average salary multiplied by the number of years of judicial service over 20.
   d. One and four-hundredths percent of final average salary multiplied by the number of years of nonjudicial public service.

   The deescalating multiplier was adopted by the committee because it both encourages mid-career attorneys to assume positions on the bench because of its high benefit accrual rate and it encourages older judges to retire because of its low benefit accrual rate after 20 years of service.
2. Members of the judicial retirement system under NDCC Chapter 27-17 will retain the same benefits and will remain in a closed system.
3. Supreme and district court judges who are members of the Public Employees Retirement System will be required to pay a five percent monthly contribution to the fund.
4. All judges currently under the Public Employees Retirement System would be subject to the statutes and rules in regard to benefit options and disability.
5. There will be no cost-of-living adjustment such as exists under the JRS plan.

The actuarial analysis states adoption of this bill would require an increase in state costs on behalf of judges equal to 13.4 percent of annual salaries. Based on the current aggregate salary of $1,093,700, this increase equates to an annual dollar cost of $146,600.

HIGHWAY PATROLMEN'S RETIREMENT STUDY

House Concurrent Resolution No. 3012 directed a review of the actuarial soundness of the Highway Patrolmen's Retirement System with emphasis on expanding the system to cover other law enforcement personnel. Under NDCC Chapter 39-03.1, every member of the Highway Patrolmen's Retirement System contributes seven percent of monthly salary, not to exceed $133 per month. The state is required to contribute 12 percent of monthly salary, not to exceed $228 per month. Normal retirement benefits consist of 2.5 percent times final average salary (not to exceed $1,900 per month), times years of service up to 25 years, plus 1.5 percent times final average salary times years of service over 25 years. Normal retirement for members of the system is 55 years of age with 25 years of service.

Under NDCC Chapter 40-45, cities having a population in excess of 5,000 inhabitants and having an organized and paid police department may levy up to one mill for a policemen's pension fund. If the police retirement system is based on actuarial tables, the city may levy up to three mills. Assessment rates range from three percent to five percent of annual salary. Normal retirement is 60 years of age with 20 years of service.

Under NDCC Chapter 40-46, any city which has adopted a civil service system for city employees may levy not more than five mills for a city employees' pension fund. Such a pension system must be based on actuarial tables and an actuarial evaluation must be performed every five years. In addition, any city which has not adopted a civil service system may, upon an affirmative vote of at least 60 percent of the electors, levy not more than three mills for a city employees' pension plan. Monthly assessment for city plans may not exceed seven percent. Normal retirement is 60 years of age with 240 months of service and retirement benefits are equal to 60 percent times 1/12 times the highest three-year average annual earnings.

Under NDCC Section 54-52-02.1, county, city, and noncertified school district employees may join the state's Public Employees Retirement System and participate in that system in the same manner as state employees.

Police other than Highway Patrolmen may be members of any program established under Chapters 40-45, 40-46, or 54-52. In addition, political subdivisions may establish private retirement accounts for their employees.

The committee received testimony from the North Dakota Highway Patrolmen's Retirement Board, members of the Highway Patrol, the Martin E. Segal Company — actuary for the committee, and others.

In conducting its study of the Highway Patrolmen's Retirement System, the committee received an actuarial report on the standards and soundness of the system. The report indicated a shortfall in the fund which necessitates an increase in contributions from either the state or the employees. To liquidate the unfunded accrued liability of the Highway Patrolmen's Retirement System on the existing 21-year amortization schedule the state contribution would have to increase to 19.2 percent of covered salary. If a 40-year amortization schedule were adopted for funding, the unfunded accrued liability the state percentage cost would only have to be increased to 15.6 percent. This equates to an annual dollar cost of approximately $78,600.

After consideration of the testimony received, the committee took no action on the feasibility of expanding the system to cover other law enforcement personnel.

The committee recommends a bill to increase the state contribution to the Highway Patrolmen's Retirement System to 15.6 percent to offset the deficit that fund is experiencing. The bill assumes an increase in the amortization schedule from 21 to 40 years.

The committee recommends a bill to place the Highway Patrolmen's Retirement System under the administration of the Public Employees Retirement System. The purpose of this bill is to bring the expertise of the Public Employees Retirement System into the administration of the Highway Patrolmen's Retirement System to help prevent any further problems in the future.

CONSIDERATION OF RETIREMENT PROPOSALS

The committee established April 1, 1982, as the deadline for submission of retirement proposals. The deadline was established to allow the committee and its actuaries sufficient time to evaluate the proposals. The committee also limited retirement proposals considered by it to legislators and those agencies entitled to the bill introduction privilege.

The committee reviewed each proposal submitted and solicited testimony from proponents, retirement program administrators, Supreme and district court judges, and other interested persons. The committee utilized the actuarial services of the Martin E. Segal Company in evaluating the proposals submitted. The committee obtained written actuarial information on each of the proposals on which it took jurisdiction.

The committee refused to take jurisdiction over proposals which did not pertain specifically to public employees retirement programs.

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 is responsible for securing introduction of that proposal. A copy of the committee's report and the actuarial evaluation must be appended to each proposal when it is introduced.

TEACHERS' RETIREMENT PROPOSALS

North Dakota Century Code Chapter 15-39 established the Teachers' Insurance and Retirement Fund (TIRF). This fund, the rights to which were preserved by Section 15-39.1-03, provides a fixed annuity for those full-time teachers whose rights vested in the fund prior to July 1, 1971. The Teachers' Insurance and Retirement Fund was repealed in 1971 when the Teachers' Fund for Retirement (TFFR) was established by the enactment of Chapter 15-39.1.

The TFFR plan provides a benefit of one percent of final average salary times the number of years of service. Final average salary equals the average of the teacher's highest monthly salaries received for any five years employed during the last 10 years of employment. The benefit is payable if:

1. The teacher has completed 10 years of teaching credit and has attained the age of 65 years; or
2. The teacher has attained the age of 65 years and has completed the final year of teaching in 1971; or
3. The teacher has attained the age of 60 years and has completed 35 years of teaching credit of which one year was completed after July 1, 1979.

A minimum benefit of $6 per month per year of teaching for the first 25 years of service and $7.50 per month of teaching credit over 25 years exists for full-time teachers who retired in or after 1971. After retirement, benefits are adjusted as deemed necessary by the Legislative Assembly. A reduced early retirement benefit is payable at age 55 after 10 years' service. A teacher who becomes disabled receives a disability benefit equal to the retirement benefit credits which the teacher has earned to the date of disablement. Disablity is determined by the board of trustees of the fund after examination of the teacher by two physicians appointed by the board.

The following is a summary of the proposals relating to teachers' retirement over which the committee took jurisdiction:

1. **Sponsor:** Teachers' Fund for Retirement

   Proposal: Allow full retirement after a combination of age and years of service equal to 90; increase the service benefit multiplier to 1.05 percent; change the final average monthly salary definition from any five years to any three years employed during the last 10 years of membership in the fund; and increase benefits to retired members by 10 percent.

   Actuarial Analysis: The benefit improvements would not require an increase in the employer or employee contribution rate, nor an appropriation from the general fund. The benefit improvements would be funded in their entirety from the actuarial margins based on the current actuarial assumptions set forth in the latest actuarial evaluations.

   Committee Report: Favorable recommendation because it allows the increase of benefits to teachers and the retired teachers by utilizing available money in the actuarial margins of the fund without having to resort to general fund appropriations.

2. **Sponsor:** Senator Gary Nelson

   Proposal: Provide a benefit increase effective July 1, 1983, to each person receiving benefits on July 1, 1979. The benefit increase would be equal to 20 percent of the person's present benefit. This percentage would be adjusted, if necessary, so the maximum increase would be no more than $60 per month or no more than $1.50 per month per year of teaching credit, whichever is less. The 20 percent increase in benefits would also be adjusted in percentage so that no person would receive less than $1 per month per year of teaching credit.

   Actuarial Analysis: This would require a one-time appropriation of $10,003,000 payable July 1, 1983, if it is to be advance funded.

   Committee Report: Unfavorable recommendation because of its excessive costs.

3. **Sponsor:** Representative Rosie Black

   Proposal: Allow purchase of military service credit by retired teachers.

   Actuarial Analysis: This would not have an actuarial cost impact on the fund.

   Committee Report: Unfavorable recommendation because of the negative policy implications of allowing a retired teacher to purchase additional credit for military service credit when they had elected not to utilize such an option before retirement. This would require recomputation of retirement benefits whenever a retired teacher chose to purchase his military service credit. This does not conform with sound retirement design principles.

4. **Sponsor:** Teachers' Fund for Retirement

Proposal: Allow purchase of military service credit by college teachers who elected to remain under the Teachers' Fund for Retirement.

Actuarial Analysis: This would not have an actuarial cost impact on the fund.

Committee Report: Favorable recommendation because this class was inadvertently overlooked during the 1981 Session when the purchase of military service credit was first allowed.

5. **Sponsor:** Representative Kenneth Knudson

Proposal: Allow purchase of military service credit by beneficiaries of members who died prior to the 1981 law which allowed purchase of military service credit by teachers. The purchase by the beneficiary would have to be made within one year after the passage of the bill.

Actuarial Analysis: This would not have an actuarial cost impact on the fund.

Committee Report: Favorable recommendation because it allows purchase of the military service credit to those who died shortly before the option was created in 1981.

6. **Sponsor:** Higher Education Study Commission

Proposal: Allow negotiation between the Board of Higher Education and tenured teachers as to who pays and how much is paid toward the teacher's TIAA-CREF annuity; allow the Board of Higher Education to actuarially reduce a teacher's retirement benefit for early retirement not less than the actuarial equivalent of benefits earned; and define "final average salary" as the highest three annual salaries earned during the career of the member. The purpose of the bill is to allow establishment of early retirement incentives and early retirement buyout for tenured teachers so new teachers can be added to the system.

Actuarial Analysis: This would change the "final average monthly salary" definitions from the highest monthly salary received for any five years employed during the last 10 years to any three years employed during the period of employment.

The annual retirement cost would increase by approximately 0.56 percent of covered salary. Based on the aggregate covered salary as of July 1, 1981, of $142 million this equates to an annual dollar cost of approximately $795,000.

Committee Report: No recommendation was made by the committee because testimony from the Board of Higher Education indicated that significant revision of the bill would have to be made in order to make its intent more clear and to limit possible undue discretion given to the Board of Higher Education.

7. **Sponsors:** Representatives Dayle Dietz and Roy Hausauer

Proposal: Eliminate the TIAA-CREF (Teachers' Insurance and Annuity Association of America-College Retirement Equities Fund) offset from the benefit of retired college teachers. (TIAA-CREF is an annuity plan for college teachers established by the State Board of Higher Education.)

Actuarial Analysis: The annual employer cost of $226,400 to eliminate the offset for the 51 active college teachers would increase the employer cost from 3.2 percent of the current salary of these teachers under the present plan to 20.1 percent of their current salary. The additional employer cost would amount to 0.16 percent of the total salaries of all teachers covered by the plan. The primary reason for the high cost is that this closed group has a high average age and service associated with it. This calculation does not reflect any increase for retired or terminated vested college teachers.

Committee Report: Unfavorable recommendation because this bill would reverse a policy decision made when teachers' benefits were increased when Section 15-39.2-01 was enacted in 1973. At that time retirement benefits were increased and the income offset was part of the formula which increased benefits.

8. **Sponsor:** Teachers' Fund for Retirement

Proposal: Change the definition of "interest" to six percent interest compounded annually for the repurchase of credit and eight percent compounded annually for the purchase of extra service credit; redefine "teacher" to mean permanent employees; determination of disability to be made by the teacher's board; allow payment of retirement benefits to a teacher who retires and who again returns to teaching in a public school or state institution in a different state; provide that the annual report need not be included in the biennial report; and eliminate the provision that four hours per day per month constitutes one month's teaching credit toward retirement for part-time teachers.

Actuarial Analysis: This would not have an actuarial cost impact on the fund.

Committee Report: Favorable recommendation to allow needed housekeeping changes in the teachers' retirement statutes.

PUBLIC EMPLOYEES RETIREMENT

North Dakota Century Code Chapter 54-52 established the Public Employees Retirement System (PERS). Any person employed by the state, a district health unit, or the Garrison Diversion Conservancy District is covered by this system. However, persons covered under the Teachers' Fund for Retirement, the Highway Patrolmen's Retirement System, the Judicial Retirement System (JRS), or other retirement plan to which the state is contributing are not members of PERS. Elected officials and officials appointed prior to July 1, 1979, can choose to be members. Officials appointed to office for the first time after July 1, 1979, are required to be members. Supreme and district court judges, except for those covered under the Judicial Retirement System, are also participating members. A county, city, or school district may choose to participate upon entering into an agreement with PERS and upon approval of a majority of the employees.

The PERS plan provides a benefit of 1.04 percent of final average salary times the number of years of service. Final average salary equals the average of the highest

salary for any 60 consecutive months of the last 120 months of employment. The benefit is payable at age 65 and a reduced early retirement is payable at age 55 after 10 years of service. No member may receive credit for more than 30 years of service unless the member has contributed to this plan, established on July 1, 1966, in excess of 30 years. After retirement, benefits are adjusted as deemed necessary by the Legislative Assembly. A member who becomes disabled receives a disability benefit equal to 60 percent of final average salary reduced by Social Security disability benefits and by workmen's compensation. Disability is determined by Social Security disability standards.

The following is a summary of 15 proposals relating to public employees retirement over which the committee took jurisdiction:

1. **Sponsor:** Public Employees Retirement System

   Proposal: Increase the service benefit and prior service benefit multiplier from 1.04 percent per year of service to approximately 1.20 percent per year of service and increase the allowable years of service credit from 30 to 35 years.

   Actuarial Analysis: The benefit improvements would not require an increase in the employer or employee contribution rate nor an appropriation from the general fund. The benefit improvements would be funded in their entirety from the actuarial margins based on the current actuarial assumptions set forth in the latest actuarial evaluation.

   Committee Report: Favorable recommendation because this allows increase of benefits to members of the system to an extent which can be funded within the actuarial margins of the system.

2. **Sponsor:** Public Employees Retirement System

   Proposal: Allow credit for all years of employment and eliminate the 30-year maximum.

   Actuarial Analysis: The annual retirement cost would increase by approximately 0.23 percent of salary. Based on the aggregate covered salary as of July 1, 1981, of $149 million, this equates to an annual dollar cost of $342,700.

   Committee Report: Unfavorable recommendation because the committee favors an increase of the maximum number years of service credit to 35 years as provided in proposal No. 1.

3. **Sponsor:** Representative Charles Mertens

   Proposal: Increase the allowable years of service credit from 30 to 35 years.

   Actuarial Analysis: The annual retirement cost would increase by approximately 0.12 percent of salary. Based on the aggregate covered salary as of July 1, 1981, of $149 million, this equates to an annual dollar cost of $178,000.

   Committee Report: Unfavorable recommendation because the committee preferred to see the bill combined with an increase in the service and prior service benefit multipliers to an amount which could be covered within the actuarial margins of the system as provided in proposal No. 1.

4. **Sponsor:** Representative Michael Unhjem

   Proposal: Allow full retirement benefits prior to age 65, without reduction for early retirement, to future retirees who have 35 or more years of covered service.

   Actuarial Analysis: The annual retirement costs would increase by approximately 0.95 percent of covered salary. Based on the aggregate covered salary as of July 1, 1981, of $149 million, this equates to an annual dollar cost of $1,415,500.

   Committee Report: Unfavorable recommendation because the committee favors passage of a bill which would increase the maximum allowable service credit to 35 years as provided in proposal No. 1 rather than allow full retirement after 35 years of service.

5. **Sponsor:** Public Employees Retirement System

   Proposal: Allow full retirement benefits at age 62, without reduction for early retirement, to future retirees who have 25 or more years of covered service.

   Actuarial Analysis: The annual retirement costs would increase by approximately 0.75 percent of covered salary. Based on the aggregate covered salary as of July 1, 1981, of $149 million, this equates to an annual dollar cost of $1,117,500.

   Committee Report: Unfavorable recommendation because the committee favors adoption of a bill which provides for a 35-year maximum for allowed service credit as provided in proposal No. 1.

6. **Sponsor:** Representative Charles Mertens

   Proposal: Allow full retirement benefits prior to age 65, without reduction for early retirement, to future retirees who have accumulated sufficient years of covered service. The specifics of the bill are shown in the following chart:

Unreduced Benefits Available at Age	if	Years of Service Equal
64		31
63		32
62		33
61		34
60		35 or more

   The bill allows full retirement benefits prior to age 65, if the age of the member plus his years of service equals 95.

   Actuarial Analysis: The assumption was made, for purposes of pricing this proposal, that employees hired under age 23 would retire at age 60, employees hired at ages 23 through 27 would retire at age 62, employees hired at ages 28 through 31 would retire at age 63, and employees hired at ages 32 and over would retire at age 65.

   Applying these retirement age assumptions, the annual retirement cost would increase by approxi-

mately 0.85 percent of covered salary. Based on the aggregate covered salary as of July 1, 1981, of $149 million, this equates to an annual dollar cost of $1,266,500.

Committee Report: Unfavorable recommendation because the committee favors a bill which provides for increase of the maximum allowed service credit to 35 years as provided in proposal No. 1 rather than an early retirement proposal.

7. **Sponsor:** Representative Charles Mertens

Proposal: Allow full retirement benefits prior to age 65, without reduction for early retirement, to future retirees who have accumulated sufficient years of covered service. Full retirement would be allowed if the member's age plus his service equals 100. The specifics of this feature are shown in the following chart:

Unreduced Benefits Available at Age	if	Years of Service Equal
64		36
63		37
62		38
61		39
60		40 or more

Actuarial Analysis: The assumption was made, for purposes of pricing this proposal, that employees hired at ages under 23 would retire at age 61, the employees hired at ages 23 through 25 would retire at age 63, employees hired at ages 26 through 27 would retire at age 64, and employees hired at ages 28 and older would retire at age 65.

Applying these retirement age assumptions, the annual retirement cost would increase by approximately 0.50 percent of covered salary. Based on the aggregate covered salary as of July 1, 1981, of $149 million, this equates to an annual dollar cost of $745,000.

Committee Report: Unfavorable recommendation because the committee favors a bill draft which increases the allowable years of service credit from 30 to 35 years as provided in proposal No. 1.

8. **Sponsor:** Representative Serenus Hoffner

Proposal: Eliminate, with respect to state employees and judges, the four percent employee contribution rate and increase the state contribution rate from 5.12 percent of salary to 9.12 percent of salary; and increase the benefit factor from 1.04 percent per year of service to 1.25 percent.

Actuarial Analysis: Assuming that approximately 70 percent of the aggregate active employee compensation falls within the category of either state employee or judges' compensation, the shifting of the four percent employee contribution rate to the state would increase the annual state cost by $4,172,000 based on the retirement system's aggregate covered salary as of July 1, 1981, of $149 million.

The effect of increasing the benefit factor to 1.25 percent per year of service is to increase the annual retirement cost by 2.35 percent of the covered salaries of the affected employees. Based on the aggregate covered salary as of July 1, 1981, of $149 million, and assuming 70 percent of this is with respect to state employees and judges, this equates to an annual dollar cost of $2,451,100.

Committee Report: Favorable recommendation if the bill is amended so the increase in the benefit multiplier is limited to 1.15 percent.

9. **Sponsor:** Representative Charles Mertens

Proposal: Permit payment of employee contributions to the Public Employees Retirement System, Teachers' Fund for Retirement, and Highway Patrolmen's Retirement System as follows: The state would pay the employee contributions by effecting a salary reduction or offset against future salary increase, or a combination of both in an amount of the required employee contribution. The purpose of this proposal is to obtain tax advantages for employees since their taxable income would be reduced while their net income would be increased.

Actuarial Analysis: This would not have an actuarial cost impact on any of the retirement systems.

Committee Report: Favorable recommendation because the proposal increases income to members of the retirement systems within permissible tax laws without additional contributions from the general fund.

10. **Sponsor:** Public Employees Retirement System

Proposal: Allow mental health center employees to purchase credit for years of service prior to becoming employees of the new state-operated human service centers.

Actuarial Analysis: This would not have an actuarial cost impact on the system.

Committee Report: Favorable recommendation because good retirement policy would allow purchase of this prior service to allow these employees to establish a quality retirement benefit.

11. **Sponsor:** Public Employees Retirement System

Proposal: Allow credit, upon termination, of unused accumulated sick leave as additional months of service for retirement purposes.

Actuarial Analysis: The assumption was made that only the sick leave "time" and not the "salary" would apply and that the provision would only apply to future retirees.

The annual retirement costs would increase by approximately 0.14 percent of covered salary based on recent sick leave accumulations of retirees. Based on the aggregate covered salary as of July 1, 1981, of $149 million, this equates to an annual dollar cost of $208,600.

Committee Report: Unfavorable recommendation because sick leave is not part of a retirement program and it should not be used to increase benefits. Prob-

lems in regard to abuses to sick leave benefits should be solved departmentally and not through the retirement programs.

12. **Sponsor:** Public Employees Retirement System

    Proposal: Add two additional options for the payment of benefits to a surviving spouse:

    a. A lump sum payment of balance in the retirement account.

    b. A 60-month annuity as if the member was age 60 at time of death.

    Actuarial Analysis: This would not have an actuarial cost impact on the system.

    Committee Report: Favorable recommendation because this bill increases the flexibility for surviving spouses to plan their financial affairs.

13. **Sponsor:** Public Employees Retirement System

    Proposal: Amend the definition of "permanent employee" to include those employed **20 hours or more** per week instead of just those employed **more than 20 hours** per week.

    Actuarial Analysis: This would not have an actuarial cost impact on the system.

    Committee Report: Favorable recommendation in order to conform the public employees retirement statutes to other state laws.

14. **Sponsor:** Public Employees Retirement System

    Proposal: Allow deposit of Public Employees Retirement System funds with the Bank of North Dakota instead of with the State Treasurer.

    Actuarial Analysis: This would not have an actuarial cost impact on the system.

    Committee Report: Favorable recommendation to allow ease of administration for the system.

15. **Sponsor:** Public Employees Retirement System

    Proposal: Define "account balance" as equal to the total contributions of a member, plus the vested funds, plus interest, and eliminate the language deeming contributions 100 percent vested if a permanent disability results in death.

    Actuarial Analysis: This would not have an actuarial cost impact on the system.

    Committee Report: Favorable recommendation because it allows ease of administration in determining an individual's retirement benefits.

HIGHWAY PATROLMEN'S RETIREMENT PROPOSALS

The committee took jurisdiction of two Highway Patrol retirement proposals:

1. **Sponsor:** Representative Gordon Larson

   Proposal: Allow the surviving spouses of nine patrolmen, who died with less than 15 years of service and before the 1981 law which increased death benefits to surviving spouses, to receive a monthly death benefit which, when added to any workmen's compensation death benefit, equals $200.

   Actuarial Analysis: The annual retirement costs would increase by approximately 0.5 percent of covered salary based on the aggregate covered salary (maximized at $22,800 per member). Based on the current aggregate covered salary of $2,183,600, this equates to an approximate dollar cost of $11,000.

   Committee Report: Unfavorable recommendation because the cost of providing the benefits is excessive and because it allows benefits before the 15-year vesting period is attained.

2. **Sponsors:** Senator Marvin Sorum and Representative Orlin Hanson

   Proposal: Increase minimum death benefits to retired members of the Highway Patrolmen's Retirement System as follows:

   a. Retirees as of July 1, 1983, with less than 25 years of service would receive a minimum monthly benefit of $200.

   b. Retirees as of July 1, 1983, with 25 or more years of service would receive a minimum monthly benefit of $400.

   c. Widows in receipt of benefits as of July 1, 1983, would receive a minimum benefit of $200.

   Actuarial Analysis: The annual retirement cost would increase by approximately .87 percent of covered salaries (maximized at $22,800 per member). Based on the current aggregate covered salary of $2,183,600, this equates to an annual dollar cost of $19,000.

   Committee Report: Unfavorable recommendation because the proposal costs are excessive.

MISCELLANEOUS RETIREMENT PROPOSALS

The committee accepted jurisdiction of two miscellaneous proposals:

1. **Sponsor:** Representative Roy Hausauer

   Proposal: Allow all cities, not just those with civil service systems, to levy five mills for city employee pensions.

   Actuarial Analysis: This would not have an actuarial cost impact on either the Public Employees Retirement System or the Teachers' Fund for Retirement.

   Committee Report: Unfavorable recommendation.

2. **Sponsor:** North Dakota Job Service

   Proposal: Increase the primary Old-Age Survivors Insurance System (OASIS) benefits from $130 per month to $150 per month in 1983 and to $160 per month in 1984.

Actuarial Analysis: The North Dakota Job Service has estimated that the effect would be to increase benefit payments by $17,790 during fiscal year 1984 and by $29,400 during fiscal year 1985. The actuary for the committee agrees with this analysis.

Committee Report: Favorable recommendation because it makes necessary postretirement benefit adjustments.

SOCIAL SERVICES COMMITTEE

The Social Services Committee was assigned two studies. Senate Concurrent Resolution No. 4053 directed a study of state laws and regulations governing the conditions and restrictions that nursing homes may impose on applicants or residents, the rates charged by nursing homes, and related issues. The goal of this study was modernization, revision, and clarification of laws regulating nursing homes. Senate Concurrent Resolution No. 4056 directed a study of the educational, employment, and life and health insurance needs of persons over 21 years of age with incurable diseases.

Committee members were Representatives Brynhild Haugland, Chairman, Paul DuBord, Arvid Hedstrom, Serenus Hoffner, Franklin Huwe, Robert Martinson, Thomas Matchie, Dagne Olsen, Alice Olson, Earl Pomeroy, Burness Reed, Gayle Reiten, Elmer Retzer, Steven Swiontek, and Donald Zimbleman; and Senators Mark Adams, Hal Christensen, James Cussons, Perry Grotberg, Curtis Peterson, Wayne Stenehjem, and Floyd Stromme.

The committee and subcommittees held seven meetings at which they received extensive oral and written testimony from concerned citizens, insurance industry representatives, nursing home administrators, governmental agencies, and others. The committee recommends five bills.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

NURSING HOME REGULATIONS

Senate Concurrent Resolution No. 4053 reflected legislative concerns over monetary admission requirements for nursing home residents, restrictions on nursing home residents, freedom of choice, and rate variances between private pay residents and Medicaid assistance residents.

The prime sponsor of the resolution testified that a primary problem in the nursing home industry is the cost differential between private pay residents and Medicaid residents. He also expressed concerns relating to the overbuilding of nursing homes within the state. Finally, he cited statistics that indicate (1) the average cost of nursing home care in North Dakota is $18,000 per year; (2) 24 percent of the state's population is over 60 years of age; and (3) 12 percent of the state's senior citizens currently reside in nursing homes.

Previous Action

Rapidly increasing health care costs have drawn legislative attention toward nursing home regulation and cost containment measures.

House Bill No. 1046 discussed during the 1977 Legislative Session would have provided a patient's bill of rights to be posted in a conspicuous place in all health care facilities and to be furnished to all patients of those facilities, and the reporting of any physical injury inflicted upon a patient of a health care facility to the State Board of Medical Examiners. The bill failed to pass.

The Legislative Council's Health Care Committee examined health care services and specifically cost containment, home health care, health maintenance organizations, the state certificate of need law, and physician extenders during the 1979-81 interim pursuant to House Concurrent Resolution No. 3021. That committee found that 15 states had legislated hospital cost containment programs. Five of the states had ratesetting commissioners, two created state agencies to review and comment publicly on the reasonableness of a facilities' costs, one had a state commission which disclosed hospital financial data, and seven states based their cost containment programs within existing state agencies. No recommendation for a mandatory health care cost containment program was made.

The same committee studied home health care programs. Home health care agencies provide a variety of posthospital care such as health education and self-care suggestions. The homemaker services program has been in existence since 1967 and provides a variety of routine housekeeping tasks. Every county in the state currently has these services. The home health aide services program has been in existence since 1972 and provides supportive home health care under the direction of a qualified nurse. This service is currently available in 42 counties. Other programs such as "meals on wheels" and adult day care provide elderly persons not in nursing homes with needed services.

The 1981 Legislative Assembly passed Senate Bill No. 2060 which provides for the licensure of home health agencies. The proposed appropriation of $1 million for home health services for indigents was deleted from the bill prior to passage. See North Dakota Century Code Chapter 23-17.3. Neither Senate Bill No. 2148, which called for a nursing ombudsman program, nor Senate Bill No. 2218, calling for equalization of nursing home rates, was passed.

Interim Studies

The committee examined alternative home health care programs, nursing home grievance procedures, drug disbursement systems, prescreening of nursing home patients, and the equalization of nursing home rates.

HOME HEALTH CARE

Social Services Subcommittee "A" was formed to study legislation to implement a bill of rights for nursing home residents and to study legislation to appropriate moneys for home health care. The purpose of this legislation is to inform nursing home residents of their rights and to minimize the number of long-term health care patients and their costs.

Existing Law

North Dakota Century Code Chapter 23-17.3 provides for the licensure of home health agencies by the State Department of Health. Section 23-17.3-03 provides that prior to licensure the department must certify a need for an agency. Section 23-17.3-05 requires minimum standards to be maintained by these agencies. Home health agencies provide a broad range of health and social services to individuals and families in their homes.

Interim Study

The costs of home health care must be paid from private sources or through Medicaid reimbursements. The committee discussed the feasibility of an appropriation to enable individuals to receive home health services who do not qualify for Medicaid assistance and are unable to pay for them from private sources. Subcommittee members noted that the purpose of the home health care program should be to keep senior citizens from

having to enter nursing homes and hospitals and that any appropriation for such a program should be used to meet the needs of senior citizens who would not otherwise be able to afford such services.

North Dakota is served by a number of home health care facilities, but all areas of the state do not receive these services. There are 10 community-based, eight hospital-based, and one free standing home health care agencies in North Dakota. These agencies are open seven days a week, 24 hours a day. Collectively these agencies serve 42 counties. Once a home health care patient's condition stabilizes the patient must be discharged from the program. Testimony indicated that there is a need for continued care at less acute levels because home health patients have a tendency to not take care of themselves properly once they are discharged.

The committee studied the means of funding the home health program. An appropriation for home health care could be administered in one of two ways. The first method would be to allow administration through the use of a sliding fee scale which would require a qualifying individual to contribute a portion of the cost. The second method would be to set an arbitrary figure as a cutoff point with persons below that income level being eligible for the program.

Information from the Department of Human Services indicated the home health care assistance should have a threshold income eligibility requirement of 200 percent over Medicaid income eligibility with a sliding scale of decreasing assistance to persons with incomes of up to 500 percent of the Medicaid eligibility.

The Department of Human Services submitted the following schedules showing how the sliding scale of payments would operate:

SLIDING FEE SCHEDULE FOR A FAMILY OF TWO

Percentage of Medical Assistance Income Level	Monthly Income Level After Medical Assistance Adjustments	Percentage of Home Health Care Costs to be Paid by Recipients	Payment: Home Health Aide Based on $11/Hour Fee	Payment: Other Based on $32/Hour Fee
150%	0 - 578	No recipient payment	$ 0	$ 0
175%	579 - 674	10%	$ 1.10	$ 3.20
200%	675 - 770	20%	$ 2.20	$ 6.40
225%	771 - 866	30%	$ 3.30	$ 9.60
250%	867 - 963	40%	$ 4.40	$12.80
275%	964 - 1,059	50%	$ 5.50	$16.00
300%	1,060 - 1,155	60%	$ 6.60	$19.20
325%	1,156 - 1,251	80%	$ 8.80	$25.60
350%	1,252 - 1,348	100% No Eligibility	$11.00	$32.00

SLIDING FEE SCHEDULE FOR A FAMILY OF FOUR

Percentage of Medical Assistance Income Level	Monthly Income Level After Medical Assistance Adjustments	Percentage of Home Health Care Costs to be Paid by Recipients	Payment: Home Health Aide Based on $11/Hour Fee	Payment: Other Based on $32/Hour Fee
150%	0 - 795	No Recipient Payment	$ 0	$ 0
175%	796 - 1,060	10%	$ 1.10	$ 3.20
200%	1,061 - 1,192	20%	$ 2.20	$ 6.40
225%	1,193 - 1,325	30%	$ 3.30	$ 9.60
250%	1,326 - 1,457	40%	$ 4.40	$12.80
275%	1,458 - 1,589	50%	$ 5.50	$16.00
300%	1,590 - 1,722	60%	$ 6.60	$19.20
325%	1,723 - 1,854	80%	$ 8.80	$25.60
350%	1,855 and above	100% No Eligibility	$11.00	$32.00

Recommendation

The committee recommends a bill which expands Chapter 23-17.3 and provides for a sliding scale payment program for home health care to be administered by the Department of Human Services with an appropriation of $1 million for that purpose. Indigent persons would be eligible to receive these benefits if their income does not exceed by 350 percent the income level and property eligibility guidelines for Medicaid.

BILL OF RIGHTS STUDY

History

Federal regulations for Medicaid eligibility require that nursing homes have both a patient bill of rights and the services of a nursing home ombudsman to receive any complaints regarding those rights. The Legislative Council's Social Services Committee during the 1977-79 interim studied the possibility of a statutorily created state ombudsman program. That committee recommended that the current ombudsman program should be continued with existing federal funding.

At the present time the ombudsman program is federally funded. There is no state statutory scheme within which the state ombudsmen operate.

Interim Study

Subcommittee "A" discussed bill of rights legislation from other states and from the Code of Federal Regulations. Federal law requires nursing homes to have such a bill of rights. Some North Dakota facilities have rights in addition to those required by federal law and yet others have added facility rights. A representative from the North Dakota Health Care Association suggested that a

well-defined grievance procedure would be most helpful in this area.

Information from the Department of Human Services indicated the need for a defined procedure for hearing complaints of patients. Although patients have certain rights, there is no procedure for enforcement of these rights. It was suggested that a committee for hearing these complaints might consist of one person from the nursing home facility, one person not related to the facility, and a state ombudsman.

The committee received testimony regarding a proposed ombudsman program bill. The bill would utilize eight regional ombudsmen who would be persons presently designated as aging coordinators. These ombudsmen would be allowed access to information relating to complaints concerning long-term care facilities.

Federal regulations currently require and subsidize the ombudsman program. The ombudsman program has been in existence in North Dakota since 1976. All states have this type of program and the money for such programs comes from federal government subsidies. The proposed bill would codify what is being done by the Aging Services Division of the Department of Human Services as a result of the federal regulations. Finally, $3.4 million would be lost by the Aging Services Division if the state's budget plan does not include moneys for an ombudsman program.

Recommendation

The committee recommends a bill to provide for the appointment of state and regional long-term care ombudsmen and to prescribe their powers and duties.

CHOICE OF PHARMACIST STUDY

The committee heard testimony relating to the bidding requirements for unit dose programs in nursing homes. The unit dose system of dispensing drugs to nursing home patients requires the local pharmacy to individually wrap and dispense each patient's prescribed drugs. This system is in contrast to the conventional system of dispensing drugs where nursing home staff administer drugs to patients from gross allotments from the local pharmacy.

It was reported to the committee that at least one nursing home in the state using the unit dose system did not allow its patients to purchase their drugs from any other pharmacy. The unit dose system of dispensing drugs was criticized because it does not allow the patient to shop around for the least expensive drugs.

The committee heard testimony that indicated drugs were more expensive under the unit dose programs but that these programs were more efficient than having nursing home staff administer individual patient's drugs.

Federal law presently provides that patients cannot be denied the right to choose their pharmacist.

Recommendation

The committee recommends a bill permitting nursing home residents to choose their pharmacists regardless of the type of drug distribution system used by the nursing home. The bill requires notice of these rights and provides for local enforcement of these rights.

PATIENT PRESCREENING

The committee was concerned that elderly persons might be prematurely placed in nursing homes for the convenience of out-of-state relatives. The committee was also concerned that nursing home patients receive the appropriate level of care actually needed.

A bill draft dealing with the prescreening of individuals prior to their admission to long-term care facilities was considered. This bill draft would have allowed the Department of Human Services, if requested, to assess individual needs prior to admission to long-term care facilities. In addition, the bill draft would have required nursing homes, intermediate care facilities, and boarding homes for the aged and infirm to distribute a written notice of the right of prospective residents, residents considering continued care, or residents considering a change in the status of their care in their respective facilities of the right to request an assessment of the need for care.

Representatives from the health care industry and from the Department of Human Services reported problems relating to inappropriate levels of care being provided by nursing homes. Many areas of the state have only long-term care facilities to care for the aged. Individuals are sometimes given high level care when a federal screening later indicates a lower level of care should have been provided. It was suggested that less acute levels of care should be made available in these areas for persons who do not require intense care and that mandatory prescreening might help to identify the proper level of care.

Others advised the committee that mandatory prescreening was unnecessary since no person on Medicaid assistance is placed in a nursing home unless necessary and all Medicaid assistance patients are required by federal law to be assessed prior to their admission to a nursing home. It was also suggested that private pay patients should have the right to choose whether or not they want a preadmission test.

Administrators testified that a mandatory prescreening bill draft would be duplicative of federal regulations and that it would also require additional administration and personnel to accomplish virtually nothing.

Conclusion

The Committee makes no recommendation for legislation regarding the prescreening of nursing home patients.

NURSING HOME RATE EQUALIZATION

History

The Legislative Council's Social Services Committee during the 1977-79 interim considered a bill draft which would have equalized the cost differential between private pay and Medicaid patients in long-term care facilities. The bill draft would have made ineligible for Medicaid reimbursement those nursing homes which charged their private pay patients rates which exceed by 10 percent those rates approved by the Department of Human Services for Medicaid recipients. The bill draft would also have required rates for all patients to be equal by July 1, 1980. Representatives from the health care industry opposed the bill draft and it was not recommended by the committee. A very similar bill was defeated during the 1981 Session.

Interim Study

In North Dakota there are 96 homes for the aged and infirm. Of these, 56 are skilled nursing facilities and 40 are intermediate care facilities (ICF). There are 4,175 licensed beds in skilled nursing facilities and 2,480 licensed beds in the ICF, making the total of 6,653 beds. According to statistics compiled by the Department of Health, there were a total of 3,519 patients requiring skilled nursing care, 2,482 patients requiring intermediate care, and 187 patients requiring basic care.

Differences in charges between state, local, and federally funded payments and private payments are as follows:

	Difference	Difference	Mean
Skilled care	45.7% (1 facility)	0% (15 facilities)	9.86%
Intermediate care	50% (1 facility)	0% (12 facilities)	15.25%
Basic care	120% (1 facility)	0% (1 facility)	55.9%

Note: Percentage differences demonstrate the percentage by which private pay rates exceed public pay rates for semiprivate rooms (SSI, Title XIX, etc.). The above figures were obtained by determining the percentage difference for each facility, totaling those percentages, and dividing the sum by the number of facilities involved in the calculation. Data was not available from 13 of the 96 facilities in North Dakota. As a result, the above figures are only rough percentages.

The 1980 payments for skilled nursing care range from a low of $25 per day to a high of $71 per day for both private and public pay patients. Payment for intermediate care patients range from $16 to $40 per day for publicly paid care and from $20 to $43 per day for privately paid care. Payments for basic care range from $11 to $16 per day for publicly paid care and from $14 to $34 per day for privately paid care.

The committee studied the reasons for rate variances between private pay and Medicaid assistance nursing home patients. Subcommittee "B" was formed to make a recommendation for legislation relating to the equalization of these rates.

The subcommittee heard testimony on a bill draft which would make nursing homes or intermediate care facilities ineligible to receive medical assistance payments from state funds, or federal funds distributed by the state, unless they agreed to refrain from charging private pay patients rates for services which exceed by more than 10 percent those rates approved by the Department of Human Services for similar services rendered to medical assistance recipients. A similar bill was studied during the 1977-79 interim and defeated during the 1981 Legislative Session.

State subsidies to Medicaid have been considered by the Department of Human Services. These proposed subsidies would be paid to nursing homes which charge private pay patients up to a certain percentage over the public pay rate. It was reported that there would be no incentive for homes to contain costs under this type of program. An alternative to this program would be the establishment of a ratesetting commission for nursing homes similar to the Public Service Commission. Several other states currently have ratesetting commissions for nursing home rates. Maryland has reported savings of $86.5 million from its ratesetting commission.

Currently state Medicaid rates are uniform and information from the Department of Human Services indicated that a ratesetting commission would make private pay rates approximately equal across the state depending upon factors such as individual homes' costs and type of care. Current costs which are not reimbursed to nursing homes include bad debts, certain pensions, advertising, and home office costs. The department's statistics show that three percent of the costs of long-term care facilities in the state are not reimbursed of which one-half are costs which have already been paid to those facilities.

Representatives from nursing homes and the North Dakota Hospital Association reported that a ratesetting commission would only affect the money subsidized by state government since federal regulations control Medicare and Medicaid payments. The proposed bill draft was described as ill-conceived because it did nothing to abolish rate increases but will in effect encourage nursing homes to maintain the maximum variance permitted by the law. Rate variances are the natural reflection of each home's individual financial picture and due to costs that are not reimbursed by Medicaid. The committee was urged to permit the free market place to control nursing home rates.

Nursing home administrators attributed rate variances to poor Medicaid reimbursements. They reported that private pay patient rates are higher in order to cover the costs not reimbursed by Medicaid. Rate variances are affected by the dates that Medicaid rates are determined, community contributions, and capital needs of the facilities. Several administrators did agree, however, that a 10 percent variance in rates is usually adequate to make up for disallowed Medicaid reimbursements.

Committee members questioned whether there was actually any real competition between nursing homes for their patients since most small communities have only one nursing home and residents generally want to stay near their families.

The Department of Human Services submitted a chart illustrating the variance in rates between all nursing homes operating in the state.

SCHEDULE OF NURSING CARE BEDS & RATES
DEPARTMENT OF HUMAN SERVICES
SEPTEMBER 1982

			SKILLED					INTERMEDIATE				
				DAILY RATE					DAILY RATE			
FACILITY	CITY	Non-Profit Profit	Licensed Beds	Private	Last Audited State	% Private Over State	Occupancy Rate	Licensed Beds	Private	Last Audited State	% Private Over State	Occupancy Rate
Americana Health Care	Fargo	P	104	48.00	43.24	11.0	90.7		46.50	37.10	24.6	
Americana Health Care	Minot	P	106	51.00	41.99	17.7	95.8		N/A	35.79	—	
Community Nursing Home	Beulah	N	42	52.00	37.97	36.9	99.9		44.00	32.45	35.6	
Good Samaritan	Rugby	N	74	49.00	47.31	3.6	93.5	30	45.55	39.63	14.9	
Parkside Lutheran	Lisbon	N						40	22.52	20.60	9.3	99.0
Community Hospital	Rolla	N	26	52.29	52.29	—	76.2	22	44.60	44.60	—	
St. Aloisius	Harvey	N	56	50.00	43.13	15.9	93.7	60	43.00	38.90	10.5	
St. Andrews	Bottineau	N	26	56.11	52.48	6.9	91.8		56.11	45.00	24.7	
Community Hospital	Hillsboro	N	50	43.50	37.61	14.3	97.3		43.00	31.78	35.3	
Valley Memorial	Grand Forks	N						71	37.00	32.08	15.3	97.3
Golden Manor	Steele	P						42	25.00	24.09	3.8	98.3
Nursing Home	Strasburg	N	80	32.50	29.58	9.9	97.5		29.50	24.20	21.9	
Community N.H.	Tioga	N	30	40.00	40.00	—	99.3		36.00	34.66	3.9	
Prairieview	Underwood	P	64	40.00	35.80	11.7	99.2		37.00	30.65	20.7	
Home for Aged	Wishek	N	91	30.50	28.69	5.9	98.0		25.70	23.90	7.5	
Good Samaritan	Aneta	N						51	25.50	23.85	6.9	97.7
Good Samaritan	Arthur	N						96	21.50	20.30	5.9	98.8
Baptist Home	Bismarck	N	64	53.00	50.70	4.5	89.8		N/A	42.15	—	
Good Samaritan	Bottineau	N						71	25.50	23.90	6.7	96.0
Sunset Homes	Bowman	N	42	35.50	35.50	—	99.8		33.00	31.78	3.8	
Pembina County	Cavalier	N	26	40.00	40.00	—	76.3	34	39.00	39.00	—	
Good Samaritan	Crosby	N						81	24.00	22.21	8.1	94.8
Good Samaritan	Devils Lake	N						80	29.00	28.85	1.0	88.3
Nursing Center	Dickinson	P	110	45.00	37.98	18.5	95.3	75	39.00	31.51	23.8	
St. Lukes	Dickinson	N	83	44.00	40.12	9.7	97.8		40.00	33.92	17.9	
Community N.H.	Dunseith	N	40	32.00	30.71	4.2	80.7		N/A	25.85	—	
Nursing Center	Ellendale	N	85	38.40	35.60	7.9	96.0		N/A	29.49	—	
Hillcrest	Enderlin	P						62	25.00	19.18	30.3	97.9
Bethany	Fargo	N	96	51.50	47.05	9.5	99.3	96	31.25	29.25	6.8	
Elim Home	Fargo	N	73	33.45	28.58	17.0	99.5		33.45	24.28	37.8	
Nursing Home	Fargo	N	102	45.00	39.94	12.7	96.3		N/A	33.95	—	
Villa Maria	Fargo	P	132	39.10	33.50	16.7	99.4		33.10	28.43	16.4	
Sargent Manor	Forman	P	62	23.00	21.49	7.0	96.4					
Nursing Home	Garrison	P	71	36.55	32.09	13.9	97.6		34.25	27.15	26.2	
Lutheran Sunset	Grafton	N	118	37.50	34.99	7.1	99.8		37.50	29.02	29.2	
Hillcrest	Hettinger	P	88	36.00	33.16	8.6	94.6		32.00	28.08	14.0	
Central Dakota	Jamestown	N	100	41.00	32.78	25.1	99.1		N/A	27.78	—	
Hi Acres Manor	Jamestown	N	106	36.00	33.30	8.1	89.2	36	36.00	27.72	29.9	
Gronna Good Samaritan	Lakota	N						58	26.75	23.11	15.8	99.5
Colonial Manor	LaMoure	P						60	31.00	24.52	26.4	97.6
Maple Manor	Langdon	P	63	33.00	32.61	1.2	94.9		33.00	26.88	22.8	
Good Samaritan	Larimore	N						68	29.77	24.69	20.6	97.5
Community Memorial	Lisbon	N	45	39.00	38.05	2.5	99.3		39.00	32.99	18.2	
Mandan Villa	Mandan	P	62	52.50	35.35	48.5	94.7	38	46.50	30.26	53.7	
Lutheran Memorial	Mayville	P	69	37.50	37.25	1.0	99.9	30	33.00	30.03	9.9	
North Central Good Sam	Mohall	N						59	30.50	26.57	14.8	96.9
Good Samaritan	Mott	N						60	33.75	24.57	37.4	96.6
Logan County Home	Napoleon	N						44	21.50	20.70	3.9	95.9
Good Shepherd	New Rockford	N	58	36.50	33.86	7.8	94.3	28	36.50	29.15	25.2	
Elm Crest Manor	New Salem	N						60	23.00	21.15	8.7	96.0
Health Develop	New Town	N	70	39.50	35.83	10.2	91.4		36.00	30.89	16.5	
Deaconess	Northwood	N	66	37.00	36.98	—	96.9	24	N/A	31.44	—	
Good Samaritan	Oakes	N						142	24.88	22.34	11.4	95.5
Good Samaritan	Osnabrock	N						41	30.20	23.83	26.7	92.9
Good Samaritan	Park River	N						79	31.00	25.69	20.7	97.1
Good Samaritan	Parshall	N						60	29.44	25.02	17.7	98.7
Mountrail Bethel	Stanley	N	41	32.00	30.67	4.3	99.9	16	27.00	26.13	3.3	
Sheyenne Manor	Valley City	N						80	23.00	18.74	22.7	98.4
Sheyenne Memorial	Valley City	N	78	39.00	32.78	19.0	99.1		N/A	26.98	—	

			SKILLED					INTERMEDIATE				
				DAILY RATE					DAILY RATE			
FACILITY	CITY	Non-Profit Profit	Licensed Beds	Private	Last Audited State	% Private Over State	Occupancy Rate	Licensed Beds	Private	Last Audited State	% Private Over State	Occupancy Rate
Health Care	Wahpeton	P						92	32.00	24.81	28.9	91.4
Nursing Center	Wahpeton	P	110	40.00	33.11	20.8	94.1		N/A	28.03	—	
Pembilier	Walhalla	N	60	33.60	32.99	1.8	98.6		33.60	28.14	19.4	
Good Shepherd	Watford City	N	47	33.50	30.27	10.6	98.6		33.50	25.62	30.8	
Westhope Home	Westhope	N	59	28.93	28.93	—	89.1		27.93	26.31	6.1	
Bethel Lutheran	Williston	N	118	40.00	38.30	4.4	98.7	55	N/A	32.56	—	
McIntosh	Ashley	N						30	38.00	37.34	1.8	95.9
Missouri Slope	Bismarck	N	100	50.50	48.55	4.0	88.5	120	42.00	41.37	1.5	
St. Vincents	Bismarck	N	94	53.00	47.46	11.7	98.5		48.00	39.17	22.5	
Rest Haven	Cando	P	74	39.50	35.12	12.5	91.7		39.50	29.80	32.6	
Golden Acres	Carrington	P	60	39.00	34.43	13.3	96.5		N/A	29.34	—	
Carrington Hospital	Carrington	N	38	44.00	44.00	—	100.0		40.00	39.19	2.0	
Griggs County	Cooperstown	N	50	38.50	36.99	4.0	99.3		38.50	31.44	22.5	
Lake Region	Devils Lake	N	104	39.95	36.33	9.1	94.2		39.95	30.29	31.9	
Jacobson Memorial	Elgin	N	25	47.00	47.00	—	96.9					
Memorial Hospital	Garrison	N						24	37.00	32.39	14.2	94.0
Marian Manor	Glen Ullin	N	82	37.00	32.62	13.4	99.4		32.00	27.11	18.0	
St. Gerards	Hankinson	N	23	39.00	34.85	11.9	99.7		35.00	29.78	17.5	
Tri County	Hatton	N	60	32.50	29.24	11.1	99.8		32.50	24.84	23.5	
Friendship Manor	McVille	P	52	37.00	31.39	17.9	98.9		33.00	26.61	24.0	
Trinity	Minot	N	208	W54.00	46.84	15.2	68.9	121	N/A	39.56	—	
Trinity	Minot	N		E68.00	63.20	7.6			N/A	55.20	—	
Trinity	Minot	N							40.00	30.68	30.4	

Recommendation

The committee recommends a bill to forbid any nursing home or intermediate care facility receiving medical assistance payments from state funds or federal funds distributed by the state from charging their private pay patients rates for services which exceed by more than 15 percent those rates approved by the Department of Human Services for similar services rendered to medical assistance recipients.

HIGH RISK POOL INSURANCE

Senate Concurrent Resolution No. 4056 reflects a legislative concern for persons over the age of 21 years that have incurable diseases. The committee's attention focused on the health insurance needs of these people.

History

The legislative history of the study resolution indicates that the scope of this study includes those persons with diseases who are still able to function normally in our society. Thus, it appears that persons defined as developmentally disabled are not the persons contemplated by the resolution. The term "developmental disability" is defined in North Dakota Century Code Section 25-01.2-01 as a disability that, among other things, "[r]esults in substantial functional limitations to the person's ability to function normally in society." In addition, the legislative history indicates that the resolution was directed at providing assurances that individuals with incurable diseases can have adequate insurance coverage, and adequate educational and employment opportunities, without fear of discrimination.

The restrictions on the availability of private insurance to adults with incurable diseases are economic ones imposed by the insurance industry through increased premiums, limited coverage, or denial of coverage.

Existing Law

The 1981 Legislative Assembly enacted North Dakota Century Code Chapter 26-16.1 which creates the Comprehensive Health Association of North Dakota (CHAND). All insurers having an annual premium volume of accident and sickness insurance contracts of at least $100,000 derived from or on behalf of North Dakota residents are required to participate in CHAND. Individuals are eligible to enroll in the plan if they are state residents and if, within six months of the date of their application, they have been rejected twice for accident and sickness insurance or they have been told twice that as compared to a person who is considered a standard risk, the coverage they will receive will be substantially reduced because of a restrictive rider or a preexisting condition limitation.

Interim Study

The CHAND program has experienced two major problems: (1) premiums received by participating insurance companies have not covered the cost of required care, and (2) premiums have been too expensive for those individuals who require the insurance.

Chapter 26-16.1 was enacted for the purpose of providing comprehensive major medical insurance to persons who are otherwise uninsurable. A study conducted by the Insurance Department revealed that 12 percent of the state's population had no health insurance whatsoever and that 12,000 persons were uninsurable. Section 26-16.1-07 requires all insurance companies which have $100,000 of premium volume per year to participate in the CHAND program. Blue Cross/Blue Shield was selected as the lead carrier to administer the program. The program had been structured to be actuarially sound but that because of one very large claim, premiums paid are insufficient to pay the cost of care being rendered and the program can be made actuarially sound only if considerably more people subscribe to the program.

Policyholders are collectively paying for the program through higher premium rates. An alternative discussed by the committee was to subsidize the insurance program

by giving tax credits to the participating insurance companies.

Available information indicated that the CHAND program cannot be self-sustaining because premiums would be too high for people to afford. Premium charges are currently approximately 300 percent over regular insurance rates. The program is currently receiving approximately three new applications per month and there are 54 current subscribers to the program.

The committee focused its attention on two proposed major changes in the current law. It was suggested that "experimental surgery" be eliminated from CHAND coverage and that participating insurance companies be given tax credits to offset their taxes by the money loss attributable to the CHAND program.

Some committee members were concerned that pool insurance subscribers have the same coverage as others and pointed out that regular Blue Cross policies did not exclude "experimental surgery" from coverage. These members also indicated that it would be very difficult to define "experimental surgery" in light of the rapid changes in the health care fields. Other members supported the exclusion and expressed their concern that without it, the state will be paying for risky and expensive experimental surgery.

The committee discussed the use of tax credits to subsidize the pool insurance program. The issue was defined as philosophical inasmuch as either the state must subsidize the program for everyone affected or health insurance consumers must bear the financial responsibility. Others agreed that the insurance companies should remain financially responsible for the program and that the costs of the program should be prorated among all policyholders.

Recommendation

The committee recommends amending North Dakota Century Code Chapter 26-16.1 by a bill which:

1. Exempts from pool insurance coverage any medical or surgical procedure with respect to which the efficacy and safety has not been established. This is a new provision.
2. Recognizes that the pool insurance program will not be self-supporting and therefore places a 125 percent premium cap on the rates charged by the five largest insurers with the largest individual qualified plan of insurance in the state. Currently there is no premium cap.
3. Makes only those participating insurance companies which are liable for state income tax responsible for the losses due to claims and expenses of the pool insurance program. Existing law requires that all participating insurance companies share the losses.
4. Permits persons who have had continuous coverage under a family or group accident and sickness insurance policy during the year immediately preceding the filing of their application to be covered by the pool insurance policies for nonelective procedures. Existing law prohibits persons from being covered for preexisting conditions during the first six months of coverage if that person was diagnosed or treated for that condition during the 90 days immediately preceding the filing of an application for pool insurance coverage.
5. Provides for a tax credit against state income tax in the amount of any assessment paid by a member of the Comprehensive Health Association during the year in which the assessment was paid.
6. Provides for a qualified plan of health coverage for benefits consisting of that portion of Medicare eligible expenses which are not paid by Medicare Part A and Medicare Part B. This insurance shall provide benefits for Medicare deductible and coinsurance amounts for Medicare eligible expenses to the extent recognized as reasonable by Medicare. This is a new provision.

TAX STATUTES REVISION COMMITTEE

The Tax Statutes Revision Committee was assigned one study. Senate Concurrent Resolution No. 4057 directed the Legislative Council "to study Title 57 of the North Dakota Century Code, relating to taxation for the purpose of identifying and removing unused and archaic sections and laws, reconciling conflicts and ambiguities, eliminating surplus language and obsolete references, and reorganizing and arranging the subject matter in the laws in a proper and logical sequence." The resolution contemplated that revision would be accomplished without substantively changing the law.

Committee members were Senators Chuck Goodman, Chairman, Robert Albers, James Dotzenrod, and Bryce Streibel; and Representatives James Gerl, Roger Hill, Tom Kuchera, Clarence Martin, Gordon Matheny, Douglas Mattson, Marshall Moore, Allen Richard, and Emil Riehl.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

BACKGROUND

Since statehood every Legislative Assembly in North Dakota has enacted, amended, or repealed state law relating to taxation. Cohesiveness and ease of administration would be difficult to achieve in a single enactment of such a large body of law, let alone in piecemeal enactment over the course of 47 Legislative Assemblies. No comprehensive review of tax laws has ever been done in North Dakota.

The bulk of North Dakota tax law is found in Title 57 of the North Dakota Century Code (NDCC) but hundreds of other sections outside Title 57 impose taxes, provide for administration and application, and impose levy limitations.

The resolution set ease of administration as a goal of the study. Since the State Tax Department is charged with administration of state tax law the committee sought recommendations from the Tax Department in commencing the study. In view of the monumental task of revising tax statutes, the department recommended prioritizing target areas for revision consideration. Representatives of the department testified that there are more problem areas than could be addressed in a single interim but recommended concentration on motor fuels tax provisions, income tax provisions, and the federalization date of the estate tax. The committee accepted these recommendations and also focused its attention on obsolete references to the personal property tax and harmonizing Century Code usage of the terms "assessed valuation" and "taxable valuation."

PERSONAL PROPERTY TAX REFERENCE REVISION

The personal property tax was enacted by the Territorial Legislative Assembly in 1877 and survived in essentially the same form until 1969. In 1969 the personal property tax was repealed for all personal property except specifically exempted property, centrally assessed property, property of certain organizations exempt from income taxes, and mobile homes. Since repeal of the personal property tax, numerous obsolete references have been removed from the Century Code, but several sections remain which contain obsolete references to the personal property tax.

Testimony from the Tax Department indicated that obsolete sections relating to the property tax may be removed from the Century Code but caution should be exercised since some sections are still needed relating to collection of personal property taxes on nonexempt property. The department also informed the committee that some counties still carry delinquent personal property taxes on the books from prior to 1969 and personal property tax collection sections of the Century Code are still necessary.

Recommendation

The committee recommends a bill to repeal three sections of the Century Code, to amend another section, and to amend nine subsections and repeal five subsections of NDCC Section 57-02-08. The bill amends Section 57-02-03 to provide that all property in this state is subject to taxation unless expressly exempted by law. The remaining changes in the bill remove sections which are obsolete or duplicate the exemption of personal property contained in Section 57-02-08(25). Section 10-12-03 exempts the personal property of the rural rehabilitation corporation and is to be repealed because personal property is presently exempted by Section 57-02-08(25). Sections 57-02-06 and 57-02-07 are repealed by the bill since they define merchants and manufacturers for purposes of taxation of inventories. The 14 subsections of Section 57-02-08 preceded the personal property tax exemption in time of enactment. They were designed to exempt personal property from taxation which was nonexempt at the time of enactment. The 1969 personal property tax exemption extends to the property which was exempted by the subsections being amended or repealed. Therefore, references in these 14 subsections to exemption of personal property may be removed without subjecting the property to taxation. All of the changes incorporated in the bill are intended to make no change in what property is subject to taxation.

ASSESSED OR TAXABLE VALUATION

Over the course of several decades a de facto valuation system for real property developed whereby property values for tax purposes were determined without regard to statutory provisions and were only a fraction of the actual value. In 1979 the North Dakota Supreme Court, in Soo Line Railroad Company v. State of North Dakota, 286 N.W.2d 459, recognized this nonstatutory valuation as an abuse and said it would no longer countenance de facto classification of property in North Dakota for purposes of taxation. The legislative response to this court decision was action in the 1981 Legislative Assembly to restructure the entire assessment system in the state.

Prior to the 1981 Legislative Assembly, NDCC Section 57-02-28 provided that the full and true value of property was to be used to compute taxes levied for payment of bonded indebtedness but the value of property to be used for computation of all other taxes was 50 percent of the true and full value. The 1981 Legislative Assembly passed Senate Bill No. 2323 which amended Section 57-02-28 to provide that the value used for computation of taxes to be levied for payment of bonded indebtedness was the assessed value. An amendment to Section 57-02-27 provided for the assessment of property at a percentage ranging from nine percent to 14 percent of true and full value. The bill also provided that taxable value was to be 50 percent of assessed value for purposes other than bonded indebtedness. Senate Bill No. 2262, also passed in

the 1981 Session, defined assessed valuation for bonded indebtedness purposes in Section 21-03-01(4) to mean six times the net value determined pursuant to Section 57-02-28.

Section 15 of Article X of the Constitution of North Dakota provides that "[t]he debt of any county, township, city, town, school district or any other political subdivision, shall never exceed five percentum upon the assessed value of the taxable property therein ...." This constitutional provision provides for increases for cities and school districts upon approval of the voters. Some bonding attorneys were concerned about whether it was constitutionally permissible to have a definition of assessed value for bonding purposes which differs from the definition of that terminology for property tax purposes. As a result of these concerns House Bill No. 1674 was passed during the November 1981 Reconvened Legislative Session. That bill amended NDCC Section 57-02-27 to provide that the percentages applied to various property identified the taxable value, rather than the assessed value, of the property. House Bill No. 1674 also created a new subsection to Section 57-02-01 defining assessed valuation as 50 percent of true and full value and amended subsection 4 of Section 21-03-01 to cross-refer the definition of assessed value in the bonding law to the definition of that terminology in the property tax law. The increased assessed valuation allows a larger bonding base for political subdivisions and the taxable valuation remains unchanged.

Another result of House Bill No. 1674 is that various dollar values associated with property tax exemptions and credits require adjustment if the present definition of assessed valuation is used. Property tax exemptions and credits provided to aged or disabled persons are expressed in dollars against assessed valuation. Since House Bill No. 1674 increased assessed valuation by approximately five times, the dollar value of exemption or credit against assessed value would yield only about one-fifth of the credit intended. Under the new valuation scheme, the original exemption or credit intended would be obtained by deducting half of the dollar amount of the exemption or credit from the taxable value of the property since taxable value was formerly equal to 50 percent of assessed value.

To avoid reducing the intended tax relief, the definition of assessed valuation included in House Bill No. 1674 excepted 12 sections of the Century Code and provided that the definition of assessed valuation for those 12 sections is the definition of assessed valuation prior to November 1981. These 12 sections may now be amended to make uniform application of the definition of assessed valuation possible.

Assessed valuation is presently defined as being 50 percent of true and full value, and using assessed valuation as a standard for application of mill levies yields an exaggerated result. Section 57-02-28 provides that taxable value is to be used for computation of taxes. Mill levy limitations can be simplified if expressed in terms of taxable valuation rather than assessed valuation throughout the Century Code.

The committee found that 151 sections of the Century Code contain references to assessed or taxable valuation. These terms have been used interchangeably in some instances and in other sections have been combined and used in phrases such as net taxable assessed valuation or net assessed taxable valuation. The committee concluded that revision of valuation references is required and should be accomplished in a single bill draft to avoid repetition of problems that have occurred in the past.

Recommendation

The committee recommends a bill to eliminate use of the term "net assessed valuation" in the Century Code and to provide for usage of the terms "assessed valuation" and "taxable valuation" uniformly throughout the code. The definition of assessed valuation in NDCC Section 57-02-01 and the definition of taxable valuation contained in Section 57-02-28 are to be applied to all Century Code sections relating to assessment or levy and appropriate amendments are made throughout the code.

The bill amends 91 of the 151 Century Code sections referring to assessed or taxable valuation. The amended sections will comply with the provisions of NDCC Section 57-02-28 that taxable valuation is to be used in the computation of taxes. To provide the same exemptions or credits as intended in statutes providing these reductions in dollar amounts, the bill divides the dollar value in half and credits the result against taxable value, which is half of what assessed value formerly equaled. The bill also eliminates use of phrases such as net assessed taxable valuation which have crept into the Century Code through the years. The bill provides for use of assessed or taxable valuation only, to provide better understanding of property tax application. The changes incorporated in the bill are intended to make no substantive changes in application of North Dakota law relating to valuation for assessment purposes.

FEDERALIZATION OF ESTATE TAX

North Dakota's estate tax is based on federal law. The tax imposed by the state is equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in North Dakota.

North Dakota's estate tax is "federalized," that is, it utilizes provisions of the Internal Revenue Code. North Dakota Century Code Section 57-37.1-01 defines the Internal Revenue Code as the law as amended through December 31, 1980. For this reason North Dakota law does not recognize the changes in federal estate tax law made by the Economic Recovery Tax Act of 1981. This results in the anomalous treatment, for tax purposes, of the estate of a decedent dying in 1982 as though the decedent had died in 1981. The estate of a decedent dying in 1982 must prepare a federal tax return for 1982, a federal tax return based on 1981 law, and a state estate tax return based on the 1981 federal tax return. Officials of the Tax Department testified that this situation creates an administrative burden and is a hardship on estate representatives. The department recommended updating the federalization date for the estate tax through December 31, 1982.

Updating the federalization date of the North Dakota estate tax will produce a fiscal effect upon North Dakota political subdivisions, which are the recipients of the tax revenues. The Tax Department estimated the statewide effect of updating the federalization date to be a revenue loss of $300,000 to $500,000 for the 1983-85 biennium and approximately $2 million per biennium after 1985.

Recommendation

The committee recommends a bill to amend NDCC Section 57-37.1-01 to provide that the United States Internal Revenue Code of 1954, as amended, means the Internal Revenue Code as amended through December 31, 1982. Committee members said the present situation is an undue burden on taxpayers and the Tax Department and that the state should be aligned with recent federal law minimizing estate taxes.

MOTOR FUELS TAX REVISION

Title 57 of the Century Code presently contains six chapters dealing with motor fuel taxation. The chapters are: Chapter 57-50 — refund motor fuel tax; Chapter 57-52 — Special Fuels Tax Act; Chapter 57-53 — special fuels tax levy; Chapter 57-54 — Motor Vehicle Fuel Tax Act; Chapter 57-54.1 — Importers for Use Tax Act; and Chapter 57-56 — aviation fuel tax. Testimony from the Tax Department was that the various chapters on fuels taxes were enacted at different times and could now be consolidated to eliminate overlapping or duplicative provisions. Representatives of the department testified that consolidation of the motor fuels tax chapters would aid consumers and business people in understanding the law and would make administration of the law simpler.

The committee considered three bill drafts to consolidate the provisions of the motor fuels tax chapters without substantively changing the law. The first bill draft considered by the committee would have combined the six motor fuels tax chapters into two chapters. This bill draft was not approved by the committee since it incorporated aviation fuels provisions which would have made the new chapter overly complicated in the view of the Tax Department. The second bill draft considered by the committee would consolidate provisions relating to special fuels taxes. The third bill draft would consolidate provision relating to motor vehicle fuels taxes. The second and third bill drafts were recommended by the Tax Department and approved by the committee.

Recommendation

The committee recommends two bills relating to motor fuels taxes. One bill repeals NDCC Chapters 57-50, 57-54, and 57-54.1 and replaces those chapters with Chapter 57-43.1, relating to motor vehicle fuels tax provisions. The second bill repeals NDCC Chapters 57-52, 57-53, and 57-54.1 and replaces those repealed chapters with a proposed NDCC Chapter 57-43.2, relating to special fuels tax provisions. Both recommended bills repeal Chapter 57-54.1 and incorporate the provisions of that chapter, relating to the importer for use tax, because importer for use tax is imposed for both special fuels and motor vehicle fuels.

The committee makes no recommendation for revision of Chapter 57-56, relating to aviation fuel tax.

Parallel tables are published with this report as appendices. Appendix "A" may be used to trace from present North Dakota Century Code sections to proposed North Dakota Century Code sections. Appendix "B" may be used to trace from proposed North Dakota Century Code sections to present North Dakota Century Code sections.

INCOME TAX REVISION

Corporate and individual income tax provisions are contained in NDCC Chapter 57-38. Representatives of the Tax Department testified that reorganization of the state income tax provisions would simplify understanding and administration of the income tax chapter. The committee asked the department to prepare and submit a bill draft for proposed income tax revision for committee consideration.

A draft of a proposed income tax chapter was presented by the Tax Department. Representatives of the department testified that the bill draft required further study and contained proposals for substantive change. The department recommended that substantive changes in income tax law be included in the committee recommendation to resolve conflicts in present law and ease administration of the income tax laws. Committee members said a lengthy revision bill should not include substantive change which might cause confusion and that income tax revision may be better delayed until such time as necessary substantive changes have been made by the Legislative Assembly. Officials of the Tax Department testified that it is difficult to work within the confines of the nonsubstantive change limitation in income tax revision, and asked that if another revision is undertaken, substantive changes be allowed.

The committee makes no recommendation on revision of the income tax chapter.

APPENDIX "A"

CROSS-REFERENCE TABLE FOR REVISED MOTOR FUEL TAX PROVISIONS

Present NDCC Section	Proposed NDCC Section	Present NDCC Section	Proposed NDCC Section
57-50-01	57-43.1-03	57-54-03	57-43.1-01
57-50-02	57-43.1-04	57-54-04	57-43.1-13
57-50-03	57-43.1-05	57-54-05	57-43.1-14
57-50-03.1	57-43.1-06	57-54-06	57-43.1-15
57-50-04	57-43.1-07;	57-54-07	57-43.1-16
	57-43.1-31	57-54-07.1	57-43.1-17
57-50-05	57-43.1-08	57-54-08	57-43.1-02
57-50-05.1	57-43.1-09	57-54-09	57-43.1-18
57-50-06	57-43.1-10	57-54-10	57-43.1-20
57-50-07	57-43.1-32	57-54-11	57-43.1-21
57-50-08	57-43.1-33	57-54-12	57-43.1-22
57-50-09	omitted	57-54-13	57-43.1-23
57-50-10	omitted	57-54-14	57-43.1-28
57-50-11	57-43.1-11	57-54-15	Repealed
57-50-11.1	57-43.1-12		1967
57-52-01	not retained	57-54-16	57-43.1-24
57-52-02	not retained	57-54-17	57-43.1-25
57-52-03	57-43.1-01;	57-54-18	57-43.1-19
	57-43.2-01	57-54-19	57-43.1-29
57-52-04	57-43.2-02	57-54-20	57-43.1-30
57-52-05	57-43.2-05	57-54-21	57-43.1-26
57-52-06	57-43.2-07	57-54-22	57-43.1-27
57-52-07	57-43.2-08	57-54-23	57-43.1-33
57-52-08	57-43.2-09	57-54-24	57-43.1-34
57-52-09	57-43.2-10	57-54.1-01	not retained
57-52-10	57-43.2-12	57-54.1-02	not retained
57-52-10.1	57-43.2-14	57-54.1-03	57-43.1-01;
57-52-11	57-43.2-18		57-43.2-01
57-52-12	57-43.2-15	57-54.1-04	57-43.1-35;
57-52-13	57-43.2-16		57-43.2-27
57-52-14	57-43.2-17	57-54.1-05	57-43.1-36;
57-52-15	57-43.2-21		57-43.2-38
57-52-16	57-43.2-13	57-54.1-06	57-43.1-37;
57-52-16.1	57-43.2-22		57-43.2-29
57-52-17	57-43.2-23	57-54.1-07	57-43.1-28;
57-52-18	57-43.2-24		57-43.2-30
57-52-19	57-43.2-25	57-54.1-08	Repealed
57-52-20	57-43.2-19		1979
57-53-01	57-43.1-01;	57-54.1-09	57-43.1-39;
	57-43.2-02		57-43.2-31
57-53-02	57-43.2-03	57-54.1-10	57-43.1-40;
57-53-03	57-43.2-04		57-43.2-32
57-53-04	57-43.2-06	57-54.1-11	57-43.1-41;
57-53-05	57-43.2-11		57-43.2-33
57-53-06	57-43.2-13	57-54.1-12	57-43.1-42;
57-53-06.1	57-43.2-22		57-43.2-34
57-53-07	57-43.2-24	57-54.1-13	57-43.1-43;
57-53-08	57-43.2-25		57-43.2-35
57-53-09	57-43.2-20	57-54.1-14	57-43.1-44;
57-53-10	57-43.2-26		57-43.2-36
57-54-01	not retained	57-54.1-15	57-43.1-45;
57-54-02	not retained		57-43.2-37

APPENDIX "B"

CROSS-REFERENCE TABLE FOR REVISED MOTOR FUEL TAX PROVISIONS

Present NDCC Section	Proposed NDCC Section
57-43.1-01	57-52-03; 57-53-01; 57-54-03; 57-54.1-03
57-43.1-02	57-54-08
57-43.1-03	57-50-01
57-43.1-04	57-50-02
57-43.1-05	57-50-03
57-43.1-06	57-50-03.1
57-43.1-07	57-50-04
57-43.1-08	57-50-05
57-43.1-09	57-50-05.1
57-43.1-10	57-50-06
57-43.1-11	57-50-11
57-43.1-12	57-50-11.1
57-43.1-13	57-54-04
57-43.1-14	57-54-05
57-43.1-15	57-54-06
57-43.1-16	57-54-07
57-43.1-17	57-54-07.1
57-43.1-18	57-54-09
57-43.1-19	57-54-18
57-43.1-20	57-54-10
57-43.1-21	57-54-11
57-43.1-22	57-54-12
57-43.1-23	57-54-13
57-43.1-24	57-54-16
57-43.1-25	57-54-17
57-43.1-26	57-54-21
57-43.1-27	57-54-22
57-43.1-28	57-54-14
57-43.1-29	57-54-19
57-43.1-30	57-54-20
57-43.1-31	57-50-04
57-43.1-32	57-50-07
57-43.1-33	57-54-23
57-43.1-34	57-54-24
57-43.1-35	57-54.1-04
57-43.1-36	57-54.1-05
57-43.1-37	57-54.1-06
57-43.1-38	57-54.1-07
57-43.1-39	57-54.1-09
57-43.1-40	57-54.1-10
57-43.1-41	57-54.1-11
57-43.1-42	57-54.1-12
57-43.1-43	57-54.1-13
57-43.1-44	57-54.1-14
57-43.1-45	57-54.1-15
57-43.2-01	57-52-03; 57-53-01; 57-54.1-03
57-43.2-02	57-52-04
57-43.2-03	57-53-02
57-43.2-04	57-53-03
57-43.2-05	57-52-05
57-43.2-06	57-53-04
57-43.2-07	57-52-06
57-43.2-08	57-52-07
57-43.2-09	57-52-08
57-43.2-10	57-52-09
57-43.2-11	57-53-05
57-43.2-12	57-52-10
57-43.2-13	57-52-16; 57-53-06
57-43.2-14	57-52-10.1
57-43.2-15	57-52-12
57-43.2-16	57-52-13
57-43.2-17	57-52-14
57-43.2-18	57-52-11
57-43.2-19	57-52-20
57-43.2-20	57-53-09
57-43.2-21	57-52-15
57-43.2-22	57-52-16.1; 57-53-06.1
57-43.2-23	57-52-17
57-43.2-24	57-52-18; 57-53-07
57-43.2-25	57-52-19; 57-53-08
57-43.2-26	57-53-10
57-43.2-27	57-54.1-04
57-43.2-28	57-54.1-05
57-43.2-29	57-54.1-06
57-43.2-30	57-54.1-07
57-43.2-31	57-54.1-09
57-43.2-32	57-54.1-10
57-43.2-33	57-54.1-11
57-43.2-34	57-54.1-12
57-43.2-35	57-54.1-13
57-43.2-36	57-54.1-14
57-43.2-37	57-54.1-15

TENNECO PLANT COMMITTEE

House Concurrent Resolution No. 3018 created the Tenneco Plant Committee and directed a study of the potential impact of the Tenneco coal gasification plant on the city of Beach, North Dakota, and the surrounding area, with special emphasis placed on alternative methods of ensuring continuous impact assistance to the area throughout the life of the plant; and that the committee communicate and meet with an appropriate committee or entity from the state of Montana to arrive at a solution mutually acceptable to both states.

Committee members were Representatives Jack Murphy, Chairman, Ronald Gunsch, and Charles Mertens; Senators Bruce Bakewell and Stella Fritzell; and Executive Branch Members August Keller, Director of the Energy Development Impact Office, and Gary Helgeson, Counsel, Governor's Office.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

BACKGROUND

The Tenneco Coal Gasification Company, a subsidiary of Tenneco, Inc., is planning to build a large-scale coal gasification plant near Beach, North Dakota, just across the border in Montana. The Tenneco coal gasification project will use the commercially proven Lurgi process to produce synthetic natural gas. The plant would require a supply of 41,000 tons of coal per day and about 10,000 acre-feet of water annually. The coal gasification project will involve the following components:

1. A coal gasification plant.
2. A surface mine.
3. A water supply system.
4. A natural gas pipeline and all ancillary facilities.

The plant is designed to produce 200 million standard cubic feet per day of synthetic natural gas from coal. The plant's life is projected to be at least 30 years, and the available lignite reserves in the area are well in excess of requirements for the life of the plant. The synthetic natural gas will be transported through a pipeline constructed to connect the plant with the Northern Border Pipeline in North Dakota, or through a pipeline constructed from the plant to Joliet, Illinois.

During the construction phase of the plant it is estimated that the peak population could increase from the present 30,000 people to approximately 43,000 in a 100-mile corridor from Dickinson to Glendive, Montana, along Interstate 94. The additional 13,000 people include employees involved in various construction and improvement activities and their families. During the production phase of the project about 1,050 workers will be employed at the plant and 300 will be employed at the mine.

The planning phase for this project is currently underway. However, the beginning of the construction phase is not slated until 1987. Full capacity production is not to begin until 1991. Mining of coal in North Dakota is not expected during the first 20 years of the project.

INTERIM STUDY

The committee solicited and received testimony from the Tenneco Company, Bureau of Land Management, Energy Development Impact Office, Roosevelt-Custer Regional Council, Golden Valley Resource Council, Dakota Resource Council, State Health Department, Public Service Commission, and interested parties from the Beach area. The committee also invited Representative Cal Winslow, Chairman of the Montana Coal Tax Oversite Committee, local legislators from the Wibaux area, and other Montana officials to the committee meetings.

The Tenneco project is approximately twice the size as the Great Plains coal gasification plant in Mercer County and it would probably require a larger construction work force and, since it will be drawing from a smaller local work force pool than the Great Plains project, a larger share of in-migrating workers may locate in Wibaux, Montana, and Golden Valley County, North Dakota. If Tenneco were to employ 3,000 people at the peak of its construction schedule and if it were able to obtain 1,000 workers who would commute daily from within the region, it would have to hire another 2,000 workers from outside the region. The Beach-Wibaux area will see major activity and the existing services and facilities will need to be improved and expanded to handle that growth. Existing services and facilities would be inadequate to handle the extra burdens placed upon it.

Testimony indicated that there will be a need for improved school facilities; additional school personnel and equipment; new water and sewer facilities for the communities; improvements to heavily traveled county roads and city streets; additional law enforcement personnel, equipment, and facilities; road and street maintenance equipment; improvements to community centers; and new park and recreational facilities and equipment.

This state's energy development impact aid program is governed by North Dakota Century Code Chapter 57-62. The program is designed to provide aid to cities, counties, school districts, and other taxing districts which demonstrate actual or anticipated extraordinary expenditures caused by coal or oil and gas development (including coal gasification) and the growth incidental thereto.

The Energy Development Impact Office, through the legislative appropriation of 35 percent of the proceeds of the coal severance tax, has been able to reduce the financial burdens natural resource projects can create for the local subdivisions affected by coal development. The impact office is only one of five sources of support in the coal impact mitigation program in North Dakota:

1. The first source of support is the local commitment of resources such as property tax collections, volunteer effort, and community involvement.
2. The second source of support comes from industry itself.
3. The third source of support is the local share of coal severance and conversion taxes. Twenty percent of the coal severance tax returns to the producing counties, cities, and schools in North Dakota to supplement their operating and capital improvement programs.
4. The fourth source of support is the coal trust fund, a constitutional trust fund that receives 15 percent of the coal severance tax. Coal-impacted counties, cities, and school districts can borrow from this trust fund at six percent interest for specific projects that are related to impact.
5. The fifth source of support is the coal impact grant program, funded by legislative appropriation of 35 percent of the coal severance tax. This program can provide direct assistance for projects to support basic governmental services which will mitigate negative impacts from coal development.

Of these five sources, only local efforts and industry

support are available to mitigate impacts from the Tenneco plant in the Beach area. The policy of the Energy Development Impact Office is that loans from the coal development trust fund and energy impact grants may not be made unless the impact is related to coal production in this state. The 20 percent direct allocation of coal severance taxes is statutorily distributed only to coal-producing counties. Without actual production in this state, therefore, the Beach area is not eligible for impact aid grants, loans, or direct coal severance tax allocations for impact assistance.

Testimony indicated that there is a need to develop a strategy to mitigate the impacts if the project proceeds as planned. Until such a strategy is established through an agreement through Tenneco and the states of North Dakota and Montana, the Energy Development Impact Office will not be able to make grant awards to those North Dakota subdivisions that will be affected by the Montana coal development. Unless such a strategy is adopted and a plan established for mitigation of the impact, the communities in North Dakota will have to rely on their own tax effort and on industry support to meet the demands resulting from the Tenneco project. As long as the coal is mined only in Montana, the communities will not receive coal severance taxes, cannot borrow from the coal trust fund, and cannot receive assistance from the coal impact fund.

There are three possible ways to provide the necessary impact assistance to the Beach area:

1. Provide that Tenneco begin mining simultaneously on both sides of the border and proceed at approximately the same rate.
2. Provide that Tenneco pay severance taxes on the estimated tonnage that would be taken from the North Dakota side of the mining tract in advance of mining.
3. Establish a reciprocity agreement between Tenneco, Montana, and North Dakota by which severance taxes on mined tonnage will be shared by the two states in proportion to the total coal reserves in the mining tract on each side of the border, regardless of where actual mining is taking place.

Implementation of these suggestions would assure the payment of coal severance taxes and would effectively put into place all five sources of support for the coal impact mitigation program in North Dakota. The communities would receive a share of the severance tax to supplement their local efforts. Tenneco, where necessary, could contribute to certain needs in the area (temporary housing, for instance). Communities receiving severance taxes could borrow from the coal trust fund, and finally, the impact office could provide direct financial assistance.

WATER SUPPLY DEVELOPMENT PROBLEMS

Testimony indicated that the Tenneco plant would require an annual water supply of about 10,000 acre-feet. The Tenneco Company has two alternatives for water supply for the plant. The first is a Yellowstone River diversion project and the second is a Yellowstone River diversion project supplemented with a Beaver Creek project. The diversion projects would both be located in Montana. The appendix to this report illustrates the proposed water supply projects.

The Yellowstone River diversion project, the primary source of water for the coal gasification plant, consists of a diversion structure with pumping plant, offstream regulating reservoir, and a pipeline connecting the diversion structure to the reservoir. The Yellowstone River diversion would transfer water out of the Yellowstone River Basin in Montana and carry it by aqueduct to the proposed site southwest of Beach.

As an alternative, the Yellowstone River diversion project could be supplemented with water from the Beaver Creek project. The Beaver Creek project would consist of an earthen dam, spillway, and outlet works on the Beaver Creek in Montana north of Wibaux. The water would then be transported by the aqueduct to the proposed plant site.

The state of North Dakota, along with Montana and Wyoming, is a signator to the Yellowstone River Compact. Article X of that compact provides that no water shall be diverted from the Yellowstone River Basin without the unanimous consent of all the signatory states.

Although Tenneco has an approved right to more than 80,000 acre-feet from the Yellowstone River, it must obtain the unanimous approval of North Dakota, Montana, and Wyoming to divert that water out of the Yellowstone Basin to the proposed plant site. During the last session of the Montana Legislature, permission to make such a diversion was denied. Intake Water Company, a subsidiary of Tenneco, Inc., has initiated a lawsuit challenging the constitutionality of Article X of the Yellowstone River Compact. The federal district court is currently accepting various briefs submitted by the parties and is considering the necessity for oral arguments. Resolution of this case is not expected soon.

The proposed Southwest Pipeline Project in North Dakota, which is to supply water to the Beach area, may be affected by the proposed Tenneco gasification plant. The Tenneco Company has proposed the possibility of supplying the Beach area with 2,000 acre-feet for water for municipal use. This may have a negative impact on the feasibility and need for the Southwest Pipeline Project in the Beach area.

COORDINATION OF ACTIVITIES WITH MONTANA

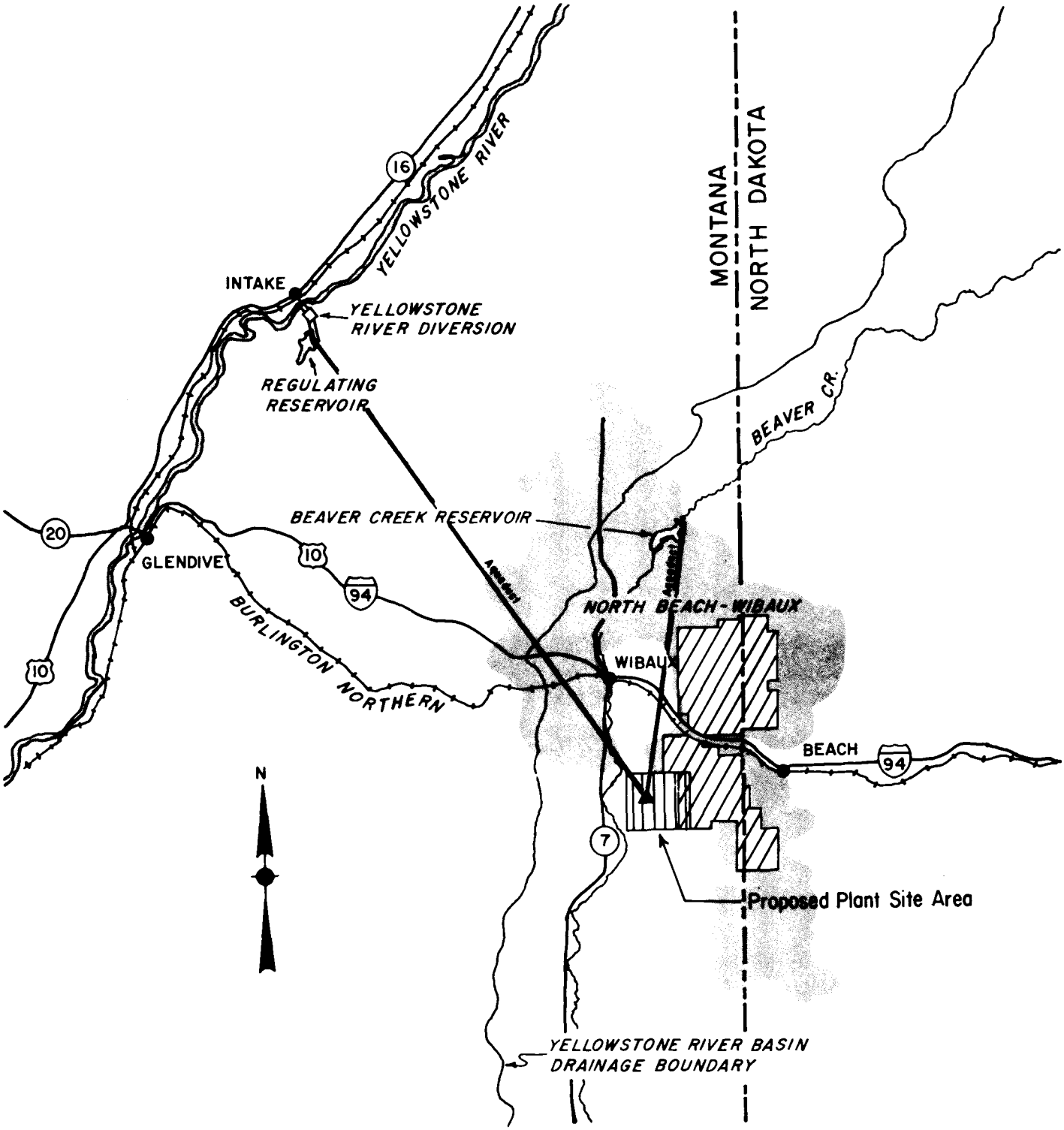
The resolution directed the committee to communicate and meet with an appropriate committee or entity from Montana in regard to the Tenneco gasification plant. Although the committee did engage in activities attempting to establish a joint meeting between the two states, Montana did not organize a group with authority to meet with the committee before the committee's last meeting. However, important contacts were made with Montana state officials and groundwork was begun for possible future meetings between North Dakota and Montana officials on this matter.

RECOMMENDATIONS

The committee recommends a concurrent resolution for the continued study of the Tenneco gasification plant impacts in North Dakota after the 1983 Legislative Session. The committee assigned the study should include a representative from the Beach-Golden Valley County area. The study should include a report on the ramifications of the various water resource issues involved with the Tenneco project upon the North Dakota Southwest Pipeline Project.

The committee noted that it is important to have a similar group from Montana established, possibly another interim committee, to deal effectively with the problems associated with the Tenneco plant.

The committee also recommends that the 1983 Legislative Assembly address the possible impacts and ramifications on existing water rights in North Dakota resulting from the two alternatives for supplying the water requirements for the Tenneco gasification plant.



LIGNITE DEPOSIT

MINING UNITS

INTAKE WATER COMPANY

WATER SUPPLY PROJECTS
NORTH BEACH-WIBAUX AREA

GRAPHIC SCALE

5 0 5 10 15 MILES

TRANSPORTATION COMMITTEE

The Transportation Committee was assigned two study resolutions. House Concurrent Resolution No. 3048 directed a study of the effects of oil and gas exploration and development on primary and secondary roads in the state and the level and type of funding needed to alleviate these effects. Senate Concurrent Resolution No. 4023 directed a study of the immediate and future availability of financial resources necessary to construct, reconstruct, repair, and maintain the various roads, streets, and highways in the state.

Committee members were Representatives Mike Timm, Chairman, Ronald Anderson, Dayle Dietz, William Goetz, Oben Gunderson, Roger Hill, David Kent, Roger Koski, Herman Larson, Kenneth Olafson, Dan Olson, Joe Peltier, Allen Richard, Emil Riehl, and Royden Rued; and Senators Jan Dykshoorn, LeRoy Erickson, Herschel Lashkowitz, Duane Mutch, William Parker, I.E. Solberg, and Jens Tennefos. Representative Bill Heigaard was a committee member until he resigned his office and was elected a senator. Representative Neil Romfo was elected to fill Representative Heigaard's vacancy and was appointed a committee member for the rest of the interim.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1982. The report was adopted for submission to the Forty-eighth Legislative Assembly.

COMMITTEE ACTION

In accordance with the directives of the Legislative Assembly, the committee solicited testimony and suggestions from the State Highway Department, representatives of local government, and members of the public as to both issues which the committee was directed to study. The committee met seven times during the interim. Although the committee makes no recommendations as to specific bills, the committee makes recommendations concerning the issues studied.

HIGHWAY FINANCING

Introduction

In accordance with the directive of Senate Concurrent Resolution No. 4023, the committee heard considerable testimony and reviewed numerous documents attesting to the growing need to find ways to ensure that the roads of this state are kept in safe and usable condition well into the future. This is a problem by no means unique to North Dakota. Many recent commentaries have described the failing condition of America's "infrastructure" (see e.g., Starr, "Decaying of America," Newsweek, August 2, 1982, pp. 12-19). "Infrastructure" is a broad term used to describe the physical plant of government — those items of real estate that provide us all with so many of our daily necessities and convenience. Thus the term encompasses not only the road system but such vital components as water systems, sewer systems, electrical supply systems, and gas supply systems.

The roads are a vital part of this state's infrastructure. Without well-built and maintained roads, farmers cannot get their supplies, material, and equipment to the farm nor can they get their products to market; students cannot get to schools; customers cannot get to stores; letter carriers cannot deliver the mail; and hunters, anglers, and vacationers cannot partake of the recreational wonders this state has to offer.

The Roads

In this state there are about 105,000 miles of roads that are not owned by the federal government. With only about 653,000 people (1980 census) that means that each one of us has to pay for about 850 feet of roadway. Imagine having to care for a 850-foot long, double width driveway. This per capita footage is one of the highest in the country.

The state's roads include:

1. The "state system" — This system has 7,167 miles and is the responsibility of the State Highway Department. Limited by law to no more than seven percent of the state's total road mileage to a maximum of 7,700 miles (NDCC Section 24-01-01.2), these roads nonetheless carry the bulk (65 percent) of all the traffic in the state.
2. The county and township roads — Total mileage is about 95,000 miles, of which about 9,400 miles are maintained by the counties and townships with federal aid, another 65,000 miles are maintained without federal aid, and 20,600 miles are not actively maintained (primarily trails and other unimproved roads with very little traffic volume).
3. Municipal streets — Total mileage for which cities are responsible is about 3,200 miles. Another 550 miles in cities are the responsibility of the state or county and included in the figures above.

The State System — What is Needed

Because the state highway system is the one that carries most of the traffic and also is supported primarily by state-level taxation or federal aid, much of the committee's study was directed at this system.

Most of the state system was built by a two-stage method and with the expectation that the weight limit for vehicles would continue to be 73,280 pounds. The two-stage system consists of laying about two to three inches of asphalt when the road is first built or rebuilt. Since this kind of pavement will last about 25 years, the expectation is that at about 20 years, another inch or two of asphalt will be added to the roadway, gaining another 20 years of useful life.

Ideally none of the state system pavement should be more than 20 years old. However, in 1980 some 2,100 miles of the state system had not been repaved in 20 years. Some stretches had not been repaved in 35 years.

Ideally about 400 miles of road should be repaved each year. In recent years budget restraints have limited repavement efforts to as few as 175 miles per year. If funding is kept at relatively constant levels (corrected for inflation) by 1990 about 2,850 miles of pavement will be over 20 years old.

Although it may seem cost beneficial to postpone repaving activities that savings is very short lived and is ultimately rendered illusory. Costs of deferring maintenance rise geometrically. If a roadway with a design life of 25 years is not repaved at the 25-year mark and repair is postponed five years, the roadway will be effectively destroyed at age 30. This means it will have to be rebuilt from scratch at a cost about five times what the repaving would have cost at age 25.

Another factor contributing significantly to wear on the road system is the weight limit. The former limit of 73,280 pounds was increased to 105,500 pounds (NDCC Section 39-12-05.1) in 1979 for most state-system roads other than the interstate highways. Even though the interstates are the strongest roads in the state system, the

limit on the interstates is 80,000 pounds (NDCC Section 39-12-05) unless Congress increases the limit (NDCC Section 39-12-05.2), which it has not done.

If this higher weight limit is to be retained, future repavement projects must be planned with this in mind.

The State System — What Will It Cost?

The answer to this question of necessity depends on a decision as to what changes should be made in the state system. The committee heard detailed testimony from Highway Department officials on this issue. A number of possible program levels were suggested. Table 1 is a summary of possible programs and costs as estimated by the State Highway Department:

Table 1:

STATE HIGHWAY PROGRAM ALTERNATIVES
1983-85 BIENNIAL COST ESTIMATES
(IN MILLIONS)

Alternatives	Miles Improved: Resurfacing (1)	Miles Improved: Regrading (2)	Federal Funds Available (3)	State Match for Federal Aid (4)	Maintenance Funds (5)	Additional State Construction Funds (6)	Total Pavement Preservation and Improvement Program (7)	Additional State Funds Required (8)
1. Existing User Fees	136	—	$10.20	$ 3.40	$83.00	—	$ 96.60	$ 11.00
2. Existing Program	350	100	58.50	19.50	75.00	—	153.00	19.10
3. 20-Year Cycle	800	200	58.50	19.50	70.00	$ 32.00	180.00	46.10
4. Responsible System Management (RSM)	1,000	200	58.50	19.50	70.00	52.00	200.00	66.10
5. 800-Mile Catchup	1,600	200	58.50	19.50	70.00	112.00	260.00	126.10
6. RSM Plus Spring Load Free	1,080	200	58.50	19.50	70.00	72.20	220.20	86.30

About This Table:

1. Alternative No. 1 assumes loss of $32 million in revenue provided from oil and gas production tax for the 1981-83 biennium. Assuming that loss, only 136 miles can be resurfaced (repaved) and even then an additional $11 million of state funds is necessary. This alternative accelerates the loss in repaved miles described above. Since about 800 miles (400 times 2) should be repaved each biennium, about 332 more miles of roadway will fall into the "over 20" category each year.
2. Alternative No. 2 assumes the present pace is kept — losing about 150 miles a year into the "over 20" category. The additional $19.10 million listed in column 7 consists of replacing the $32 million from the oil and gas production tax plus another $3 million to match federal aid.
3. Alternative No. 3 is the slowest possible "catchup" program. Instead of losing 150 miles a year into the "over 20" category, the net miles in that category would be reduced 100 to 125 miles each year. In about 17 years, no state system roads would be in the "over 20" category.
4. Alternative No. 4 is described by the Highway Department as "responsible system management." In addition to providing the "catchup" described in Alternative No. 3, this alternative includes necessary rebuilding of roads that have gone too far beyond the 20-year pavement life for repaving to be effective.
5. Alternative No. 5 would allow a faster recovery of some of the miles lost to the "over 20" category in previous years. This assumes 800 miles of catchup over the first biennium (400 miles a year). The biennial cost would not continue as high after the 1983-85 biennium as this alternative assumes that from then on Alternative No. 4 can be used.
6. Alternative No. 6, in addition to the "responsible system maintenance program" outlined in Alternative No. 4, assumes upgrading of spring load capabilities of certain major highways. The load limit on many highways must be reduced during the springtime. This is because while the groundwater under the roadway melts, the roadway is especially vulnerable to damage from heavy loads. The problem dissipates as the ground dries out in the spring; the load limits are then removed. This alternative proposes a 10-year program to eliminate spring load limits on the roads identified in Table 2:

Table 2:

Minimum "Spring Load Free" System
(Between I-94 and U.S. 2)

Highway	Mileage	Cost
U.S. 52	171	$ 24,684,000
U.S. 281	56	12,925,000
U.S. 85	108	17,548,000
U.S. 2	338	110,765,000
U.S. 83	110	37,150,000
	Total 783	$203,072,000

The Other Systems — What is Needed?

Although much of the detailed analysis and study centered around the state system as the primary traffic carrier, that does not mean the problems are any less for the roads in the other systems. In fact the problem is probably worse for those roads. Many were not designed for the 73,280-pound load limits let alone the 105,500-pound limit. Financing for these roads is dependent not on just state level revenue. Although the counties and cities get a share of the state's motor fuel tax (based on the highway tax distribution formula, 37 percent of the total — 27 percent generally to the counties, 10 percent to the cities — NDCC Section 54-27-19), the local jurisdictions must also rely on property tax revenue to fund highway programs.

Unfortunately, just because a local road is used less than a state system road, that does not mean it is going to cost all that much less to build the local road or to maintain it. The lower cost per mile for local roads is more than made up by the greater number of miles to be considered. Thus, the cost estimates for the local road systems are even higher.

The Other Systems — What Will It Cost?

Based on a detailed study of the roads in 15 counties of the state, the Highway Department prepared estimates of the cost of upgrading the county road systems throughout the state. About $1.3 billion is estimated as necessary to fund a program that would provide the following services:

1. Major and minor collector roads.
2. Year-round access to each household.
3. Schoolbus routes so each household is served by at least one potential route.
4. Mail routes so each household is served by at least one potential route.
5. All other county and township roads kept open during nonwinter seasons.

Table 3 (prepared by the State Highway Department) shows the estimated cost of providing the service levels. Capital projects are amortized on a 20-year basis. The total cost becomes less if lower priority levels are removed.

Table 3:

COUNTY AND TOWNSHIP ROAD SYSTEM
Estimated Cost of Various Service Levels

Service Level	Type of Improvement	Capital Cost (Millions)	Annual Cost on 20-Yr. Cycle (Millions)
1. Major and Minor Collectors	Regrading	$ 312.29	$ 15.61
	Bituminous Surfacing (3,300 mi.)	330.00	16.50
	Bridge Replacement	84.61	4.23
	Annual Maintenance		35.07
Subtotal		$ 726.91	$ 71.41
2. Year-Round Access	Regrading	$ 136.46	$ 6.82
	Bridge Replacement	123.69	6.18
	Annual Maintenance		23.94
Subtotal		$ 260.15	$ 36.94
3. Schoolbus Routes	Regrading	$ 29.07	$ 1.45
	Bridge Replacement	26.56	1.33
	Annual Maintenance		5.10
Subtotal		$ 55.63	$ 7.88
4. Rural Mail Routes	Regrading	$ 31.28	$ 1.56
	Bridge Replacement	32.63	1.63
	Annual Maintenance		5.49
Subtotal		$ 63.91	$ 8.68
5. All Remaining Roads*	Bridge Replacement	$ 111.93	$ 5.60
Subtotal		$ 111.93	$ 5.60
Totals		$1,218.53	$130.51

*Some roads on Level 5 would be minimum maintenance routes such as trails and paths, and in most cases would not be upgraded.

About This Table:

1. Since county budgets are prepared annually, these figures are for annual costs rather than the biennial costs used in Table 1.
2. Major and minor collectors are roads that provide more than one of the lower service levels.
3. The total annual cost can be reduced by giving up lower service levels. Keeping service level 1 (dropping all others) alone would require some homeowners to maintain short distances of road for year-round access, schoolbus service, and mail service.

How Do We Pay For It?

Traditionally most roads have been financed by "user fees" — taxes and charges levied specifically to pay for roads. The best known user fee and the one that produces the most revenue is the motor fuels tax. The state motor fuel tax is generally eight cents per gallon; it is four cents on "gasohol." From the gross tax receipts there is withheld enough money to provide refunds for nonhighway users (primarily farms), exempt users (certain governmental agencies), and the cost of collecting the tax. What is left is distributed according to the formula in the highway tax distribution fund — generally with 63 percent going to the state, 27 percent to the counties, and 10 percent to the cities. In counties with a city of at least 10,000 population, the cities get more than 10 percent and the counties less than 27 percent. The exact difference depends on the populations of the cities in that county (NDCC Section 54-27-19).

Other user fees include license fees, registration fees, overweight and overwide permit fees, and other truck regulatory fees. Use of these user fee funds is generally limited to paying for the cost of collecting the funds, an allowance for refunds, and then "solely for construction, reconstruction, repair, and maintenance of public highways, and the payment" of bonds used to finance such projects (N.D. Const., Art. X, Section 11).

At the state level, user fees have generally been the exclusive source of nonfederal funding. For the 1981-83 biennium, significant general fund revenues were for the first time used for highways when up to $32 million of the oil and gas gross production tax revenue was allocated to the highway tax distribution fund (NDCC Section 57-51-15(1)). Highway financing is heavily dependent on federal aid. For example, in fiscal year 1981, of $116 million received by the State Highway Department, $62 million (53 percent) was federal money.

Traditionally federal aid has been intended primarily for construction projects. That is why in Table 1 the

"federal funds available," Column (3) is the same for all alternatives after the first. The intensity of federal aid varies. For interstate projects, the federal aid is 90 percent of the cost. For most other projects on the state or local systems, the federal aid is about 76 percent. For special kinds of projects such as safety improvements the federal aid ranges from 50 to 100 percent of the cost.

The highway financing needs in this state are now almost exclusively related to existing roads. In 1980 only 19 miles were added to the state system, 31 fewer than the annual maximum of 50 miles (NDCC Section 24-01-02). It is apparent that unless the emphasis for federal aid is shifted to include significant aid for reconstruction projects, federal aid cannot be counted upon as a significant revenue source for the work that is necessary for North Dakota's roads. In any event the availability of federal aid is a factor that is not within the powers of the Legislative Assembly to control.

Factors within the powers of the Legislative Assembly are those that increase revenues from highway users' fees. Although the committee does not choose from among the possible alternatives, it notes a number of possibilities for consideration by the Legislative Assembly.

One possibility is to increase the motor fuels tax. Presently eight cents per gallon, the tax has been unchanged since 1977. In 1970 when gasoline cost about 35 cents per gallon, the tax was increased from six to seven cents per gallon. Thus, the state tax was about 20 percent of the cost of the fuel. By the fall of 1982, the tax was up one cent (having been increased in 1977) but the cost of the fuel was disproportionately higher. In Bismarck, in the fall of 1982, gasoline prices were in the $1.35 range (varying plus or minus 20 cents or more depending on grade of gasoline and whether it is "self-service"). Thus, the state tax share of the price is now only about 5.9 percent.

North Dakota's motor fuel tax is quite low by national standards. In November 1982 only three states had lower gasoline taxes. The median rate is 11 cents per gallon. See Table 4:

Table 4:

GASOLINE# TAXES

(Ranking by States)
November 4, 1982

Rank	State	Tax
1.	Indiana	16.5¢*
2.	Michigan	16.4+
3.	Mississippi	15.7*@
4.	California	15.1*@
5.	Pennsylvania	14.7
6.	Virginia	14.1@
7.	Washington, D.C.	14.0
	New Hampshire	14.0
9.	Hawaii	13.9*@
10.	Nebraska	13.7
11.	New York	13.4*@
12.	Iowa	13.0
	Minnesota	13.0
	South Carolina	13.0
	South Dakota	13.0@
	Wisconsin	13.0
17.	Illinois	12.9*@
18.	Idaho	12.5
19.	North Carolina	12.2
20.	Nevada	12.0@
	Washington	12.0
22.	Ohio	11.7
23.	Georgia	11.5*
24.	Alabama	11.0@
	Connecticut	11.0
	Delaware	11.0
	Maryland	11.0
	Utah	11.0
	Vermont	11.0
30.	West Virginia	10.5
31.	Massachusetts	10.4
32.	Arizona	10.0
	Kentucky	10.0
	New Mexico	10.0
	Rhode Island	10.0
	Tennessee	10.0@
37.	Arkansas	9.5
38.	Colorado	9.0
	Maine	9.0
	Montana	9.0
41.	Alaska	8.0
	Florida	8.0@
	Kansas	8.0
	Louisiana	8.0
	New Jersey	8.0
	NORTH DAKOTA	8.0
	Oregon	8.0@
	Wyoming	8.0
49.	Missouri	7.0
50.	Oklahoma	6.6
51.	Texas	5.0

Sources: "State Legislative Report," Highway Users Federation, 1982; Missouri Senate Research Staff.

Notes:

Some states have different rates for diesel or gasohol.

* Includes applicable sales tax.

+ Includes extra wholesale tax.

@ Additional local taxes allowed also; not included in table.

For jurisdictions with sales tax or wholesale tax included, figure is based on $1.05 per gallon for wholesale price and $1.35 for retail price.

Neighboring states underscored.

The Highway Department estimates that a penny increase in the motor fuels tax would raise an additional $8.2 million per biennium for the highway tax distribution fund. Of this, under the present distribution formula, $5.2 million (63 percent) would be allocated to the State Highway Department. Table 5 illustrates what the motor fuel tax increase would have to be to fund the various alternatives presented in Table 1, if that is the only revenue raising measure used.

Table 5:

NECESSARY FUEL TAX INCREASES FOR SUGGESTED PROGRAM LEVELS

Alternatives	Additional State Funds Needed (Millions)	Fuel Tax Increase	New Ranking If Adopted
1. Existing user fees	$ 11.00	2.1¢	32
2. Existing program	19.10	3.7	22
3. 20-year cycle	46.10	8.9	1
4. "Responsible System Management"	66.10	12.7	1
5. 800-mile catchup*	126.10	24.2	1
6. RSM plus spring load free	86.30	16.6	1

Sources: Columns (1) and (2) — Table 1 of this report.
Column (3) — Column (2) divided by 5.2.
Column (4) — North Dakota's new ranking if this increase were adopted, based on Table 4.
Note: *This alternative assumes a one-time cost at the beginning. See Table 1 notes.

Of course, increasing the motor fuel tax is not the only way to raise the necessary revenue. One possibility is to dedicate all excise tax revenue from motor vehicle sales to the highway tax distribution fund. Almost all of the revenue of the motor vehicle excise tax goes to the general fund (NDCC Section 57-40.3-10). The only share of that tax's revenue that does not go to the general fund is half the tax on motor vehicles purchased outside the state (NDCC Section 57-40.3-10(1)).

Another possibility is to allocate, to the highway distribution fund, sales tax revenue from the sale of automotive parts and accessories. This would have the disadvantage of difficulty in administration as retailers pay sales tax on the basis of total taxable sales without segregation as to kind of merchandise. An alternative might be to make a reasonable calculation of total sales tax revenue attributable to those items and dedicate that percentage to highways.

Other possibilities include removing the exemptions for off-road use, imposing a weight-distance tax on ton-miles on commercial vehicles, increasing registration fees, and imposing state excise taxes on tires and automotive parts.

At local levels, highway revenue increases could be achieved by county fuel taxes, county registration fees, property tax levy for bridge replacement, and changing the highway tax distribution formula. Cities could obtain revenue from parking fees, fines for traffic offenses, city fuel tax or registration fee, and by general property tax levy.

None of these alternatives for raising revenue is particularly cheerful. However, if one accepts the premise that the road system of this state must be kept in good working order to keep this state's economy vibrant and alive, then the issue becomes how to raise the revenue not whether to raise the revenue and thus becomes a choice of the least undesirable method.

OIL AND GAS IMPACT

Introduction

In accordance with the directive of House Concurrent Resolution No. 3048, the committee studied the effects of oil and gas exploration and development on North Dakota's roads with a view toward estimating the level and type of funding needed to alleviate these impacts.

Much of the testimony heard by and information supplied to the committee in this issue was similar to that provided as to highway finances in general.

The Problem

Although it has been known for some time that recoverable oil and gas was available under North Dakota and there was a brief oil boom in the 1950's, it is only in the past decade, with the dramatic increase in the price of fossil fuels, that recovery of North Dakota's fossil fuel resources became a major activity. Several important characteristics of the fossil fuel development industry contribute to the problems expressed by the study resolution.

The industry is very risky and very expensive. For every producing well drilled there are five or six "dry holes" drilled, and it costs just as much to drill a dry hole.

The industry relies extensively on equipment that is very expensive and usually very heavy. The expense requires that exploration equipment be used as closely as possible to around-the-clock and all year long. This means the equipment must be brought to drilling sites when it is needed, no matter what the weather. One estimate indicates that nearly 100 major loads (over 80,000 pounds) are required to drill a hole. If the hole is a producer another 50 will be required ("Oil Development and Secondary Roads in Region 1," Williston Basin Regional Council for Development, Sept. 1981, pp. 32-35: Williston Basin). Because the equipment is heavy, the roads wear out faster.

Some areas are fortunate enough to have fossil fuels underlie readily accessible locations — there is an oil well on the Capitol grounds in Oklahoma. North Dakota's fossil fuel resources are not so conveniently located. Found primarily in the sparsely settled western part of the state, these resources are found in areas with few roads. Evidence of the significance of this fact is that although the western part of the state has only 18 percent of the state-system road mileage, that area has 77 percent of the state's legal overloads, half of the state's illegal overloads, and almost half of all the state's truck traffic. Of course, not all of this use is attributable to oil and gas development. Yet some indication of the amount attributable to oil and gas development is evident from the fact that, roughly coincident with the increase in development, daily traffic counts in Planning and Development Region I (Divide, McKenzie, and Williams Counties) nearly doubled from 1976 to 1981.

Because of the heavy loads, road wear is importantly different in the oil and gas development area. The heavy loads cause rutting and severe "pavement distress" (observable deterioration or damage to the pavement). Another factor accelerating the road wear is frequency of heavy loads. When a heavy load is driven over a stretch of pavement, the pavement is compressed. It takes some time for the pavement to return to its normal consistency. If many heavy loads are driven over the area in a short time, the pavement becomes more and more rigid. Even-

tually the pavement becomes so rigid that it is almost brittle and successive heavy loads just break it up. There are two possible solutions to this problem — build the roads thicker and thus more resilient or lower the load limits. The former is quite expensive, the latter unpopular and difficult to effect.

As bad as the situation is for paved roads, it is much worse for unpaved roads. Very few oil rigs are not on sites where at least some of the distance must be traversed over an unpaved road. The committee heard testimony about instances where a gravel road was totally destroyed when a single heavy load was driven over it after a rain storm.

The problem as to unpaved roads is worsened because these roads are not on the state system but are under local control and the highway managers have to deal with lower tax revenues. For example, in the western part of the state, the share of the highway tax distribution fund, which is based on motor vehicle registrations in each county, is comparatively low.

Possible Solutions

Like the problem of highway financing in general, the solution to the oil and gas impact problem lies in additional revenue. For counties generally, the chief state level source of highway financing, other than the counties' share of the user fees, is the counties' share of the $32 million one-time allocation from the basic five percent oil and gas gross production tax (NDCC Section 57-51-15(1) (a)). Although counties and cities generally also receive a share of the 6.5 percent oil extraction tax, these funds are for other than highway programs, primarily school aid (NDCC Section 57-51.1-07).

The coal development fund provides an example of one possible solution. Financed (NDCC Section 57-61-10) by a severance tax on most coal extraction activities (NDCC Section 57-61-01), the coal development fund provides impact aid for counties, cities, and certain other local jurisdictions (NDCC Section 57-62-02) affected by coal development activities. The coal development fund is distributed as follows: 35 percent to the Energy Development Impact Office for grants to affected jurisdictions; 15 percent to the coal development trust fund for loans to affected jurisdictions; 20 percent to the coal-producing counties, in proportion to coal production, for distribution to the county's cities, schools, and general fund; and 30 percent to the state general fund (NDCC Section 57-62-02).

Such a development fund could conceivably be established for oil and gas production areas as well.

OTHER ISSUES

Although the committee's activity was primarily focused on the issues raised by the study resolutions, the committee did consider other issues which merit a report.

Train-Mile Tax

One factor leading to increased use of highways by heavy vehicles, and therefore affecting the highway finance issue, is the abandonment of railroad branch lines. North Dakota is served by many railroad branch lines, running mostly in a northwest to southeast direction. Many branch lines serve only a few grain elevators and have little other usage. Consequently the railroads have proposed to close a number of branch lines.

In response to this problem the committee considered a bill draft that would have established a train-mile tax and railroad crossing tax. Funds from the tax would have been used to finance loans for improvements to branch line railbeds and crossings. While the committee was considering the bill draft, a major railroad in the state announced a program of branch line rehabilitation that will slow the pace of branch line closing. Consequently the committee believes the potential need for the bill draft passed and does not recommend it to the Legislative Council.

However, this issue has potential for recurring. When a branch line is closed, farmers must haul their crops over more miles of highway. Since most roads affected by such action are local roads, the impact of more heavy loads is especially great on local governments.

Special Assessment Districts

The committee also considered a bill draft that would have allowed creation of special assessment districts in rural areas for road improvements. The intent of the proposal was to fill a gap in present law relating to special assessments for street improvements. Cities are allowed to make special assessments under North Dakota Century Code Section 40-22-01(2). Special assessments are allowed in rural areas for improvements to a "rural, platted, zoned, and recorded subdivision with restrictive covenants" under Section 11-33.1-01. The gap arises when the residents of a qualifying subdivision want improvements made to a road that services the subdivision, but is not part of the platted subdivision. Since the road is outside the subdivision, the special assessment cannot be made.

The only remedy for those residents is to wait until the road in question works its way up the list of priorities for county roads or to literally take up a collection. The first choice may involve quite a long wait, especially with dwindling county resources for road projects. The collection choice is only feasible for relatively low-cost projects and certainly not for one whose expenses would take 20 years to amortize as allowed under Section 11-33.1-01.

Because the proposal was made late in the interim and the bill draft was not available until the final committee meeting, the committee does not recommend a bill. However, the committee recognizes the merit of allowing rural subdivisions to "self-assess" for improvements that may be outside the subdivision. The same protections afforded dissenting property owners under existing special assessment law should also be provided.

Overweight Loads

Another issue considered by the committee was the problem of assigning responsibility for damage to roads and bridges caused by overweight and oversize loads. As mentioned in the discussion of highway finance, there are three road systems — state, county and township, and municipal. Each system has its own method of issuing permits.

Since many overweight loads go on roads of more than one system and of more than one jurisdiction some sort of uniform permit system seems desirable.

Of course, no permit system is effective against operators who simply ignore the permit requirement. Although this issue is somewhat a detection and enforcement problem and thus not amenable to legislative correction, one possible solution is to charge for the permit based on the presence of heavy equipment in an area. Instead of charging by the load, the charge could be based on the mere presence of the heavy equipment such as an oil rig. Since the heavy equipment could presumably not have gotten there except over roads, charging a fee based on the presence of the heavy equipment would be one way of ensuring that funds are available to pay for damage caused by bringing the equipment in. Some provision would probably have to be made to exempt operators who can show that the heavy equipment was airlifted in.

Of course, this proposal would not solve the problem of identifying transient haulers moving overweight loads through an area to a destination that will escape the attention of authorities; it would also be ineffective as to overweight loads of commodities not inherently large and thus likely to escape attention of the authorities once delivered.

RECOMMENDATION

The committee recognizes that more funds must be made available to keep up the state's highway system and to alleviate the impact of oil and gas exploration. The committee therefore recommends that a method be found to increase revenues available for these purposes. It defers to the full Legislative Assembly the dialogue that is still needed to ascertain what level of road upkeep North Dakotans want, how much they are willing to pay for it, and how they are willing to pay.

SENATE BILL SUMMARIES

Senate Bill No. 2041 — Central Personnel Rules. This bill specifically excepts rules of the central personnel system and of the director of the Central Personnel Division from the application of the Administrative Agencies Practice Act. (Administrative Rules Committee)

Senate Bill No. 2042 — Revision of Bee Laws. This bill provides for an annual beekeeper's license fee, increased apiary inspection fees, revocation of apiary sites by property owners, modification of the two-mile radius restriction, the transfer of commercial apiaries with permission from the property owner, identification of all bee hives located within the state, and penalties for the violation of rules adopted by the Commissioner of Agriculture. (Agriculture Committee)

Senate Bill No. 2043 — Medical Center Loan Fund. This bill changes the qualification requirements of loan applicants, the amount of loans to be granted, and the loan conditions of the medical center loan fund. (Budget "B" Committee)

Senate Bill No. 2044 — State Revenue Sharing Funds. This bill provides that state revenue sharing to political subdivisions is to be paid directly from the general fund. The bill transfers moneys in the state revenue sharing fund to the general fund, and makes a general fund appropriation of $5,460,000 for the last six months of the biennium. (Budget "B" Committee)

Senate Bill No. 2045 — Lands and Minerals Trust Transfer. This bill transfers $25 million from the lands and minerals trust to the general fund. (Budget "B" Committee)

Senate Bill No. 2046 — State Personnel Board and Central Personnel Division. This bill revises the structure of the State Personnel Board, the duties of the board, and the duties of the director of the Central Personnel Division. (Budget "C" Committee)

Senate Bill No. 2047 — School District Mill Levy Consolidation. This bill consolidates 15 different school district mill levies into two levies — one for a general fund requiring voter approval and the other for a special fund where the levy may be effected by board action. (Educational Finance Committee)

Senate Bill No. 2048 — Determination of Mill Levy for Reorganized School Districts. This bill requires the county reorganization committee to determine the amount of funding which would be necessary to meet the expenses of the proposed reorganized district and to submit the proposed levy to the state reorganization committee (the State Board of Public School Education) as part of the proposed reorganization plan. (Educational Finance Committee)

Senate Bill No. 2049 — Oil and Gas Gross Production Tax County Revenue Caps. This bill places caps on county revenues from the oil and gas gross production tax for the 1983-85 biennium at rates 10 percent above the caps provided for the 1981-83 biennium. (Finance and Taxation Committee)

Senate Bill No. 2050 — State Banking Board Membership. This bill removes the requirement that at least one member of the State Banking Board be an individual with experience in a state-chartered savings and loan association. The bill allows the individual to have had experience in any state or national bank. (Financial Institutions Committee)

Senate Bill No. 2051 — State and Federal Charter Privileges. This bill coordinates language that allows state-chartered banks, credit unions, and savings and loans to perform functions allowed to their federally chartered counterparts. (Financial Institutions Committee)

Senate Bill No. 2052 — Credit Union Loan Limits. This bill lowers the limits on individual loans that may be made by large credit unions (assets over $500,000). (Financial Institutions Committee)

Senate Bill No. 2053 — Coordination of Truth in Lending. For consumer loan transactions governed by both federal and state truth-in-lending law, this bill makes compliance with federal truth-in-lending provisions an acceptable substitute for compliance with state provisions. (Financial Institutions Committee)

Senate Bill No. 2054 — Variable Rate Loans. This bill allows financial institutions to make mortgage loans the interest rates of which change over the life of the loans. (Financial Institutions Committee)

Senate Bill No. 2055 — Revolving Charge Account Interest. This bill removes the present 18 percent ceiling on revolving charge accounts. No new limit is imposed. The bill also allows charging a minimum finance charge on accounts with small balances at the end of a billing period. (Financial Institutions Committee)

Senate Bill No. 2056 — Late Payment Charges. This bill increases the maximum allowable rate on late payment charges from 18 percent to 21 percent. (Financial Institutions Committee)

Senate Bill No. 2057 — Senate Confirmation of Gubernatorial Appointments. This bill removes Senate confirmation requirements for appointees to the Postsecondary Education Commission, the Board of Public School Education, the Council on the Arts, the State Historical Board, and the Multistate Tax Commission. (Judiciary Committee)

Senate Bill No. 2058 — Initiative, Referendum, and Recall Petitions. This bill provides the specific form to be used for initiative, referendum, or recall petitions; and the form of the required affidavits which must be executed by the circulators and be attached to each copy of the petition. The bill also requires that the names of at least five sponsors of a recall be on the petition. (Judiciary Committee)

Senate Bill No. 2059 — Penalties for Hindering Law Enforcement. This bill extends the crime of hindering law enforcement to circumstances where the actor knows of conduct which is a Class AA felony. (Judiciary Committee)

Senate Bill No. 2060 — Terrorizing. This bill makes intent language in the statute concerning the crime of terrorizing apply to both circumstances under which that crime may be charged. (Judiciary Committee)

Senate Bill No. 2061 — Mandatory Prison Terms for Armed Offenders. This bill provides that the mandatory four-year minimum prison term for being armed when committing a felony applies even when being armed is an element of the offense for which the offender is convicted. (Judiciary Committee)

Senate Bill No. 2062 — Management of State-Owned Motor Vehicles. This bill requires the Office of Management and Budget to establish a central vehicle management system to regulate the acquisition, operation, maintenance, management, and disposal of motor vehicles. (Legislative Audit and Fiscal Review Committee)

Senate Concurrent Resolution No. 4001 — Utilization of Aircraft by State Employees. This resolution recommends the establishment of an aircraft pool and urges state departments, agencies, and institutions to increase the efficiency of employee travel by utilizing aircraft

whenever it is economical. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2063 — Powers of Retirement Committee. This bill clarifies procedures concerning when measures must be submitted to the Legislative Council's Committee on Public Employees Retirement Programs and who must submit them. Deleted is language prohibiting introduction of retirement measures not accompanied by a report of the committee, language giving the committee sole authority to determine jurisdiction over retirement measures, and language attempting to invalidate retirement legislation not following certain procedures. (Legislative Procedure and Arrangements Committee)

Senate Bill No. 2064 — Irrigation District Modernization. This bill revises the statutes governing irrigation districts to address the use of sprinkler irrigation systems, pipelines, and ground water supplies; updates election procedures; and makes various general amendments to provide for more workable organization and operation of irrigation districts. (Natural Resources Committee)

Senate Bill No. 2065 — Mill Levy Limitation Consolidation. This bill places all mill levy limitations relating to political subdivisions within one chapter of the Century Code. (Political Subdivisions Committee)

Senate Bill No. 2066 — Jail Classifications. This bill provides that Grade 2 jails may confine inmates for not more than 90 days, Grade 3 jails may confine inmates for not more than 96 hours, and Grade 2 and Grade 3 jails do not need to provide outdoor recreation areas, contact visitation areas, or exercise rooms separate from dayrooms. (Political Subdivisions Committee)

Senate Bill No. 2067 — Games of Chance. This bill requires eligible organizations to have been in existence within this state for two years to conduct games of chance, allows governing bodies of cities or counties to charge a $150 fee for a site approval permit, requires eligible organizations to pay an annual $20 permit fee for each blackjack table operated to the governing body of cities or counties, imposes age and hour limitations on conducting games of chance, requires acceptance of wagers of $1 in games of twenty-one, and imposes a graduated tax upon quarterly adjusted gross proceeds of eligible organizations. Two percent of adjusted gross proceeds collected as tax is returned to cities and counties in proportion to the tax collected in their jurisdiction. Counties and cities are allowed to regulate the number of twenty-one tables per site and the number of sites per eligible organization within their jurisdiction. (Political Subdivisions Committee)

Senate Bill No. 2068 — Judicial Retirement — Disability — Contribution — Benefits. This bill restricts the disability provisions under the Judicial Retirement System to members of that system. The bill also increases the monthly contribution of Supreme Court and district court judges who are members of the Public Employees Retirement System to five percent; and establishes a benefit formula for these judges as follows: three percent of final average salary times the first 10 years of judicial service, two percent for the next 10 years, one percent for all years of judicial service exceeding 20, and an amount equal to 1.04 percent for the number of years of nonjudicial state service. (Retirement Committee)

Senate Bill No. 2069 — Equalization of Nursing Home Rates. This bill forbids any nursing home or intermediate care facility receiving medical assistance payments from state funds or federal funds distributed by the state from charging private pay patients rates for services which exceed by more than 15 percent those rates approved by the Department of Human Services for similar services rendered to medical assistance recipients. (Social Services Committee)

Senate Bill No. 2070 — Nursing Home Ombudsman Program. This bill provides for the appointment of state and regional long-term care ombudsmen and prescribes their powers and duties. (Social Services Committee)

Senate Bill No. 2071 — Assessed Valuation and Taxable Valuation. This bill provides for uniform usage of the terms assessed valuation and taxable valuation in the Century Code. The bill includes no substantive change. (Tax Statutes Revision Committee)

Senate Bill No. 2072 — Personal Property Tax References. This bill deletes obsolete personal property tax references. (Tax Statutes Revision Committee)

HOUSE BILL SUMMARIES

House Bill No. 1042 — Homestead Tax Credit Certification by County Auditors. This bill changes the date that counties must certify homestead tax credit information to the State Tax Commissioner from March 1 of each year to February 10. The bill also reduces the county's share of the payment if the county auditor does not file the required information by February 10. (Budget "B" Committee)

House Bill No. 1043 — Fees of the Securities Commissioner. This bill increases the fee amounts charged by the Securities Commissioner. (Budget "C" Committee)

House Bill No. 1044 — Fees of the Department of Banking and Financial Institutions. This bill imposes an annual assessment fee on state banks and revises the examination fee amounts charged by the Department of Banking and Financial Institutions. (Budget "C" Committee)

House Bill No. 1045 — Fees of the Department of Agriculture. This bill increases the fee amounts charged by the Department of Agriculture for recording and rerecording brands and increases the price of a brand book. (Budget "C" Committee)

House Bill No. 1046 — Fees of the State Laboratories Department. This bill replaces egg dealer licensure with registration and increases fee amounts charged by the State Laboratories Department. (Budget "C" Committee)

House Bill No. 1047 — Commercial Haystack Mover Vehicle Registration. This bill requires the vehicles used by commercial haystack movers to be registered with the Motor Vehicle Department. (Budget "C" Committee)

House Bill No. 1048 — Fees of the Real Estate Commission. This bill increases the fee amounts charged by the Real Estate Commission. (Budget "C" Committee)

House Bill No. 1049 — Fees of the Public Service Commission. This bill increases the fee amounts charged by the Public Service Commission for inspections of weighing and measuring devices. (Budget "C" Committee)

House Bill No. 1050 — Agency Fee Reports. This bill requires agencies to provide information on fees with their biennial budget requests rather than file annual reports with the State Auditor and eliminates the biennial report requirements of the Board of Public Accountancy. (Budget "C" Committee)

House Bill No. 1051 — Density-Based Schoolbus Transportation Aid Allocation Formula for School Districts. This bill modifies the existing state schoolbus aid program for school districts by making the aid one-third based upon the density of student population per square mileage in each district, and two-thirds based upon a per-vehicle-per-mile basis. (Educational Finance Committee)

House Bill No. 1052 — Assessment Valuation Formula. This bill makes adjustments to the assessment valuation formula for agricultural land. Annual gross return is defined as 20 percent of annual gross income for land used for growing sugar beets and potatoes, 30 percent for other cropland, and 40 percent for grazing land. Average annual gross return is calculated by averaging returns for four of the most recent six years, the high and low years being discarded. The capitalization rate for agricultural land valuation will be 7.5 percent through 1985, and thereafter will be equal to a five year average of the gross Federal Land Bank mortgage rate of interest for North Dakota. (Finance and Taxation Committee)

House Bill No. 1053 — Taxpayer and Taxing District Protection. This bill protects taxpayers and taxing districts by allowing each taxing district to levy the same amount in dollars as that taxing district levied the prior year plus seven percent, subject to adjustments. (Finance and Taxation Committee)

House Bill No. 1054 — Main Insurance Code Revision. This bill revises the insurance laws with respect to the Commissioner of Insurance, insurance companies, "state" insurance companies, and insurance premiums and rates. (Insurance Code Revision Committee)

House Bill No. 1055 — Housekeeping Insurance Code Revision. This bill makes the changes necessary throughout the North Dakota Century Code if House Bill No. 1054 is enacted. The bill eliminates numerous references to insurance company investments, corrects cross-references, and allows a surety company to continue operation under provisions that are proposed for repeal. (Insurance Code Revision Committee)

House Concurrent Resolution No. 3001 — Insurance Code Study. This resolution directs the Legislative Council to study the insurance provisions in NDCC Title 26 that were not revised in the 1981-83 legislative interim, with emphasis on technical and grammatical changes and the type of changes made by the revision during the 1981-83 legislative interim. (Insurance Code Revision Committee)

House Bill No. 1056 — Jurisdiction of County Courts. This bill makes it clear the actions for claim and delivery of property, attachment, garnishment, and forcible detainer with some dollar limitations are within the jurisdiction of the county court and gives the county courts concurrent jurisdiction with district courts over trusts. (Judiciary Committee)

House Bill No. 1057 — Guardianship. This bill divests the superintendent of Grafton State School of his automatic guardianship over the school's residents and provides for a limited type of guardianship and conservatorship. (Judiciary Committee)

House Bill No. 1058 — Technical Corrections Act. This bill makes technical corrections to the North Dakota Century Code by eliminating inaccurate and obsolete name and statutory references and superfluous language, recognizing legislative and Supreme Court rules and orders, and replacing unclassified penalties with approximate equivalents. (Judiciary Committee)

House Bill No. 1059 — Public Service Commission's Surface Mining and Reclamation Fund. This bill provides for permit application fees to be deposited in the general fund, and transfers the amount in the surface mining and reclamation fund which relates to permit application fees that have been deposited in the fund to the general fund on July 1, 1983. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1060 — Accrual Fund Accounting System. This bill provides for the Office of Management and Budget to implement and operate a new accrual fund accounting system. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1061 — State Auditor's Operating Fund. This bill creates an operating fund to be used by the State Auditor. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1062 — Jail Facility Loan Program. This bill appropriates $3,900,000 to the Attorney General for loans to enable counties and cities to upgrade jail facilities to meet state jail standards. (Political Subdivisions Committee)

House Bill No. 1063 — Jail Prisoner Per Diem Payment Program. This bill appropriates $1,270,000 to the Attorney General for operation of a program to provide per diem payments to counties for holding prisoners in county jails who are awaiting trial in district court or who have been sentenced by district court. (Political Subdivisions Committee)

House Bill No. 1064 — City Antitrust Immunity. This bill extends state antitrust immunity to cities and city governing bodies acting within the scope of authority of grants of power to home rule cities, nonhome rule cities, and city governing bodies. (Political Subdivisions Committee)

House Bill No. 1065 — Office of Information Management. This bill establishes an Office of Information Management. The functions of the office include a records center, a records management office, micrographics, and a forms management division. The Governor will appoint the Office of Information Management director. The Office of Information Management includes a committee of state officials that will have the responsibility for making decisions regarding the retention and disposition of state records. (Records Management Committee)

House Bill No. 1066 — Highway Patrolmen's Retirement Administered by Public Employees Retirement System. This bill provides for the administration of the Highway Patrolmen's Retirement System by the Public Employees Retirement System. (Retirement Committee)

House Bill No. 1067 — State Contribution to Highway Patrolmen's Retirement. This bill increases the contribution by the state to the Highway Patrolmen's Retirement System to 15.6 percent of the monthly covered salary or wage. (Retirement Committee)

House Bill No. 1068 — Premium Cap and Tax Credits For Comprehensive Health Association of North Dakota (CHAND) Insurance Premiums and Assessments. This bill limits CHAND premiums to 125 percent of established rates, provides a premium tax credit for comprehensive health association assessments, eliminates coverage for experimental medical and surgical procedures, provides for a qualified plan of insurance to cover those costs not paid by Medicare, and provides for continuous coverage of persons applying for comprehensive health insurance who have been covered under a family or group policy during the year immediately preceding their application. (Social Services Committee)

House Bill No. 1069 — Choice of Pharmacist by Nursing Home Residents. This bill allows nursing home residents to choose their pharmacist regardless of the type of drug distribution system used by their nursing home. (Social Services Committee)

House Bill No. 1070 — Payment of Home Health Care Services. This bill provides for a sliding scale payment program for home health care services to be administered by the Department of Human Services with an appropriation of $1 million for that purpose. Indigent persons would be eligible to receive these benefits if their income does not exceed by 350 percent the income level and property eligibility guidelines for Medicaid. (Social Services Committee)

House Bill No. 1071 — Estate Tax Federalization. This bill updates federalization of the North Dakota estate tax through December 31, 1982. (Tax Statutes Revision Committee)

House Bill No. 1072 — Special Motor Fuels Revision. This bill revises and consolidates provisions relating to taxation of special motor fuels. (Tax Statutes Revision Committee)

House Bill No. 1073 — Motor Vehicle Fuels Revision. This bill revises and consolidates provisions relating to taxation of motor vehicle fuels. (Tax Statutes Revision Committee)

House Concurrent Resolution No. 3002 — Tenneco Gasification Project Impact Study. This resolution directs the Legislative Council to continue its study of the possible social and economic impacts from the proposed Tenneco coal gasification plant near Beach, North Dakota. This resolution also directs a study of the effects of the Tenneco project on the Southwest Pipeline Project in North Dakota. (Tenneco Plant Committee)