REPORT

OF THE

NORTH DAKOTA LEGISLATIVE COUNCIL

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

SIXTIETH LEGISLATIVE ASSEMBLY
2007

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January 3, 2007

Honorable John Hoeven
Governor of North Dakota

Members, 60th Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations of 22 interim committees, the Advisory Commission on Intergovernmental Relations, and the Commission on Alternatives to Incarceration.

Major recommendations include a comprehensive business climate initiative, cost recovery for new or modified electrical transmission facilities, authorization of the Governor to negotiate reserved water rights of the United States and federally recognized Indian tribes, licensure of new health professions by a single board, licensure of persons who practice acupuncture, authorization of correctional facility employees to administer prescription drugs, an appropriation for renovating and expanding the State Penitentiary, continuation of flexibility for the University System fiscal management, additional benefits for catastrophically injured workers, reduced marriage license fees for premarital counseling, and an appropriation to provide property tax relief.

The report also discusses committee findings and numerous other pieces of recommended legislation. In addition, the report contains brief summaries of each committee report and of each recommended bill and resolution.

Respectfully submitted,

Bob Stenehjem

Senator Bob Stenehjem
Chairman
North Dakota Legislative Council

BS/CS

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HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

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 1953-54 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 more accurately reflect 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.

THE NEED FOR A LEGISLATIVE SERVICE AGENCY

Nearly all states have a legislative council or its equivalent, although a few states use varying numbers of special committees.

Legislative service agencies provide legislators with the tools and resources that 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 today while remaining a part-time citizen legislature that meets for a limited number of days every other year.

COMPOSITION OF THE COUNCIL

The Legislative Council by statute consists of 17 legislators, including the majority and minority leaders of both houses and the Speaker of the House. The Speaker appoints six other representatives, three from the majority and three from the minority as recommended by the majority and minority leaders, respectively. The Lieutenant Governor, as President of the Senate, appoints four senators from the majority and two from the minority as recommended by the majority and minority leaders, respectively.

The Legislative Council is thus composed of 10 majority party members and 7 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.

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 Administrative Rules Committee, Employee Benefits Programs Committee, Information Technology Committee, and 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 members appointed as provided by statute. Nearly all committees consist entirely of legislators, although a few citizen members are sometimes selected to serve 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 reviews state agency

rules and rulemaking procedures, legislative proposals affecting health and retirement programs for public employees, and information technology management of state agencies. The Council has on its staff the legislative budget analyst and auditor and assistants who provide technical assistance to Council committees and legislators, review audit reports for the Legislative Audit and Fiscal Review Committee, provide budget analysis, and assist the Legislative Assembly in developing the state's biennial budget. The Council provides information technology services to the legislative branch, including legislative publishing and bill drafting capabilities. The Council makes arrangements for legislative sessions and controls the use of the legislative chambers and use of space in the legislative wing of the State Capitol. The Council also maintains a wide variety of materials and reference documents, many of which are not available from other sources.

MAJOR PAST PROJECTS OF THE COUNCIL

Nearly every facet of state government and statutes has been touched by one or more Council studies since 1945. Statutory revisions, including the rewriting of criminal laws, election laws, game and fish laws, insurance laws, motor vehicle laws, school laws, and weapons 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 the delivery of human services, agriculturally related functions of state government, the creation of the Information Technology Department and the cabinet-level position of Chief Information Officer, the creation of the Department of Commerce, organization of the state's higher education system, and the creation of the Commission on Legal Counsel for Indigents, as well as studies of the feasibility of consolidating functions in state government. Unification of the state's judicial system and the establishment of a public venture capital corporation were also subjects of studies.

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

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 1950s and coal in the 1970s, 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 School of Medicine and Health Sciences is another area that has been the subject of several interim studies.

The Legislative Council has permitted the legislative branch to be on the cutting edge of technological innovation. North Dakota was one of the first states to have a computerized bill status system in 1969 and, beginning in 1989, the Legislator's Automated Work Station system has allowed legislators to access legislative documents at their desks in the House and Senate. Since 1997, the Legislative Council has had the responsibility to study emerging technology and evaluate its impact on the state's system of information technology.

Perhaps of most value to citizen legislators are committees that 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. Other subjects that have been regularly studied include school finance, health care, property taxes, and legislative rules.

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SUMMARY
BRIEFLY - THIS REPORT SAYS

ADMINISTRATIVE RULES COMMITTEE

The Council reviewed all state administrative rulemaking actions from December 2004 through October 2006, covering 1,920 pages of rules. The Council voided one set of agency rules. The Council approved repeal of obsolete rules as requested by the Department of Human Services. The Council agreed on rules amendments with the Department of Human Services, Superintendent of Public Instruction, Attorney General, State Board of Accountancy, and Workforce Safety and Insurance.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations exercised its statutory authority to serve as a forum for the discussion and resolution of intergovernmental problems and to study issues relating to local government structure; fiscal and other powers and functions of local governments; relationships between and among local governments and the state or any other government; allocation of state and local resources; interstate issues involving local governments, including cooperation with the appropriate authorities of other states; and statutory changes required to implement commission recommendations.

In particular, the Council studied charitable organizations' property tax exemptions, tax levy authority, township levy limitations, city and county development impact fees, legal services for indigents, the Uniform Environmental Covenant Act, extraterritorial zoning jurisdiction, jail administration, and the feasibility and desirability of establishing an organization or ombudsman to support and coordinate governmental and private efforts to discourage destructive behavior. The Council also received a report on the use of county document preservation funds.

AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The Council studied utilization of the state's abundant energy resources to attract energy-intensive economic development projects to the state, railroad fuel surcharges, and the process to negotiate and quantify reserved water rights.

The Council recommends House Bill No. 1025 to authorize the Governor to negotiate reserved water rights of the United States and federally recognized Indian tribes.

The Council received information concerning the Garrison Diversion Unit Project and Red River Valley Water Supply Project studies.

The Council received a report from the Game and Fish Department regarding the department's findings on its assessment of the status of mountain lions in North Dakota.

The Council received reports from the Agriculture Commissioner regarding all notifications and requests for assistance by individuals who believe local weed boards have not eradicated or controlled noxious weeds satisfactorily.

The Council reviewed grain quality issues and agricultural research activities, the future of North Dakota's endangered species protection program, the Public Service Commission's case against rail carriers for high grain shipment rates, and renewable energy initiatives under consideration in Fargo and Grand Forks.

BUDGET SECTION

The Council received information regarding the duties and responsibilities of the Budget Section and recommends Senate Bill No. 2028 to remove statutory requirements for certain reports to the Budget Section.

The Council received periodic reports from the Office of Management and Budget on the status of the general fund, tobacco settlement proceeds, irregularities in the fiscal practices of the state, the status of the risk management workers' compensation program, and agency turnbacks to the general fund for the 2003-05 biennium.

The Council received reports from the North Dakota University System regarding the higher education equity pool, the higher education review of the long-term finance plan, and the status of utilities' budgets for the institutions of higher education for the 2005-07 biennium. The Council authorized the expenditure of additional funds for capital projects at North Dakota State University and Minot State University - Bottineau.

The Council received annual reports from the Information Technology Department and the Mill and Elevator and reports from Job Service North Dakota on the status of the unemployment insurance computer system modernization procurement planning.

The Council received reports from the Department of Human Services on transfers the department made between line items and between subdivisions in excess of $50,000, the status of the federal medical assistance program percentage for fiscal year 2007, and the status of the Medicaid management information system project.

The Council received reports from the Department of Commerce on the annual audits of renaissance fund organizations, the job web site, common accountability measures, North Dakota economic goals and benchmarks, and the use of grant funds by the Rural Development Council, the Red River Valley Research Corridor, the center for technology program, and the partners in marketing program. The Council received reports from the Highway Patrol on the training program for law enforcement officers and other emergency service providers, from Workforce Safety and Insurance on the status of the building maintenance account, and from the Department of Transportation on additional full-time equivalent positions hired for highway construction.

The Council approved 11 requests for centers of excellence funding awards that had prior approval of the Centers of Excellence Commission and the Emergency Commission. The Council approved two land acquisition requests of the Game and Fish Department. The Council approved 47 agency requests considered for increased spending authority, transfers of spending authority, or increased full-time equivalent positions that were approved by the Emergency Commission. There were six requests authorized by the Emergency Commission to obtain funds from the state contingency fund.

The Council recommends House Concurrent Resolution No. 3001 to authorize the Budget Section to hold legislative hearings required for receipt of federal block grant funds.

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Council studied the incarceration and facility needs of the Department of Corrections and Rehabilitation and received reports from the Department of Corrections and Rehabilitation, the Dakota Women's Correctional and Rehabilitation Center, regional correctional centers, county jails, and a corporation operating private correctional facilities. The Council received information on male and female inmate populations, the condition of existing facilities, incarceration guidelines, alternatives to incarceration, joint exercise of governmental powers, and requirements of the Nurse Practices Act and rules relating to medication management within local correctional facilities.

The Council recommends Senate Bill No. 2025 to provide for an exemption from nursing requirements for employees providing medication to inmates within a correctional facility and House Bill No. 1026 to provide an appropriation of $38 million from the general fund for the renovation and expansion of the State Penitentiary.

The Council received reports from the Office of Management and Budget, the Department of Transportation, the Highway Patrol, the Parks and Recreation Department, the Information Technology Department, the Department of Commerce, and the Department of Veterans Affairs regarding the government performance and accountability system pilot project.

The Council studied state-owned real estate and the utilization of real estate owned by state agencies and institutions, the best use of state-owned real estate, and whether the state should establish and maintain an inventory of state-owned real estate. The Council received reports from the Office of Management and Budget and the Land Department.

The Council received a report regarding the history of the bistate authority legislation providing for agreements between North Dakota and South Dakota to jointly exercise any agency, department, or institution function authorized by law.

BUDGET COMMITTEE ON HEALTH CARE

The Council studied the need for a comprehensive long-range study of the state's current and future health care needs. The Council recommends that the 60th Legislative Assembly consider providing for a comprehensive Legislative Council study of health care and health insurance during the 2007-08 interim and that a consultant be hired, as necessary, to assist with the study.

The Council studied the feasibility and desirability of creating an allied health professions board to regulate the practice of members of allied health professions, including the feasibility and desirability of a North Dakota allied health professions board entering joint professional licensure agreements with neighboring states. The Council recommends Senate Bill No. 2026 establishing an allied health professions board.

The Council studied the fiscal impact and the feasibility and desirability of establishing an umbrella licensing organization for a group consisting of counselors, psychologists, marriage and family therapists, and social workers.

The Council studied the licensure and regulation of acupuncturists practicing in the state as well as the possibility of multistate joint licensure and regulation programs. The Council recommends Senate Bill No. 2027 requiring individuals practicing acupuncture in North Dakota, excluding those individuals who practice acupuncture under the scope of a profession for which they are licensed, to register with the State Department of Health.

The Council received a report from the Insurance Commissioner regarding cost-benefit analyses for bills mandating health insurance coverage during the 2005 legislative session. The Council accepted the Insurance Commissioner's recommendation to continue to contract with Milliman and Associates to conduct cost-benefit analyses during the 2007 legislative session.

The Council received reports from the Board of Nursing on its study of nursing educational requirements and the nursing shortage in this state and the implications for rural communities, the Department of Human Services regarding enrollment statistics and costs associated with the children's health insurance program state plan, and the State Department of Health regarding its pilot project to test an announced basic care survey process and the department's recommendation regarding whether the unannounced survey process should continue for all basic care facilities.

BUDGET COMMITTEE ON HUMAN SERVICES

The Council studied public health units and food and lodging investigation services, the Medicaid medical reimbursement system, the costs and benefits of adopting a comprehensive Healthy North Dakota and workplace wellness program, services provided by residential treatment centers and residential child care facilities and the appropriateness of the payments provided by the state for the services, and state

programs providing services to children with special health care needs.

The Council received reports from the Department of Human Services regarding the department's review of its budget, programs, and services; the department's plan to transfer appropriate individuals from the Developmental Center to community placements; the department's Medicaid waiver request to provide in-home services to children with extraordinary medical needs; the department's amendment to the North Dakota Medicaid state plan allowing the disregard of assets for individuals owning long-term care insurance policies; activities of the prescription drug monitoring workgroup and implementation of a prescription drug monitoring program; the development of management initiatives for the Medicaid program; the development and implementation of a plan for the implementation of the Medicare prescription drug program; and the department's five-year Medicaid analysis report. The Council recommends the 60th Legislative Assembly consider the value of the biennial medical assistance report and the importance of continuing funding for the report for the actuarial analysis and other information that may be useful for the Legislative Assembly in the development of the Department of Human Services' appropriation.

COMMISSION ON ALTERNATIVES TO INCARCERATION

The Council studied sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other issues related to alternatives to incarceration.

The Council recommends Senate Bill No. 2029 to provide standards under which the Department of Corrections and Rehabilitation may implement an electronic home detention and global positioning system monitoring program.

The Council provided recommendations to the Governor for the Governor's consideration in preparation of the biennial executive budget, including $300,000 for room and board expenses for individuals admitted to a faith-based program to address addiction problems, approximately $600,000 for the addition of two full-time equivalent positions for the Department of Corrections and Rehabilitation and four full-time equivalent positions for the Department of Human Services to assist in the expansion of drug courts, up to $1.2 million for the expansion of the Robinson Recovery Center, $200,000 to be administered on a cost-share basis with local governments for the operation of community service programs, and $582,000 to assist in implementing the Cass County Jail Intervention Coordinating Committee mental health project, to be contingent upon the receipt of a federal grant for the implementation of the project.

The Council expresses its support for an appropriate level of funding, staffing, and training for electronic monitoring programs and the continued use and expansion of the secure continuous remote alcohol monitoring program and the Council encourages the Governor to assess the need for reducing caseloads for licensed addiction counselors, case managers for individuals with serious mental illnesses, and parole and probation officers to attempt to achieve industry caseload standards. The Council recommends the provision of adequate funding for mental health and substance abuse programs.

The Council encourages the Department of Human Services to work with treatment providers to identify gaps in recovery support services and to assist in the implementation of programs to provide early mental health screenings, encourages school districts to operate alternative schools to assist in keeping adolescents in school, encourages the continued study of the effectiveness of substance abuse treatment programs, and encourages state agencies and other entities to place additional emphasis on education and awareness of substance abuse issues.

The Council expresses support for the work of the Prevention Council appointed by the Governor, including the identification of methods for strengthening families and healthy communities, and expresses support and encouragement for private initiatives, such as the program that provides mentors for children of incarcerated individuals.

ECONOMIC DEVELOPMENT COMMITTEE

The Council studied the state's business climate through a business climate initiative, which included conducting and participating in seven focus groups and a Business Congress attended by business leaders, local economic developers, and young professionals. The focus groups discussed ways to enhance the state's business climate to stimulate job growth and enhance economic prosperity for employees and employers by encouraging the growth of existing businesses in the state, creating new businesses in the state, and encouraging expansion or relocation of businesses in the state. The Business Congress received a report on the activities of the focus groups, identified methods to enhance the state's business climate to stimulate job growth and enhance economic prosperity, identified methods to prepare the state for the high-growth and high-demand jobs of the future, and evaluated the impact of existing state economic development programs.

The Council studied issues relating to venture and risk capital and whether and how some of these issues may be negatively impacting business development in the state.

The Council received a biennial report from the Commissioner of Commerce on the process used and factors considered by the commissioner in identifying target industries on which economic development efforts are focused and the special focus target industry; reports from the Commissioner of Commerce on the status of the American Indian Business Development Office and the status of the International Trade and Business Office, on the status of the certification program through which the Division of Economic Development and Finance provides training services to local economic developers, on the status of the image information program, on the status of the business hotline program, on the status of the Dakota Manufacturing Initiative, on

the outcome of the department's study of the state's intellectual property laws as they relate to the protection of intellectual property rights, and on the outcome of the department's study of the state's economic development incentives; a report from the president of the Bank of North Dakota on the status of the Bank's investment in alternative and venture capital investments and early-stage capital funds; a report from the State Board of Higher Education and the Centers of Excellence Commission on the status of the centers of excellence program; a report from the chancellor of the University System on the outcome of the State Board of Higher Education's study of incentives the state could adopt to serve as catalysts for stimulating more efficient commercialization of new technologies; a report from the director of the Office of Management and Budget on the status of providing procurement information through the Internet and on the outcome of the director's procurement assistance center study; and annual reports from the Department of Commerce Division of Community Services on renaissance zone progress.

The Council recommends House Bill No. 1027 to address a broad range of economic development and business climate issues.

EDUCATION COMMITTEE

The Council studied the state's elementary and secondary education system, including key measurements of student progress, programs that address the state's competitiveness with other states, costs incurred by the state relating to implementation of the No Child Left Behind Act, and the most effective means of using taxpayer dollars at the state and local levels to ensure the best possible education for the children of this state. The Council recommends Senate Bill No. 2030 to address the financial operation and board membership of educational associations governed by joint powers agreements.

The Council received reports regarding school district employee compensation, requests for and waivers of accreditation rules, requests for and waivers of instructional time requirements for high school courses, student scores on recent statewide tests of reading and mathematics, the failure of school boards to meet a statutory threshold for increasing teacher compensation, implementation of a policy to assess the English communication skills of faculty members and teaching assistants at institutions of higher education, and the State Board of Higher Education's long-term finance plan.

ELECTRIC INDUSTRY COMPETITION COMMITTEE

The Council studied the impact of competition on the generation, transmission, and distribution of electric energy within this state. In addition, the Council received reports on emergency 911 telephone system standards and guidelines, on city and county fees on telephone exchange access service and wireless service, and on the activities of the North Dakota Transmission Authority.

The Council studied transmission issues, including the Wyoming Infrastructure Authority, cost allocation and recovery, siting, CapX 2020, wind energy, and project financing. The Council recommends Senate Bill No. 2031 to provide for expedited rate adjustments to recover transmission facility costs. The Council studied competition, taxation, and the continuation of the committee. The Council recommends House Bill No. 1028 to create the Energy Development and Transmission Committee of the Council.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Council solicited and reviewed various proposals affecting retirement and health programs of public employees and obtained actuarial and fiscal information on each of these proposals and reported this information to each sponsor. The Council also studied issues relating to state employee compensation.

FINANCE AND TAXATION COMMITTEE

The Council studied enhanced funding for elementary and secondary education and methods to reduce property taxes to fund elementary and secondary education. The Council recommends Senate Bill No. 2032 to appropriate approximately $74 million for allocation to school districts and to require reduction to school district property tax levies to reflect the allocation received. The Council recommends House Bill No. 1029 to limit transfers of home rule county and city sales tax revenue to school districts.

The Council studied alternatives to expressing property tax levies in mills. The Council recommends Senate Bill No. 2033 to require more information for taxpayers on property tax statements.

HIGHER EDUCATION COMMITTEE

The Council studied higher education funding and accountability, including a review of the progress made in implementing the Higher Education Roundtable recommendations relating to the North Dakota University System meeting the state's expectations and needs, the funding methodology needed to meet those expectations and needs, and the appropriate accountability and reporting system for the University System. The Council also received reports from the State Board of Higher Education regarding the status of the board's review of the long-term financing plan and the implementation of a policy requiring all institutions to access faculty and teaching assistant English communication skills.

The Council recommends House Bill No. 1030 to continue the continuing appropriation of higher education institutions' special revenue funds, including tuition, through June 30, 2009; House Bill No. 1031 to continue the requirement that the budget request for the University System include budget estimates for block grants for a base funding component, an initiative funding component, and an asset funding component and continues the requirement that the appropriation for the University System include block grants for a base funding appropriation, an initiative funding appropriation,

and an asset funding appropriation through June 30, 2009; and House Bill No. 1032 to provide for the continuation through June 30, 2009, of the University System's authority to carry over unspent general fund appropriations.

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

The Council studied the appropriate minimum standard of loss ratio for accident and health insurers and whether that loss ratio is more appropriately set by statute or by rule.

The Council studied the pharmacy benefits management industry, including the extent of competition in the marketplace for health insurance and prescription drugs; whether protecting the confidentiality of trade secret or proprietary information has a positive or negative impact on prescription drug prices; the ownership interest or affiliation between insurance companies and pharmacy benefits management companies and whether such relationships are good for consumers; the impact of disclosure of information regarding relationships between pharmacy benefits management companies and their customers; the use of various cost-containment methods by pharmacy benefits managers, including the extent to which pharmacy benefits managers promote the use of generic drugs; the actual impact of the use of pharmacy benefits management techniques on community pharmacies; the impact of mail service pharmacies on consumers and community pharmacies; the impact of generic and brand name drugs in formulary development, drug switches and mail order operations, as well as spread pricing, data sales, and manufacturers' rebates and discounts; the price consumers actually pay for prescription drugs in North Dakota; and the legality of imposing statutory restrictions on pharmacy benefits managers.

The Council studied the implementation by Job Service North Dakota of a shared work demonstration project.

The Council studied reemployment processes and costs and an appropriate method for providing a limitation on the total average number of job-attached unemployment insurance claimants. The Council recommends Senate Bill No. 2034 to establish a return-to-employer fee for job-attached employees of negative balance employers and to provide that 50 percent of any fee collected must be considered as an unemployment contribution and the remaining 50 percent must be deposited in the federal advance interest repayment fund, to be split evenly between use for reemployment services and for administration.

The Council studied the unemployment insurance tax rate structure; the structure's impact on the unemployment insurance trust fund, with special focus on the impact of the current unemployment insurance tax structure on new businesses; the historical cyclical risks faced by the industries in which new businesses are beginning to operate; and whether the unemployment insurance tax impact is reasonably favorable to the desired economic development of the state. The Council recommends Senate Bill No. 2035 to modify the unemployment insurance tax rate formula to provide that negative balance employers do not benefit from a reduction in unemployment insurance tax rates when there is a surplus in the unemployment insurance trust fund.

The Council studied the feasibility and desirability of requiring professional employer organizations operating in North Dakota to register with the state, including consideration of how other states address the issue of registration of professional employer organizations. The Council recommends Senate Bill No. 2036 to provide for the licensing of professional employer organizations by the Secretary of State and to allow the Secretary of State to refer a complaint against a professional employer organization to the Attorney General for investigation and disposition. The bill also sets forth the requirements for a professional employer organization agreement and the rights and obligations of the parties entering a coemployment relationship.

The Council studied public improvement contracts and issues relating to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems. The Council recommends House Bill No. 1033 to revise statutory provisions relating to bidding and public improvement contracts and to allow state and local governments to use the construction management delivery method.

The Council received a report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures, a report from Workforce Safety and Insurance regarding the safety audit of Roughrider Industries work programs and the performance audit of the modified workers' compensation coverage program, and a report from the Insurance Commissioner on the outcome of the commissioner's compilation of existing data regarding the state's liability insurance marketplace with respect to tourism-related businesses.

INFORMATION TECHNOLOGY COMMITTEE

The Council received reports from the Chief Information Officer and representatives of the Information Technology Department regarding the prioritization of major computer software projects for the 2007-09 biennium; the department's business plan; the department's annual report; statewide information technology policies, standards, and guidelines; and major information technology projects.

The Council recommends Senate Bill No. 2037 to provide that the Chief Information Officer may require information technology contractors to submit to a criminal history record check, to authorize the Information Technology Committee to receive and review project startup and project closeout reports for any major information technology project, to provide that information technology plans are subject to acceptance by the Information Technology Department, to revise the contents of the statewide information technology plan and the Information Technology annual report, and to provide that only entities approved by the Criminal Justice Information Sharing Board can access the

criminal justice system. The Council recommends Senate Bill No. 2038 to require the Information Technology Department to develop policies, standards, and guidelines using a process involving advice from state agencies and institutions and to provide that the State Information Technology Advisory Committee is to review policies, standards, and guidelines developed by the Information Technology Department and is to prioritize proposed major information technology projects of executive branch state agencies, excluding institutions under the control of the State Board of Higher Education and agencies of the judicial and legislative branches.

JUDICIAL PROCESS COMMITTEE

The Council studied issues relating to the appropriate public uses for the power of eminent domain. The Council recommends Senate Bill No. 2039 to limit the uses of eminent domain. The bill prohibits private property from being taken for use by a private commercial enterprise for economic development or for any other private use without the consent of the owner; defines economic development as any activity to increase tax revenue, tax base, employment, or general economic health; provides that public use does not include the public benefits of economic development, including an increase in the tax base or in tax revenues or an improvement of general economic health; provides that the question of whether a use is a public use must be determined by a court; and provides that the court is required to try the matter de novo.

The Council studied judicial elections and recent federal court decisions affecting the conduct of judicial elections. The Council recommends House Concurrent Resolution No. 3002 to provide for a Legislative Council study of judicial election and judicial selection issues. The concurrent resolution also provides that the study should include a public information and education program with the State Bar Association of North Dakota which includes public forums around the state regarding judicial selection methodology and the conduct of judicial elections.

The Council studied the laws of this state and other states as they relate to the unauthorized acquisition, theft, and misuse of personal identifying information belonging to another individual. The Council recommends Senate Bill No. 2040 to prohibit third parties from assisting and facilitating consumer fraud upon the consumers in North Dakota.

The Council studied the legal and medical definitions used for dementia-related conditions. The Council makes no recommendations regarding this study.

The Council received a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state; a report from the Commission on Legal Counsel for Indigents regarding the implementation of the commission, the indigent defense contract system, and established public defender offices; and a report from the director of the North Dakota lottery regarding the operation of the lottery.

JUDICIARY COMMITTEE

The Council studied the state's marriage laws and methods for strengthening the institution of marriage in the state, including premarital requirements, such as marital education and counseling, waiting periods, and marital blood tests; the availability of marriage counseling and parenting education in the state; and the implementation of predivorce requirements, such as divorce-effects education. The Council recommends Senate Bill No. 2041 to provide for a $25 reduction in the marriage license fee for individuals who complete four hours of premarital counseling. The bill provides that the Department of Human Services is to administer the program by using a voucher system and contains an appropriation of $110,000 from temporary assistance for needy families (TANF) funds for the program.

The Council studied the feasibility and desirability of adopting the Uniform Trust Code in North Dakota. The Council recommends House Bill No. 1034 to adopt the Uniform Trust Code.

The Council studied the feasibility and desirability of adopting the Uniform Commercial Code Revised Article 1 - General Provisions. The Council recommends House Bill No. 1035 to adopt the Uniform Commercial Code Revised Article 1 - General Provisions.

The Council reviewed uniform Acts recommended by the North Dakota Commission on Uniform State Laws.

The Council received a report from the Department of Human Services regarding the status of the alternatives-to-abortion program and the funding for that program.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council received and accepted 160 audit reports prepared by the State Auditor's office and public accounting firms. Among the audit reports accepted were four performance audits and evaluations--Department of Emergency Services, collection and use of 911 fees, Veterans Home followup report, and Department of Transportation Driver and Vehicle Services followup report. The Council approved the State Auditor's request to hire a consultant to assist in conducting the University of North Dakota School of Medicine and Health Sciences' performance audit.

The Council approved replacement of 12 audit guidelines previously used with six audit questions and eight other issues to be communicated by the auditors of state agencies and institutions to the Legislative Audit and Fiscal Review Committee. The new guidelines are effective for audit periods covering fiscal years ending June 30, 2006, and thereafter.

The Council studied state agency and institution continuing appropriation authority. The Council received reports from selected state agencies and institutions regarding the statutory authority for continuing appropriation authority within the agencies or institutions; justification for continuing the authority; and related revenues, expenditures, and fund balances for previous bienniums and projections for the 2005-07 biennium.

The Council received information regarding the status of salary increases provided to employees of the Department of Emergency Services; construction costs

for the North Dakota Horse Park; revenues of the Racing Commission and potential liability of the Racing Commission for injuries occurring at races licensed by the Racing Commission; Department of Human Services accounts receivable writeoffs; a followup report from the Department of Corrections and Rehabilitation regarding implementation of previous State Auditor's office audit recommendations; and the status of information technology projects.

LEGISLATIVE MANAGEMENT COMMITTEE

The Council approved arrangements for the 2007 legislative session. The Council approved the project plan for replacing legislative technology applications in the legislative branch, inspected the veterans' memorial on the Capitol grounds, studied the need for additional legislative committee meeting rooms, studied the feasibility of printing bills and resolutions by using computers and high-speed printers rather than contracting with a printing company, and studied whether increased daily compensation should be provided to standing committee division chairmen.

The Council approved a legislative technology applications replacement plan that included appointment of an executive steering group, development of a request for proposal, selection of a vendor, negotiation of a contract, and a schedule for performance of the work.

The Council reviewed options to use the House locker room as a committee meeting room, to use the bill and journal room as either one or two committee meeting rooms, and to move the bill and journal room to the public coatroom area and eliminate the public coatroom. The Council determined that the best approach was to renovate the existing bill and journal room and to convert that room into two committee meeting rooms and a bill and journal room. The Council also approved replacing member chairs in all committee rooms.

The Council suggested that the Facility Management Division of the Office of Management and Budget contact veterans' organizations to determine whether those organizations would provide approximately $22,600 for installing additional panels to add new names to the veterans' memorial on the Capitol grounds.

The Council makes no recommendation regarding the appropriateness of increasing the daily compensation for chairmen of substantive standing committee divisions established by rule of the House or Senate.

The Council recommends amendment of the legislative rules to continue the Monday bill draft introduction deadlines. In addition, the Council recommends amendment of the rule establishing the crossover date to continue that date as a Friday, which results in the two-day recess after crossover being on Monday and Tuesday, February 19-20, 2007.

NO CHILD LEFT BEHIND COMMITTEE

The Council studied the No Child Left Behind Act, amendments to the Act, changes to federal regulations implementing the Act, and policy changes and letters of guidance issued by the United States Secretary of Education.

The Council received reports regarding requests for exceptions to the requirement that individuals be licensed to teach in a particular course area or field before being allowed to teach in such an area or field, costs that are likely to be incurred by the state in meeting the requirements of the No Child Left Behind Act, and operations of educational associations governed by joint powers agreements.

TRANSPORTATION COMMITTEE

The Council studied federal highway appropriations and state matching requirements, the effectiveness of financial responsibility requirements imposed on individuals convicted of driving without liability insurance, and cost-shifting of medical costs of individuals injured in automobile crashes. The Council recommends House Bill No. 1036 to replace the criminal procedure for driving without liability insurance with an administrative procedure. The Council also recommends House Bill No. 1037 to change the citation procedure for driving without liability insurance by replacing the 20-day grace period to provide proof of insurance with a defense to the charge by providing proof to the appropriate court.

TRIBAL AND STATE RELATIONS COMMITTEE

The Council conducted joint meetings with the Native American Tribal Citizens' Task Force.

The Council studied economic development initiatives, taxation, delivery of services and case management services, child support enforcement, transportation finance issues, sovereign lands and oil and gas resource development, water issues, game and fish issues, methamphetamine issues, law enforcement issues, and education in Indian country.

WORKERS' COMPENSATION REVIEW COMMITTEE

The Council reviewed the workers' compensation cases of 11 injured employees to determine whether changes should be made to the state's workers' compensation laws.

The Council recommends House Bill No. 1038 to increase coverage for specially equipped motor vehicles for catastrophically injured employees; create an alternative calculation for additional benefits payable to address employees who were injured before July 1, 1995, but did not receive a determination of permanent and total disability until after July 1, 1995; increase death benefits to cover a catastrophically injured employee who dies more than six years after the date of injury; expand who may qualify for a Workforce Safety and Insurance educational loan and decrease the interest rates for these loans; and decrease the period an injured employee is required to wait before receiving supplementary benefits.

The Council recommends Senate Bill No. 2042 to expand the presumption of workers' compensation compensability for full-time paid firefighters and law

enforcement officers to provide coverage, not to exceed 56 days, if a medical examination produces a false positive result for a condition covered under the presumption.

The Council recommends Senate Bill No. 2043 to provide that for purposes of workers' compensation claims brought under the presumption of compensability of full-time paid firefighters and law enforcement officers, the period to appeal is extended from 30 to 45 days.

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, 28-32-17, 28-32-18, and 28-32-18.1. The committee is required to review administrative agency rules to determine whether:

1. Administrative agencies are properly implementing legislative purpose and intent.
2. There is dissatisfaction with administrative rules or statutes relating to administrative rules.
3. There are unclear or ambiguous statutes relating to administrative rules.

The committee may recommend rule changes to an agency, formally object to a rule, or recommend to the Legislative Council the amendment or repeal of the statutory authority for the rule. The committee also may find a rule void or agree with an agency to amend or repeal an administrative rule to address committee concerns, without requiring the agency to begin a new rulemaking proceeding.

The Legislative Council delegated to the committee its authority under NDCC Section 28-32-10 to distribute administrative agency notices of proposed rulemaking and to approve extensions of time for administrative agencies to adopt rules and its responsibility under Section 28-32-42 to receive notice of appeal of an administrative agency's rulemaking action.

Committee members were Representatives William R. Devlin (Chairman), LeRoy G. Bernstein, Randy Boehning, Duane DeKrey, Mary Ekstrom, Rod Froelich, Pat Galvin, Ronald A. Iverson, Kim Koppelman, Jon O. Nelson, Sally M. Sandvig, Margaret Sitte, Blair Thoreson, and Dwight Wrangham and Senators John M. Andrist, Dennis Bercier, Richard L. Brown, April Fairfield, Tom Fischer, Layton W. Freborg, Jerry Klein, Gary A. Lee, and Constance Triplett.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

ADMINISTRATIVE AGENCY RULES REVIEW

Administrative agencies are those state agencies authorized to adopt rules under the Administrative Agencies Practice Act (NDCC Chapter 28-32). A rule is an agency's statement of general applicability that implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. Properly adopted rules have the force and effect of law. Each rule adopted by an administrative agency must be filed with the office of the Legislative Council for publication in the North Dakota Administrative Code.

Under NDCC Section 54-35-02.6, it is the standing duty of the Administrative Rules Committee to review administrative rules adopted under Chapter 28-32. This continues the rules review process initiated in 1979.

For rules scheduled for review, each adopting agency is requested to address:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation. If so, the agency is requested to indicate whether the rules are mandated by federal law or to explain any options the agency had in adopting the rules.
3. A description of the rulemaking procedure followed in adopting the rules, e.g., the time and method of public notice and the extent of public hearings on the rules.
4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to the rules. Each agency is asked to describe any such concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint and to summarize the comments of any person who offered comments at the public hearings on these rules.
5. The approximate cost of giving public notice and holding hearings on the rules and the approximate cost (not including staff time) used in developing and adopting the rules.
6. The subject matter of the rules and the reasons for adopting the rules.
7. Whether a written request for a regulatory analysis was filed by the Governor or an agency, whether the rules are expected to have an impact on the regulated community in excess of $50,000, and whether a regulatory analysis was issued. If a regulatory analysis was prepared, a copy is to be provided to the committee.
8. Whether a regulatory analysis or economic impact statement of impact on small entities was prepared as required by NDCC Section 28-32-08.1. If a small entity impact assessment was prepared, a copy is to be provided to the committee.
9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. If a constitutional takings assessment was prepared, a copy is to be provided to the committee.
10. If the rules were adopted as emergency rules under NDCC Section 28-32-03, the agency is to provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support the declaration and a copy of the Governor's approval of the emergency status of the rules.

During committee review of the rules, agency testimony is required and any interested party may submit oral or written comments.

Current Rulemaking Statistics

The committee reviewed 1,353 rules sections and 1,920 pages of rules that were changed from December 2004 through October 2006. The number of sections affected and the number of pages of rules were substantially fewer than the comparable numbers from the previous biennial period. Table A at the end of this report shows the number of rules amended, created, superseded, repealed, reserved, or redesignated for each administrative agency that appeared before the committee.

Although rules differ in length and complexity, comparison of the number of administrative rules sections affected during biennial periods is one method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of North Dakota Administrative Code (NDAC) sections amended, repealed, created, superseded, reserved, or redesignated during designated time periods:

Time Period	Number of Sections
November 1986-October 1988	2,681
November 1988-October 1990	2,325
November 1990-October 1992	3,079
November 1992-October 1994	3,235
November 1994-October 1996	2,762
November 1996-October 1998	2,789
November 1998-November 2000	2,074
December 2000-November 2002	1,417
December 2002-November 2004	2,306
December 2004-October 2006	1,353

For committee review of rules at each meeting, the Legislative Council staff prepares an administrative rules supplement containing all rules changes submitted for publication since the previous committee meeting. The supplement is prepared in a style similar to bill drafts, with changes indicated by overstrike and underscore. Comparison of the number of pages of rules amended, created, or repealed is another method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of pages in administrative rules supplements during designated time periods:

Time Period	Supplement Pages
November 1992-October 1994	3,809
November 1994-October 1996	3,140
November 1996-October 1998	4,123
November 1998-November 2000	1,947
December 2000-November 2002	2,016
December 2002-November 2004	4,085
December 2004-October 2006	1,920

2005 Rules Review Changes

Passage of 2005 House Bill No. 1421 revised rulemaking procedures and rules review by the Administrative Rules Committee. Under prior law, administrative rules were published and in effect before they were reviewed by the Administrative Rules Committee. If rules review resulted in amendment, repeal, or voiding of a rule, that rule would be in effect for a short time and then be changed or eliminated. Administrative Rules Committee members expressed concerns that this made it difficult for the public to rely on rules until after completion of rules review. In discussion of these concerns with agency representatives, they generally agreed it would make sense to delay the effectiveness of rules until completion of the rules review process. However, agency representatives expressed concern that the statutory procedure for administrative rulemaking already required a substantial amount of time to put a rule in place, and adding an additional delay until completion of rules review by the Administrative Rules Committee would greatly increase the time required to put a rule in place. House Bill No. 1421 provided that nonemergency rules will become effective after they have been reviewed by the Administrative Rules Committee and reduced the time requirements to put a rule in place under the rulemaking process. The bill reduced from 30 to 20 days the time that must elapse after publication of notice of rulemaking before the public hearing may be held. The bill reduced the comment period after a rulemaking hearing from 30 to 10 days. The bill established a quarterly schedule of effective dates for administrative rules to replace the previous schedule of rules becoming effective on the first day of the month following publication. The bill required the Administrative Rules Committee to meet and consider rules not later than the 15th day of the month before the rules are scheduled to become effective. If a rule is carried over for consideration by the Administrative Rules Committee, that rule is delayed in becoming effective until the first day of the calendar quarter after the meeting at which the rule is reconsidered. The following table illustrates the rule filing dates, deadlines for committee meetings, and effective dates of rules under the new procedures established by House Bill No. 1421:

Filing Date	Committee Meeting Deadline	Effective Date
August 16-November 15	December 15	January 1
November 16-February 15	March 15	April 1
February 16-May 15	June 15	July 1
May 16-August 15	September 15	October 1

Voiding of Rules

Under NDCC Section 28-32-18, the committee may void all or part of a rule if that rule is initially considered by the committee not later than the 15th day of the month before the date of the Administrative Code supplement in which the rule change appears. The committee may carry over consideration of voiding administrative rules for not more than one additional meeting. This allows the committee to act more deliberately in rules decisions and allows agencies additional time to provide information or to work with affected groups to develop mutually satisfactory rules. The committee may void all or part of a rule if the committee makes the specific finding that with regard to the rule there is:

1. An absence of statutory authority;
2. An emergency relating to public health, safety, or welfare;

3. A failure to comply with express legislative intent or to substantially meet the procedural requirements of NDCC Chapter 28-32 for adoption of the rule;
4. A conflict with state law;
5. Arbitrariness and capriciousness; or
6. A failure to make a written record of an agency's consideration of written and oral submissions respecting the rule under NDCC Section 28-32-11.

Within three business days after the committee finds a rule void, the office of the Legislative Council is required to provide written notice to the adopting agency and the chairman of the Legislative Council. Within 14 days after receipt of the notice, the agency may file a petition with the chairman of the Legislative Council for Legislative Council review of the decision of the committee. If the adopting agency does not file a petition, the rule becomes void on the 15th day after the notice to the adopting agency. If within 60 days after receipt of a petition from the agency the Legislative Council has not disapproved the finding of the committee, the rule is void.

Obsolete Rule Repeal

Under NDCC Section 28-32-18.1, an agency may amend or repeal a rule without complying with the normal notice and hearing requirements relating to adoption of administrative rules if the agency initiates the request to the committee, the agency provides notice to the regulated community of the time and place the committee will consider the request, and the agency and the Administrative Rules Committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community.

Agency Rules Analysis

Under NDCC Section 28-32-08, an agency is required to issue a regulatory analysis of a proposed rule if a request for the analysis is filed by the Governor or a member of the Legislative Assembly or the proposed rule is expected to have an impact on the regulated community in excess of $50,000. A regulatory analysis is required to identify persons who will be affected by the proposed rule and to address economic impact, implementation and enforcement costs, and consideration of alternative methods for achieving the purposes of the proposed rule.

Under NDCC Section 28-32-09, an agency is required to prepare an assessment of constitutional takings implications of a proposed rule that may limit the use of private property. The agency must assess the likelihood that the proposed rule may result in a taking or regulatory taking, identify the purpose of the proposed rule, explain the necessity of the proposed rule to substantially advance the purpose of the rule, examine any alternative action that could achieve the agency's goals while reducing impact to private property owners, estimate potential cost to the government if a court determines that the rule constitutes a taking or regulatory taking, identify the source within the agency's budget for payment of compensation that might be ordered, and certify that the benefits of the proposed rule exceed the estimated compensation costs.

Under NDCC Section 28-32-08.1, an agency analysis is required for rules affecting small entities. This section requires agency consideration of the impact of proposed rules on small entities, including a small business, small nonprofit organization, or small political subdivision. The agency must consider methods of reducing the impact of proposed rules on small entities, including establishing less stringent compliance or reporting requirements for small entities, establishing less stringent schedules or deadlines for compliance or reporting for small entities, consolidating or simplifying compliance or reporting requirements for small entities, establishing performance standards for small entities to replace design or operational standards required by the rule, and exemption of small entities from all or any part of the proposed rule. This section does not apply to rules mandated by federal law, to any occupational or professional licensing agency, or to 17 specifically listed agencies.

COMMITTEE ACTION ON RULES REVIEWED

Obsolete Rules Repeal

The Department of Human Services conducted a review of all Administrative Code provisions adopted by the department. The review process resulted in updating or eliminating many rules. The department obtained approval of the Administrative Rules Committee for repeal of NDAC Chapter 75-01-01, which provided an overview of programs and services and contact information for the department. Department representatives said it is very difficult to keep the information in the chapter current and it is more effective to provide this information to the public on the department's web site and in other publications. The department received approval of the committee for the repeal of NDAC Chapter 75-02-11, relating to the food stamp program, and NDAC Chapter 75-03-26, relating to aging services community programs. Department representatives testified that food stamp program rules were obsolete because the rules duplicate federal food stamp regulations and the aging services program rules were obsolete because they duplicate the federal Older Americans Act.

Rules Amendments by Committee Approval

The Department of Human Services received approval of the Administrative Rules Committee for an additional amendment to substance abuse treatment program rules adopted by the department. A department representative said providers of substance abuse treatment programs expressed concerns that the rules as adopted prohibited treatment of adolescents in a group with adults and smaller treatment programs find it necessary to combine adolescent and adult groups. The additional amendment makes clear the department may issue a designation for treatment in an adolescent and adult combined program. The department received

approval from the committee for amendment of rules governing assessment of child abuse and neglect reports. Committee members expressed concern that the rules provision did not match the statutory requirement that the department is required to advise the subject of a report of suspected child abuse or neglect of the specific complaint or allegations made against the person at the time of initial contact with the person. Committee members also pointed out the statutory provision governing assessments contains the specific statement that the program is to protect the legal rights and safety of children and families. The department proposed amendments to address the committee concerns and the committee approved the adoption of the amendments.

The Superintendent of Public Instruction adopted a substantial body of rules changes governing school accreditation standards. Representatives of the North Dakota School Boards Association, the North Dakota Council of Educational Leaders, and the North Dakota Education Coalition expressed concerns and opposition regarding some of the rules changes. One of the concerns was that the rules changes would take effect at the beginning of a new contract cycle for school districts and possibly would force nonrenewals of some teacher and principal contracts. Another concern was a rules requirement that health education be provided in both seventh grade and eighth grade, rather than being provided in either seventh grade or eighth grade. The committee carried over consideration of the accreditation rules and urged the Superintendent of Public Instruction to meet with concerned groups regarding the issues raised. At the subsequent meeting of the committee, Superintendent of Public Instruction representatives described discussions with concerned groups on the issues in controversy and recommended further amendments to the rules, including delaying the effective date of some rule changes until October 2006 or July 2007 to avoid impact on the current cycle of school district teacher and principal contract renewal decisions. One aspect of the rules that did not result in agreement between department representatives and representatives of education groups was the requirement that health education be taught in both seventh grade and eighth grade. A memorandum from the Attorney General's office concluded that statutory interpretation would support the rule as adopted by the Superintendent of Public Instruction requiring health education in both seventh grade and eighth grade. The committee approved adoption of the additional amendments proposed by the Superintendent of Public Instruction.

The Attorney General adopted rules changes governing operation of the North Dakota lottery. Committee members expressed concern about some aspects of the rules changes and carried over consideration of the rules to a subsequent meeting. At the subsequent meeting, the committee agreed with the Attorney General to eliminate three amendments that would have removed language prohibiting lottery material that degrades a person who does not buy a ticket, allowed a member of the immediate family of a lottery employee to receive a gift from a licensee or vendor, and allowed the director of the lottery to waive application of any lottery rule.

The State Board of Accountancy adopted rules allowing unlicensed accountants to use the title "accountant" or "accounting" in describing their services if a specific disclaimer was included in the advertising and use of the terms. Representatives of unlicensed individuals providing accounting services expressed opposition to the disclaimer required because the length of the required disclaimer would prohibit certain forms of advertising. The committee carried over consideration of the rule as adopted and, at the subsequent meeting, the committee agreed with the State Board of Accountancy on a further amendment to require a substantially shorter disclaimer. It was the understanding of the committee that the adoption of the amendment would result in the dismissal of the pending lawsuit filed against the state by unlicensed individuals providing accounting services.

Workforce Safety and Insurance adopted several rules changes governing coverage. Workforce Safety and Insurance requested and the committee approved an additional amendment to specify the occasions when Workforce Safety and Insurance may conduct retrospective reviews of medical services and subsequently reimburse medical providers when it is later determined that a treated individual was entitled to Workforce Safety and Insurance coverage.

In several instances, the committee carried over consideration of administrative rules and received information from the relevant agency at the subsequent meeting which satisfied the committee's concerns. Rules of the Agriculture Commissioner, the State Board of Architecture, the State Department of Health, the Department of Human Services, and the Superintendent of Public Instruction which were carried over for consideration were the subject of no further committee action after information and explanations were provided by agency representatives.

The Secretary of State adopted rules to govern mixed fighting style competition. One of the rules adopted provides that a ticket to mixed fighting style competition may not be sold for more than the price printed on the ticket. The committee carried over consideration of this rule to its December meeting because it appears similar to legislation considered but not approved by the Legislative Assembly.

Committee Voiding of Agency Rules

Workforce Safety and Insurance adopted a rule allowing an injured worker coverage for a branded equivalent of a generically available medication only after prior approval by the organization and when documentation exists that the injured worker had an adverse response to the generic medication. Committee members expressed concern that this requirement unduly interferes with a treating physician's discretion and that a similar provision under the Department of Human Services medical assistance program resulted in legislative debate and compromise relating to prior authorization for medication. Representatives of the North Dakota Medical Association expressed opposition

to the Workforce Safety and Insurance rule and pointed out that North Dakota law allows prescribers to require brand name medication by handwriting the words "brand necessary" on the prescription form, under NDCC Section 19-02.1-14.1. The committee considered a motion to void the rule amendment adopted by Workforce Safety and Insurance but the motion failed.

The State Board of Funeral Service adopted rules governing funeral service practice, including a requirement for continuing education for funeral practitioners. Funeral practitioners expressed opposition to the aspect of the rule requiring approval by the State Board of Funeral Service of continuing education courses and an organization providing continuing education. Funeral practitioners said the rules as adopted provide no guidance on what courses or organizations would be approved and decisions of the board could be completely arbitrary. The committee approved a motion to void the State Board of Funeral Service continuing education rules on the grounds that the rules are arbitrary and capricious.

CONCLUSION

The committee makes no recommendation regarding changes to statutes relating to administrative rules.

TABLE A

STATISTICAL SUMMARY OF RULEMAKING
December 2004 Through October 2006 Supplements 306 Through 322

Title	Supplement No.	Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
2	06 APR 320	Abstracters' Board of Examiners	2	10					12
3	05 JUL 313	State Board of Accountancy	1						1
	06 APR 320	State Board of Accountancy	1	1					2
6	05 SEP 315	Aeronautics Commission	1						1
7	05 JUN 312	Agriculture Commissioner	5						5
8	05 FEB 308	State Board of Architecture	40	27					67
10	06 APR 320	Attorney General	35	4		7			46
20	06 APR 320	State Board of Dental Examiners	10	3					13
20.5	06 JAN 319	Board of Dietetic Practice	4						4
24	04 DEC 306	State Electrical Board	18						18
25	05 APR 310	State Board of Funeral Service	7	6					13
30	06 APR 320	Game and Fish Department	49	16		10			75
32	05 DEC 318	State Board of Cosmetology	30			2			32
33	04 DEC 306	State Department of Health	7	13		8			28
	05 APR 310	State Department of Health	6						6
	05 FEB 308	State Department of Health	15	2		1			18
	06 JAN 319	State Department of Health	4	7					11
	06 OCT 322	State Department of Health	3	1			6		10
37	06 JAN 319	Department of Transportation	6	9		12			27
43	06 JAN 319	Industrial Commission	17						17
45	05 SEP 315	Insurance Commissioner	16	1					17
	06 JAN 319	Insurance Commissioner	28	2	1	9	2		42
48	06 JUL 321	State Board of Animal Health	6			1			7
49	05 JAN 307	Board of Massage	7						7
50	05 JUN 312	State Board of Medical Examiners		1					1
	06 APR 320	State Board of Medical Examiners	2						2
54	05 AUG 314	Board of Nursing	9						9
55	05 NOV 317	State Board of Examiners for Nursing Home Administrators	2						2
61	05 JAN 307	State Board of Pharmacy	12	3		1			16
	06 JAN 319	State Board of Pharmacy	1	1		1			3
61.5	06 APR 320	Board of Physical Therapy	13	4					17
67	06 APR 320	Department of Public Instruction	69	8		5			82
	06 JUL 321	Department of Public Instruction	2	8					10
67.1	06 APR 320	Education Standards and Practices Board	22	3					25
69	05 MAY 311	Public Service Commission	8	10		3			21
70	06 JAN 319	Real Estate Commission	10						10
	06 JUL 321	Real Estate Commission	1						1
71	06 JUL 321	Public Employees Retirement System	47	3		2			52
72	06 JUL 321	Secretary of State	6	1					7
	06 OCT 322	Secretary of State		25					25
74	05 JAN 307	State Seed Department	6			6			12
	06 JUL 321	State Seed Department	47			1			48
75	05 JUN 312	Department of Human Services	21	103		88			212
	05 DEC 318	Department of Human Services	2			6			8
	06 JUL 321	Department of Human Services	59	16		1			76
81	06 APR 320	Tax Commissioner	33	3		2			38
87	04 DEC 306	State Board of Veterinary Medical Examiners	2						2
89	06 JUL 321	State Water Commission	4						4
92	06 JUL 321	Workforce Safety and Insurance	22	13		26			61
93	05 MAY 311	Private Investigative and Security Board	14	1					15
96	06 JAN 319	Board of Clinical Laboratory Practice		2					2
99	06 OCT 322	State Gaming Commission	62	1					63
105	06 JAN 319	State Board of Respiratory Care	7	12					19
108	06 JAN 319	Department of Commerce		19					19
109	06 JUL 321	Peace Officer Standards and Training Board	9	3					12
Sections affected			810	342	1	192	8	0	1,353
Grand total all sections									1,353

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

STATUTORY FRAMEWORK FOR COMMISSION

The Advisory Commission on Intergovernmental Relations occupies a unique status among committees with legislative membership. The commission differs from usual Legislative Council interim committees in its membership, its permanent status, and its statutory authority to determine its own study priorities.

The powers and duties of the commission are provided in North Dakota Century Code (NDCC) Section 54-35.2-02. Under this section, the commission is free to establish its own study agenda and to accept suggestions from groups or individuals for study.

Under this section, the Advisory Commission on Intergovernmental Relations specifically is required to:

1. Serve as a forum for the discussion of resolution of intergovernmental problems.
2. Engage in activities and studies relating to the following subjects:
   a. Local governmental structure.
   b. Fiscal and other powers and functions of local governments.
   c. Relationships between and among local governments and the state or any other government.
   d. Allocation of state and local resources.
   e. Interstate issues involving local governments, including cooperation with appropriate authorities of other states.
   f. Statutory changes required to implement commission recommendations.
3. Present reports and recommended legislative bills to the Legislative Council for consideration in the same manner as interim Legislative Council committees.
4. Prepare model ordinances or resolutions for consideration by officials of political subdivisions.

In conjunction with NDCC Section 54-35.2-02(4), Section 54-40.3-03 provides that a political subdivision entering a joint powers agreement may file a copy of the agreement and the explanatory material with the commission to assist other political subdivisions in exploring cooperative arrangements.

In addition to its statutory powers and duties, the commission was assigned one study and delegated the duty to receive one report. Senate Bill No. 2372 required the Legislative Council to study the feasibility and desirability of establishing an organization or ombudsman to support and coordinate federal, tribal, state, including institutions of higher education, and local government and private efforts to discourage destructive behavior, including alcohol and drug abuse and tobacco use. The Legislative Council delegated to the commission the duty to receive a report from the North Dakota Association of Counties before April 1 of each even-numbered year regarding how each county has used the county's document preservation fund during the preceding two fiscal years.

Under NDCC Section 54-35.2-01(1), the commission consists of 12 members:

- The North Dakota League of Cities Executive Committee appoints two members.
- The North Dakota Association of Counties Executive Committee appoints two members.
- The North Dakota Township Officers Association Executive Board of Directors appoints one member.
- The North Dakota Recreation and Park Association Executive Board appoints one member.
- The North Dakota School Boards Association Board of Directors appoints one member.
- The Governor or the Governor's designee is a member.
- The Legislative Council appoints four members of the Legislative Assembly as members.

The Legislative Council designates the chairman of the commission. All members of the commission serve a term of two years. Commission members were Representatives Scot Kelsh (Chairman) and Chuck Damschen; Senators Dwight Cook and Constance Triplett; North Dakota Recreation and Park Association representative Randy Bina; North Dakota Association of Counties representatives Karin Boom and Barry Cox; North Dakota School Boards Association representative Jon Martinson; North Dakota League of Cities representatives Mary Lee Nielson and Greg Sund; North Dakota Township Officers Association representative Ken Yantes; and Governor John Hoeven.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

LEGISLATIVE HISTORY

In 1989 the Legislative Assembly enacted NDCC Chapter 54-35.2, which provides for the commission. In 1991 the Legislative Assembly enacted Section 54-35.2-02.1, which provided for administration by the commission of local government efficiency planning grants. In 1991 the Legislative Assembly also provided an appropriation of $250,000 for these grants. The commission spent the majority of its time during the 1991-92 interim developing guidelines and procedures, reviewing grant requests, and monitoring grant projects. The commission approved grant awards for 15 grant projects in the total amount of $198,558.34, leaving $51,441.66 unexpended from the $250,000 appropriated for grants for the 1991-93 biennium.

In 1993 the Legislative Assembly amended NDCC Section 54-35.2-02.1, changing the objects for which grants could be provided, allowing the commission to directly expend all or a portion of the appropriated

amount for research and studies, and providing that unexpended grant funds that are returned are to be deposited in the state aid distribution fund. The Legislative Assembly also provided an appropriation of $51,400 to the commission for distribution in local government efficiency planning grants. During the 1993-94 interim, the commission received final reports from grant recipients from the previous interim and returned $1,466.14 in unexpended grant funds to the state from grant recipients that had completed their grant projects. The commission also authorized two grants of $24,999 each.

In 1995 the Legislative Assembly did not appropriate any funds for continuation of the local government efficiency planning grant program. During the 1995-96 interim, the commission received reports from the two grant recipients from the previous interim.

In 1997 the Legislative Assembly did not appropriate any funds for the continuation of the local government efficiency planning grant program.

During the 1997-98 interim, the commission found that, although the local government efficiency planning grant program served an important purpose, the program probably will not receive funding in the future; therefore, the law establishing the program was no longer necessary. As a result, the commission recommended Senate Bill No. 2028 to repeal NDCC Section 54-35.2-02.1 relating to the local government efficiency planning grant program. In 1999 the Legislative Assembly enacted Senate Bill No. 2028.

In 2001 the Legislative Assembly amended NDCC Section 54-35.2-02 to include on the commission a member appointed by the North Dakota School Boards Association Board of Directors.

In 2003 the Legislative Assembly considered House Bill No. 1333, which as introduced would have repealed NDCC Chapter 54-35.2 and Section 54-40.3-03, with the effect of abolishing the commission. As passed by the House of Representatives, House Bill No. 1333 retained Chapter 54-35.2 but removed the commission's authority to recommend proposed legislation to the Legislative Council. The bill failed to pass the Senate.

In 2005 the Legislative Assembly enacted Senate Bill No. 2024. The bill removed the June 30, 2005, expiration date for the document preservation fund and continued the additional fees imposed for the purpose of funding the document preservation fund. Revenue in the fund may be used only for contracting for and purchasing equipment and software for a document preservation, storage, and retrieval system; training employees to operate the system; maintaining and updating the system; and contracting for offsite storage of microfilm or electronic duplicates of documents for the county recorder's office. The bill required each recorder, before March 1 of each even-numbered year, to prepare a report that specifies how the county used the county's document preservation funds during the preceding two fiscal years, how the county's use of the document preservation funds has furthered the goal of document preservation, and the county's general strategic plans for its document preservation. The county reports must be submitted to the North Dakota Association of Counties for compilation and submittal to the Legislative Council. The Legislative Council designated the Advisory Commission on Intergovernmental Relations as the entity to receive the reports.

HISTORICAL AREAS OF STUDY

During the 1999-2000 interim, the commission focused on 12 areas of interest:

1. Park district mill levy consolidation - Resulting in passage of House Bill No. 1031.
2. The membership of the commission - Resulting in passage of House Bill No. 1032.
3. Tobacco education and cessation - Resulting in passage of Senate Bill No. 2024.
4. Clarification of definition of institutions of public charity exempt from property taxation - Resulting in Senate Concurrent Resolution No. 4001, which the Legislative Council did not prioritize for study.
5. Collection of municipal court fines.
6. Creation of a disaster relief fund.
7. Status of the Leadership Initiative for Community Strategic Planning.
8. Provisions of government services at the local level, including receipt of a report from the Child Support Enforcement Division of the Department of Human Services regarding the status of the child support state disbursement unit and the provision of child support services at the local level, receipt of a report on the provision of judicial services at the local level from the North Dakota Supreme Court, and receipt of a report from the Driver and Vehicle Services Division of the Department of Transportation regarding vehicle registration services in branch offices.
9. Funding of maintenance of local roads.
10. Census 2000 and areas of possible state and local government interest.
11. History of revenue sharing and personal property tax replacement.
12. Status of taxing e-commerce.

During the 2001-02 interim, in addition to the assigned study of the feasibility and desirability of creating cost-sharing mechanisms for the unexpected discovery of cultural and paleontological resources within local road projects, the commission focused on eight areas of interest:

1. County mill levy consolidation - Resulting in passage of House Bill No. 1024.
2. Revenue sharing and personal property tax replacement - Resulting in passage of House Bill No. 1025.
3. Tobacco education and cessation.
4. Homeland security.
5. E-commerce taxation.
6. Public school funding and taxation.
7. Tool chest legislation update.
8. Wind energy.

During the 2003-04 interim, the commission focused on seven areas of interest:

1. Mill levy consolidation. The commission recommended House Bill No. 1025, which failed

to pass the House. The bill would have revised the county general fund levy under NDCC Section 57-15-06.10, removing from the consolidated general fund the specific mill levies for the industrial development organization, county parks and recreation, library fund, weed board and weed control, and weather modification; decreasing the maximum general fund levy from 134 to 118 mills; and removing the general fund levy increase limitations that are based on the consumer price index.

2. Delinquent property tax. The commission recommended House Bill No. 1026, which failed to pass the House. The bill would have decreased from approximately five years to approximately three years the period of time in which foreclosure will take place for delinquent property taxes and would have allowed a board of county commissioners to waive all or part of the penalties or interest on delinquent real estate taxes if a board determines the reduced period for foreclosure of tax liens creates a hardship for similarly situated taxpayers.
3. Document preservation fund. The commission recommended, as previously explained, Senate Bill No. 2024, which became effective July 1, 2005.
4. Motor vehicle branch offices.
5. Sheriff service of process.
6. Emergency preparedness.
7. Wind turbine siting.

2005-06 INTERIM AREAS OF STUDY

During the 2005-06 interim, in addition to the assigned study of the feasibility and desirability of establishing an organization or ombudsman to support and coordinate governmental and private efforts to discourage destructive behavior, the commission focused on eight areas of interest.

1. Charitable organizations' property tax exemptions.
2. Tax levy authority.
3. Township levy limitation.
4. City and county development impact fees.
5. Legal services for the indigent.
6. Uniform Environmental Covenants Act.
7. Extraterritorial zoning jurisdiction.
8. Jail administration.

CHARITABLE ORGANIZATIONS' PROPERTY TAX EXEMPTIONS

Legal Framework

The Constitution of North Dakota provides in Article X, Section 5, that ". . . property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation."

North Dakota Century Code Section 57-02-08(8) provides an exemption for:

> All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit . . . .

The statutory requirement that buildings and land, to be exempt, must be property "belonging to" institutions of public charity requires that the property must be owned by the institution of public charity to be eligible for the exemption and ownership by an individual renders property ineligible for the charitable property tax exemption. Vacant lots owned by institutions of public charity are not exempt because the lots are not "actually occupied" by a charitable institution.

In *Riverview Place, Inc. v. Cass County*, 448 N.W.2d 635 (N.D. 1989), the Supreme Court of North Dakota said:

> [T]he determination of whether an institution falls within the exemption is, essentially, a two-step process in which it must be determined "whether the organization claiming the exemption is in fact a charitable one, and whether the property on which the exemption is claimed is being devoted to charitable purposes." . . . ownership of the property in question by an institution of public charity does not, by that fact alone, exempt the property from taxation . . . it is the **use** made of the property . . . which determines whether the property is exempt from taxation. [emphasis in text] The property's use must be devoted to charitable purposes and it must actually be used in carrying out the charitable purposes of the organization claiming the exemption.

The following conclusions have been reached in application of the exemption by the Attorney General and the Tax Commissioner:

1. Only the amount of land which is reasonably required for a site for the buildings and improvements used for charitable purposes is eligible for the exemption. Excess land used to pasture cattle is "used with a view to profit."
2. The meaning commonly given to "not used with a view to profit" is that no individual stockholder or investor will receive any kind of profit or gain or dividend from the operation of the charity. It does not mean that the charity cannot make some type of charge for certain services.
3. Occasional rental of property owned by a public charity and rented for nonexempt purposes does not destroy the tax-exempt status of the property.
4. If a charitable organization leases a building to another charitable organization at rent substantially below market rental rates so as to constitute financial assistance to the lessee charitable organization, then a charitable use by the lessor can be established.
5. A used clothing store operated by a public charity is not exempt because it is used for profit rather than the charitable uses of the charitable institution.

Legislative History

In 1997 two bills were introduced which would have amended NDCC Section 57-02-08(8)--House Bill Nos. 1460 and 1289. Both failed to pass in the House.

House Bill No. 1460 would have changed the test to determine if a building is exempt from property taxation on charitable grounds to provide that if the building belongs to "an organization organized and operated exclusively for charitable purposes, but any portion of that building is not exempt if it is not used exclusively for charitable purposes." In addition, the bill provided that "[a]n organization is not organized and operated exclusively for charitable purposes if it . . . pays wages . . . exceeding seventy-five thousand dollars to any person employed in this state during the taxable year."

House Bill No. 1289 would have required a charitable exemption to be specifically approved by the governing body of the city, if the property is located within city limits, or by the governing body of the county in which the property is located, if not within city limits. The bill would have grandfathered existing exemptions so that city or county approval was not required to continue the exemption.

In 1999 the interim Taxation Committee recommended House Bill No. 1051 to allow imposition of special assessments by cities against exempt property of charitable organizations. The bill would have allowed a city to establish a special assessment district composed only of property of charitable organizations. The bill would have allowed imposition of special assessments by the governing body of a city for the proportionate share of costs of police and fire protection and infrastructure expenditures paid from the budget of the city. The bill would have limited the amounts that may be levied against subject properties based on comparison of the value of those properties to the value of taxable property in a city. Committee members said the bill would provide local flexibility in determining whether and at what level special assessments would be imposed. The bill would have given cities an option to require charitable organizations to pay for the value of certain city services in the same manner they pay special assessments for property improvements under existing law because the services contribute to the value of the property. House Bill No. 1051 failed to pass in the House.

Testimony and Discussion

The commission received testimony on the use of the phrase "in part," as used in "used wholly or in part for public charity," as it applies to charitable organizations' property tax exemptions. A letter from the Tax Commissioner's office to the Grand Forks state's attorney in 1979 stated that "If a property is used partly for the charitable purposes of the public charity owner of the building and partly for other uses, the dominant use determines the use of the property." The commission was informed that the use of the words "in part" are inherently unclear; however, if the standard were "used wholly" for charitable purposes, there may be difficulty in having support for that proposition.

Whether a property is exempt from property taxation is first decided by the local assessor and then the claim is appealed up the chain. Most of the decisions relating to the use of the term "in part" are handled at the local level and there is lack of uniformity among the local decisionmakers. The commission was informed that although there may be flexibility in the terms for political reasons, flexibility can result in inequity and everyone in the same circumstance should be treated the same regarding taxation.

The commission was informed that the purpose of a charity may not be monetary, but a charity may make money. For example, a secondhand store that sells clothing but is staffed by the developmentally disabled may have a dominant purpose of providing training to the developmentally disabled to enter retail employment. The commission was informed that there are controversies in other states over whether hospitals and YMCAs should have charitable status. A major issue as of late is whether assisted living facilities are charitable. Commission discussion included that another issue is development of university campuses which extends the exemption for the educational use beyond what seems to be the original intent of the exemption.

TAX LEVY AUTHORITY

The commission considered, but does not recommend, a bill draft that would have allowed a taxing district to increase the amount levied in dollars in the base year as adjusted by the consumer price index. The commission received information on the consumer price index. The commission also considered, but does not recommend, a version of the first bill draft which also would have clarified language to include ordinances as well as resolutions that increase the levy.

The commission received testimony in support of the bill draft. The commission was informed the change would allow budget flexibility that would allow a city's budget to keep up with inflation. It appears all cities and 46 counties are taxing the maximum tax levy and with inflation, prices increase and cities and counties are limited to offering fewer services with the same amount of money. The limitation creates complications with county budgeting because county social services employees receive raises when state employees receive raises and counties pay increases in automation costs based upon the consumer price index without increased revenues.

The commission was informed that under NDCC Section 57-15-01.1, the general fund limit may be exceeded. In 2005, 256 cities and 25 counties had exceeded the general fund limit for those subdivisions. Under present law, a city would need to vote on a tax increase to exceed the dollars levied in the base year. The primary beneficiaries of the bill draft would be smaller cities that do not have other revenue sources besides property taxes and do not have increasing values in real estate. However, commission discussion included that if small cities are having trouble, their citizens are most likely not going to be able to pay more.

The commission received testimony in opposition to the bill draft. Substantial increases in valuation have

increased tax revenues and the bill draft compounds the increase. The bill draft includes all political subdivisions and this bill draft would be an increase on top of recent increases made during the 2005 legislative session. The procedure for creating a county budget is that the board of county commissioners creates a budget, tabulates income, and fills in the rest with property taxes. It was argued this procedure is backwards in comparison to how an individual creates a budget. It was argued that taxpayers should have an opportunity to vote on tax increases and most people want property tax relief, not an increase.

Commission discussion included that there are increases in the cost of services that political subdivisions provide, such as fuel. It was argued that political subdivisions need to be able to increase taxes to meet the costs. Commission discussion included that budgets are tight and getting tighter and more services are being required. It was argued that an increase should be allowed if it is reasonable. Commission discussion included that a flat mill levy is a decrease in taxes as inflation goes up. It was clarified that the bill draft allows an increase and if valuations are increasing, then a political subdivision would not need to use this authority.

Commission discussion included that taxation is a three-legged stool with legs of property tax, sales tax, and income tax. It was argued that the property tax leg is too long and there may need to be an increase in sales or income taxes. Commission discussion included that the first step in changing the taxation structure is to balance taxes and the second step is to keep them in balance. Commission discussion included that the commission should delay action on the bill draft because the bill draft may be premature and should be considered as part of a larger plan. The commission was informed that the interim Finance and Taxation Committee is studying property tax reduction.

TOWNSHIP LEVY LIMITATION

The commission received a resolution from the North Dakota Township Officers Association in support of an increase in the general mill levy limitation from 18 to 30 mills. The commission was informed that funding for township services has not kept up with the inflation of the costs of the services provided by the townships. At present, a township may increase the mill levy limitation from 18 to 27 mills as an excess levy under NDCC Chapter 57-17. The excess levy is limited to 50 percent over the general mill levy limitation. Most of the townships that are using excess levies are located around major cities.

The commission received testimony regarding a major expenditure of townships--roads. The approximately 56,000 miles of township roads in this state must be certified to the county auditor to be considered township roads. Township roads do not include farm trails but could include dirt roads.

Commission discussion included the example of a township that operates on a $7,500 budget. Considering the average cost for graveling a mile of road is between $2,500 and $3,000, the township does not have enough money. Commission discussion included that considering the work of the interim Finance and Taxation Committee, the commission should not address this issue.

CITY DEVELOPMENT IMPACT FEES

In 2005, Senate Bill No. 2390 was introduced to allow for impact fees and as passed allowed for a study of impact fees. The Legislative Council did not prioritize the study.

The commission received testimony in support of city development impact fees. Impact fees place the cost of new development in the purchase price of the lots, not in special assessments. Impact fees place the risk of development on developers and the increased costs on the people causing the increase--the people in a new development. It was argued that impact fees discourage urban sprawl by putting the cost of developing far away from existing development on developers. It was argued that a city acts as a banker for new development when special assessments are used to fund development. The commission was informed that the administrative cost for special assessments is 25 to 35 percent; whereas, developers have development costs of around 11 percent.

The commission considered, but does not recommend, a bill draft that would have allowed for city development impact fees. The commission also considered, but does not recommend, a bill draft that would have allowed for city and county development impact fees and would have included more requirements and suggestions for what is in an impact fee ordinance. In particular, the bill draft would have placed a 15 percent limit on administrative costs charged by a city or county. An opinion was expressed that the bill draft should be amended to include public facilities owned or operated by a park district as well as a city.

The commission was informed that the limitation on administrative fees of 15 percent was an arbitrary level placed in the bill draft to limit "taxing" authority.

The commission received testimony on impact fees in Dickinson. Dickinson does very little upfront work as part of imposing impact fees. A developer does most of the work so the city does not charge administrative fees, only actual costs. The commission was informed that there have not been any challenges to the impact fees in Dickinson because of the good relationship between the developers and the city.

Commission discussion included that there have not been any complaints about impact fees because developers have had input in the beginning and have a successful partnership with the cities that impose impact fees. It was argued the bill draft may tamper with the successful partnership that is now in place. The bill draft could encourage cities to adopt impact fees without working with developers to address problems as the problems arise.

The commission was informed legislation is not required to provide for an impact fee ordinance in home rule cities. Home rule cities have general authority in the cities' home rule charters to make ordinances that encompass impact fee ordinances. Commission

discussion included a hesitation to support the bill draft because it may make ambiguous the authority of home rule cities to impose impact fees. It was argued that the bill draft may solve a problem that does not need to be solved.

The commission was informed that there are no statutory limitations on impact fees. The commission was informed that there may need to be some limitation on impact fees so cities do not unrealistically mark up the price of services. The commission was informed that the bill draft places all cities on the same playing field.

The commission received testimony in opposition to the bill draft. The commission was informed that impact fees are becoming less popular because impact fees make development difficult for small developers and affect the affordability of housing by affecting the number of people qualifying for mortgages. It was argued that impact fees and any limits on impact fees should be dealt with at the local level because each community is different. It was argued that impact fees are an unknown variable which have not produced a positive effect on development in other states.

LEGAL SERVICES FOR THE INDIGENT

The commission was informed that counties use the same procedure for applying for indigent counsel for civil matters and criminal matters. It was argued that this creates the appearance that the state should likewise be paying for the civil matters.

The Commission on Legal Counsel for Indigents does not fund several matters for which there is not a constitutional right to counsel but for which indigent individuals are provided legal services at no cost. These instances are civil commitments, child custody investigations, and appointments of guardians ad litem. The cost of indigent counsel in these civil matters is the responsibility of the counties.

The commission received information on indigent defense costs paid by counties for 2001-02 and 2003-04 for sexual predator commitment proceedings, mental illness proceedings, guardian ad litem proceedings, and custody investigations. The total estimate of costs for these services was $390,300 per biennium.

The commission received testimony on the problems with counties providing indigent defense. The commission was informed that the costs for counties are sporadic and some are especially costly, e.g., for the commitment of a sexual predator. In particular, this cost is borne by the county to which the predator is released after prison regardless of whether the county has a connection to the predator. The commission was informed that there has been an increase in costs for custody hearings as a result of a federal law that requires a quicker process and more use of guardianships when a child is removed from a home. The commission was informed that there is a conflict of interest when a county hires someone to represent an individual in a legal proceeding against the state's attorney who is a county official. It was argued that although the transfer of these legal services to the state would save the counties money, the conflict of interest and difficulty in budgeting are satisfactory and independent reasons for the transfer.

UNIFORM ENVIRONMENTAL COVENANTS ACT

The commission received testimony on the Uniform Environmental Covenants Act. The commission compared the Uniform Environmental Covenants Act to 2005 House Bill No. 1279. The commission was informed the Uniform Environmental Covenants Act was included in one of the drafts for House Bill No. 1279 but was removed. Even though the Uniform Environmental Covenants Act was removed, House Bill No. 1279 allows for environmental covenants. However, House Bill No. 1279 does not provide as many particulars as to environmental covenants as the Uniform Environmental Covenants Act, especially as to the relation of the covenant to adverse possession, tax lien foreclosures, zoning changes, and marketable title statutes.

Commission discussion included that it appears House Bill No. 1279 and the Uniform Environmental Covenants Act address the same type of problem. House Bill No. 1279 was created by many stakeholders in this state over a long period of time to address the problems of contaminated property. As such, it was argued the commission should monitor House Bill No. 1279 and, if needed, make changes instead of pursuing the Uniform Environmental Covenants Act.

EXTRATERRITORIAL ZONING JURISDICTION

The commission received testimony on the reduction of city extraterritorial zoning jurisdiction and the concern of some political subdivisions with the four-mile reach of city zoning jurisdiction. The four-mile reach is for cities with a population of 25,000 people or more--Bismarck, Fargo, Grand Forks, and Minot. Minot is the only one of the four which has not exercised this jurisdiction. Eight cities may increase their extraterritorial zoning jurisdiction up to two miles and 345 cities may increase their extraterritorial zoning jurisdiction from one-half mile to one mile.

Commission discussion included the example of the city of Grand Forks that extended the city's extraterritorial jurisdiction over the objection of the county, township, and people living in an area. The zoning rules require at least 40 acres per residence, so development has been shut down. This may cause a ring of development over four miles outside the city to develop.

JAIL ADMINISTRATION

The commission considered, but does not recommend, a bill draft that would have allowed the board of county commissioners to provide for the administration of county jails. A recent Attorney General's opinion stated that the Burleigh County Board of County Commissioners could not hire an administrator of the jail. The opinion said the administration of the jail was the sheriff's duty. The commission was informed that a recent Attorney General's opinion calls into

question the practice of having a separate jail administrator and sheriff as is the case in Grand Forks County. Grand Forks County has had a separate sheriff and jail administrator for approximately 20 years.

The commission was informed that a regional jail may hire an administrator who is not a sheriff. As such, the Grand Forks County Board of County Commissioners had two choices--agree with another political subdivision to establish a regional facility or seek to clarify the law. Commission discussion included that it is interesting that two counties can agree to exclude the sheriff from being the administrator of a jail, but one county may not exclude the sheriff.

The commission received testimony in support of the bill draft. The commission was informed the bill draft recognizes that generally sheriffs administer jails; however, boards of county commissioners may make exceptions.

The commission received testimony in opposition to the bill draft. The commission was informed that sheriffs are not opposed to what Grand Forks County is doing but are opposed to the bill draft because the bill draft could affect other sheriffs. The commission was informed that politics should not be part of running a jail. It was argued that giving a board of county commissioners authority to remove the duty of administering a jail from a sheriff allows for improper influence. In short, it was argued if a sheriff does not get along with county commissioners, the commissioners should not be able to hold jail administration over the sheriff to influence the sheriff. It was argued that county commissioners are not educated in corrections, sheriffs are educated in corrections, and sheriffs need to control programs and staffing.

SUPPORT AND COORDINATION OF PUBLIC AND PRIVATE EFFORTS TO DISCOURAGE DESTRUCTIVE BEHAVIOR STUDY

Senate Bill No. 2372 required a study of the feasibility and desirability of establishing an organization or ombudsman to support and coordinate federal, tribal, state, including institutions of higher education, and local government and private efforts to discourage destructive behavior, including alcohol and drug abuse and tobacco use.

Legislative History

Senate Bill No. 2372, as introduced, would have created a five-member Responsible Choices Commission, funded by an increase in taxes on beer. The commission would have had authority to contract with or grant funds to entities within this state to discourage impaired driving, alcohol and drug abuse, tobacco use, and other destructive behavior. The commission would have worked with state agencies, political subdivisions, and higher education institutions to provide a network for the dissemination of information and materials to further its mission. The commission would have been authorized to provide funding for programs aimed at creating effective strategies to discourage destructive behavior. The bill was amended in the Senate to remove the tax increase and to allow the commission to accept grants, gifts, goods, and services from public or private sources and to allow the commission to spend any obtained funding.

The legislative history for Senate Bill No. 2372 reveals that proponents of the bill wanted to provide a funding source for alcohol prevention and the beer tax was targeted because the National Highway Traffic Safety Administration had suggested that the tax be adjusted because beer is taxed at a lower rate than distilled spirits based on alcohol content. In addition, this state's alcohol tax rate has not been raised since 1967. However, the opponents to the beer tax pointed out that the federal tax on beer was doubled in 1991. Opponents of the beer tax increase were against the increase on a number of grounds. First, the opponents found the increase too large. The present beer tax provides approximately $2.7 million a year in excise tax collections and the increase would have increased collections by approximately $3.6 million a year. Other arguments against the beer tax increase included that it was unfair because the increased tax was only on beer, the increased tax created an unfair playing field with surrounding states, and the increased tax would be regressive.

The legislative history reveals that the main proponent for Senate Bill No. 2372 was Students Against Destructive Decisions (SADD). This group favored the tax because the tax would have provided a predictable funding source. When the beer tax increase was removed from Senate Bill No. 2372, the Responsible Choices Commission was left without a dedicated funding source. The commission was limited to accepting grants, gifts, equipment, supplies, material, or services from government or private sources. Although the testimony revealed that the beer industry would donate money to SADD, SADD will not take money directly from the beer industry.

Therefore, the bill, as passed, provided solely for this study.

Other Coordinating Entities

Under NDCC Section 15.1-24-01, the Superintendent of Public Instruction is required to develop a plan for the coordination of services relating to chemical abuse prevention programs with other agencies, including the Department of Human Services, the State Department of Health, the Department of Transportation, and law enforcement agencies. Under this section, the Superintendent is required to adopt rules for the implementation of chemical abuse prevention programs in this state's schools. In short, the rules relate to the coordination of chemical abuse prevention efforts of school-age individuals.

Under NDCC Section 54-56-01, the Children's Services Coordinating Committee is created and consists of the Governor, the Superintendent of Public Instruction, a representative of the juvenile courts, the executive director of the Department of Human Services, the State Health Officer, the director of the Department of Corrections and Rehabilitation, the director of the

State Board for Career and Technical Education, and a representative of the Indian Affairs Commission. As part of the Children's Services Coordinating Committee's powers under Section 54-56-03, the committee may coordinate delivery of services to children who are abused, neglected, emotionally disturbed, mentally ill, medically disabled, runaways, homeless, deprived, school dropouts, school-age parents, chemical or alcohol abusers, unruly, or delinquent. In addition, the committee may foster primary prevention ideas and strategies.

In 2005 the Legislative Assembly passed Senate Bill No. 2349, which provides for an Office of Faith-Based and Community Initiatives within the Governor's office. An advisory commission was created to, among other things, make recommendations to the government regarding faith-based and community organizations concerning the future of existing state programs and initiatives. The principle functions of the Office of Faith-Based and Community Initiatives include coordination of community programs and expansion of the role of those efforts in communities; coordination of public education activities designed to mobilize public support through volunteerism, special projects, demonstration pilots, and public and private partnerships; and encouraging nonprofit organizations and civic initiatives.

In 2002 the Governor created the North Dakota Commission on Drugs and Alcohol to evaluate substance abuse in this state by exploring the interrelationship among substance abuse prevention, education, and enforcement programs; design procedures to coordinate resources in the substance abuse area; and ensure future coordination of resources designed to address substance abuse issues. The commission has representatives from law enforcement, state's attorneys, the Legislative Assembly, the Governor's office, the Department of Public Instruction, the Attorney General's office, the Bureau of Criminal Investigation, the Indian Affairs Commission, the Department of Human Services, the State Department of Health, the judiciary, public schools, the Mercy Recovery Center, the North Dakota Higher Education Consortium for Substance Abuse Prevention, and the United States Attorney's Office.

The United States Department of Health and Human Services was provided grants through the Substance Abuse and Mental Health Services Administration to states to create a state prevention framework. To receive the grant, the state must have a North Dakota prevention advisory council. The council may use up to 15 percent of the funds for administration, including assessment, training, planning, implementation, monitoring, and evaluation. A North Dakota state prevention framework infrastructure chart has been created for the application for the grant. The general scheme is to implement model programs in a coordinated effort through community coalitions.

State Programs for Alcohol, Drug, Tobacco, and Risk-Associated Behaviors

The government programs for discouraging destructive behavior are directed mainly at drugs, alcohol, and tobacco. The main state agencies addressing these behaviors are the State Department of Health, Department of Human Services, and Superintendent of Public Instruction.

In general, the State Department of Health administers the programs and funding relating to tobacco. Under NDCC Section 23-38-01, the department is to establish a community health grant program to prevent or reduce tobacco usage. These programs are funded mainly through tobacco master settlement funds that go to public health units for preventative services in schools and communities. Forty percent of the funds are to be used by public health units in coordination with school boards to reduce student tobacco use. Forty percent are to be used by the public health units for a unitwide plan concerning preventative health programs. Twenty percent are to be used by the public health units to supplement existing state aid from other sources.

The Department of Human Services has a Division of Mental Health and Substance Abuse Services with programs addressing substance abuse. Under NDCC Section 54-38-05, the department is to study alcoholism and drug abuse and related problems and disseminate information on the subject of alcoholism and drug abuse for the prevention of alcoholism and drug abuse to the public and government agencies. The Department of Human Services receives a substance abuse prevention and treatment grant, which allows it to plan, carry out, and evaluate activities to prevent increased substance abuse. The Division of Mental Health and Substance Abuse Services operates the North Dakota Prevention Resource Center, which is a clearinghouse of alcohol and other drug information, including pamphlets, brochures, booklets, posters, bookmarkers, and stickers. These materials are available free of charge. In addition, each of the eight human service centers and four tribal regions have a coordinator to develop local coalitions to address substance abuse.

The Superintendent of Public Instruction has coordinated school health and drug-free programs that support programs that prevent violence in and around schools; prevent the illegal use of alcohol, tobacco, and drugs; involve parents; and coordinate with other related federal, state, and community efforts and resources. The programs mainly address destructive behavior in kindergarten through grade 12. The North Dakota Higher Education Consortium for Substance Abuse Prevention mainly addresses the coordination of substance abuse prevention at the collegiate level.

During the 2001-02 interim, the Budget Committee on Government Services studied programs dealing with prevention and treatment of alcohol, tobacco, and drug abuse and other kinds of risk-associated behavior which are operated by various state agencies. The committee studied whether better coordination among the programs within those agencies might lead to more effective and cost-efficient ways of operating the programs and providing services. A survey of agency alcohol, drug, tobacco, and risk-associated behavior programs was conducted and the results were placed in a table. That information was updated during the 2003-04 interim by

the Budget Committee on Government Services as part of that committee's study of the state's long-term prison needs and the needs of individuals with mental illness, drug and alcohol addictions, and physical or developmental disabilities.

On November 14, 2005, a letter was sent to the relevant agencies requesting an update of the table for the Advisory Commission on Intergovernmental Relations. In particular, the letter requested that the information be updated and narrowed to address programs that discourage destructive decisions. Discouraging destructive decisions includes prevention, education, awareness, and early intervention. In July 2006 the Advisory Commission on Intergovernmental Relations requested the information for the 2005-06 interim be narrowed to only include prevention programs and the money in each program that goes to local chapters of SADD to students against destructive decisions be identified. Table A at the end of this report notes changes to the original table presented to the commission for the 2005-06 interim. Underscored language is new and overstruck language is old.

Testimony and Discussion

The commission received testimony from SADD and was informed that SADD needs stable funding. Grant money is unpredictable and grants are limited to a certain purpose for a limited period of time. Federal grants are designed to build programs, not sustain programs. The commission was informed that because of the impending loss of federal funding, SADD does not have the luxury of time to find a stable funding source. For the past several years SADD has received three grants for approximately $85,000. One grant is in the final year, one has one year left, and one is year to year.

The commission received testimony from young adults representing SADD on the positive effects of SADD on the lives of young people in this state. The commission was informed that SADD is cost-effective and provides an alternative to drugs and alcohol. There are approximately 70 chapters of SADD in this state. Individual chapters raise their own money for their own programs. Commission discussion included that SADD effectively involves youth in preventing destructive behavior in other youth.

The commission received testimony on sources of stable funding. The commission was informed that the majority of states fund SADD through federal highway safety funds. The commission was informed that there is a short supply of these funds in this state because of the low population.

The commission was informed that grants require long-term local planning and local groups have relied heavily on regional and tribal children's services coordinating committees in the past. Because of the termination of children's services coordinating committees, the plans used by local entities may have become outdated and these entities may be unable to meet federal requirements.

Commission discussion included that grants are not applied for because the writing of the application and the administration of the grants have to be done within an organization's budget. Most organizations do not have the administration and grant-writing expertise to receive grants. Commission discussion included that grants that are applied for by a professional grant writer appear more professional and have a greater chance of success than grants written by a layperson. It was argued that the commission should consider a centralized office to aid private groups in applying for grants and to apply for grants to pass through to private groups.

The commission received testimony regarding the Office of Faith-Based and Community Initiatives. The commission was informed that there are no financial resources for the office and the office has been absorbed into the Governor's office. The commission was informed the office was in its infancy and there appeared to be some opportunity for the office to be able to receive grants. Commission discussion included that the office may be able to access funding for addressing destructive behavior, especially in obtaining funding for SADD.

The commission was informed that in an effort to provide stable funding, SADD was considering an initiated measure. The commission received testimony on the proposed initiated measure. In 2005, Senate Bill No. 2372 would have increased all beer taxes to 25 cents per gallon and would have raised $1.7 million per year. The proposed initiated measure, which is based on Senate Bill No. 2372, would have raised the tax on beer cans and bottles to 24 cents per gallon and bulk sales to 16 cents per gallon. The total funds raised under the proposed initiated measure would be approximately $1.3 million per year.

The commission received testimony on use of the funds from the proposed initiated measure. Presently, the state SADD office operates on approximately $80,000 per year. To meet the needs of the state, SADD wanted approximately $225,000 per year at the state level. One of the goals of SADD at a state level is to have community coordinators throughout the state. The remaining money would be allocated by the Responsible Choices Commission and could be used for, among other things, a media campaign.

Commission discussion included support of the efforts of SADD and for funding for the types of programs supported by SADD. It was argued that the future savings as a result of people not engaged in destructive decisions at a young age would be enormous. It was argued that the commission should support a dedicated funding source for SADD.

The commission received testimony in opposition to a dedicated beer tax to fund SADD. It was argued the main problem with Senate Bill No. 2372 and the proposed initiated measure was the tax would not be fiscally responsible because a beer tax is regressive. Commission discussion included that the purpose of state funding of SADD through increased beer taxes was to launder money for SADD. It was argued that this should not be the purpose of a tax. Commission discussion included a philosophical problem with using a tax on beer to support programs that discourage drinking.

The commission received testimony on other sources of funding. The commission was informed of state, federal, and private foundation funding for alcohol abuse and related activities in this state. In addition, each of the 16 wholesalers in this state contribute approximately $10,000 each to Responsible Choices Commission campaigns and this money usually is matched by brewers. The commission was informed that the use of materials provided by wholesalers in schools has a positive response from schools. The commission was informed that the industry has been involved with promoting responsible decisions for the last 20 years and there has been a significant decline in alcohol abuse.

The commission was informed that although SADD had a proposed initiated measure approved for circulation, SADD was not actively pursuing the proposed measure because the Governor's office has offered support for a general fund appropriation. The commission was informed that the assurance of a general fund appropriation did not include an assurance of a specific dollar amount. The commission was informed that SADD wanted a $1 million per year general appropriation to be used for multiple purposes, including funding SADD. The commission was informed that an appropriation could go to the Prevention Advisory Committee because of its similarity to the Responsible Choices Commission.

The commission was informed that changing the funding to general fund money as a means of supporting a private organization is relatively unprecedented and would be a major change in policy. Commission discussion also included some support for funding SADD with a general fund appropriation.

REPORT ON COUNTY DOCUMENT PRESERVATION FUNDS

The Legislative Council delegated to the commission the duty to receive the report from the North Dakota Association of Counties before April 1, 2006, regarding how each county has used the county's document preservation fund during the preceding two fiscal years.

Before a survey was sent to each county on the use of the fund, the Association of Counties provided information on the survey to the commission. The Association of Counties then provided a written report of how each county has used the county's preservation funds during the preceding two fiscal years. As a result of accepting federal Department of Emergency Management money, each county must microfilm all records. A copy of each land record is stored onsite in each county. The largest problem with Internet access to records was high fees, which have been cut in half. The commission was informed there is reason to believe that all counties will join the single web access system by the next legislative session. The system charges a $100 setup charge and a monthly service fee of $25. Grand Forks charges a setup fee of $200 and monthly services of $100. Grand Forks has an independent system that was started due to the flood in 1997.

TABLE A

Alcohol, Drug, Tobacco, and Other Risk-Associated Behavior Programs	2005-07 Biennium Amount and Funding Source for Each Program			Detail of Sources of Federal and Special Funds	Restrictions on Uses of Funds	Anticipated Uses of Funds
	General Fund	Federal and Special Funds	Total Funds			
State Department of Health Community health grant program: To SADD through local public health		~~$4,700,000~~ $4,671,700 28,300	$4,700,000	Tobacco master settlement funds (10%) through the community health trust fund	Funds go to local public health units for preventive health services in schools and communities with an emphasis on tobacco control	Majority of funds for tobacco prevention and control in schools and communities - Estimated 20 to 25% will fund other preventive health services
Statewide tobacco cessation quitline for primary prevention		~~884,000~~ 68,016	~~884,000~~ 68,016	Tobacco master settlement funds	Funds support a statewide toll-free telephone counseling and referral quitline	100% of funds will support the statewide tobacco cessation quitline
Tobacco prevention and control - Centers for Disease Control and Prevention (CDC)		2,463,495	2,463,495	Centers for Disease Control and Prevention	Restricted to tobacco control; cannot be used for direct services or cessation services	100% for tobacco control
Abstinence education grant program: To state SADD chapter		~~405,583~~ 355,789 49,794	405,583	Health Resources and Services Administration - Section 510 abstinence education grant program	Funds go to the regional/tribal children's services coordinating committees and public health units within the four tribal and eight regions of North Dakota	70% of funds are used for abstinence education in their respective commu-nities and the other is used for administrative services $22,000 appropriation received, funding not secured
Comprehensive sexually transmitted disease prevention systems (CSPS) for primary prevention		~~553,092~~ 27,655	~~553,092~~ 27,655	Centers for Disease Control and Prevention	Limited to prevention of syphilis, gonorrhea, and chlamydia	.9 full-time equivalent (FTE) position for grant administration and 1.5 FTE positions for sexually transmitted disease counseling and intervention. Funding to support chlamydia testing in high-risk individuals approximately 3 to 5% of funds are directed to risky behavior recognition/reduction. Funding is generally used for disease intervention.
Injury prevention program		463,301	463,301	Department of Transportation and Title V (maternal and child health block grant)	Department of Transportation funds are restricted for child passenger safety projects for preschool and school-age populations	Department of Transportation funds are for purchase of car seats, training, and projects designed to increase child restraint and seatbelt use by young children. Title V funding may be used for suicide prevention. No specific funds are dedicated for programs addressing destructive decisions in the adolescent population relating to motor vehicle crashes or suicides.
Title X family planning program base funding and Title V supplement - The primary focus of the program identified above is to provide and enhance family planning		334,053	334,053	Title X family planning	Funds to be used for the provision of family planning medical, laboratory, and counseling services	100% for the provisions of clinical, laboratory, contra-ceptive supplies, and counseling family planning services to

Alcohol, Drug, Tobacco, and Other Risk-Associated Behavior Programs	2005-07 Biennium Amount and Funding Source for Each Program			Detail of Sources of Federal and Special Funds	Restrictions on Uses of Funds	Anticipated Uses of Funds
	General Fund	Federal and Special Funds	Total Funds			
services for women and men in North Dakota. A portion of the funds identify and address alcohol, tobacco, drug use and abuse issues, and risky sexual behavior through short-term counseling and referral services. No treatment services are provided. It is estimated that 15% of family planning funding addresses risky behaviors.					Special initiative funds for one-time projects restricted to the goal workplan of that project	men and women Special initiative funds to address: Subsidizing the cost of contraceptives for low-income clients Community education and outreach about family planning services Services to incarcerated women Enhance networks to address family and intimate partner violence
Total State Department of Health		~~$12,217,228~~ $8,462,103	~~$12,217,228~~ $8,462,103			

Alcohol, Drug, Tobacco, and Other Risk-Associated Behavior Programs	2005-07 Biennium Amount and Funding Source for Each Program			Detail of Sources of Federal and Special Funds	Restrictions on Uses of Funds	Anticipated Uses of Funds
	General Fund	Federal and Special Funds	Total Funds			
Attorney General's office CounterAct program - Drug prevention programs aimed at grades 4 through 6. The fund is used to train local law enforcement officers and to provide classroom materials.		$60,000	$60,000	Safe and drug-free schools program, United States Department of Education - Passthrough from the Department of Human Services	Funds must be used to train/certify law enforcement officers on CounterAct materials for presentation to grades 5 and 6 students	Train law enforcement and purchase materials for students - 100% program operations
Total Attorney General's office		$60,000	$60,000			

Alcohol, Drug, Tobacco, and Other Risk-Associated Behavior Programs	2005-07 Biennium Amount and Funding Source for Each Program			Detail of Sources of Federal and Special Funds	Restrictions on Uses of Funds	Anticipated Uses of Funds
	General Fund	Federal and Special Funds	Total Funds			
Department of Human Services Prevention related to substance abuse		$2,353,702	$2,353,702	SAPT block grant - $2,353,702	Funds are limited to **primary** prevention activities only See additional restrictions for SAPT grant	To develop and implement a comprehensive prevention program which includes a broad array of prevention strategies directed at individuals not

Alcohol, Drug, Tobacco, and Other Risk-Associated Behavior Programs	2005-07 Biennium Amount and Funding Source for Each Program			Detail of Sources of Federal and Special Funds	Restrictions on Uses of Funds	Anticipated Uses of Funds
	General Fund	Federal and Special Funds	Total Funds			
						identified to be in need of treatment. Implementation shall use a variety of strategies, including: Regional prevention coordination College-forward strategies Program operations - $541,583/23% Grants/contracts - $1,812,119/77%
Governor's fund for safe and drug-free schools and communities - Funding is provided as grants to high-risk areas for enforcement and education: SADD statewide mentoring		~~917,394~~ 853,394 64,000	917,394	Safe and drug-free schools and communities grant	At least 10% of this amount shall be used for law enforcement education partnerships. No more than 5% of this amount can be used for administrative costs.	To provide drug and violence prevention programs and activities through grants to parent groups, community action/job training agencies, community-based organizations, and other entities Priority shall be given to programs and activities for: Children and youth not normally served by state or local educational agencies Populations that need special or additional resources Grants/contracts - 100%
Department of Justice underage drinking grant - Funding is used for underage drinking prevention programs.		720,000	720,000	Enforcing underage drinking laws grant - This program is funded by the Department of Justice.	Cannot be used to supplant state or local funds Funding can be suspended if: Failure to adhere to requirements or conditions placed on grant Failure to submit timely reports Filing a false certification Other good cause shown	To support and enhance state efforts, in cooperation with local jurisdictions, to enforce laws prohibiting the sale of alcoholic beverages to or the consumption of alcoholic beverages by minors Activities may include: Statewide task forces of state and local law enforcement and prosecutorial agencies Public advertising programs to educate establishments about statutory prohibitions and sanctions Innovative programs to prevent and combat underage drinking

Alcohol, Drug, Tobacco, and Other Risk-Associated Behavior Programs	2005-07 Biennium Amount and Funding Source for Each Program			Detail of Sources of Federal and Special Funds	Restrictions on Uses of Funds	Anticipated Uses of Funds
	General Fund	Federal and Special Funds	Total Funds			
						Operating expenses - $4,600/.6% Grants/contracts - $715,400/99.4%
Total Department of Human Services		~~$20,471,943~~ $3,991,096	~~$30,985,940~~ $3,991,096			

Alcohol, Drug, Tobacco, and Other Risk-Associated Behavior Programs	2005-07 Biennium Amount and Funding Source for Each Program			Detail of Sources of Federal and Special Funds	Restrictions on Uses of Funds	Anticipated Uses of Funds
	General Fund	Federal and Special Funds	Total Funds			
Department of Transportation						
402 highway traffic safety: ~~Funding is used for fake ID training~~		~~$270,000~~	~~$270,000~~	402 funding is allocated to each state from the National Highway Traffic Safety Administration and is based on a formula	402 funds must be used for projects involving highway safety issues. A portion of the funding within the North Dakota highway safety plan is dedicated to alcohol counter-measures and youth projects.	402 funds only 20%, administration 80% - Grants to local agencies primarily for youth prevention efforts
Teen court		$30,000				
Students against drunk driving ~~and the cops-in-shops programs~~		53,500				
College-based programs		3,700				
Safe community programs		350,000				
Alcohol Forum Conference		15,000				
		452,200	$452,200			
		~~400,000~~	~~400,000~~			Will be used for public information regarding impaired driving and to purchase video cameras for law enforcement because of a transfer of funds to highway safety and carryover dollars
410 alcohol incentive grant - ~~Funding is used for alcohol countermeasure activities and other programs discouraging drinking and driving~~		~~500,000~~	~~500,000~~	410 funding is an incentive grant available to states that meet certain criteria, such as law, programs, and data elements. The criteria for this grant will be changing in fiscal year 2006.	410 funds must be used for alcohol countermeasure projects, such as saturation patrols, checkpoints, and drugged driving training	410 funds only: 8% administration 28% public information 48% law enforcement overtime 1% training 15% youth activities
Parents LEAD program		80,000	80,000			
Total Department of Transportation	$0	~~$1,170,000~~ $532,200	~~$1,170,000~~ $532,200			

Alcohol, Drug, Tobacco, and Other Risk-Associated Behavior Programs	2005-07 Biennium Amount and Funding Source for Each Program			Detail of Sources of Federal and Special Funds	Restrictions on Uses of Funds	Anticipated Uses of Funds
	General Fund	Federal and Special Funds	Total Funds			
Department of Public Instruction						
Title IV safe and drug-free schools and communities program - Funding for reducing alcohol, drug, and tobacco use through education and prevention activities[1]		$1,708,024	$1,708,024	Department of Education	For prevention activities and early intervention - Not to be used for treatment or entertainment	$3,411,322 (93%) - Local education agencies' grants $146,724 (4%) - Technical assistance to local education agencies

Alcohol, Drug, Tobacco, and Other Risk-Associated Behavior Programs	2005-07 Biennium Amount and Funding Source for Each Program			Detail of Sources of Federal and Special Funds	Restrictions on Uses of Funds	Anticipated Uses of Funds
	General Fund	Federal and Special Funds	Total Funds			
21st century community learning centers provide funds for out-of-school programs, including academics, enhanced academic programming, arts, and recreation[1]		9,663,995	9,663,995	Department of Education	Must serve students attending school with 40% or greater free and reduced lunch, must have a community-based partner, and must occur when school is not in session	$110,042 (3%) - Administration 95% to local education agencies and community-based organizations 3% for technical assistance 2% for administration
Total Department of Public Instruction	$0	$11,372,019	$11,372,019			

Alcohol, Drug, Tobacco, and Other Risk-Associated Behavior Programs	2005-07 Biennium Amount and Funding Source for Each Program			Detail of Sources of Federal and Special Funds	Restrictions on Uses of Funds	Anticipated Uses of Funds
	General Fund	Federal and Special Funds	Total Funds			
National Guard State military counterdrug operations - Supports law enforcement agencies in interdiction efforts with intelligence analysis and aviation reconnaissance, along with supporting state and local coalitions and school education and prevention programs[2]		~~$2,600,000~~ $300,000	~~$2,600,000~~ $300,000	Department of Defense through the National Guard Bureau		
Total National Guard		~~$2,600,000~~ $300,000	~~$2,600,000~~ $300,000			

Alcohol, Drug, Tobacco, and Other Risk-Associated Behavior Programs	2005-07 Biennium Amount and Funding Source for Each Program			Detail of Sources of Federal and Special Funds	Restrictions on Uses of Funds	Anticipated Uses of Funds
	General Fund	Federal and Special Funds	Total Funds			
North Dakota Higher Education Consortium for Substance Abuse Prevention Coordinates and supports the prevention efforts and programs of each campus	$150,000		$150,000			Salary
NDCORE federal and special funds		$17,000	17,000	Department of Transportation grant		For NDCORE alcohol and drug survey
Outreach coordinator		130,000	130,000	Department of Human Services passthrough federal block grant		For outreach coordination for local campuses
Total North Dakota Higher Education Consortium for Substance Abuse Prevention	$150,000	$147,000	$297,000[3]			

Agency Summary Report	2003-05 Biennium Amount and Funding Source for Each Agency			2005-07 Biennium Amount and Funding Source for Each Agency		
	General Fund	Federal and Special Funds	Total Funds	General Fund	Federal and Special Funds	Total Funds
State Department of Health	$13,000	$8,982,425	$8,995,425		$8,462,103	$8,462,103
Attorney General's office	~~1,786,136~~	60,000	60,000		60,000	60,000

Agency Summary Report	2003-05 Biennium Amount and Funding Source for Each Agency			2005-07 Biennium Amount and Funding Source for Each Agency		
	General Fund	Federal and Special Funds	Total Funds	General Fund	Federal and Special Funds	Total Funds
~~Department of Corrections and Rehabilitation~~	~~4,712,666~~	~~7,493,002~~	~~12,205,668~~	~~$16,952,066~~	~~3,910,833~~	~~20,862,899~~
Department of Human Services	~~9,427,739~~	3,480,081	3,480,081		3,991,096	3,991,096
Department of Transportation		694,000	694,000		532,200	532,200
Department of Public Instruction		8,904,408	8,904,408		11,372,019	11,372,019
~~Supreme Court~~	~~89,799~~	~~318,617~~	~~408,416~~	~~215,904~~	~~171,096~~	~~387,000~~
National Guard		250,000	250,000		300,000	300,000
North Dakota Higher Education Consortium for Substance Abuse Prevention				$150,000	147,000	297,000
Total all agencies	$13,000	$22,370,914	$22,383,914	$150,000	$24,864,418	$25,014,418

[1]Funds may go to SADD through local entity.

[2]Estimated.

[3]Each campus in the University System funds prevention efforts through various sources, including fines, community grants, donations, and the general fund. The amounts range from no specific budget at Valley City State University to $101,000 at the University of North Dakota.

AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The Agriculture and Natural Resources Committee was assigned three studies. House Concurrent Resolution No. 3028 (2005) directed a study of the utilization of the state's abundant energy resources to attract energy-intensive economic development projects to the state. Section 1 of 2005 House Bill No. 1370 directed a study of railroad fuel surcharges. Section 1 of 2005 Senate Bill No. 2115 directed a study of the process to negotiate and quantify reserved water rights. The Legislative Council also assigned responsibility for overview of the Garrison Diversion Project and related matters and any necessary discussions with adjacent states on water-related topics, responsibility to receive a report from the Game and Fish Department regarding the department's findings on its assessment of the status of mountain lions in North Dakota, and responsibility to receive reports from the Agriculture Commissioner regarding all notifications and requests for assistance by individuals who believe local weed boards have not eradicated or controlled noxious weeds satisfactorily. In addition to these activities, the committee reviewed grain quality issues and agricultural research activities, the future of North Dakota's endangered species protection program, the Public Service Commission's case against rail carriers for high grain shipment rates, and renewable energy initiatives under consideration in Fargo and Grand Forks.

Committee members were Representatives Chet Pollert (Chairman), LeRoy G. Bernstein, Michael D. Brandenburg, Tom Brusegaard, Chuck Damschen, Rod Froelich, Lyle Hanson, Craig Headland, Scot Kelsh, Keith Kempenich, Joyce Kingsbury, Matthew M. Klein, Jon O. Nelson, Eugene Nicholas, Mike Norland, Dorvan Solberg, and Gerald Uglem and Senators Bill L. Bowman, Joel C. Heitkamp, Stanley W. Lyson, David O'Connell, and Herb Urlacher.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

ENERGY-INTENSIVE ECONOMIC DEVELOPMENT STUDY

Background

House Concurrent Resolution No. 3028 directed the Legislative Council to study utilization of the state's abundant energy resources to attract energy-intensive economic development projects to the state.

Proponents of the resolution testified that North Dakota has an abundance of energy resources in this state but that the state has encountered problems transmitting energy produced from these resources outside the state. One solution to this problem identified by the sponsors of the resolution would be to encourage businesses to relocate to North Dakota and utilize this energy in state.

Oil and Gas Production

North Dakota crude oil production totaled 97,168 barrels per day for July 2005, ranking North Dakota 10th out of the 31 oil and gas-producing states and federal offshore areas. The state had 3,172 producing oil wells in July 2005, averaging 31 barrels of oil per day. The state produced 5,660,754 million cubic feet (mcf) of gas in March 2004 and sold 4,528,795 mcf of gas in that month. The state has a single refinery--Tesoro West Coast Refinery--located at Mandan, with a distillation capacity of 58,000 barrels per day.

The federal Department of Energy estimates that North Dakota has 353 million barrels of crude oil proved reserves, ranking the state eighth in the nation. The state has seven major crude oil pipelines, three major product pipelines, and two major liquefied petroleum gas pipelines.

Coal Production

North Dakota's coal resources are in the form of lignite--a low-grade, low-sulfur coal. North Dakota mines produced 30.1 million tons of lignite coal in 2004, marking the sixth year in a row that over 30 million tons have been produced. Since 1988 the state's lignite production has consistently been near the 30-million-ton range, making it 1 of 16 major coal-producing states, as measured by the Energy Information Administration. North Dakota ranked 11th among the 26 coal-producing states in 2003.

There are six active coal mines in North Dakota. There are four large mines and two small mines that produce leonardite. The large mines are BNI Coal, Ltd.'s Center Mine, Dakota Westmoreland Corporation's Beulah Mine, Coteau Properties Company's Freedom Mine, and Falkirk Mining Company's Falkirk Mine. The Coteau Properties Company and Falkirk Mining Company are subsidiaries of the North American Coal Corporation. In addition to these mines, there are five other mines that have closed and remain permitted and bonded for reclamation purposes. These are the Gascoyne, Glenharold, Indian Head, Larson, and Royal Oak Mines. In 2004 the Freedom Mine, the state's largest lignite producer, sold over 15 million tons of lignite, which was used by four customers. These were Dakota Gasification Company's Great Plains Synfuels Plant, Basin Electric Cooperative's Antelope Valley and Leland Olds Stations, and Great River Energy's Stanton Station. The Falkirk Mine, the state's second largest lignite producer, sold 7.6 million tons of lignite in 1984. The primary customer of this mine is Great River Energy's Coal Creek Station, the largest of the state's power plants. The Center Mine, owned by BNI Coal, a subsidiary of Minnesota Power, produced 4.1 million tons of lignite, which was primarily sold to Minnkota Power Cooperative's Milton R. Young Station. The Beulah Mine produced three million tons of lignite. Otter Tail Power Company's Coyote Station and Montana-Dakota Utilities Company's Heskett Station purchase coal from the Beulah Mine.

The Department of Mineral Resources estimates that western North Dakota contains an estimated 351 billion tons of lignite, the single largest deposit of lignite known in the world. The survey estimates that North Dakota also contains an estimated 25 billion tons of economically minable coal. The lignite and coal reserves are sufficient to last for over 800 years at the present extraction rate of 32 million tons per year.

Wind Energy

The National Wind Coordinating Committee estimates the United States could meet 10 to 40 percent of its electricity demand with wind power. Areas of the United States identified as having significant wind energy potential include areas near the coasts, along ridges of mountain ranges, and in a wide belt that stretches across the Great Plains, including North Dakota. The Great Plains is an especially attractive area for wind energy development because many coastal areas and mountain ridges are unsuitable for wind energy development due to rocky terrain, inaccessibility, environmental protection, or population density. Wind energy can be converted to electricity by using wind turbines. The amount of electricity created depends on the amount of energy contained in wind that passes through a turbine in a unit of time. This energy flow is referred to as wind power density. Wind power density depends on wind speed and air density, with air density being dependent on air temperature, barometric pressure, and altitude. Wind speed, wind shear, and turbine costs determine a site's wind energy potential.

According to the American Wind Energy Association, installed wind energy generating capacity totals 4,685 megawatts, and generates approximately 11.2 billion kilowatts of electricity, less than 1 percent of electricity generated in the United States. By contrast, the American Wind Energy Association estimates the total amount of electricity that could potentially be generated from wind in the United States at 10,777 billion kilowatts annually, three times the electricity generated in the United States today. North Dakota ranks first among the top 20 states for wind energy potential, as measured by annual energy potential in billions of kilowatt-hours, factoring in environmental and land use exclusions for wind classes of three and higher. The top 20 states are listed in the following table:

1	North Dakota	1,210
2	Texas	1,190
3	Kansas	1,070
4	South Dakota	1,030
5	Montana	1,020
6	Nebraska	868
7	Wyoming	747
8	Oklahoma	725
9	Minnesota	657
10	Iowa	551
11	Colorado	481
12	New Mexico	435
13	Idaho	73
14	Michigan	65
15	New York	62
16	Illinois	61
17	California	59
18	Wisconsin	58
19	Maine	56
20	Missouri	52

Source: An Assessment of the Available Windy Land Area and Wind Energy Potential in the Contiguous United States, Pacific Northwest Laboratory, 1991.

Similarly, the Department of Energy National Renewable Energy Laboratory has identified North Dakota as having the greatest wind resource of any of the lower 48 states. North Dakota also has few environmental restraints regarding land availability. However, the Division of Community Services within the Department of Commerce has identified a number of issues that must be addressed before significant wind energy development can occur in North Dakota. The single biggest obstacle identified by the Division of Community Services is constraints on the state's existing transmission grid. North Dakota currently exports nearly 60 percent of the power generated within the state, and it is likely that most wind-generated electricity also will be exported. Thus, utility experts agree that additions to the current transmission grid will be necessary for significant generation expansion in the state, regardless of fuel source. Other issues include identification of the market for wind energy and possible avian issues related to raptors and nesting waterfowl.

A continued interest in wind energy development in the United States and worldwide has produced steady improvements in technology and performance of wind power plants. In addition to being cost-competitive, wind power projects may offer additional benefits to the economy and the environment. The National Wind Coordinating Committee has indicated that wind energy development carries the economic benefits of job and business creation while supporting local economies and reducing reliance on imported energy. Wind energy may also protect utilities and energy consumers from the economic risks associated with changing fuel prices, new environmental regulations, uncertain load growth, and other cost uncertainties. In addition, the National Wind Coordinating Committee has found the environmental benefits of wind energy development to be substantial by reducing a utility's pollutant emissions, thus easing regulatory pressure and meeting the public's desire for clean power sources. The National Wind Coordinating Committee summarizes the benefits of wind energy as being cost-competitive; creating no air pollution; and benefiting the public health, the environment, and the economy. In addition, wind power does not require fuel, create pollution, or consume scarce resources.

Concerning the effect of wind energy development on state and local economies, the National Wind Coordinating Committee has identified several direct economic effects on the economy. Direct effects include increased revenues to local governments and landowners, creation of jobs and demand for local goods and services during construction and operation, and additional property tax revenues to local governments. Secondary or indirect effects identified by the National Wind Coordinating Committee include increased

consumer spending power, economic diversification, and use of indigenous resources.

Rural landowners can reap substantial economic rewards from wind energy development. Rent to landowners is paid because land rights for a wind energy project must be secured in advance by purchase or lease. The National Wind Coordinating Committee estimates that rural landowners can receive $50 to $100 per acre from wind energy development projects. In addition, in most cases, farming operations may continue undisturbed. Thus, a landowner is recognizing significant increased income while retaining use of that landowner's land.

Wind power plants generally can be constructed in less than a year. The National Wind Coordinating Committee estimates that for a 50-megawatt wind project, 40 full-time jobs may be created. Operation and maintenance of wind power plants generally require between two and five skilled employees for each 100 turbines. In addition, construction and operation of a wind project creates demand for local goods and services, such as construction materials and equipment; maintenance tools; supplies and equipment; and accounting, banking, and legal assistance. These economic benefits are not weakened by heavy demands on state and local infrastructure, and wind projects require little support from public services, such as water and sewer systems, transportation networks, and emergency services. Wind energy projects also contribute to economic diversification in a local economy, thus ensuring greater stability by minimizing high and low points of business cycles. The National Wind Coordinating Committee indicates this effect may be particularly important in rural areas that generally have one-dimensional economies.

Primary Sector Economic Incentives

The Department of Commerce has compiled a schedule of incentive programs available to businesses in the state. These incentive programs are primarily finance tools and tax advantages that benefit primary sector businesses and corporations. The Department of Commerce has responsibility for certifying primary sector businesses, defined as individuals, corporations, partnerships, or associations that, through the employment of knowledge or labor, add value to products, processes, or services which result in the creation of new wealth. These incentive programs are divided into income tax incentives, renaissance zones, property tax exemptions, sales tax exemptions, finance programs, training funds, and additional programs.

A new or expansion project in a primary sector business or tourism qualifies for an income tax exemption for up to five years. The exemption is limited to income earned from the qualifying project. The project operator must file a state income tax return even though the exemption is granted. However, this exemption is not allowed to an individual, estate, or trust that calculates an income tax under North Dakota Century Code (NDCC) Section 57-38-30.3, the simplified method of computing income tax. A project is not eligible for an exemption if it received a tax exemption under tax increment financing; there is a recorded lien for delinquent property, income, or sales and use taxes against the project operator or principal officers; or the exemption fosters unfair competition or endangers existing businesses.

A corporation doing business in North Dakota for the first time may take an income tax credit equal to 1 percent of wages and salaries paid during the tax year for each of the first three years of operation and one-half percent of wages and salaries paid during the tax year for the fourth and fifth years. A corporation qualifies for the credit if it did not receive a new business income tax exemption; was not created from a reorganization or acquisition of an existing North Dakota business; and is engaged in assembling, fabricating, manufacturing, mixing, or processing of an agricultural, mineral, or manufactured product.

An individual, estate, trust, or partnership is allowed an income tax credit for investing in a business certified by the Department of Commerce Division of Economic Development and Finance. For a partnership, the credit is passed through to its partners, but only its individual, estate, or trust partners may claim their share of the credit. The credit is equal to 45 percent of an investment of at least $4,000 but not more than $250,000. Not more than one-third of the credit is allowed in any taxable year. The unused credit may be carried forward up to four years. The total amount of tax credits allowed for all investments made in all years is limited to $2.5 million.

An income tax credit is allowed to an individual, estate, trust, or corporation for buying membership in, paying dues to, or contributing to a certified nonprofit development corporation. The credit is equal to 25 percent of qualifying payments or $2,000, whichever is less. Unused credit may be carried forward seven years. This credit is not allowed to an individual, estate, or trust that calculates an income tax under NDCC Section 57-38-30.3.

An income tax credit is allowed to an individual, estate, trust, or corporation for investing in a qualified North Dakota venture capital corporation. The credit is equal to the lesser of 25 percent of the amount invested or $250,000. The unused credit may be carried forward seven years. This credit is not allowed to an individual, estate, or trust that calculates an income tax under NDCC Section 57-38-30.3.

An income tax credit is allowed to an individual, estate, trust, corporation, financial institution, or insurance company for investing in the North Dakota Small Business Investment Company. The credit is equal to 25 percent of the amount invested or 50 percent in the case of a financial institution or insurance company. The unused credit may be carried forward seven years. The credit is not allowed to an individual, estate, or trust that calculates an income tax under NDCC Section 57-38-30.3.

An individual, estate, or trust is allowed a deduction of up to $5,000, or $10,000 on a joint return, for investing in a qualified North Dakota venture capital corporation. The deduction may only be taken in the tax year in which the investment qualifies for the North Dakota venture capital corporation investment credit. This deduction is

not allowed to an individual, estate, or trust that calculates an income tax under NDCC Section 57-38-30.3.

A corporation is allowed an income tax credit for the expenses of conducting research in North Dakota. The credit is 8 percent of the first $1.5 million of expenses in excess of base period research expenses and 4 percent of expenses over that amount. The unused credit may be carried back three years and forward 15 years.

A taxpayer is allowed an income tax credit for installing a geothermal, solar, or wind energy device in a building or on a property owned or leased in North Dakota. The credit for a device installed before January 1, 2001, is equal to 5 percent of the cost of acquisition and installation and is allowed in each of the first three taxable years. For a device installed after December 31, 2000, the credit is equal to 3 percent of the cost of acquisition and installation and is allowed in each of the first five taxable years. In all cases, the credit is first allowed in the year the installation is completed. For a passthrough entity, the amount of credit is determined at the entity level and passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. The credit is not allowed to an individual, estate, or trust that calculates an income tax under NDCC Section 57-38-30.3.

An individual, estate, trust, or partnership is allowed an income tax credit for investing in a cooperative or limited liability company that operates an agricultural commodity processing facility in North Dakota. The cooperative or limited liability company must be certified by the Department of Commerce Division of Economic Development and Finance. For a partnership, the credit is passed through to its partners, but only its individual, estate, or trust partners may claim the credit. The credit is equal to 30 percent of the first $20,000 invested. Not more than 50 percent of the credit is allowed in any taxable year. The credit in any taxable year may not exceed 50 percent of the tax liability. The unused credit may be carried forward up to 15 years.

Businesses and individuals may qualify for one or more tax incentives for purchasing, leasing, or making improvements to real property located in a North Dakota renaissance zone. A renaissance zone is a designated area within a city which is approved by the Department of Commerce Division of Community Services. The tax incentives consist of a variety of state income and financial institution tax exemptions and credits as well as local property tax exemptions.

Any new or expanding business project may be granted a property tax exemption for up to five years. Two extensions are available, agricultural processors may be granted a partial or full exemption of up to five additional years and a project located on property leased from a governmental entity qualifies for exemption for up to five additional years upon annual application by the project operator. In addition to, or instead of, an exemption, local governments and any project operator may negotiate payments in lieu of property taxes for a period of up to 20 years from the date the project operations commence. To qualify, a project must be a new or expanded revenue-producing enterprise. All buildings, structures, or improvements used in, or necessary to, the operation of the project qualify. Land does not qualify for an exemption. A project is not eligible for exemption if a tax exemption was received under tax increment financing or the governing body determines the exemption fosters unfair competition or endangers existing businesses. North Dakota exempts all personal property from property taxation, except for certain oil and gas refineries and utilities.

A new or expanding plant may exempt machinery or equipment from sales and use taxes if the machinery or equipment is used primarily for manufacturing or agricultural processing or is used solely for recycling. The expansion must increase production volume, employment, or the types of products which may be manufactured or processed.

A sales and use tax exemption is allowed for the purchase of computers and telecommunications equipment that are an integral part of a primary sector business or a physical or economic expansion of a primary sector business provided the primary sector business has been certified by the Department of Commerce. The exemption does not extend to the purchase of replacement equipment.

Construction materials used to construct an agricultural processing facility are exempt from sales and use taxes. The processor must apply to the Tax Commissioner for a refund of the tax paid by a contractor.

A sales and use tax exemption is allowed for purchasing building materials, production equipment, and other tangible personal property used in the construction of wind-powered electrical generating facilities between July 2001 and January 2011. To be eligible, a facility must have at least one single electrical energy generation unit with a nameplate capacity of 100 kilowatts or more. The manufacturer, recycler, wind-powered electrical generating facility, or qualifying primary sector business must receive prior approval from the Tax Commissioner to qualify for the exemption at the time of purchase. If prior approval is not received, the manufacturer, recycler, wind-powered electrical generating facility, or qualifying primary sector business must pay the tax and then apply to the Tax Commissioner for a refund. The exemption is not available to contractors. Manufacturers, recyclers, wind-powered electrical generating facilities, or qualifying primary sector businesses may apply for a refund of the appropriate portion of the tax actually paid by the contractors on eligible machinery, equipment, computers, and telecommunications equipment.

The Bank of North Dakota operates two loan programs that may be used for incentives. Both programs require local bank participation. These are the partnership in assisting community expansion (PACE) program and a match program. The PACE program is designed to assist manufacturing, processing, data processing, communications, and telecommunications projects and the match program is designed to assist manufacturing, processing, and value-added industries with a long-term credit rating of "A" or better.

The North Dakota Development Fund, Inc., provides flexible gap financing through debt and equity investments for new or expanding primary sector businesses. The Development Fund also operates the regional rural development revolving loan fund. The Development Fund makes investments of up to $300,000 through direct loans, participation loans, and subordinated debt and equity investments. All loans must be secured with a first or second mortgage in fixed assets, equipment, inventory, or other reasonable sources of available collateral. The established criteria for the Development Fund includes the requirement that the entrepreneur must have a realistic financial commitment at stake, which means that generally, principals must have a minimum of 15 percent equity in the project; refinancing of the debt is not eligible; principal shareholders with 20 percent or greater ownership are generally required to guarantee the debt and other shareholders may also be required to guarantee the debt; the fund will not participate in more than 50 percent of a project's capitalization needs; and financing is available to a primary sector business project, except production agriculture. The regional rural development revolving loan fund is allocated equally among the state's economic regions for projects located in communities with a population less than 8,000 or more than five miles outside the city limits of a larger city.

The North Dakota new jobs training program provides a mechanism for primary sector businesses to secure funding to help offset the cost of training new employees for business expansion or startup. Under the new jobs training program, a business obtains funds in the form of grants, which may be obtained from the state, city, or local economic development corporation; loans, which may be obtained from a commercial lender, a local development corporation, the Bank of North Dakota, or other qualified lender; or through self-financing. Funds are made available through the capture of the state income tax withholding generated from permanent, full-time new positions that are created. Reimbursements to repay the loan, plus interest, are made directly to the lender. Reimbursements for a grant are made directly to the granting community or local economic development corporation. Under the self-financing option, 60 percent of the allowable state income tax withholding may be reimbursed directly to the participating business. The state income tax withholding may be captured for up to a 10-year period or until the loan is repaid, or the self-financing or grant obligations have been met, whichever occurs first. To be eligible, a business must be a primary sector business, a new employer locating in North Dakota creating a minimum of five new jobs, or an expanding business increasing its base employment level by a minimum of one new job. A business may not be closing or reducing its operation in one area of the state and relocating substantially the same operation to another area of the state. Also, employees in eligible new positions must be paid a minimum of $7.50 per hour plus benefits by the end of the first year of employment in the new job position created. The amount of tax withheld is based on the number of permanent, full-time new positions created, the wage rate for these new positions, and a withholding formula provided by the Tax Commissioner applied to the actual annual salary of the new jobs being created. The formula considers the individuals' average tax liability using a varying number of exemptions. The formula is applied to the annual gross wages of the new jobs created, and then is multiplied by the number of new positions in each pay category. The figure is then multiplied by 10, the maximum number of years of the program, to establish the maximum state income tax withholding available under the new jobs training program. To determine the loan amount or self-financing amount, the business provides the lender with the amount of state income withholding available. Based on the interest rate charged and draw-down schedule established by the business, the lender amortizes the total amount of state income tax withholding to determine the loan amount. Sixty percent of the allowable quarterly withholding will be reimbursed directly to the business up to the maximum available withholding identified in a program agreement. A grant is based upon the amount of the state income tax withholding available.

Work Force 2000 is a state-funded program that assists employers in providing retraining and upgrade training to support the introduction of new technologies and work methods into the workplace. The funding is provided for current workers and new employees. Training funded under Work Force 2000 is limited to North Dakota residents who are or will be employed in the state. The program is a funding source to assist in reducing the cost of training for the employer. Businesses and industries that bring new revenue to the state by selling a majority of products and services outside North Dakota are given priority for funding. Businesses that sell products or services in the local area are eligible but must demonstrate compelling economic benefit to the community or state. Projects must emphasize job skill training or basic skill training. Only training for permanent jobs that have significant career opportunities and require substantive instructions may be considered for funding. For projects that train new employees for expansion and startups, employees who successfully complete training must be given priority in hiring by the business. If the occupation for which training is being conducted is covered by a collective bargaining agreement, union concurrence is required. If new job openings are created through upgrade training, the sponsoring company should give priority consideration to individuals eligible for other state and federal job training programs. Costs for training needs assessments and the preparation of applications are the responsibility of the company. Only direct training costs can be reimbursed.

Work Force 2000 funds may not be used to reimburse salaries; fund in-house trainers; purchase equipment, software, or nonexpendable supplies; or for in-house training space. Grants are based on cost reimbursement of those actual costs identified in the contract. A company is required to submit a report identifying individuals participating in the training program. Followup reports on individuals who

participate in Work Force 2000-funded training must be submitted by the employer 90 days, 180 days, and 365 days after training.

The roots program is an incentive to assist companies in moving new employees to North Dakota. This program is offered through the Housing Finance Agency and provides incentives to purchase homes in North Dakota. The incentive is either an interest rate reduction on a first mortgage or a downpayment and closing cost assistance. To qualify for the roots program, a prospective homeowner must be a new or returning North Dakotan who is employed by a new primary sector business or who has moved to North Dakota for an employment opportunity with an existing primary sector business. The borrower must have lived and worked outside North Dakota for at least one year. The borrower must purchase a primary residence within six months of employment in North Dakota. Borrowers must meet standard credit underwriting criteria. Under one option, the first mortgage interest rate is reduced by one-half of 1 percent off the current market rate, as determined by the Housing Finance Agency. The loan is a 30-year fixed rate loan and is not assumable. The loan must be standard credit quality and requires a $500 minimum home buyer contribution. The second option is in the form of a five-year second mortgage fixed rate loan at the first mortgage rate. The amount of assistance available is equal to the present value of a one-half of 1 percent interest rate reduction with a minimum $500 home buyer contribution. The first mortgage loan is at current market interest rates.

Testimony and Committee Activities

The committee reviewed efforts by Montana-Dakota Utilities Company, Basin Electric Power Cooperative, and Xcel Energy, Inc., in assisting the state and the communities they serve in the retention and attraction of energy-intensive development projects to the state. Representatives of Montana-Dakota Utilities Company testified that the main method employed by the company in attracting projects is through competitive energy rates. Montana-Dakota Utilities Company's filed electric tariff rates are in the lower half of electric rates nationwide. One tool that allows the company to be more competitive in attracting companies is an existing economic development rate tariff, which allows the company to flex on the demand portion of the energy charge for the initial five years of a new business's operation. In addition, a special contract rate may be negotiated with the new business. Montana-Dakota Utilities Company also has the potential to offer a customer a flex rate on natural gas service. Although this rate does not allow the adjustment of the cost of the natural gas commodity, it allows some room to flex on the distribution rate charged by the company. Montana-Dakota Utilities Company also participates financially in specific projects and uses in-kind efforts to assist in the attraction of new companies to locate in North Dakota or to ensure that existing companies remain competitive.

Representatives of Basin Electric Power Cooperative testified that North Dakota's lower than average electric rates are extremely important in promoting energy and economic development in the state. The cooperative's abundant supplies of lignite, combined with renewable hydroelectric power, provide a reliable, low-cost supply of power to the consumers of North Dakota.

Representatives of Xcel Energy, Inc., testified that the primary incentive it uses to attract new economic development to the state is its low electric rates. In addition, Xcel Energy, Inc., provides financial support for economic development in the state and increases the value of its investments through the leadership role its employees take in economic development activities at the state and local levels.

The committee received testimony from representatives of Headwaters, Inc., concerning the coal-to-liquids facility being constructed by Headwaters, Inc., Great River Energy, Falkirk Mining Company, and the North American Coal Corporation at Underwood. The coal-to-liquids project will produce 50,000 barrels of fuel per day, export up to 500 megawatts of electricity, consume 15 million tons of lignite per year, employ 1,000 people, and costs $5 billion. Benefits of the project for North Dakota include a multibillion dollar investment, thousands of direct and indirect jobs, millions of dollars of additional tax revenue, efficient use of natural resources, production of clean fuel, generation of clean power, downstream industrial growth, and making the state the leader in the United States in clean coal and energy security.

The committee received testimony from representatives of Westmoreland Coal Company concerning the FutureGen proposal and the Lignite Vision 21 Gascoyne project. Westmoreland Coal Company is pursuing a 500-megawatt project at the Gascoyne site. The Gascoyne site can accommodate air permits for a 500-megawatt project and a 275-megawatt FutureGen project. Westmoreland Coal Company is pursuing potential customers, continuing the permitting process, exploring opportunities to bargain with wind energy producers, and exploring transmission issues.

The committee received testimony from representatives of Great River Energy concerning Great River Energy's resource plans, including the Spiritwood Industrial Park, Blue Flint ethanol project, coal-to-liquids project, and baseload issues. The Spiritwood Industrial Park will be composed of the Cargill malting plant, the Spiritwood ethanol plant, and the Spiritwood energy generation facility. Following the upgrade at the Cargill malting plant, it will be the world's largest malting plant. The Spiritwood ethanol plant will produce 100 million gallons of ethanol per year and the energy facility will provide electricity for the malting plant and ethanol plant. The Blue Flint ethanol plant is being constructed by a partnership comprised of Headwaters, Inc., and Great River Energy. The Blue Flint ethanol plant will be located adjacent to Great River Energy's Coal Creek Station at Underwood and will produce 50 million gallons of ethanol per year. The plant is being built to allow expansion to 100 million gallons per year. The plant will utilize 18 million bushels of No. 2 yellow corn, will be McLean Electric Cooperative's largest customer, and in addition to the 50 million gallons of ethanol will produce

160,000 tons of dry or 420,000 tons of wet distillers grain. The distillers grain will be sufficient to feed 225,000 head of feeder cattle. The Blue Flint ethanol plant will employ 37 full-time employees.

The committee received testimony from representatives of Great Northern Power Development concerning the Lignite Vision 21 South Heart project. The South Heart power project is on schedule for commencing commercial operations for the period 2013 to 2015. The committee also received resource updates from Basin Electric Power Cooperative and Minnkota Power Cooperative, including the latter's plans to develop the Milton R. Young III Station.

Conclusion

The committee makes no recommendation concerning its study of energy-intensive economic development.

RENEWABLE ENERGY INITIATIVES

The committee reviewed petitions to amend the city of Fargo and the city of Grand Forks home rule charters to provide that 20 percent of each of the city's electricity must come from renewable sources by 2020 and 30 percent of each city's electricity must come from renewable sources by 2030. The initiatives require that at least half of the renewable electricity must be generated in North Dakota. Qualified renewable electricity generating sources include electricity generated by solar, wind power, biomass, liquid biofuels, geothermal, hydrogen derived from water using electricity from fuels that otherwise qualify, and hydrogen derived from biomass or biofuels

The president of the Utility Shareholders of North Dakota urged the committee to oppose the petition drives or any mandates for wind energy. Representatives of Cass County Electric Cooperative, Inc., testified that the home rule charter amendments raise several questions that should be answered in order for the voters of Fargo and Grand Forks to cast informed votes on the measures. These questions include the costs of complying with the measures and if the measures would impact Fargo's and Grand Forks' ability to be competitive with other locations as places where operating costs are reasonable, the effect on grid stability when 20 percent or 30 percent of the generating capacity is supplied by an intermittent source, such as wind energy, the impact if some other technology is developed between now and 2020 that proves to be even better than those on the list of qualified sources contained in the measures, the omission of hydroelectric power as a renewable energy source, uncertainty if it is not technologically feasible to meet the percentages by the deadlines stated in the initiatives, uncertainty if the measures' requirements are not met, and uncertainty concerning the term "delivered into the city."

Representatives of Xcel Energy, Inc., testified that Xcel Energy, Inc., is the largest producer of wind energy in the country, currently producing 1,048 megawatts. By 2007 the utility plans to have 2,300 megawatts of wind capacity in its energy supply portfolio. In its five-state electric delivery system in the Upper Midwest, Xcel Energy, Inc., will have nearly 20 percent of its electricity supplied by wind resources. Representatives of Xcel Energy, Inc., noted that the utility purchases 500 megawatts of hydroelectricity from Manitoba but under the proposed initiatives the purchases would not fulfill the requirements of the proposal as hydropower is not listed as a qualifying source. The representatives testified that cost is a key concern for many who have reviewed the proposal and that the Xcel Energy, Inc., North Dakota residential rates have been the lowest among investor-owned utilities in North Dakota, South Dakota, Montana, Wyoming, Minnesota, Wisconsin, and Iowa three of the last four years and the utility has done this by having a diverse mix of generation sources available and planning on an integrated system basis. The representatives noted that if Xcel Energy, Inc., is required to adjust this portfolio for a particular resource within an arbitrary timeframe, its customers' energy costs would increase.

Representatives of Otter Tail Power Company testified that Otter Tail Power Company actively supports the development of renewable resources for the provision of electricity and while supporting increased use of renewables for generating electricity, the utility does not support the use of mandates, either by states or municipalities, to accomplish this goal.

RAILROAD FUEL SURCHARGES STUDY

Background

House Bill No. 1370 (2005) directed the Legislative Council to study railroad fuel surcharges. House Bill No. 1370, as introduced, would have provided that the Public Service Commission, to the extent not inconsistent with federal law, prohibit fuel surcharges in North Dakota by a railroad which are higher than the average of fuel surcharges imposed by that railroad in other states in which that railroad operates. House Bill No. 1370, as engrossed, would have provided that the Public Service Commission, to the extent not inconsistent with federal law, prohibit the assessment of a railroad fuel surcharge on a shipment of commodities in this state if the surcharge is not assessed in a region, zone, or area on a per car basis or if the surcharge exceeds on a per car basis the surcharge on a carload shipment of the commodities originating in the same or similar region, zone, or area. As enacted, the bill is limited to the section calling for a study.

State Jurisdiction Over Railroads

Barring a constitutional limitation, states have the power to regulate railroads within their states. The major limitation on this power comes from the commerce clause of the Constitution of the United States. Under the commerce clause, a state may not discriminate against an out-of-state entity without an important noneconomic state interest and there can be no reasonable nondiscriminatory alternative. Even if a state does not discriminate, a state cannot burden interstate commerce if the burden outweighs the state's interest. Even if a state passes one of the preceding tests, under the supremacy clause, the "Constitution, and Laws of the United States which shall be made in pursuance

thereof . . . shall be the supreme law of the land" and Congress can supersede conflicting state laws or preempt all the state laws in the same field under a specifically listed power in the Constitution.

Under the commerce clause, Congress has the power to "regulate commerce with foreign nations, and among the several states, and with Indian tribes." Under the necessary and proper clause, Congress can "make all laws which shall be necessary and proper for carrying into execution" the commerce clause. The commerce clause is broad in scope and regulation under the clause may address any activity, even if entirely intrastate, that taken with other similar acts affects commerce in other states. The necessary and proper clause is broad in scope and extends the commerce clause to anything appropriately related to railroads. In short, Congress has the power to regulate anything relating to railroads.

Generally, the intent of Congress is that railroads should be regulated primarily on the national level through an integrated network of federal law. In particular, Congress has passed laws relating to railroad employees, economic regulation, safety regulation, and taxation.

Economic Regulation

Under the Interstate Commerce Act of 1887, freight railroads became the first industry in the United States to become subject to comprehensive federal economic regulation. Railroads were regulated by the federal government through the Interstate Commerce Commission for the next 93 years. In 1980 Congress passed the Staggers Rail Act. The Staggers Rail Act deregulated the railroad industry, but not completely. The Interstate Commerce Commission retained authority to set maximum rates or to take certain other actions if railroads were found to have abused market power or engaged in anticompetitive behavior. In addition, the Interstate Commerce Commission had jurisdiction over railroad line abandonments. With the passage of the Interstate Commerce Commission Termination Act of 1995, the Surface Transportation Board succeeded the Interstate Commerce Commission as the federal agency with jurisdiction over railroads. Under 49 U.S.C. § 10501(b), the Surface Transportation Board has **exclusive jurisdiction** over:

> (1) **transportation by rail carriers**, and remedies . . . with respect to rates, classifications, rules . . ., practices, routes, services, and facilities of such carriers; and
>
> (2) the construction, acquisition, operation, abandonment, discontinuance of a spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, . . .
>
> [T]he remedies . . . with respect to regulation of rail transportation are **exclusive and preempt** the remedies as provided under Federal or State law. (emphasis supplied)

Transportation is defined as including property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail and services related to that movement, including receipt, delivery, storage, handling, and interchange of passengers and property. Rail carrier is defined as a person providing common carrier railroad transportation for compensation. Railroad is defined to include a switch, spur, track, terminal, terminal facility and freight depot, yard, and ground, used or necessary for transportation.

In exercise of its commerce power, Congress has preempted most economic regulation by states of railroads. There are three forms of preemption--express, field, and conflict. Express preemption is when Congress explicitly preempts state law. Field preemption is when congressional regulation of a field is so pervasive or the federal interest so dominant that the intent to preempt can be inferred. Conflict preemption is when a state law stands as an obstacle to the purpose of a federal statute. When the preemption is explicit, the first step is to look at the plain meaning of the statute. However, there is a presumption against the federal government supplanting the historic state police powers unless preemption is the clear and manifest purpose of Congress.

In a 2002 article in *Widener Journal of Public Law*, "Wheeling and Lake Erie Railway Co. v. Pennsylvania Public Utility Commission: Pennsylvania Maintains Police Powers Over Railroad Bridge Construction Despite the Interstate Commerce Commission Termination Act of 1995," the author states:

> Few courts in the country have addressed whether the ICC Termination Act preempts the states' police powers, and the courts that have addressed this issue have held that Congress intended to preclude the states from regulating any aspect of the railway industry based on the broad jurisdiction clause of the statute.

In addition to having exclusive jurisdiction over "transportation by rail carriers," the broadly inclusive phrase "regulation of rail transportation" evidences congressional intent to preclude state remedies for violation of any state laws or rules regulating rail transportation. As stated in *CSX Transportation, Inc. v. Georgia Public Service Commission*, 944 F. Supp. 1573 (N.D. Ga. 1996), "[i]t is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations." In *Burlington Northern Santa Fe Corporation v. Anderson*, 959 F. Supp. 1288 (D. Mont. 1997), the court stated the "federal scheme of economic regulation and deregulation is intended to address and encompass all such regulation and to be completely exclusive."

In *City of Auburn v. U.S. Government*, 154 F.3d 1025 (1998), cert. denied, 119 S. Ct. 2367 (1999), the Ninth Circuit Court of Appeals addressed federal preemption of local environmental regulation. In that case, the city of Auburn asserted that congressional preemption over railroads only related to economic regulation of rail transportation, not the traditional state police power of environmental review. The court found that the plain

language of the Interstate Commerce Commission Termination Act explicitly granted the Surface Transportation Board exclusive authority over railway projects. The court found that any distinction between economic and noneconomic regulation begins to blur. Noneconomic regulation can turn into economic regulation if the carrier is prevented from constructing, acquiring, operating, abandoning, or discontinuing a line.

Safety Regulation

The federal regulation of railway safety is accomplished through the Federal Railway Safety Act. In the Act, Congress has expressly provided for state regulation of railroad safety. Under 49 U.S.C. § 20106, national uniformity is provided as follows:

> Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order--
>
> (1) is necessary to eliminate or reduce an essentially local safety or security hazard;
>
> (2) is not incompatible with a law, regulation, or order of the United States Government; and
>
> (3) does not unreasonably burden interstate commerce.

Under this scheme, state regulations can fill gaps that the Secretary of Transportation has not regulated and a state can respond to safety concerns of a local, rather than national, character. In addition, under 49 U.S.C. § 20113, a state may enforce federal safety regulations in certain circumstances if the state is certified to investigate railroads for violations under 49 U.S.C. § 20105.

In *CSX Transportation, Inc. v. Easterwood*, 113 S. Ct. 1732 (1993), the United States Supreme Court found that language under the Federal Railroad Safety Act preempted the state common-law duty to operate a train at a safe speed. The Court said federal regulation of speed limits should be understood as "covering the subject matter" of the state law. Federal railroad safety regulations cover the same subject matter if the regulation substantially subsumes the same subject matter as a federal regulation and does more than merely touch upon or relate to a federal regulation. Under *Burlington Northern and Santa Fe Railway Company v. Doyle*, 186 F.3d 790 (1999), the Seventh Circuit Court of Appeals opined that even nonregulation can be regulation preempting state regulation. This happens when the Federal Railroad Administration has examined and determined that there is no need for regulation.

Congress has provided for specific regulation applicable to different aspects of railway safety under 49 U.S.C. §§ 20131 through 20153 and the Federal Railroad Administration has made many rules relating to these areas of railroad safety. There are statutes or rules relating to noise omissions, whistles, locomotive boiler inspections, and safety as to cars and the coupling of cars, among other things. Whether a certain state action is preempted depends upon the type of regulation. For example, locomotive boiler inspection and car safety are preempted through field preemption. In other areas, there may be no rule or rules that allow cooperation between state and federal authorities. Any state regulation of safety requires a review of federal law and Federal Railroad Administration rules to determine if the regulation is preempted or allowed and, if allowed, in what measure. The courts give great weight to an agency delegated with authority over an area to determine whether a state law should be preempted.

Under North Dakota Century Code Section 49-11-19:

1. A person may not operate any train in a manner as to prevent vehicular use of any roadway for a period of time in excess of ten consecutive minutes except:
   a. When necessary to comply with safety signals affecting the safety of the movement of trains;
   b. When necessary to avoid striking any object or person on the track;
   c. When the train is disabled, by accident or otherwise;
   d. When the train is in motion except when engaged in switching operations or loading or unloading operations;
   e. When vehicular traffic is not waiting to use the crossing;
   f. When necessary to comply with a government statute or regulation; or
   g. When allowed by written agreement between the governmental entity that controls the roadway and the interested commercial entities. The agreement must indicate which party is responsible for the timely notification of local emergency service providers regarding the crossing that will be blocked and the period of time the crossing will be blocked.
2. A person that violates this section is guilty of a class B misdemeanor. This section does not apply to a city that has an ordinance covering the same subject matter.

In *CSX Transportation, Inc. v. City of Plymouth*, 283 F.3d 812 (2002), a similar statute was reviewed to determine if the state regulation was preempted by federal regulation. A Michigan statute prohibited trains from continuously blocking grade crossings for more than five minutes. There were two exceptions to the

prohibition--if the train is continuously moving in one direction, then the train can block a grade crossing for up to seven minutes, and if the train stopped because of an accident, mechanical failure, or unsafe condition. CSX had been repeatedly fined for violating the statute. Federal regulation provides for the regulation of speed, length, and brake testing. The Sixth Circuit Court of Appeals found that these regulations preempted Michigan's law because the amount of time a moving train spends at a grade crossing is mathematically a function of the length of the train and the speed the train is traveling. As such, the federal regulations substantially subsume the subject matter of the state statute.

State Taxation

The Railroad Revitalization and Regulatory Reform Act of 1976, often referred to as the 4-R Act, prohibits states from discriminatorily taxing railroads. Under 49 U.S.C. § 11501, a state is prohibited from unreasonably burdening or discriminating against interstate commerce. In particular, a state may not:

(1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.

(3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

In *Ogilvie v. State Board of Equalization of the State of North Dakota*, 893 F. Supp. 882 (D. N.D. 1995), the United States District Court found that the North Dakota tax system continued to violate the 4-R Act and previous court orders by exempting all personal property from taxation, except that of railroad companies, airlines, and public utilities and by granting a 5 percent discount for early payment of real property taxes while classifying a property used for railroad purposes as personal property.

In addition, under *Trailer Train Company v. State Board of Equalization of the State of North Dakota*, 710 F.2d 468 (1983), the Eighth Circuit Court of Appeals extended the rationale for the violation of the 4-R Act to a railcar corporation. The railcar corporation engaged in the business of providing standardized railroad flatcars to railroad companies. The court found that since tax discrimination against the train car corporation adversely affected railroad companies as directly and immediately as tax discrimination against the railroad cars of the railroad companies, North Dakota's practice of taxing personal property of the railcar corporation while exempting personal property of other commercial and industrial taxpayers was a violation of the Act.

Railroad Fuel Surcharges

On August 8, 2005, the Burlington Northern Santa Fe (BNSF) Railway issued a mileage-based fuel surcharge announcement. The announcement included a letter that stated in part that for a number of years, the BNSF Railway has assessed a fuel surcharge based on a percentage of a customer's freight bill. The fuel surcharge allows the BNSF Railway to recover a portion of its increased expense when the price of diesel fuel increases significantly. The fuel surcharge percentage changes as diesel fuel prices change. In response to feedback from its customers, the railway announced in March 2005 the railroad industry's first mileage-based fuel surcharge program was to take effect January 1, 2006. The effective date was set to allow customers and the railroad adequate time to design and implement system changes. The letter continued that in this era of tight transportation capacity, rapidly rising fuel prices, and fuel price volatility, the railroad believes a mileage-based fuel surcharge program is the most direct and accurate method of reflecting the impact of fuel price changes on the railroad and its valued customers.

Testimony and Committee Activities

The committee received testimony from representatives of the North Dakota Grain Dealers Association that railroad fuel surcharges are considerably higher than what is needed to compensate railroads for their increased fuel costs. The North Dakota Grain Dealers Association also objected to the way the surcharge was calculated before January 1, 2006, and that although the mileage-based system is an improvement, it should be based on rail miles rather than highway miles. The committee received testimony from representatives of the North Dakota Grain Dealers Association that the fuel surcharge charged by the BNSF Railway was 9 percent in January 2005, 11.5 percent in September 2005, and 13 percent in October 2005. The representatives testified that the fuel surcharge charged by the Canadian Pacific Railway has consistently been 3.5 percentage points below that charged by the BNSF Railway. The committee received testimony that until January 1, 2006, these percentages are applied to the rate, which does not necessarily correspond to the cost of fuel. For example, wheat rates are higher than corn and soybean rates and thus the fuel surcharge for wheat is more than for soybeans moved from the same elevator to the same destination. The representatives testified that wheat and soybeans weigh the same and thus the weight of a carload or a trainload is the same.

The committee received testimony from representatives of the BNSF Railway that the rail industry began assessing fuel surcharges some time ago when the price of diesel fuel began to escalate. The

BSNF Railway alone consumes approximately 1.4 billion gallons of diesel fuel each year. The reason the fuel surcharge was applied as a percentage of the basic freight rate until January 1, 2006, is because it was the easiest and simplest way to calculate the surcharge for both the railroads and their customers.

The committee received testimony from representatives of BNSF Railway that although the railroad planned to switch from a surcharge based on a percentage of the freight rate to one based on mileage and the formula was to use highway miles, rather than rail miles, in calculating the surcharge, the railroad elected to use actual rail miles in calculating the surcharge for grain and coal customers.

Representatives of the Public Service Commission testified that the commission has everything it needs under state law to allow it to regulate railroads in this state to the extent allowed under federal law and regulation and the commission does not require any change in state law to address rail regulation issues.

Conclusion

The committee makes no recommendation concerning its study of railroad fuel surcharges.

RAIL RATE COMPLAINT CASE

Throughout the interim, representatives of the Public Service Commission provided periodic updates concerning the rail rate complaint case. House Bill No. 1008 (2005) appropriated $945,000 to the Public Service Commission for the rail rate complaint case. Representatives of the Public Service Commission reported that in midwinter 2005-06 the railroad industry began implementing a series of rate cuts on wheat. The commission believes these changes were in response to the state's impending rate case. According to calculations prepared by the Upper Great Plains Transportation Institute, rate reductions directly attributable to rate case activities total nearly $10 million annually or approximately 4 cents per bushel on shipping costs on wheat for North Dakota producers. In addition, representatives of the Public Service Commission noted that the BNSF Railway has restructured its fuel surcharges to a mileage-based rate that has resulted in further cost reductions for North Dakota shippers. The Upper Great Plains Transportation Institute calculates this change resulted in a 1.5-cent to 2-cent transportation cost reduction per bushel.

Representatives of the Public Service Commission reported that the federal Surface Transportation Board has released proposed rules for the filing and processing of small shipper rate complaint cases which may adversely affect the North Dakota rail rate case. Representatives of the Public Service Commission testified that due to this development it may be unwise for the commission and stakeholders to spend the funds appropriated for the rail rate case this biennium. Representatives of the Public Service Commission recommended that if, by the end of the biennium, it has not yet filed a rail rate complaint case, the Legislative Assembly consider creating a continuing appropriation for rail litigation. This fund would serve as a reserve to guard against abusive rail practices. Also, the Public Service Commission representatives testified that if the commission recommends such a fund be established that the purposes of the fund be expanded to address a wide range of rail concerns that extend to both rate and service issues.

Late in the interim, the committee learned that the Surface Transportation Board proposes to limit small shipper complaint filing rules to those cases the maximum values of which are under $200,000. Representatives of the Public Service Commission testified that this standard would be damaging to North Dakota's efforts because while North Dakota shippers are small by any standard, the value of these cases is almost always above $200,000 due to the excessive freight rates North Dakota shippers pay. The proposed Surface Transportation Board rules are procedurally and legally untested which would mean increased cost, time, and litigation. The Public Service Commission has filed a "notice of intent to participate" in the Surface Transportation Board rulemaking.

GRAIN QUALITY ISSUES AND AGRICULTURAL RESEARCH ACTIVITIES

Throughout the interim, representatives of North Dakota State University, the North Dakota Agricultural Experiment Station, the North Dakota State University Extension Service, and the State Board for Agricultural Research and Education briefed the committee on grain quality issues and agricultural research activities.

Fusarium head blight or scab is caused by a fungus, the spores of which are dependent on high rainfall for development. The fungus spores are then dependent upon high rainfall and humidity to be carried to the grain head. Infection of wheat and barley only occurs after the head is fully emerged and only under conditions very favorable for the fusarium head blight fungus. The high rainfall that North Dakota received in June 2005 was conducive to fusarium head blight infestation.

Fusarium head blight causes lower test weight in pounds per bushel, causes the presence of vomitoxin and deoxynivalenol, and results in damaged kernels. Fusarium head blight management techniques include reduction of infected stubble, crop rotation with nonhost crop varieties, development of fusarium head blight resistant crop varieties, and the use of fungicides. The prevalence of no-till and minimum-till practices in North Dakota reduce the viability of reducing infected stubble. The use of fungicides has proven beneficial and studies have shown the use of scab fungicides may result in a 20 percent yield increase.

Fusarium head blight first became a significant problem in North Dakota in 1993. Since that time, North Dakota State University has undertaken significant research activities and has developed and released three varieties of wheat that have some degree of scab resistance.

Cultural control methods for fusarium head blight include the North Dakota Agricultural Weather Network which is widely used by wheat and barley growers in an effort to control fusarium head blight. The system has a

disease forecasting model that can be accessed either by computer or by toll-free telephone. Information obtained from this site allows the grower to determine whether conditions are conducive to fusarium head blight infection and if it would be appropriate to spray the grower's crop with fungicides. Other cultural control methods include chemical control, crop rotation, the development of resistant cultivars, hard red spring wheat breeding and genetics, durum wheat breeding and genetics, barley breeding and genetics, and the efforts of the United States wheat and barley scab initiative. The United States wheat and barley scab initiative funds approximately 130 scientists in 22 states and Mexico who are collaborating to control the fusarium head blight epidemic. Funding for the program is obtained from earmarked funds through the United States Department of Agriculture and administered by Michigan State University. The current annual funding for the scab initiative is approximately $6 million and is distributed through a competitive grants process. Of the 22 states, North Dakota receives the greatest level of funding, approximately $1 million per year, distributed among 10 to 15 scientists. These funds are used for winter nurseries, germplasm screening, disease nurseries, equipment, operations, and funding of graduate students.

Economists at North Dakota State University have examined losses to North Dakota's farm economy resulting from reduced grain yields per acre and reduced acres harvested due to field abandonment. Because the Northern Plains is a major producer of hard red spring wheat, durum, and barley, reduced yields and fewer acres harvested impact grain supplies. Reductions in supply can have a positive impact on grain prices, but the reduced supplies may be offset by substitution of grains grown elsewhere. Prices received by farmers may be impacted further by discounts when scab affects wheat or barley quality. Although there was a predicted positive overall impact on hard red spring wheat prices due to reduced supplies, production losses and negative price effects in durum and barley combined to produce an overall loss to growers of these crops of approximately $157 million in 2005. These losses represent 8 percent, 31 percent, and 21 percent, respectively, of the value of production of these crops in 2004. Research conducted by North Dakota State University revealed that for each $1 in crop losses there is a corresponding $2.08 in total economic loss as a result of fusarium head blight. Thus, the total state impact of the $157 million loss to producers in 2005 was close to $500 million. Fusarium head blight has caused a total of $1.5 billion in direct economic losses to North Dakota producers since 1993.

The committee also received information from the North Dakota State University Extension Service showing the estimated crop and livestock production losses in North Dakota due to 2006 drought conditions. North Dakota had 26 counties meeting the criteria for the livestock assistance grant program. The North Dakota State University Department of Agribusiness and Applied Economics estimated $58,435,000 of net direct losses due to drought conditions in 2006 in North Dakota. The impact to livestock was $31,135,000 and the impact to crops was $320,138,000, with $292,873,000 of crop insurance and indemnity payments, leaving a net estimated direct loss of $58,435,000.

The committee also reviewed budget issues concerning the Agricultural Experiment Station and College of Agriculture, Food Systems, and Natural Resources for the 2007 legislative session. The Agricultural Experiment Station has identified and prioritized general fund major projects for the 2007-09 biennium. Priority No. 1 is the research greenhouse complex Phase 2 at a cost of $9 million. Priority No. 2 is headquarter office buildings additions and renovations at a cost of $1,107,750. These include additions and renovations at the Carrington Research Extension Center, the Hettinger Research Extension Center, and the North Central Research Extension Center. Priority No. 3 is a beef research facility costing $950,000. The committee also reviewed initiatives to develop and expand existing enterprises and to give rise to entirely new ones.

Representatives of North Dakota State University reviewed the Grow 21: Enhancing North Dakota's Economy Through Agriculture initiative. The initiative identifies three essential attributes to a healthy community--a diverse resilient economy, effective efficient infrastructure, and leadership. The components of a diverse and resilient economy are agricultural business development, food industry enhancement, bioproducts and bioenergy development, livestock industry enhancement, cropping systems enhancement and control of scab and other pests, and multiple land uses. The report estimates the cost of this component at $6,925,000. The estimated cost of the effective and efficient infrastructure component is $2,302,000 and the growing agriculture and community leadership component is estimated to cost $200,000.

RESERVED WATER RIGHTS STUDY

Background

Senate Bill No. 2115 (2005) directed the Legislative Council to study the process to negotiate and quantify reserved water rights. Senate Bill No. 2115, as introduced, would have authorized the State Engineer to negotiate reserved water rights of the United States and federally recognized Indian tribes.

Proponents of Senate Bill No. 2115 noted that state law does not contain a procedure allowing the state to negotiate with tribes or the federal government to quantify reserved water rights and Senate Bill No. 2115 would have established such a procedure. In addition to the State Engineer, the Turtle Mountain Band of Chippewa Indians supported the bill. The bill was opposed by the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation and the Standing Rock Sioux Tribe. The chairman of the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation testified that in addition to the State Engineer, other individuals and parties should be involved in the negotiation process and that it may be better for the tribes to negotiate with a body or perhaps a commission that would be a fair representative of the state rather than with just one

individual. The chairman testified that any agreement negotiated by the State Engineer should be subject to ratification by the Legislative Assembly and signed by the Governor. Finally, the chairman testified that the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation objected to the provisions of Senate Bill No. 2115 providing that exceptions to an agreement would be resolved through an administrative process. The chairman of the Standing Rock Sioux Tribe testified that the tribe was in fundamental opposition to Senate Bill No. 2115. The chairman testified that the bill posed grave risks for all North Dakota tribes and did not believe it was necessary at this time to quantify the tribes' reserved water rights under the "Winters doctrine" relating to reserved water rights for Indian tribes.

As enacted, Senate Bill No. 2115 is limited to the section calling for a study.

Surface Water Appropriation

There are generally two systems that govern the appropriation of water in the United States. The humid Eastern states where water resources are more plentiful follow the common-law doctrine of riparian rights. The arid Western states where water resources are more scarce follow the doctrine of prior appropriation.

A riparian right is a right to use a portion of the flow of a watercourse that arises by virtue of ownership of land bordering a stream. The basic principle of prior appropriation is that a person may acquire an exclusive right to use a specific quantity of water by applying it to a beneficial use without reference of the focus of the use. An appropriate right is also defined by the time period of use as well as by the quantity claimed. Thus, the prior appropriation doctrine is often known as the first in time first in right water appropriation system.

North Dakota is a prior appropriation doctrine state. North Dakota Century Code Section 61-04-06.3 provides, in part:

> Priority in time shall give the superior water right. Priority of a water right acquired under this chapter dates from the filing of an application with the state engineer, except for water applied to domestic, livestock, or fish, wildlife, and other recreational uses in which case the priority date shall relate back to the date when the quantity of water in question was first appropriated, unless otherwise provided by law.

Ground Water Appropriation

Generally, there are four water allocation doctrines applicable to ground water--absolute ownership, reasonable use, correlative rights, and prior appropriation. The first three are based upon ownership of the land overlying the water resource, and the fourth doctrine has been applied to ground water by a number of states that use the prior appropriation doctrine to allocate surface water resources.

The absolute ownership doctrine was imported to the Eastern United States from England. Under its provisions, a landowner owns, and has an unlimited right to withdraw, any water found beneath the landowner's land. This doctrine is followed in Connecticut, Georgia, Illinois, Indiana, Maryland, Massachusetts, Mississippi, Rhode Island, Texas, and the District of Columbia.

Under the reasonable use doctrine, ground water may be used without waste on overlying land and landowners are only liable for injuries arising from their ground water withdrawals if their use is unreasonable. A use is unreasonable if it is wasteful or if the water is used on nonoverlying lands. This doctrine is followed in Arizona, Nebraska, and Oklahoma. However, Nebraska has enacted legislation authorizing industrial and municipal nonoverlying ground water uses if a permit has been obtained.

The correlative rights doctrine was designed to accommodate all overlying owners when water supply is insufficient to meet the reasonable needs of all overlying landowners. Under this doctrine, owners of land are each limited to a reasonable share of the total supply of ground water. The share is usually based on the amount of acreage owned by each landowner. California is the only state that follows this doctrine.

The prior appropriation doctrine, when applied to ground water, has been modified in most jurisdictions to allow more widespread ground water use than strict application of the doctrine would allow. Alaska, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming, as well as North Dakota, apply this doctrine.

Priority

Although North Dakota is a prior appropriation state, this common-law doctrine has been statutorily modified by the requirement that the first in time first in right be measured by the acquisition of a water permit from the State Engineer. North Dakota Century Code Section 61-04-02 requires that an appropriator secure a permit for the beneficial use of water. If there are competing applications for water from the same source and the source is insufficient to satisfy all applicants, then the State Engineer must follow the priority established by Section 61-04-06.1 in granting water permits. The priority established by Section 61-04-06.1 is:

1. Domestic use.
2. Municipal use.
3. Livestock use.
4. Irrigation use.
5. Industrial use.
6. Fish, wildlife, and other outdoor recreational uses.

The water appropriated must still be put to a beneficial use in order to secure a valid water right under the prior appropriation doctrine. Also, NDCC Section 61-04-06.3 provides, in part:

> Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire the prior appropriator's water under the changed conditions.

Reserved Water Rights Doctrine

In *Cappaert v. United States*, 426 U.S. 128 (1976), the United States Supreme Court stated:

> This Court has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation. In so doing the United States acquires a reserved right in unappropriated water which vests on the date of the reservation and is superior to the rights of future appropriators. Reservation of water rights is empowered by the Commerce Clause, Article I, Section 8, which permits federal regulation of navigable streams, and the Property Clause, Article IV, Section 3, which permits federal regulation of federal lands. The doctrine applies to Indian reservations and other federal enclaves, encompassing water rights in navigable and nonnavigable streams.

The United States Supreme Court first recognized Indian reserved water rights in *Winters v. United States*, 207 U.S. 564 (1908). In *Winters* the United States Supreme Court held that the 1888 agreement and statutes, which created the Fort Belknap Reservation in north central Montana, implicitly reserved to the tribe water from the Milk River for irrigation purposes. In finding that the policy of the United States to promote the transformation of tribal members to a "pastoral and civilized people" would be defeated and the land would become "practically valueless" unless the tribe's supply of irrigation water was protected from non-Indians claiming water under state law, the Court stated that "[t]he lands were arid, and, without irrigation, were practically valueless. And yet, it is contended, the means of irrigation were deliberately given up by the Indians and deliberately accepted by the government. The lands ceded were, it is true, also arid; and some argument may be urged, and is urged, that with their cession there was the cession of the waters, without which they would be valueless, and 'civilized communities could not be established thereon.' And this, it is further contended, the Indians knew, and yet made no reservation of the waters. We realize that there is a conflict of implications, but that which makes for the retention of the waters is of greater force than that which makes for their cession." It should also be noted that courts have held that the priority of Indian reserved water rights dates from the creation of the Indian reservation and Indian reserved water rights are not subject to forfeiture or abandonment for nonuse.

Quantity of Reserved Water Rights - The Practicably Irrigable Acreage Standard

In *Arizona v. California*, 373 U.S. 546 (1963), the United States Supreme Court adopted the practicably irrigable acreage standard as the presumptive quantification standard for Indian reserved water rights. In *Arizona* the Court agreed with the special master's conclusion that the quantity of water intended to be reserved was intended to satisfy the future as well as the present needs of the Indian reservations and ruled that enough water was reserved to irrigate all of the practicably irrigable acreage on the reservations. *Arizona* contended that the quantity of water reserved should be measured by the Indians' "reasonably foreseeable needs," which the Court rejected. The Court concluded, as did the special master, that the only feasible and fair way by which reserved water for the reservations can be measured is irrigable acreage.

Adjudication and Quantification of Reserved Water Rights

In *Indian Reserved Water Rights* by John Shurts, the author outlines the rationale for the adjudication and quantification of Indian reserved water rights. He states that the "prospect of expensive litigation and uncertain outcomes has led Indian groups, the federal government, state and local governments, private water users, and others to focus heavily on negotiating agreements to confirm and quantify reserved rights; agreements that Congress is asked or will be asked to ratify. In the usual situation, a particular Indian nation is asked by the other parties to relinquish its indefinite and potentially expandable reserved rights in return for a clearly described right to a definite, quantified amount of water, plus an amount of money or an agreement for assistance in bringing water to reservation lands, or both." However, until passage of the McCarran Amendment in 1952, the ability of states to quantify reserved water rights and to incorporate them into decrees and administrative systems was thwarted by the sovereign immunity of the United States and tribes. The McCarran Amendment waives the sovereign immunity of the United States and allows the United States to be named as a defendant in state general adjudication and administration proceedings. The McCarran Amendment provides:

> Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to such a suit shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason by its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual in like circumstances.

The *American Indian Law Deskbook* notes that "[i]n part due to the passage of the McCarran Amendment and in part due to the increasing competition for scarce water, most western states have commenced general

adjudication of varying scope in order to quantify reserved water rights and incorporate them into comprehensive state water management systems."

As affirmed by the United States Supreme Court in *Colorado River Water Conservation District v. United States*, 427 U.S. 800 (1976), the McCarran Amendment allows Indian reserved water rights to be adjudicated in state courts by suing the United States in its role as trustee for the tribes. The *American Indian Law Deskbook* notes that tribes themselves cannot be named as defendants in state adjudication proceedings since the McCarran Amendment did not waive the sovereign immunity enjoyed by Indian tribes.

State adjudication proceedings generally take one of three forms. One form is the traditional civil judicial action wherein a court determines the water rights of the interested parties. The second form is to authorize an administrative agency to conduct the adjudication process. The third form is to create a commission to negotiate the adjudication of reserved water rights with Indian tribes.

An example of a state that provides for civil judicial adjudication of reserved water rights is South Dakota. South Dakota Codified Laws Section 46-10-01 provides that "[i]t shall be the duty of the attorney general to bring an action for the general adjudication of the nature, extent, content, scope, and relative priority of the water rights and the rights to use water of all persons, or entities, public or private, on any river system and on all other sources, when in his judgment, or in the judgment of the Water Management Board, the public interest requires such action." Section 46-10-1.1 provides that the procedure in any case of general adjudication is as in other civil cases, insofar as that procedure is not inconsistent with South Dakota law. Some commentators have criticized this method of adjudicating reserved water rights because the judicial proceedings are adversarial in nature and thus the final adjudication is sometimes viewed as one in which there are winners and losers.

An example of a state that has delegated negotiated authority to an administrative agency is Oregon. It appears that Senate Bill No. 2115 is based on the Oregon statute.

An example of a state that has adopted the commission form of adjudicating reserved water rights is Montana. Montana Code Annotated Section 85-2-701 provides that "because the water and water rights in each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. It is the intent of the legislature that the unified proceedings include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666 (the McCarran Act). However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state. To the maximum extent possible, the reserved water rights compact commission should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by law its highest priority. In negotiations, the commission is acting on behalf of the Governor."

Montana has approved, ratified, and codified the Yellowstone River Compact, the Fort Peck-Montana Compact between Montana and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, the North Cheyenne-Montana Compact between Montana and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, the United States Park Service-Montana Compact between Montana and the United States National Park Service, the United States Bureau of Land Management-Montana Compact between Montana and the United States Bureau of Land Management, the Chippewa Cree Tribe-Montana Compact between Montana and the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, the United States Fish and Wildlife Service, Black Coulee and Benton Lake-Montana Compact between Montana and the Fish and Wildlife Service, the Red Rock Lakes-Montana Compact between Montana and the Fish and Wildlife Service, the Crow Tribe-Montana Compact between Montana and the Crow Tribe, and the Fort Belknap-Montana Compact between Montana and the Fort Belknap Indian community of the Fort Belknap Reservation.

Testimony and Committee Activities

The chief assistant attorney general for the Idaho Attorney General's office reviewed the negotiation and quantification of federal and Indian reserved water rights in Idaho and other western states. The chief assistant attorney general reviewed the Snake River Basin adjudication, alternatives for quantification of Indian reserved water rights, state processes for negotiation of tribal claims, the Idaho reserved water rights adjudication process, the Shoshone-Bannock negotiations, the Nez-Perce negotiations, the Northwestern Band of Shoshoni negotiations, the Shoshone-Paiute negotiations, and general principles concerning the adjudication and quantification of federal and Indian reserved water rights.

The Snake River Basin adjudication was a general stream adjudication of all water rights in the Snake River Basin within Idaho. The purposes of the Snake River Basin adjudication were to obtain an accurate list of all state-based water rights, quantify all federal reserved water rights in the basin, and determine hydraulically connected water sources. The Snake River Basin adjudication was the second largest general stream adjudication in the United States. The Snake River Basin adjudication encompassed 150,000 water rights claims, 20,000 of which were federal and tribal water rights claims. To date, 120,000 claims have been decreed and it is expected the remaining claims will be decreed within the next five years.

The Shoshone-Bannock Tribe filed a claim for irrigation in the amount of 782,107 acre-feet per year of water. The final decreed amount was 581,031 acre-feet of water per year. The claim filed by the Nez-Perce

Tribe was recognized at 50,000 acre-feet of water per year with a settlement pending. The claim for the Shoshone-Paiute Tribe of 451 acre-feet per year is also pending. Other entities, such as the United States Department of Energy, United States Department of Defense, United States Department of Veterans Affairs, General Services Administration, United States Geological Survey, United States Fish and Wildlife Service, United States Army Corps of Engineers, and National Park Service, also filed federal reserved water rights claims in the Snake River Basin adjudication. There were federal claims for 5,970 acre-feet of water per year, of which 5,963 acre-feet of water per year were dismissed, thus recognizing federal claims for 7 acre-feet of water per year.

The process of adjudication and quantification of federal reserved water rights usually begins when the situation ripens by the presence of a strong desire to settle water rights in a basin, a sense of urgency is present, and the key players are involved. The next step is preparation for the adjudication process. It must be decided who will be present at the negotiation table, the spokespersons and resources must be identified, preparatory analysis must be completed, working relationships must be established, and information must be shared. The committee learned that there is no one right or correct water adjudication method, but what is important are the intangible factors, such as the relationships of the parties, information, and the motivation of each of the parties to reach an agreement. The next step is to reach a local agreement. Local agreements are reached by establishing and negotiating protocols, identifying the major goals and issues of the adjudication, developing strategies and proposals, finding alternative means to meet these objectives, and reaching agreement through compromise. The next step is authorization by the state and local parties followed by federal review and approval. Next, the agreement must be approved in a tribal referendum, court approval may be required, and congressional appropriations may need to be secured to fund the settlement. Finally, the agreement must be implemented.

The committee learned that there are at least three alternatives for quantification of Indian reserved water rights. These include litigation, negotiation, and a combination of litigation and negotiation. The Wind River adjudication in Wyoming is an example of quantification of Indian reserved water rights through litigation, the Warm Springs settlement in Oregon is an example of quantification of Indian reserved water rights through negotiation, and the states of Montana, Colorado, Arizona, and New Mexico have utilized litigation and negotiation to quantify Indian reserved water rights. There are at least four processes for negotiation of tribal reserved water rights claims. Oregon specifies the State Engineer conduct negotiations on behalf of the state. Montana has established a compact commission that conducts negotiations on behalf of the state. In Colorado, Washington, and Idaho negotiations are conducted by the executive branch. In Arizona, water users have initiated negotiation of tribal reserved water rights claims. Water users in Arizona have led the effort to settle tribal claims in order to quantify the amount of water reserved for tribes and to add finality to tribal claims. Regardless of the approach to negotiate tribal reserved water rights claims, most states form a multimember negotiating team consisting of a political official for policy direction, a senior management official for continuity of negotiations, a technical representative, a legal representative, and a lead negotiator. Concerning the process followed in Idaho, the Governor was the lead negotiator, supported by the Attorney General. These executive officials worked closely with the Idaho Legislature while the state director of water resources provided technical support to all parties involved with the negotiations. Idaho's process began with historical research of all federal claims followed by a technical review of those claims. Next, the legal representative evaluated the risks of litigation and chance for settlement. Next, Idaho developed a process for the development for key constituents, provided periodic updates to the Governor and the legislature, and provided a public process for approval of reserved water rights settlements.

The committee learned that whether a settlement needs to be approved by a state legislative body or Congress depends on the nature of the settlement. If the settlement only quantifies and adjudicates water rights, conceivably the water rights can be settled in a judicial decree without legislative approval. However, if the settlement includes something in addition to water rights, such as an economic development package or other services requiring state or federal funds, then the settlement would require legislative approval. The Idaho chief assistant attorney general recommended the legislative body be involved from the beginning because it is not known at the beginning of the process what form the settlement will take. For example, if the settlement includes state recognition of a tribal water right, the settlement may require legislative approval.

The committee learned that the technical review step is important because it determines what the historical diversions have been and what cropping patterns are on the reservation to determine the duty of water. Also, the technical review will reveal what the potential is to develop water on the reservation. This is important because a federal reserved water right is not limited to actual beneficial use but includes both present and future water needs.

Ten factors are necessary for successful reserved water right negotiations. There must be an uncertain outcome, realistic expectations, stakeholder involvement and continuity of stakeholders, a sense of urgency, mutual respect and trust, equal access to technical data and facts, avoidance of sovereignty issues, funding, a forum for conducting sensitive discussions, and clear boundaries on negotiations.

The Idaho chief assistant attorney general also reviewed the Shoshone-Bannock negotiations, the Nez-Perce negotiations, the Northwestern Band of Shoshoni negotiations, and the Shoshone-Paiute negotiations. The committee learned the negotiation process should be tailored to the needs of the parties. The committee learned the state must understand what

the claims are, what it is willing to negotiate, and at what point the state is willing to walk away from negotiations if a good agreement is not achievable. The state should insist on a strong federal commitment to the negotiation process. The state must assure the tribe that the state is committed to negotiations and finally the state must know the limits of what it is willing to negotiate. Once a water rights settlement is quantified, negotiated, and finalized, the agreement is final and cannot be renegotiated. This is to achieve one of the objectives of quantification and adjudication of water rights which is finality, which provides a basis upon which the interested parties can make future decisions.

Concerning the issue of whether the reserved water rights doctrine applies to ground water as well as surface water, the committee learned Western states have taken the position that the reserved water rights doctrine only applies to surface water and does not apply to ground water. The only case in which a reserved water right to ground water has been found is *Cappaert v. United States*, 426 U.S. 128 (1976). However, that case rests upon several unique facts, one of which is that the ground water was being expressed as a surface supply. Thus, there is no clear legal precedent whether the reserved water rights doctrine applies to ground water.

Concerning off-reservation reserved water rights, the committee learned Idaho litigation and cases are premised on the basis that a reserved water right is associated expressly with reserved lands and that absent the reservation of lands, there can be no reserved water right and thus the right would not extend off reservation.

The committee learned that all reserved water rights negotiations and agreements in Idaho are premised on the prior appropriation doctrine. Thus, if there is a shortage, subordination agreements are used whereby a senior appropriator may agree to and be compensated for subordinating that person's right to take a certain quantity of water, making that water available to a junior appropriator.

Representatives of the Turtle Mountain Band of Chippewa Indians testified the tribe desires a cooperative agreement with the state that benefits both the state and the tribe. The tribe knows it can commence litigation to settle its reserved water rights claims but prefers to quantify its reserved water rights through negotiations with the state. The primary reason the Turtle Mountain Band of Chippewa Indians would like to quantify its reserved water rights is to ensure the availability of water for the reservation and to protect the resource.

Committee Considerations

The committee considered a bill draft that authorized the Governor to negotiate reserved water rights of the United States and federally recognized Indian tribes. Under the bill draft, the Governor or the Governor's designee could negotiate with any federally recognized Indian tribe claiming a reserved water right in North Dakota and representatives of the federal government as trustee for the federally recognized Indian tribe to define the scope and attributes of rights to water claimed by the Indian tribe or negotiate with the federal government to define the scope and attributes of non-Indian reserved water rights claimed by the federal government. Under the bill draft, when the Governor or the Governor's designee and representatives of any federally recognized Indian tribe or the federal government with regard to non-Indian reserved water rights have completed an agreement, the agreement, upon approval of the Legislative Assembly, must be signed by the Governor on behalf of the state and by authorized representatives of the Indian tribe and the federal government as trustee for the Indian tribe or by an authorized representative of the federal government with regard to non-Indian reserved water rights agreements.

Representatives of the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation testified that the issue of reserved water rights is very important to the tribe and one of the objections of the tribe to the bill considered by the Legislative Assembly during the 2005 legislative session was that the Legislative Assembly delegated authority to negotiate Indian and federal reserved water rights to the State Engineer. The tribe favors legislation whereby a commission would be established to negotiate Indian reserved water rights. It was suggested this legislation might be similar to legislation enacted in Montana and that the Governor appoint a number, such as four or five, to a commission to negotiate Indian reserved water rights. Another aspect of the Montana commission system favored by the tribe is that there is an interim process whereby water rights can be used until final negotiations are concluded.

The committee considered a bill draft that would have created a reserved water rights compact commission. In negotiations, the commission would have been acting on behalf of the Governor. The commission would have consisted of two members of the House of Representatives, two members of the Senate, four members designated by the Governor, and one member designated by the Attorney General. The State Water Commission would have provided administrative, staff, technical, and engineering services to the commission; the Attorney General would have provided legal services to the commission; and the Governor would have designated a chairman from among the members of the commission.

Representatives of the State Water Commission noted that the bill draft required Legislative Assembly approval of any agreement following negotiations and then if there are exceptions, an adjudicative proceeding would begin with the State Engineer to issue a final order and the reserved water right would then become effective. The State Engineer proposed that the adjudicative process occur before the agreement would be submitted to the Legislative Assembly for ratification. Following ratification, the State Engineer would then issue a final order and the reserved water right would become effective. The State Engineer testified the State Water Commission would have sufficient resources to negotiate a reserved water rights agreement with the Turtle Mountain Band of Chippewa Indians but if the

state were to be involved in additional negotiations, additional resources may be required. The bill draft was supported by the Turtle Mountain Band of Chippewa Indians and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation.

Several members of the committee indicated the Legislative Assembly should authorize the Governor to appoint qualified individuals to negotiate water rights agreements on behalf of the state and this structure may be preferable to including members of the Legislative Assembly on a commission. Several members of the committee noted the Governor would undoubtedly appoint qualified individuals to undertake the negotiations; whereas, members of the Legislative Assembly may not have the requisite expertise to be qualified members of the commission.

The committee considered a bill draft that authorized the Governor to negotiate reserved water rights agreements rather than having a commission, with a revised procedural process to provide that the agreements would be ratified by the Legislative Assembly near the end of the negotiation process.

Representatives of the Governor's office testified the Governor has authority to negotiate reserved water rights based upon the executive powers granted to the Governor by the Constitution of North Dakota and in statutes enacted by the Legislative Assembly to coordinate state agency dealings with Indian tribes. Article V, Section 7, of the Constitution of North Dakota states that the Governor is the chief executive of the state and shall transact and supervise all necessary business of the state with the United States, the other states, and the officers and officials of this state. North Dakota Century Code Chapter 54-40.2 provides that state agencies may negotiate agreements with Indian tribes regarding subjects over which they have authority under state law. These agreements are effective only upon approval by the Governor. The representative of the Governor's office noted that Chapter 61-02 gives the State Water Commission full and complete power, authority, and general jurisdiction over the regulation and appropriation of water in this state, full control over all unappropriated public waters of the state, and specific authority to make all contracts or compacts necessary or requisite with the United States or any department, agency, or officer thereof. The representative of the Governor testified that these constitutional and statutory provisions indicate the authority to negotiate reserved water rights with the federal government and Indian tribes already exists. The representative of the Governor's office said requiring legislative approval over reserved water rights agreements may cause a delay because the Legislative Assembly only meets once every two years. Also, if the negotiators know that legislative approval is required, it may discourage serious negotiations. A representative of the Attorney General agreed there are mechanisms in North Dakota law which allow state officials to negotiate with tribes to determine and settle their water rights. The representative noted that if the Governor uses the authority under Chapter 51-40.2 or 61-02 to negotiate reserved water rights agreements, then the Legislative Assembly could amend the statutes to require legislative approval. However, if the Governor is relying on the authority contained in Article V, Section 7, of the Constitution of North Dakota, that the Governor as chief executive officer of the state has authority to transact and supervise all necessary business of the state with the United States, the other states, and the officers and officials of this state, then requiring legislative oversight may violate the separation of powers contained in the state constitution.

Representatives of the Turtle Mountain Band of Chippewa Indians testified that the tribe prefers the bill draft be tribe-specific, that the Governor may negotiate with the Turtle Mountain Band of Chippewa Indians to negotiate that tribe's reserved water rights. A member of the committee noted that the bill draft should not be limited to a single tribe but as drafted is discretionary and allows those tribes that wish to negotiate their reserved water rights an opportunity to do so but does not force any tribe to enter negotiations with the state to quantify its water rights. A member of the committee noted if the committee did not recommend the bill draft to the Legislative Council for submission to the Legislative Assembly, then the committee is saying that the Legislative Assembly should not be involved in approving reserved water rights agreements. However, if the committee forwards a bill draft to the Legislative Council, it is making a strong statement that the committee believes the Legislative Assembly should have final approval over any reserved water rights agreement negotiated between the state and a tribe. A member of the committee noted it is clear the Governor has authority to negotiate reserved water rights agreements under current law. However, if the Legislative Assembly is to have a voice in the process by requiring an agreement be submitted to the Legislative Assembly for approval, then the bill draft should be approved and recommended to the Legislative Council.

Recommendation

The committee recommends House Bill No. 1025 to authorize the Governor to negotiate reserved water rights of the United States and federally recognized Indian tribes. Upon signature by all required parties, an agreement must be submitted to the Legislative Assembly for approval. Upon approval by the Legislative Assembly, the State Engineer is required to incorporate the agreement in a final order. The agreement is effective upon issuance of the final order.

NOXIOUS WEED REPORTS

Section 37 of 2005 Senate Bill No. 2280 provides that the Agriculture Commissioner shall report to the Legislative Council all notifications and requests for assistance by individuals who believe local weed boards have not eradicated or controlled noxious weeds satisfactorily. A representative of the Agriculture Commissioner reported for 2005 that the department received approximately 10 calls complaining about weed control during the summer of 2005. Each time the individual was referred back to the county weed board for action. The department did not receive any written

appeals on weed control problems for the 2005 season. The department did not receive a request from county weed boards to enforce NDCC Chapter 63-01.1 because of a conflict of interest.

The Agriculture Commissioner reported that for 2006 the department received a complaint on April 3, 2006, which was investigated.

ENDANGERED SPECIES ACT

A representative of the Agriculture Commissioner reviewed the future of North Dakota's endangered species protection program. The committee learned the Environmental Protection Agency will start adding county bulletin reference language to pesticide labels in 2006. The state will be required to have county bulletins in place within the next year. Existing North Dakota bulletins will not be adequate. The Agriculture Commissioner is analyzing what role the state should play in developing the bulletins. The commissioner has identified three options. Option 1 is to have the Environmental Protection Agency develop bulletins for North Dakota just as it will do for most states. This is the default option if the state does nothing. Option 2 is to have the commissioner take complete ownership of the program under a state-initiated endangered species protection program. This option is estimated by the commissioner to require five additional full-time equivalent positions and $1.5 million in state funds. Option 3 is a hybrid approach under which the Environmental Protection Agency would retain ultimate responsibility for the preparation of the publication of bulletins but the commissioner could offer input to the agency and furnish agency staff with local pesticide use data, cropping data, species distribution maps, environmental monitoring data, and recommendations for bulletin language. The commissioner estimated this option would require an additional three full-time equivalent positions at approximately $500,000 in additional funds per biennium. The Agriculture Commissioner recommended the state pursue Option 3 as it would allow significant input in the process and allow the state some control over the pesticide use restrictions found in the bulletins. Representatives of the North Dakota Farm Bureau, the North Dakota Farmers Union, the North Dakota Grain Growers Association, and the North Dakota Agricultural Association testified that these organizations support Option 3--the hybrid approach--under which the Environmental Protection Agency would retain ultimate responsibility for the preparation of publication of bulletins but with state input. This option would provide substantial cost-savings and may provide the most workable solution.

MOUNTAIN LION ASSESSMENT REPORT

Section 2 of 2005 House Bill No. 1102 requires the Game and Fish Department in cooperation with tribal authorities to assess the status of mountain lions in North Dakota. Between 1958 and 1991, there were 11 confirmed sightings of mountain lions in North Dakota. In 1991 the Legislative Assembly classified mountain lions as fur-bearers and directed the Game and Fish Department to manage them with other rare fur-bearers in a closed season. However, there are statutory provisions allowing individuals to take mountain lions to protect livestock. North Dakota Century Code Section 20.1-07-04 allows a landowner or tenant or that person's agent to catch or kill any wild fur-bearing animal that is committing depredations upon that person's poultry or domestic animals. However, this section requires a person catching or killing a mountain lion to report the capture or killing to the department within 24 hours and the entire animal must be turned over to the department. Between 1991 and 2003, there were 26 confirmed reports of mountain lions in North Dakota. A new reporting system was developed by the department beginning in 2004 to obtain specific locational information on mountain lions; to attempt to verify sightings based on physical evidence; and to classify sightings as unfounded, improbable unverified, probable unverified, or verified. Approximately 2 percent of North Dakota can support a small population of mountain lions. The suitable habitat is located in the Badlands and Missouri River Breaks and, assuming there is no managed harvest, can support between 45 and 74 mountain lions.

The department held an experimental mountain lion season between September 2, 2005, and March 12, 2006. A quota of five mountain lions was allowed and when this quota was reached, the season was closed. The first mountain lion was harvested on November 16, 2005, and the final mountain lion taken on January 15, 2006.

Although most of North Dakota does not contain habitat suitable for mountain lions, mountain lions either have recolonized or are in the process of recolonizing a portion of their former range in the Badlands. Individual lions travel through the other portions of the state and are most likely young dispersing animals. The lion population in North Dakota likely will be limited due to geographic isolation from other lion populations in adjacent states.

Representatives of the department reported seven bighorn sheep have been killed by mountain lions with mountain lions suspected in another three sheep deaths. The department has invested substantial resources in expanding the bighorn sheep population in the state and if it is documented a mountain lion is taking sheep, the lion will be removed by the department.

The department representatives reported the department will again offer an experimental mountain lion hunting season in 2006-07. The season will run from September 2, 2006, through March 12, 2007, or when the quota of five mountain lions has been reached. The season will be very similar to the 2005-06 season; however, no hunting or pursuing with dogs will be allowed until after January 1, 2007. Also, individuals hunting with dogs may not pursue or take a female mountain lion accompanied by kittens. Any mountain lion other than kittens, lions with visible spots, or females accompanied by kittens will be a legal animal. Finally, in the event that none of the five lions are taken on the Fort Berthold Reservation, one additional mountain lion may be taken on the reservation when the quota has been reached and the statewide season closed.

GARRISON DIVERSION PROJECT AND RED RIVER VALLEY WATER SUPPLY PROJECT STUDIES

The Garrison Diversion Conservancy District is an instrumentality-political subdivision of the state created in 1955 to construct the Garrison Diversion unit of the Missouri River Basin project as authorized by Congress on December 22, 1944. Amendments enacted by Congress in 1986 and 2000 have changed the Garrison Diversion unit from a million-acre irrigation project into a multipurpose project with an emphasis on the development and delivery of municipal and rural water supplies. The mission of the Garrison Diversion Conservancy District is to provide a reliable, high-quality, and affordable water supply for the benefit of North Dakota. The manager of the Garrison Diversion Conservancy District updated the committee on the municipal, rural, and industrial water supply program, recreation programs, agricultural research, the Oakes Test Area, and the Red River Valley water supply project.

The Garrison Diversion Conservancy District and the State Water Commission jointly administer the municipal, rural, and industrial water supply program. To date in 2006, they have distributed $4,116,847 in federal funding. Approximately $245 million remains of federal authorization for this program. The conservancy district and State Water Commission have also distributed $715,837 from the water development and research fund in 2006.

The Garrison Diversion Conservancy District allocates two-tenths of its one-mill tax levy to a matching recreation grant program within the district. In 2005, $176,000 in matching grant funds were approved for 30 applicants. In fiscal year 2006, just over $190,000 in matching grant funds have been approved to project applicants in 20 of the 28 counties that comprise the conservancy district. The Dakota Water Resources Act of 2000, an amendment to the Garrison Diversion Unit Reformulation Act of 1986, authorized $6.5 million for a recreation program. The conservancy district is developing an agreement with the federal Bureau of Reclamation to implement this program.

The conservancy district supports agricultural research by providing funding to the North Dakota Irrigation Association, the Oakes Field Trials administered by North Dakota State University, and an irrigation specialist with North Dakota State University. The conservancy district is working with a local irrigation district to facilitate the smooth transition of the Oakes Test Area from federal ownership to local ownership in 2009. This title transfer, mandated by the Dakota Water Resources Act of 2000, must occur within two years of the formal record of decision on the Red River Valley Water Supply Project.

The Dakota Water Resources Act of 2000 authorized $200 million for construction of the Red River Valley Water Supply Project to meet the water supply needs of the Red River Valley. The Act authorized two studies. The first study was a needs and options study conducted by the Secretary of the Interior. The study was a comprehensive study of the water quality and quantity needs of the Red River Valley and possible options for meeting those needs. Second, the Secretary of the Interior and the state, represented by the conservancy district, are jointly preparing an environmental impact statement concerning all feasible options to meet the comprehensive water quality and quantity needs of the Red River Valley. The needs and options report was completed in 2005 and the environmental impact statement is scheduled for release in February 2007. North Dakota has selected a buried pipeline from the McClusky Canal to Lake Ashtabula as the preferred alternative to meet the long-term water supply needs of the Red River Valley. The Red River Valley Water Supply Project will be funded jointly by local water users, the state of North Dakota, and the federal government.

BUDGET SECTION

The Legislative Council's Budget Section is referred to in various sections of the North Dakota Century Code (NDCC) and the Session Laws of North Dakota. Although there are statutory references to the Budget Section, it is not created by statute. The Budget Section is an interim committee appointed by the Legislative Council. By tradition, the membership of the Budget Section consists of the members of the Senate and House Appropriations Committees, the majority and minority leaders and their assistants, and the Speaker of the House.

Budget Section members were Representatives Ken Svedjan (Chairman), Ole Aarsvold, Larry Bellew, Rick Berg, Merle Boucher, Tom Brusegaard, Ron Carlisle, Al Carlson, Jeff Delzer, Eliot Glassheim, Pam Gulleson, Scot Kelsh, Keith Kempenich, James Kerzman, Matthew M. Klein, Joe Kroeber, Bob Martinson, Ralph Metcalf, David Monson, Chet Pollert, Earl Rennerfeldt, Bob Skarphol, Blair Thoreson, Mike Timm, Francis J. Wald, Alon C. Wieland, and Clark Williams and Senators John M. Andrist, Bill L. Bowman, Randel Christmann, Michael A. Every, Tom Fischer, Tony Grindberg, Ray Holmberg, Ralph L. Kilzer, Aaron Krauter, Ed Kringstad, Elroy N. Lindaas, Tim Mathern, David O'Connell, Larry J. Robinson, Randy A. Schobinger, Bob Stenehjem, Harvey Tallackson, and Russell T. Thane.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

The following duties, assigned to the Budget Section by law, were acted on during the 2005-06 interim:

1. Tobacco **settlement funds (Section 54-44-04(23))** - This section provides that the director of the Office of Management and Budget shall report to the Budget Section on the status of tobacco settlement funds and related information.
2. **Irregularities in the fiscal practices of the state (Section 54-14-03.1)** - This section requires the Office of the Budget to submit a written report to the Budget Section documenting:
   a. Any irregularities in the fiscal practices of the state.
   b. Areas where more uniform and improved fiscal procedures are desirable.
   c. Any expenditures or governmental activities contrary to law or legislative intent.
   d. The use of state funds to provide bonuses, cash incentive awards, or temporary salary adjustments for state employees.
3. **Form of budget data (Section 54-44.1-07)** - This section requires the director of the budget to prepare budget data in the form prescribed by the Legislative Council and to present it to the Legislative Assembly at a time and place set by the Legislative Council. Drafts of proposed general and special appropriations acts embodying the budget data and recommendations of the Governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the Governor for putting into effect the proposed financial plan must be submitted to the Legislative Council within seven days after the day of adjournment of the organizational session. The Legislative Council has assigned this responsibility to the Budget Section.
4. **Status of the risk management workers' compensation program (Section 65-04-03.1(5))** - This section requires Workforce Safety and Insurance and the Risk Management Division of the Office of Management and Budget to periodically report to the Budget Section on the success of the risk management workers' compensation program.
5. **Designation of a center of excellence (Section 15-69-02 and 2005 Senate Bill No. 2032, Section 4)** - This section provides that designation of a center of excellence occurs upon State Board of Higher Education, North Dakota Economic Development Foundation, and Budget Section approval of a Centers of Excellence Commission funding award recommendation; in considering whether to designate a center of excellence, the board, the foundation, and the Budget Section may not modify the commission recommendation; and the Budget Section may not make a recommendation of whether to approve or reject a commission funding award recommendation until the Emergency Commission reviews the commission recommendation and makes a recommendation to the Budget Section (effective July 1, 2005, through July 31, 2011).
6. **Office of Management and Budget borrowing $5 million from the Bank of North Dakota for centers of excellence (Section 13 of 2005 Senate Bill No. 2018)** - This section provides that as requested by the Centers of Excellence Commission and subject to Emergency Commission and Budget Section approval, the Office of Management and Budget shall borrow up to $5 million from the Bank of North Dakota for providing funding to centers of excellence (effective July 1, 2005).
7. **Higher education campus improvements and building construction (Section 15-10-12.1)** - This section requires the approval of the Budget Section or the Legislative Assembly for the construction of any building financed by donations, gifts, grants, and bequests on land under the control of the board. Campus improvements and building maintenance of more than $385,000 also require the approval of the Budget Section or Legislative Assembly. Budget Section approval can only be provided

when the Legislative Assembly is not in session and the six months prior to a regular legislative session. The Budget Section approval regarding the construction of buildings and campus improvements must include a specific dollar limit for each building, campus improvement, or maintenance project. If a request is to be considered by the Budget Section, the Legislative Council must notify each member of the Legislative Assembly and allow any member to present testimony to the Budget Section regarding the request. Campus improvements and building maintenance of $385,000 or less and the sale of real property received by gift or bequest may be authorized by the State Board of Higher Education.

8. **Change or expand state building construction projects (Section 48-02-20)** - This section provides that a state agency or institution may not significantly change or expand a building construction project approved by the Legislative Assembly unless the change, expansion, or additional expenditure is approved by the Legislative Assembly, or the Budget Section if the Legislative Assembly is not in session.
9. **Sources of funds received for construction projects of entities under the State Board of Higher Education (Section 15-10-12.3)** - This section requires each institution under the State Board of Higher Education undertaking a capital construction project, that was approved by the Legislative Assembly and for which local funds are to be used, to present a biennial report to the Budget Section detailing the source of all funds used in the project.
10. **Allocation of the higher education equity pool (Section 9 of 2005 Senate Bill No. 2003)** - This section requires a representative of the State Board of Higher Education to report to the Budget Section regarding the allocation of the equity pool provided to address equity at higher education institutions and other campus needs (effective July 1, 2005).
11. **Status of the higher education review of long-term finance plan (Section 17 of 2005 Senate Bill No. 2003)** - This section requires a representative of the State Board of Higher Education to report periodically to the Budget Section on the status of the higher education review of the long-term finance plan during the 2005-06 interim (effective July 1, 2005).
12. **Status of the State Board of Agricultural Research and Education (Section 4-05.1-19(10))** - This section requires, within the duties of the State Board of Agricultural Research and Education, that a status report is to be presented to the Budget Section.
13. **Report from the Information Technology Department (Section 54-59-19)** - This section requires the Information Technology Department to prepare and present an annual report to the Information Technology Committee and to present a summary of the report to the Budget Section.
14. **Department of Human Services transfers between line items and between subdivisions in excess of $50,000 (Section 6 of 2005 House Bill No. 1012)** - This section provides that the Department of Human Services shall report to the Budget Section after June 30, 2006, on any transfers made during the 2005-07 biennium between line items within each subdivision and between subdivisions in excess of $50,000 (effective July 1, 2005).
15. **Annual audits of renaissance fund organizations (Section 40-63-07(9))** - This section requires the Department of Commerce Division of Community Services to provide annual reports to the Budget Section on the results of audits of renaissance fund organizations.
16. **Money spent to administer an Internet web site that provides career guidance and job opportunity services (Section 54-60-10)** - This section requires the Department of Commerce to report annually to the Budget Section regarding money spent to administer an Internet web site that provides career guidance and job opportunity services.
17. **Annual report on North Dakota economic goals and associated benchmarks (Section 53 of 2005 Senate Bill No. 2018)** - This section requires the Commissioner of the Department of Commerce to report annually during the 2005-06 interim to the Budget Section regarding North Dakota economic goals and associated benchmarks (effective July 1, 2005).
18. **Use of grant funds provided to the Rural Development Council (Section 21 of 2005 Senate Bill No. 2018)** - This section requires the Department of Commerce to report to the Budget Section after July 1, 2006, on the use of grant funds provided to the Rural Development Council to match federal funds (effective July 1, 2005).
19. **Use of grant funds provided to the Red River Valley Research Corridor (Section 25 of 2005 Senate Bill No. 2018)** - This section requires the Department of Commerce to report to the Budget Section after July 1, 2006, on the use of grant funds provided to the Red River Valley Research Corridor to match federal funds (effective July 1, 2005).
20. **Use of grant funds provided to the North Dakota center for technology program (Section 26 of 2005 Senate Bill No. 2018)** - This section requires the Department of Commerce to report to the Budget Section after July 1, 2006, on the use of grant funds provided to the North Dakota center for technology program (effective July 1, 2005).
21. **Use of funding for grants in the partners in marketing grant program (Section 27 of 2005**

Senate Bill No. 2018) - This section requires the Department of Commerce to report to the Budget Section after July 1, 2006, on the use of funding for grants in the partners in marketing grant program (effective July 1, 2005).

22. **Highway Patrol training program (Section 2 of 2005 Senate Bill No. 2031)** - This section requires the Highway Patrol to report to the Budget Section after July 1, 2006, regarding the progress of the training program.
23. **Annual report from State Mill and Elevator Association (Section 35 of 2005 Senate Bill No. 2014)** - This section requires the manager of the State Mill and Elevator Association to present an annual report to the Budget Section, including the current role and mission of the State Mill and Elevator Association; short-term and long-term plans for acquisitions, construction, renovation, equipment upgrading, sales and marketing, personnel, and all financial matters; and a description of the efforts made by the State Mill and Elevator Association to inform legislators about the role, mission, and operations of the State Mill and Elevator Association (effective July 1, 2005).
24. **Workforce Safety and Insurance building maintenance account (Section 65-02-05.1)** - This section requires that if a new Workforce Safety and Insurance facility is built and rental space is included in the facility, Workforce Safety and Insurance is to deposit the building rental proceeds in a building maintenance account and report to the Budget Section on a biennial basis on the revenues deposited into and expenditures from the account.
25. **Game and Fish Department land acquisitions (Section 20.1-02-05.1)** - This section provides that Budget Section approval is required for Game and Fish Department land acquisitions of more than 10 acres or $10,000.
26. **Positions affected by Department of Emergency Services reorganization and justification of any prior salary increases (Section 10 of 2005 House Bill No. 1016)** - This section provides that the Department of Emergency Services shall report to the Budget Section the positions affected by its reorganization, a detailed justification of any prior salary increases, and a recommendation and analysis of any proposed salary increases or decreases (effective July 1, 2005).
27. **Salary increases to positions affected by Department of Emergency Services reorganization (Section 10 of 2005 House Bill No. 1016)** - This section provides that, upon Budget Section approval, the sum of $213,493 is available to the Department of Emergency Services for providing salary increases to positions affected by the reorganization (effective July 1, 2005).
28. **Report detailing use of federal homeland security funds at state and local levels and any discrepancies relating to needs assessments (Section 7 of 2005 House Bill No. 1016)** - This section provides that the Department of Emergency Services shall provide a report to the Legislative Council, as requested, detailing the uses of federal homeland security funds at the state and local levels and a report regarding any discrepancies relating to the needs assessments completed by the department and political subdivisions and purchases made with federal homeland security funds (effective July 1, 2005).
29. **Job insurance trust fund (Section 52-02-17)** - This section requires that Job Service North Dakota report to the Legislative Council before March 1 of each year the actual job insurance trust fund balance and the targeted modified average high-cost multiplier, as of December 31 of the previous year, and a projected trust fund balance for the next three years. The Legislative Council has assigned this responsibility to the Budget Section.
30. **Additional full-time equivalent positions hired for highway construction (Section 4 of 2005 Senate Bill No. 2012)** - This section provides that the Department of Transportation shall report to the Legislative Council on any additional full-time equivalent positions for highway construction and maintenance hired in lieu of contracting for those positions (effective July 1, 2005).
31. **Performance assurance fund payments received and expenditures (Section 49-21-31)** - This section requires the Public Service Commission to report annually to the Budget Section with respect to the payments received under the performance assurance plan and the expenditures from the performance assurance fund (effective March 28, 2003, through June 30, 2005).
32. **Transfers to the state tuition fund (Section 15.1-02-14)** - This section requires the Superintendent of Public Instruction to report annually to the Budget Section regarding any transfer to the state tuition fund of federal or other money received by the Superintendent to pay programmatic administrative expenses for which the Superintendent received a state general fund appropriation.
33. **Statement from ethanol plants that received production incentives (Section 4-14.1-07)** - This section requires any North Dakota ethanol plant receiving production incentives from the state to file with the Budget Section, within 90 days after the conclusion of the plant's fiscal year, a statement by a certified public accountant indicating whether the plant produced a profit during the preceding fiscal year, after deducting incentive payments received from the state (effective until July 1, 2005).

34. **Statement from ethanol plants in operation before July 1, 1995, that received production incentives (Section 4-14.1-07.1 and 2005 Senate Bill No. 2270, Section 1)** - This section requires any North Dakota ethanol plant in operation before July 1, 1995, receiving production incentives from the state to file with the Budget Section, within 90 days after the conclusion of the plant's fiscal year, a statement by a certified public accountant indicating whether the plant produced a profit during the preceding fiscal year, after deducting incentive payments received from the state (effective July 1, 2005).
35. **Report identifying every state agency that has not submitted a claim for property belonging to that agency (Section 47-30.1-24.1)** - This section requires the commissioner of University and School Lands to present a report to the Budget Section identifying every state agency that has not submitted a claim for unclaimed property belonging to that agency within one year of receipt of the certified mail notification.
36. **Relinquishment of agency rights to recover property (Section 47-30.1-24.1)** - This section provides that each state agency that does not submit a claim for unclaimed property belonging to that agency within one year of receipt of the certified mail notification relinquishes its right to recover the property upon approval of the Budget Section.
37. **Conduct budget tours and receive budget tour group reports** - The Budget Section is responsible for conducting budget tours of state facilities and institutions or assigning the budget tours to other interim committees and receive reports from the committees on the budget tours conducted.
38. **Transfers exceeding $50,000 (Section 54-16-04(2))** - This section provides that, subject to Budget Section approval, the Emergency Commission may authorize a transfer of more than $50,000 from one fund or line item to another. Budget Section approval is not required if the transfer is necessary to comply with a court order, to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis, or to avoid an imminent financial loss to the state.
39. **Acceptance and expenditure of more than $50,000 of federal funds which were not appropriated (Section 54-16-04.1).**
    a. **Acceptance of federal funds** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to accept more than $50,000 of federal funds which were not appropriated and the Legislative Assembly has not indicated an intent to reject the money. Budget Section approval is not required if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state.
    b. **Expenditure of federal funds** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to spend more than $50,000 of federal funds, which were not appropriated and the Legislative Assembly has not indicated an intent to reject the money.
40. **Acceptance and expenditure of more than $50,000 of other funds which were not appropriated (Section 54-16-04.2).**
    a. **Acceptance of other funds** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to accept more than $50,000 from gifts, grants, donations, or other sources, which were not appropriated and the Legislative Assembly has not indicated an intent to reject money or programs. Budget Section approval is not required if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state.
    b. **Expenditure of other funds** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to spend more than $50,000 from gifts, grants, donations, or other sources, which were not appropriated and the Legislative Assembly has not indicated an intent to reject the money or programs.
41. **Transfers of spending authority from the state contingencies appropriation exceeding $50,000 (Section 54-16-09)** - This section provides that, subject to Budget Section approval, the Emergency Commission may authorize a transfer of more than $50,000 from the state contingencies line item to the appropriate line item in the appropriation of the state officer who requested the transfer. Budget Section approval is not required if the transfer is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state.

The following duties, assigned to the Budget Section by law or by Legislative Council directive, are scheduled to be addressed by the Budget Section at its December 2006 meeting:

1. **Receive report on specified commodities and services exempted from the procurement requirements of Chapter 54-44.4** - This section requires the director of the Office of Management and Budget to report to the Budget

Section in December of even-numbered years on specified commodities and services exempted by written directive of the director from the procurement requirements of Chapter 54-44.4.

2. **Review and report on budget data (Legislative Council directive)** - Pursuant to Legislative Council directive, the Budget Section is to review and report on the budget data prepared by the director of the budget and presented to the Legislative Assembly during the organizational session (December 2006).

The following duties, assigned to the Budget Section by law or by Legislative Council directive, did not require action by the Budget Section during the 2005-06 interim:

1. **Additional full-time equivalent positions at the State Hospital (Section 42 of 2005 House Bill No. 1015)** - This section provides that upon Emergency Commission and Budget Section approval, the State Hospital may hire up to 21 additional full-time equivalent positions relating to the substance abuse treatment pilot program (effective July 1, 2005).
2. **Capital improvements preliminary planning revolving fund (Section 54-27-22)** - This section provides that before any funds can be distributed from the preliminary planning revolving fund to a state agency, institution, or department, the Budget Section must approve the request (approximately $80,000 was available for the 2005-07 biennium).
3. **State Forester reserve account (Section 4-19-01.2)** - This section provides that Budget Section approval is required prior to the State Forester spending money in the State Forester reserve account.
4. **Investment in real property by the Board of University and School Lands (Section 15-03-04)** - This section provides that Budget Section approval is required prior to the Board of University and School Lands purchasing, as sole owner, commercial or residential real property in North Dakota.
5. **Reduction of the game and fish fund balance below $15 million (Section 20.1-02-16.1)** - This section provides that the Game and Fish Department can spend money in the game and fish fund within the limits of legislative appropriations, only to the extent the balance of the fund is not reduced below $15 million, unless otherwise authorized by the Budget Section.
6. **Provision of contract services by the Developmental Center (Section 25-04-02.2)** - This section provides that, subject to Budget Section approval, the Developmental Center at Westwood Park, Grafton, may provide services under contract with a governmental or nongovernmental person.
7. **Waiver of exemption of special assessments levied for flood control purposes on state property (Section 40-23-22.1)** - This section provides that state property in a city is exempt from special assessments levied for flood control purposes unless the governing body of the city requests waiver of the exemption and the exemption is completely or partially waived by the Budget Section. The exemption does not apply to any privately owned structure, fixture, or improvement located on state-owned land if the structure, fixture, or improvement is used for commercial purposes unless the structure, fixture, or improvement is primarily used for athletic or educational purposes at a state institution of higher education.
8. **Termination of food stamp program (Section 50-06-05.1(17))** - This section provides that, subject to Budget Section approval, the Department of Human Services may terminate the food stamp program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the coupon bonus payments.
9. **Termination of energy assistance program (Section 50-06-05.1(19))** - This section provides that, subject to Budget Section approval, the Department of Human Services may terminate the energy assistance program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the energy assistance program payments.
10. **Transfers resulting in program elimination (Section 54-16-04(1))** - This section provides that, subject to Budget Section approval, the Emergency Commission may authorize a transfer which would eliminate or make impossible the accomplishment of a program or objective funded by the Legislative Assembly.
11. **New correctional programs which exceed $100,000 of cost during a biennium (Section 54-23.3-09)** - This section requires the director of the Department of Corrections and Rehabilitation to report to the Legislative Assembly or, if the Legislative Assembly is not in session, the Budget Section, prior to the implementation of any new program that serves adult or juvenile offenders, including alternatives to conventional incarceration and programs operated on a contract basis if the program is anticipated to cost in excess of $100,000 during the biennium.
12. **Cashflow financing (Section 54-27-23)** - This section provides that in order to meet the cashflow needs of the state, the Office of Management and Budget may borrow, subject to Emergency Commission approval, from special funds on deposit in the state treasury. However, the proceeds of any such indebtedness cannot be used to offset projected deficits in state finances unless first approved by the Budget Section. Additional cashflow financing, subject to certain limitations, must be approved by the Budget Section.

13. **Budget stabilization fund (Section 54-27.2-03)** - This section provides that any transfers from the budget stabilization fund must be reported to the Budget Section.
14. **Purchases of "put" options (Section 54-44-16)** - This section requires the Office of Management and Budget to report any purchases of "put" options to the Budget Section (effective July 1, 2003, through June 30, 2005).
15. **Objection to budget allotments or expenditures (Section 54-44.1-12.1)** - This section allows the Budget Section to object to a budget allotment, an expenditure, or the failure to make an allotment or expenditure if such action is contrary to legislative intent.
16. **Budget reduction due to initiative or referendum action (Section 54-44.1-13.1)** - This section provides that, subject to Budget Section approval, the director of the budget may reduce state agency budgets by a percentage sufficient to cover estimated revenue reductions caused by initiative or referendum action.
17. **Children's Services Coordinating Committee grants (Section 54-56-03)** - This section provides that Budget Section approval is required prior to the distribution by the Children's Services Coordinating Committee of any grants not specifically authorized by the Legislative Assembly.
18. **Requests by the Information Technology Department to finance the purchase of software, equipment, or implementation of services (Section 54-59-05(4))** - This section requires the Information Technology Department to receive Budget Section approval before executing any proposed agreement to finance the purchase of software, equipment, or implementation of services in excess of $1 million. The department may finance the purchase of software, equipment, or implementation of services only to the extent the purchase amount does not exceed 7.5 percent of the amount appropriated to the department during that biennium.
19. **Approval of expenditures exceeding $130,000 from Department of Commerce operating fund for web site maintenance (Section 54-60-10)** - This section provides that any additional amounts over $130,000 that are deposited in the Department of Commerce operating fund during a biennium from subscriptions, commissions, fees, or other revenue from the Internet web site may be spent pursuant to legislative appropriations or with Budget Section approval.
20. **Extraterritorial workers' compensation insurance (Section 65-08.1-02)** - This section authorizes Workforce Safety and Insurance to establish, subject to Budget Section approval, a casualty insurance organization to provide extraterritorial workers' compensation insurance.
21. **Federal block grant hearings (2005 Senate Concurrent Resolution No. 4001)** - This resolution authorizes the Budget Section, through September 30, 2007, to hold any required legislative hearings for federal block grants.
22. **Construction of equipment and storage buildings in Towner and Bottineau (Section 11 of 2003 House Bill No. 1003)** - This section authorizes the Forest Service, after receiving approval from the Budget Section, to obtain and use funds received from any source for construction of the equipment and supply storage buildings in Towner and Bottineau (effective until July 1, 2005).
23. **Annual audits from center of excellence-awarded funds under Chapter 15-69 (Section 15-69-05 and 2005 Senate Bill No. 2032, Section 4)** - This section requires that a center of excellence that is awarded funds under Chapter 15-69 provide an annual audit to the Budget Section on the funds distributed to the center until the completion of four years following the final distribution of funds (effective July 1, 2005, through July 31, 2011).
24. **Acceptance of federal funds for a specific purpose or program which were not appropriated (Section 54-16-04.1(4) and 2005 House Bill No. 1278, Section 1)** - This section provides that upon approval by the Emergency Commission and Budget Section, the state may accept any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent prior to the next regular legislative session for deposit into a special fund until the Legislative Assembly appropriates the funds (effective August 1, 2005).
25. **Request for additional full-time equivalent positions for Medicaid program (Section 4 of 2005 House Bill No. 1012)** - This section provides that subject to Emergency Commission and Budget Section approval, the Department of Human Services may hire additional full-time equivalent positions for Medicaid program review of eligibility and payments in addition to those authorized by the Legislative Assembly when it is cost-effective to hire additional positions in lieu of contracts (effective July 1, 2005).
26. **Request for Department of Emergency Services to borrow up to $900,000 from the Bank of North Dakota (Section 6 of 2005 House Bill No. 1016)** - This section provides that subject to Emergency Commission and Budget Section approval, the Department of Emergency Services may borrow up to $900,000 from the Bank of North Dakota for expenses associated with the migration of the State Radio communications system from analog to digital during the 2005-07 biennium (effective July 1, 2005).

27. **Requests for additional expenditures made or employees hired for North Dakota lottery (Section 11 of 2005 House Bill No. 1259)** - This section provides that the Attorney General shall report to the Budget Section on any expenditures made or employees hired for additional administrative or other operating costs of the North Dakota lottery in excess of the appropriation (effective May 4, 2005).
28. **Request for construction of additional footings for the new Bank of North Dakota building (Section 6 of 2005 Senate Bill No. 2014)** - This section provides that upon Emergency Commission and Budget Section approval, the Industrial Commission may proceed with the construction of additional footings for up to three additional floors in the new Bank of North Dakota building (effective July 1, 2005).
29. **Request for receipt and expenditure of additional funds for treatment services under the substance abuse treatment pilot program (Section 3 of 2005 Senate Bill No. 2373)** - This section provides that the Department of Human Services may seek Emergency Commission and Budget Section approval to receive and spend additional federal or other funds that become available for treatment services under the department's substance abuse treatment pilot program (effective July 1, 2005).

ANALYSIS OF BUDGET SECTION DUTIES AND RESPONSIBILITIES

Background

The Budget Section considered a bill draft that would eliminate certain reports to the Budget Section and a memorandum entitled *Summary of the Bill Draft Relating to the Duties and Responsibilities of the Budget Section*. The Budget Section determined that two sections in the bill draft regarding the reporting requirements of the State Board of Agricultural Research and Education and the Children's Services Coordinating Committee should be retained and were removed from the bill draft. The Budget Section determined the reporting requirements of the Information Technology Department should be changed to remove the reporting requirement to the Legislative Audit and Fiscal Review Committee.

Recommendation

The Budget Section recommends Senate Bill No. 2028 relating to removing the statutory requirement for certain reports to the Budget Section.

OFFICE OF MANAGEMENT AND BUDGET

Status of the General Fund

At each Budget Section meeting, a representative of the Office of Management and Budget reviewed the status of the state general fund and revenue collections for the 2005-07 biennium. The following is a summary of the status of the state general fund, based on actual revenue collections reported in October 2006, reflecting the August 2006 revised revenue forecast for the remainder of the 2005-07 biennium:

Unobligated general fund balance - July 1, 2005	$68,015,056
Add	
General fund collections through August 31, 2006	1,258,186,328
Forecasted general fund revenue for the remainder of the 2005-07 biennium (based on the August 2006 revised revenue forecast)	934,713,862
Total estimated general fund revenue for the 2005-07 biennium	$2,260,915,246
Less	
2005-07 biennium general fund appropriations	1,989,452,623
Estimated general fund balance - June 30, 2007 ($261,167,092 more than the 2005 legislative estimate of $10,295,531)	$271,462,623

The Office of Management and Budget reported $99,472,631 was transferred from the general fund to the budget stabilization fund at the end of the 2003-05 biennium. The amount of the transfer is the maximum amount allowed to be retained in the fund, pursuant to NDCC Section 54-27.2-01.

The August 2006 revenue forecast estimated total revenues for the 2005-07 biennium to be approximately $2,038,283,783, which was approximately $258 million more than the March 2005 forecast. The increase in revenue was due mainly to an increase in sales and use tax and individual and corporate income tax collections and increased oil production and oil prices. Based on the preliminary revenue forecast, the transfers to the permanent oil tax trust fund for the 2005-07 biennium are anticipated to be $180.6 million. The average price per barrel of oil has been above the trigger price throughout the 2005-07 biennium. As a result, the tax rate for approximately 50 percent of monthly oil extraction is 6.5 percent. The remaining 50 percent of monthly oil extraction is from stripper well properties and enhanced recovery projects which are exempt from the oil extraction tax. The 6.5 percent tax rate will remain in effect until the average price per barrel of oil drops below the trigger price for five consecutive months. Pursuant to NDCC Section 57-51.1-01, the trigger price is $35.50 as indexed for inflation and the Tax Commissioner computes the indexed trigger price by December 31 of each year to be applied for the following calendar year. The adjusted trigger price for 2006 is $39.36. An oil production tax of 5 percent is applied to all oil produced in North Dakota.

The August 2006 revised forecast projects total revenue for the 2007-09 biennium to be approximately $2,139,400,000, which is approximately $359 million more than the March 2005 revenue forecast. The oil and gas production tax and the oil extraction tax are anticipated to reach the $71 million cap for the 2007-09 biennium, resulting in anticipated transfers of $177.4 million to the permanent oil tax trust fund for the 2007-09 biennium.

The Office of Management and Budget reported that preliminary deficiency general fund appropriations requests for the 2005-07 biennium as of October 1, 2006, total approximately $14.7 million as shown below:

Agency	Potential Deficiency Appropriation
Department of Emergency Services	$4,300,000
Department of Corrections and Rehabilitation	4,668,655
North Dakota University System (utilities)	4,644,533
North Dakota University System (flood and rain events)	849,568
Department of Public Instruction	275,000
Total	$14,737,756

NOTE: The Department of Human Services is not included. However, the Department of Human Services may request a deficiency appropriation of $3 million for the sex offender program at the State Hospital in Jamestown.

Tobacco Settlement Proceeds

Pursuant to NDCC Section 54-44-04, the Budget Section received reports on tobacco settlement proceeds received by the state. The Office of Management and Budget reported that as of October 2006, approximately $174.3 million had been received to date by the state and deposited in the tobacco settlement trust fund. The state receives annual payments in April and payments are expected to increase in April 2008. The proceeds have been allocated among the community health trust fund, common schools trust fund, and water development trust fund as follows, pursuant to Section 54-27-25:

Tobacco settlement trust fund	
Community health trust fund (10%)	$17,426,123
Common schools trust fund (45%)	78,417,552
Water development trust fund (45%)	78,417,552
Total transfers from the tobacco settlement trust fund	$174,261,227

The Office of Management and Budget reported the balances of the trust funds were:

Community health trust fund	
Deposits	$17,426,123
Expenditures	14,042,677
August 31, 2006, balance	$3,383,446
Water development trust fund	
Deposits	$78,417,552
Expenditures	68,497,210
August 31, 2006, balance	$9,920,342

Fiscal Irregularities

Pursuant to NDCC Section 54-14-03.1, the Budget Section received reports from the Office of Management and Budget on irregularities in the fiscal practices of the state. Fiscal irregularities include the use of state funds to provide bonuses, cash incentive awards, and temporary salary adjustments for state employees. The Office of Management and Budget identified the following fiscal irregularities:

- Secretary of State - Provided one-time pay adjustment of $1,500 for a special project.
- Highway Patrol - Provided pay adjustments totaling $12,403.03 required per United States Labor Department audit for hours worked from October 22, 2002, through October 12, 2004.
- Department of Commerce - Provided pay adjustments totaling $10,875 for a special project, temporary pay increases for workload due to vacant positions, and a temporary increase for workload due to a coworker's maternity leave.
- Department of Transportation - Provided a three-month temporary increase of $3,150 for a special project.
- Department of Commerce - Paid $672 to one employee and $5,340 to another employee for severance pay.
- Workforce Safety and Insurance - Paid $13,282 to a terminated employee in a settlement agreement.
- Department of Transportation - Paid $10,682 to an employee for backpay due to reversal of dismissal.
- Council on the Arts - Paid $850 each to four employees for temporary increase in workloads.
- Workforce Safety and Insurance - Paid $600 to an employee for a special project.
- Department of Commerce - Paid $500 to an employee for writing a successful federal grant application.
- Department of Public Instruction - Overspent its operating expense line item by $450,172 due to invoices from several vendors being received after the accounting system was closed for the 2003-05 biennium. Invoices were paid under 2005-07 biennium appropriation authority.
- Protection and Advocacy Project - Overspent its general fund spending authority by $803 due to payments made in July 2005 being posted to the wrong biennium.
- Department of Commerce - Provided temporary pay adjustments of $2,875 to one employee and $1,625 to another employee for additional workloads.

Preliminary Planning Revolving Fund

Pursuant to NDCC Section 54-27-22, the Budget Section is to receive reports from the Office of Management and Budget on recommendations for the use of money in the preliminary planning revolving fund. For the 2005-07 biennium to date, the Office of Management and Budget has not received any agency requests for money from the preliminary planning revolving fund. The balance of the preliminary planning revolving fund as of October 2006 is $69,840.

2007-09 Biennium Budget Form Changes

The Budget Section reviewed information on the form of the budget data and appropriation bill format. The information included the statutory provisions related to budget data, the 2005-07 biennium appropriation bill format, and 2005 legislation relating to budget information. There were several bills considered during the 2005 legislative session that would have changed budget information, including bills that would require continuing appropriation, bonding, and financing or leasing information be included in budget data, and a bill that would have established a limitation on the general

fund budget increases recommended by the Governor or approved by the Legislative Assembly.

Pursuant to NDCC Section 54-44.1-07, the Office of Management and Budget reported it did not have any proposed changes for the 2007-09 biennium budget data or appropriation bill format. The 2007 Legislative Assembly will use the same format for appropriation bills as was used during the 2005 legislative session, providing three sections in each appropriation bill detailing the prior biennium's appropriations, changes, and the 2007-09 appropriation. Budget data required from the agencies will include information on telecommute analysis, agency continuing appropriations, and agency information technology plans.

Pursuant to NDCC Section 54-44.1-07, the Budget Section recommended changes to the budget data by requesting the Office of Management and Budget to:

- Direct agencies, in the development of 2007-09 budget requests, to identify one-time budget investments that will result in long-term budget savings or efficiencies and other one-time budget expenditure items and that the Office of Management and Budget include these items in the executive budget information provided to the 60th Legislative Assembly in December 2006, including the amount and funding source of items recommended in the executive budget.
- Provide a separate report identifying the estimated impact of increased oil activity and oil prices on all state revenue types in the projected state revenues for the 2005-07 and 2007-09 bienniums and Economy.com to provide information on the impact of the state's oil industry on state revenues.
- Provide the legislative revenue forecast to the 2007 Legislative Assembly during the week of February 5, 2007.

Status of the Risk Management Workers' Compensation Program

The Office of Management and Budget presented information to the Budget Section regarding the status of the risk management workers' compensation program, pursuant to NDCC Section 65-04-03.1(5). Legislation in 2001 established a single workers' compensation account for all state entities. The Risk Management Division of the Office of Management and Budget administers the program. The Office of Management and Budget reported for coverage periods beginning July 1, 2001, the Risk Management Division entered deductible contracts with Workforce Safety and Insurance for 143 consolidated accounts. The deductible amount selected was $100,000 per claim. Results for the five coverage years beginning July 1, 2001, through June 6, 2006, are:

Nonconsolidated guaranteed cost program premium and assessments		$19,850,412
Risk Management Division deductible premium paid to Workforce Safety and Insurance	$7,595,455	
Risk Management Division paid losses through June 6, 2006	5,365,751	
Risk Management Division pending losses (reserves)	1,077,109	
Risk Management Division combined deductible premium and losses		14,038,315
Estimated savings for a five-year period		$5,812,097

The Office of Management and Budget reported the initial three-year savings was approximately $2.2 million. The Risk Management Division has implemented programs to pass the savings on to agencies with effective risk management strategies. The funds returned to agencies as a result of the implementation of safety programs totaled $1.3 million. The Risk Management Division recently implemented a dividend program to return money to agencies based on loss history, with $362,000 returned to agencies through this program.

The Budget Section learned if a claim is denied, charges would not be assessed to the risk management account but if a claim is accepted and determined to be a compensable claim, claim costs would be charged to the risk management account.

ConnectND Deficiency Appropriation - 2003-05 Biennium

The Budget Section received a report from the Office of Management and Budget on a projected budget surplus for the ConnectND project for the 2003-05 biennium. During the 2003-05 biennium, the report indicated the North Dakota University System requested and received $150,000 from the state contingency fund in support of the ConnectND project. During the 2005 legislative session, the University System also requested and received a deficiency appropriation of $617,520 to help cover additional consulting costs. The Budget Section learned planning assumptions changed and the ConnectND budget anticipated a carryover balance at the end of fiscal year 2005 of $835,000. The $150,000 from the contingency fund was to be returned and Budget Section direction was sought regarding the balance of $617,520.

The Budget Section approved asking the Legislative Council chairman to send a letter to the chancellor of the North Dakota University System encouraging the University System to return the 2003-05 biennium deficiency appropriation of $617,520 for ConnectND costs to the general fund. The letter was sent in June 2005.

2003-05 Biennium General Fund Turnback

The Budget Section received a report from the Office of Management and Budget on the 2003-05 biennium agency general fund turnback amounts. Agency turnback to the general fund for the 2003-05 biennium totaled approximately $16.9 million. Turnback was

estimated at $12.9 million at the close of the 2005 Legislative Assembly. Agencies with the largest amounts of general fund turnback included the Department of Human Services ($8,478,412), judicial branch ($1,561,120), Tax Commissioner's office ($1,478,915), and the Veterans Home ($1,255,752).

Special Emergency Commission Meeting - Hurricane Katrina

The Office of Management and Budget provided the Budget Section with information on a special meeting of the Emergency Commission held on September 7, 2005. Governor John Hoeven informed members of the Emergency Commission on North Dakota's assistance in response to the Hurricane Katrina disaster. Pursuant to NDCC Section 37-17.1-05, the Governor issued an executive order on September 6, 2005, declaring a state of emergency that allows the Governor to use all available resources of state government as reasonably necessary to manage the disaster or emergency.

The Office of Management and Budget reported that, even though federal officials assured the Governor that the federal government will reimburse the state for all the expenses it incurs as a result of Hurricane Katrina, the state could still incur some nonreimbursable expenses. The Budget Section learned the state would have to pay for the expenses at the time they are incurred and the Federal Emergency Management Agency (FEMA) will reimburse the state at a later date. The Office of Management and Budget reported that the National Guard was expected to incur approximately $2 million in expenses to send approximately 88 National Guard soldiers to the Gulf Coast region for approximately 90 days. The Department of Emergency Services was also expected to incur expenses related to the Hurricane Katrina disaster.

The Office of Management and Budget reported resources available to the Governor for the emergency declaration include borrowing funds from the Bank of North Dakota and the state general fund, both of which would be repaid when the state receives federal reimbursement from the Federal Emergency Management Agency.

HIGHER EDUCATION

Centers of Excellence

Pursuant to NDCC Section 15-69-02, the Budget Section considered applications for centers of excellence funding awards that had been recommended by the Centers of Excellence Commission and the Emergency Commission and forwarded to the Budget Section. The Budget Section considered 11 requests, all of which were approved. Funding for the approved applications total $20 million, including $15 million from loan proceeds from the Bank of North Dakota as authorized in Section 11 of 2005 Senate Bill No. 2018, to be repaid from the permanent oil tax trust fund, and $5 million from loan proceeds from the Bank of North Dakota as authorized by Section 13 of 2005 Senate Bill No. 2018. Section 12 of 2005 Senate Bill No. 2018 appropriates up to $16 million from the permanent oil tax trust fund to the Office of Management and Budget for the purpose of repaying the $15 million loan and related interest. The Office of Management and Budget will request authority from the 2007 Legislative Assembly to repay the $5 million loan. The approved applications for centers of excellence are:

- Bismarck State College Career and Technology Institute - $3,000,000.
- Lake Region State College Dakota Center for Optimized Agriculture - $450,000.
- University of North Dakota National Center for Hydrogen Technology - $2,500,000.
- North Dakota State University Center for Advanced Electronics Design and Manufacturing - $3,000,000.
- University of North Dakota Center for Life Sciences and Advanced Technology - $3,500,000.
- University of North Dakota Center for Unmanned Aerial Vehicle and Simulation Applications - $1,000,000.
- North Dakota State University Center for Agbiotechnology: Oilseed Development - $2,000,000.
- North Dakota State University Center for Surface Protection - $2,000,000.
- Valley City State University Enterprises Application Model - $1,000,000.
- Williston State College Petroleum Safety Technology Center - $400,000.
- Dickinson State University Center for Entrepreneurship and Rural Revitalization - $1,150,000.

Capital Projects

During the 2005-06 interim, the Budget Section received requests relating to the following University System capital projects:

- **North Dakota State University - Bison Sports Arena** - Pursuant to NDCC Section 15-10-12.1, the Budget Section approved North Dakota State University's request to accept and spend $8 million in donated funds for an addition and renovation project to the Bison Sports Arena.
- **Minot State University - Bottineau - Thatcher Hall addition** - Pursuant to NDCC Section 48-02-20, the Budget Section approved Minot State University - Bottineau's request to change the scope of the Thatcher Hall addition project to include a racquetball court project, resulting in a net reduction of $43,000 for the estimated cost for the racquetball court project.

Local Funds - Higher Education Construction Projects

The Budget Section received a report from the North Dakota University System on the sources of local funds received for construction projects of entities under the State Board of Higher Education for the 2003-05 biennium, pursuant to NDCC Section 15-10-12.3. There were three projects completed during the 2003-05 biennium which had a legislatively mandated local funds

match requirement associated with the state appropriation: a 1999-2001 biennium authorized project for Williston State College which was completed during the 2003-05 biennium and two projects authorized in the 2001-03 biennium--one project for Minot State University and one for the Langdon Research Center--which were also completed in the 2003-05 biennium. All three projects were completed within the overall appropriation authority and within the local match requirements. The University System reported there were no state-appropriated projects with a local match requirement approved for the 2003-05 biennium.

Higher Education Equity Pool

Pursuant to Section 9 of 2005 Senate Bill No. 2003, the Budget Section received a report from the North Dakota University System on $2 million to be used to address equity at higher education institutions and other campus needs. In January 2006 the University System reported that the State Board of Higher Education approved the allocation of $300,000 to the University of North Dakota, $400,000 each to Bismarck State College and Lake Region State College, and $900,000 to North Dakota State University.

Higher Education Review of Long-Term Finance Plan

Pursuant to Section 17 of 2005 Senate Bill No. 2003, the Budget Section received a report from the North Dakota University System on the review of the long-term finance plan, including a review of peer institutions and a review of the allocation of funds between equity and parity. The Budget Section learned a committee consisting of campus representatives assisted the University System with the review. A review was also completed by a consulting firm--MGT of America, Inc.--for the Higher Education Committee. A comprehensive report and recommendations were submitted to the State Board of Higher Education in May 2006.

The University System reported the board adopted several recommended changes to the long-term finance plan, many of which are consistent with the MGT of America, Inc., recommendations. The University System noted recommendations that were considered to be major issues. Two recommendations relate to changing the allocation of parity and equity money. The formula for distributing equity funding will be changed to a weighting calculation that is based on both dollar and percentage differentials in peer benchmarks. One recommendation would remove the direct appropriations for agricultural research and extension services from North Dakota State University but include the University of North Dakota School of Medicine and Health Sciences for purposes of calculating benchmarks. The recommendations were included in the development of the University System 2007-09 biennium budget request, which includes a $10 million pool to address equity differentials.

Status of Utilities Budget

The Budget Section received a report from the North Dakota University System on the status of utilities budgets for the institutions of higher education for the 2005-07 biennium. The University System anticipates a utility funding shortfall of over $5 million in the 2005-07 biennium due to higher fuel prices. The University System reported that the impact on campuses varies significantly due to differences in heating sources. Campuses have absorbed some of the utility cost increases by reallocating resources from other budget areas or passing the cost increases on to students through tuition increases. The University System reported it plans to request a deficiency appropriation for the 2005-07 biennium.

STATUS OF THE STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION

The State Board of Agricultural Research and Education provided information to the Budget Section regarding the status of the board, pursuant to NDCC Section 4-05.1-19(10). The board reported significant progress has been made on programs initiated by the 2005 Legislative Assembly. Several capital improvement projects are nearing completion and over $1 million in matching funds was raised for the North Central Research Center agronomy laboratory and greenhouse. The board has developed a priority list to address future issues which includes keeping the infrastructure current and aggressively addressing pest management. The board reported it will continue its investment in research because North Dakota agriculture provides $3.5 billion annually in cash receipts.

INFORMATION TECHNOLOGY DEPARTMENT

Annual Reports

Pursuant to NDCC Section 54-59-19, the Budget Section received the Information Technology Department 2004-05 and 2005-06 annual reports. The Information Technology Department reported it tracks and monitors the cost and revenue for each service to ensure that service is not subsidizing another service. The federal government does not allow the department to charge rates that generate revenues in excess of costs on federally funded programs; therefore, the department monitors its cash balances and adjusts rates accordingly. The department also monitors what other entities are charging for similar services in an effort to maintain quality services at a fair price.

Approximately 66 percent of the department's total revenue is generated from 10 agencies. The Information Technology Department reported a second data center was created in Mandan to provide disaster recovery services previously acquired through IBM in Boulder, Colorado. The relocation of the data center allows the department to bring critical systems up within eight hours in case of a disaster at the Bismarck data center.

DEPARTMENT OF HUMAN SERVICES

Transfers in Excess of $50,000

Pursuant to Section 6 of 2005 House Bill No. 1012, the Budget Section received a report from the Department of Human Services regarding transfers the department made between line items and between subdivisions of that bill in excess of $50,000. The transfers made by the department pursuant to this section are:

Description	General Fund	Federal/Other Funds	Transfer Total
Move funding from human service centers to central office[1]			
Administration/support	$382,343	$40,509	$422,852
Northwest Human Service Center	($46,960)	($11,477)	($58,437)
North Central Human Service Center	($45,552)	($4,671)	($50,223)
Lake Region Human Service Center	($28,120)	($3,276)	($31,396)
Northeast Human Service Center	($65,322)	($7,306)	($72,628)
Southeast Human Service Center	($44,792)	($4,431)	($49,223)
South Central Human Service Center	($28,120)	($3,276)	($31,396)
West Central Human Service Center	($47,637)	($6,072)	($53,709)
Badlands Human Service Center	($75,840)		($75,840)
Move funding from human service centers to program/policy management[2]			
Mental Health and Substance Abuse	$114,702	$115,498	$230,200
Lake Region Human Service Center	($114,702)		($114,702)
Southeast Human Service Center		($115,498)	($115,498)
Move funding among human service centers[3]			
North Central Human Service Center	$3,672	$93,706	$97,378
Lake Region Human Service Center		($46,260)	($46,260)
West Central Human Service Center	($3,672)	($47,446)	($51,118)
Move national family caregiver funds from human service centers to central office[4]			
Aging Services		$454,466	$454,466
Northwest Human Service Center		($28,305)	($28,305)
North Central Human Service Center		($126,773)	($126,773)
Lake Region Human Service Center		($31,767)	($31,767)
Northeast Human Service Center		($42,443)	($42,443)
Southeast Human Service Center		($74,521)	($74,521)
South Central Human Service Center		($40,013)	($40,013)
West Central Human Service Center		($67,354)	($67,354)
Badlands Human Service Center		($43,290)	($43,290)
Transfer funding from program/policy management to central office[5]			
Mental Health and Substance Abuse	$138,317	$249,021	$387,338
Administration/support	($138,317)	($249,021)	($387,338)

[1]Billing/receivable functions were moved from the human service centers to fiscal administration to apply consistent practices and maximize revenue collections.

[2]Clinical and data lead functions were moved from the human service center level to program/policy management for proper program alignment.

[3]Child care licensing functions were consolidated in regions to create consistent application of policy.

[4]Funding the grants from the central office with a regional designation is consistent with other programs.

[5]Full-time equivalent positions were moved under the direction of the Mental Health and Substance Abuse Division to provide for a more efficient operation of the research function staff.

Federal Medical Assistance Percentage

The Budget Section received a report from the Department of Human Services regarding the federal medical assistance percentage for fiscal year 2007. The Budget Section learned that in September 2005 the Federal Funds Information for States calculated the actual federal medical assistance percentage for federal fiscal year 2007 at 64.72 percent, compared to 62.37 percent estimated during the 2005 Legislative Assembly. The increase in the federal medical assistance percentage was estimated to reduce the general fund matching requirements for the Department of Human Services by approximately $8.8 million. The Department of Human Services anticipated using the $8.8 million from the general fund that is no longer needed for increases in utilization of services within the Medicaid program.

Medicaid Management Information System

The Budget Section received periodic reports from the Department of Human Services regarding the status of the Medicaid management information system (MMIS). The Budget Section learned that during the 2003-05 biennium the department hired Fox Systems, Inc., as a consultant to assist with the preparation of several documents for the eventual procurement of a new Medicaid management information system. Based on an analysis of the costs, benefits, and risks, the

department recommended a turnkey solution over a fiscal agent solution. The 2005 Legislative Assembly appropriated $29.2 million, including $3.7 million from the permanent oil tax trust fund, to design, develop, and implement the replacement Medicaid management information system. The department released a request for proposal (RFP) on June 1, 2005, which was due on September 1, 2005, and the final offers were due on December 5, 2005. The cost proposals, including the best and final offers, came in higher than anticipated due in part to significant changes taking place within the areas of health care and Medicaid technology. The newer technology will enable the Medicaid systems to be more effective and efficient and is intended to reduce long-term replacement costs; however, it has increased the initial development costs.

Based on the best and final offers received from the vendor, the Information Technology Department's estimated cost for staff, hardware and software, and the Department of Human Services project office/support costs, the overall projected cost of the MMIS project is $56.8 million, of which $5.7 million is from state funds.

The department reported that postponement of the MMIS replacement may result in the loss of the 90 percent federal match the department has secured for project replacement costs, providers and clients would be negatively impacted, and there is no guarantee that the cost of the system will decrease if the project is postponed. The Budget Section learned the MMIS project is estimated to take 24 months to complete and the department anticipated beginning the project in April 2006.

The Department of Human Services completed contract negotiations with Affiliated Computer Services, Inc., Government Healthcare Solutions for a project cost of $56.8 million. The Budget Section learned Affiliated Computer Services, Inc., agreed to hold its price firm until the 2007 Legislative Assembly is able to consider funding the costs of the remainder of the project, as long as the department moves forward with an initial design. Affiliated Computer Services, Inc., agreed to sign a contract identifying two phases--Phase 1 includes a detailed system design that is expected to cost no more than $8 million and is reusable and Phase 2 includes the balance of the design, development, and implementation. The two-phased approach is intended to protect the state's interest in retaining the bid. The department reported the Information Technology Department has agreed to complete initial development work with 100 percent of its effort being reusable and costing approximately $1.6 million. Under this plan, the Department of Human Services would spend no more than $10 million in total funds for Phase 1, including $1 million from state funds. The remaining state appropriation will be returned.

The Budget Section approved asking the Legislative Council chairman to send a letter to express the committee's support of the Department of Human Services proceeding with Phase 1 of the MMIS project with a final decision to be made by the 2007 Legislative Assembly. The department was encouraged to begin preliminary work on the project that would be required for all of the following options:

- Acceptance of the current Affiliated Computer Services, Inc., bid.
- Rebidding of the MMIS project.
- Joint development with another state.
- Use of a fiscal agent.
- Outsourcing the billing and payment components.

The Budget Section also encouraged the department to contract for an independent analysis of the five options, including a cost-benefit analysis, and to arrange for the information to be available to the Legislative Assembly by January 8, 2007.

The department has hired MTG Management Consultants LLC, Seattle, Washington, to complete an analysis of the five options for consideration by the 2007 Legislative Assembly.

The department subsequently reported it is focusing on the requirement document meetings and completing the visioning process for future business capabilities. The Information Technology Department has begun work on Phase 1, which includes data conversion analysis, design of system edits and audits, and design work for the recipient hub. The department has established a Medicaid Systems Project Stakeholder Committee to secure input from various stakeholders regarding the vision, design, and implementation of a new Medicaid management information system and to create a communication process with the stakeholders regarding the design and operations of the eventual system.

Medicaid Medical Advisory Committee

The Department of Human Services presented information to the Budget Section regarding the Medicaid Medical Advisory Committee. The Department of Human Services reported the federal Medicaid regulations require each state Medicaid program to have a medical care advisory committee. The advisory committee is to advise the Medicaid agency director on health and medical care services. The Department of Human Services asked the advisory committee to participate in discussions regarding the future of Medicaid and the prospect of a Medicaid program that encompasses sustainability, consumer responsibility, and fiscal accountability. The advisory committee will meet quarterly to continue the "modernizing Medicaid" discussions.

DEPARTMENT OF COMMERCE

Annual Audits of Renaissance Fund Organizations

The Department of Commerce reported on the annual audits of renaissance fund organizations, pursuant to NDCC Section 40-63-07. The department reported there are 26 cities with a renaissance zone, but only 6 cities have a renaissance fund organization--Fargo, West Fargo, Casselton, Valley City, Jamestown, and Hazen. The city of Hazen started its own fund and is doing its own management and the other five cities

contract with Renaissance Ventures LLC, in Fargo to manage their respective renaissance fund organizations.

The Budget Section learned the 1999 Legislative Assembly appropriated $2.5 million in tax credits for investments in a renaissance fund organization and the 2001 Legislative Assembly appropriated an additional $2.5 million. As of October 2006 there is $610,000 remaining from the original appropriation and the entire $2.5 million from the second appropriation is still available.

The department reported the audit of the renaissance fund organizations for Fargo, West Fargo, Casselton, Jamestown, and Valley City as of December 31, 2004, shows that the city of Fargo has received investments of $2,633,000, the city of Jamestown $300,000, the city of Casselton $75,000, and the city of West Fargo $200,000, resulting in the use of $1,604,000 in tax credits. No investments have been made in Valley City's renaissance fund organization. The total tax credits requested as of September 2005 total $1,880,500, which included the use of $273,500 in tax credits for the city of Fargo since January 1, 2005, and $3,000 in tax credits for the city of Hazen renaissance fund organization from a $6,000 investment. The department reported it has not received the annual audits for 2005.

Annual Report on Job Web Site

The Department of Commerce reported to the Budget Section on money spent to administer an Internet web site that provides career guidance and job opportunity services, pursuant to NDCC Section 54-60-10. The Budget Section learned the Department of Commerce has discontinued use of the *northdakotahasjobs.com* web site and has not spent any money in the 2005-07 biennium on a career guidance and job opportunity web site.

Common Accountability Measures Report

The Budget Section received a report from the Department of Commerce on common accountability measures for the 2003-05 and 2005-07 bienniums. The 2003 Legislative Assembly gave the Department of Commerce the responsibility of monitoring and reporting common measures accountability for workforce development and training activities. The workforce development and workforce training programs covered under the accountability report include the Department of Human Services job opportunities and basic skills training program, the basic employment skills training program, and the senior community service employment program that was transferred from Job Service North Dakota to the Department of Human Services effective July 1, 2006; Job Service North Dakota Work Force 2000 program, Workforce 20/20 program, North Dakota new jobs training program, trade adjustment assistance program, and the Workforce Investment Act; and the University System workforce training quadrants.

North Dakota Economic Goals and Associated Benchmarks

The Budget Section received a report from the Department of Commerce on North Dakota economic goals and associated benchmarks, pursuant to Section 53 of 2005 Senate Bill No. 2018. The Department of Commerce reported North Dakota is making progress in the following areas:

- Net growth of 2,225 businesses and 7,100 jobs.
- Consistent increase in average annual wages.
- Largest percentage growth nationally in academic research and development expenditures from 2000 through 2004.
- Significant increases in manufacturing jobs.
- North Dakota businesses are competing successfully in the global market with North Dakota exports growing at almost twice the national rate.

The Budget Section learned North Dakota ranks No. 1 in lowest Workforce Safety and Insurance premiums according to the Oregon Department of Consumer and Business Services and No. 2 in the lowest cost of doing business according to the Milken Institute cost of doing business index.

Rural Development Council - Use of Grant Funds

Pursuant to Section 21 of 2005 Senate Bill No. 2018, the Department of Commerce presented information to the Budget Section regarding the use of grant funds provided to the Rural Development Council. Section 21 of Senate Bill No. 2018 directed the Department of Commerce to provide a grant of up to $50,000 to the Rural Development Council. The Rural Development Council was initiated in 1992 by the United States Department of Agriculture as a rural outreach tool to provide rural communities with access to funds and program assistance. The council was relocated to the Center for Technology and Business in November 2004. Grant funds have been used for:

- One part-time staff.
- Electronic commerce - Web site development and hosting fees.
- Office, equipment, telephone, etc.
- Travel (one trip to Washington, D.C.); rural outreach.
- Program cost-sharing with rural communities.

Red River Valley Research Corridor - Use of Grant Funds

The Department of Commerce presented information to the Budget Section regarding the use of grant funds provided to the Red River Valley Research Corridor, pursuant to Section 25 of 2005 Senate Bill No. 2018. The 2005 Legislative Assembly provided $400,000 to assist in both marketing and the development of the assets within the Red River Valley Research Corridor. Additional funding of $155,000 for each year in the biennium was granted by the Economic Development Administration. The funds have been used for:

- Underwrite the cost of trade show displays in a Department of Commerce marketing event in the Silicon Valley.

- Retain the services of Development Counselors International who have brought in national journalists and site selectors to the region.
- Underwrite the cost of university staff to travel on business prospecting trips to visit with companies that may wish to relocate to the University of North Dakota or North Dakota State University.
- Underwrite the cost of university experts to travel to conferences to speak of the assets of the University of North Dakota and North Dakota State University.
- Purchase membership in a life science online community that specializes in research and development.
- Pay for sponsorship of selected conferences deemed appropriate to the development of assets.
- Underwrite the cost of general marketing pieces on an as-needed basis.

North Dakota Center for Technology Program - Use of Grant Funds

Pursuant to Section 26 of 2005 Senate Bill No. 2018, the Department of Commerce presented information regarding the use of grant funds provided to the center for technology program. Section 26 directed the Department of Commerce to provide a grant up to $50,000 to the center for technology program. The Center for Technology and Business was founded in 1999 as Women and Technology and has been funded by the United States Small Business Administration with annual matching grants from the Department of Commerce. The program has assisted more than 17,000 students from 218 North Dakota communities.

The Department of Commerce reported the Center for Technology and Business provided the following technology outreach to rural North Dakota in 2006:

- 1,925 students statewide participated in classes in introductory and intermediate computers, Excel, and Access.
- Increased rural payrolls by $1.242 million and created 115 home-based jobs working with Verety (formally known as SEI) in a unique home-based model taking orders for McDonald's restaurants. Jobs were generated in Wishek, Fessenden, Rugby, and Steele.
- Increased Telco revenues by creating more rural Internet customers ($7.65 million cumulative over five years).
- 154 students entered the rural workforce after learning how to use a computer.
- 163 jobs were retained through increased workforce intelligence. This was done by bringing technology into businesses and nonprofit and government entities.
- $86,625 in classroom revenues paid to rural computer trainers.
- 90 injured workers were retrained for vocational technical education and Workforce Safety and Insurance. All workers reentered the workforce in new jobs utilizing technology as a job component.

Partners in Marketing Program - Use of Grant Funds

Pursuant to Section 27 of 2005 Senate Bill No. 2018, the Department of Commerce presented information regarding the use of grant funds provided to the partners in marketing grant program. Section 27 provided $250,000 for the partners in marketing grant program and the Department of Commerce reported grants totaling $175,153 have been approved during the 2005-07 biennium as follows:

Grant Recipient	Amount	Use
Bismarck-Mandan Development Association	$5,000	Trade mission
Cooperstown Economic Development Authority	5,000	Trade mission
Grand Forks Region Economic Development Corporation	15,000	Trade mission/advertising
Greater Fargo-Moorhead Economic Development Corporation	6,734[1]	Trade mission
Hannaford Community and Economic Development Corporation	3,309	Trade mission
Tri-County Regional Development	25,000	Specialty event
Mercer County Economic Development Corporation	7,110	Collateral materials
Southwest Region Developers	10,000	Specialty event
Tioga Area Development Corporation	5,000	Trade mission
Valley City - Barnes County Economic Development Corporation	10,000	Collateral materials
Williston Area Development Foundation	9,000	Trade mission
Greater Fargo-Moorhead Economic Development Corporation	5,500	Collateral materials
McHenry County Job Development Authority	9,000	Collateral materials
Williston Area Development Foundation	25,000	Specialty event
Jamestown Stutsman Development	19,500	Collateral materials
Southwest Region Developers	15,000	Specialty event
Total	$175,153	

[1]This grant was approved in the 2003-05 biennium and paid in the 2005-07 biennium.

HIGHWAY PATROL TRAINING PROGRAM

The Highway Patrol presented information to the Budget Section regarding the training program for law enforcement officers and other emergency service providers under 2005 Senate Bill No. 2031, which provided $400,000 for training law enforcement officers and other emergency service providers. The funding was included in the Highway Patrol budget to support the efforts of the Peace Officer Standards and Training Board in providing regional training throughout North Dakota. The Highway Patrol reported the first course was held in February 2006 and there were 14 training

programs scheduled through September 30, 2006. Reimbursement has been requested at a total cost of $239,000. Not all courses have requested reimbursement.

MILL AND ELEVATOR ANNUAL REPORT

2004-05 Annual Report

Pursuant to Section 35 of 2005 Senate Bill No. 2014, the Budget Section received the 2004-05 annual report of the Mill and Elevator, including the current role and mission of the mill, short-term and long-term plans, and a description of the efforts by the mill to inform legislators about the role, mission, and operations of the mill.

The Mill and Elevator reported the mission of the mill is to promote and provide support to North Dakota agriculture, commerce, and industry; to provide superior quality, consistency, and service to its customers; to grow the business and provide a profit to the owners, who are the citizens of North Dakota; and to conduct business with the highest integrity so that the employees, customers, suppliers, and owners are proud to be associated with the mill. The mill reported six strategic issues:

1. Promote and support North Dakota agriculture, commerce, and industry.
2. Increase the earning potential of the mill.
3. Focus on its customers.
4. Develop and grow the mill employees.
5. Improve technology.
6. Expand internal and external communications.

The Budget Section learned the Mill and Elevator produced 2.9 million pounds of flour per day and the completion of an expansion project would increase the mill's production to 3.4 million pounds of flour per day which would make the mill the largest single-site flour mill in the country. The mill processed 65,000 bushels of wheat per day, had an elevator capacity of 4.3 million bushels, and had 9 million pounds of flour storage. The mill's profits increased each fiscal year from 2001 through 2005 as follows:

Fiscal Year	Profits
2001	$330,085
2002	$1,924,595
2003	$2,003,461
2004	$5,636,472
2005	$5,806,157

The Budget Section learned the significant increase in the Mill and Elevator profits from fiscal years 2003 to 2004 was due to the completion of a renovation project. Total profits for the mill from 1971 to 2005 were approximately $92.3 million and the mill transferred $52.5 million to the state general fund during that time. Planned capital expenditures for fiscal year 2006 total approximately $8.7 million, including $6.3 million for the C and K mill expansion project and $850,000 for the Buhler packaging system. Capital spending for the mill for fiscal years 2001 through 2005 was:

Fiscal Year	Total Capital Spending	Major Project
2001	$20,083,884	Renovation and expansion project ($19,500,000)
2002	$684,195	Organic wheat blending system ($240,000)
2003	$1,392,377	Plant electrical generator ($540,000)
2004	$1,094,471	K-mill capacitors ($95,585); bulk flour plant pump room ($82,610)
2005	$2,262,589	Whole wheat mill project ($1,700,000)
2006	$8,556,280	C-mill expansion/K-mill renovation ($5,431,858); Buhler pack line ($363,850); railcar unload system and track ($249,058)

2005-06 Annual Report

Pursuant to Section 35 of 2005 Senate Bill No. 2014, the Budget Section received the 2005-06 annual report of the Mill and Elevator, including the same information that was in the last report regarding the role and mission of the mill, short-term and long-term plans, and a description of the efforts by the mill to inform legislators about the role, mission, and operations of the mill.

The Budget Section learned the Mill and Elevator now produces 3.4 million pounds of flour per day, processes 65,000 bushels of wheat per day, has an elevator capacity of 4.3 million bushels, and has 9 million pounds of flour storage. The mill's profits have increased each fiscal year from 2001 through 2006 as follows:

Fiscal Year	Profits
2001	$330,085
2002	$1,924,595
2003	$2,003,461
2004	$5,636,472
2005	$5,806,157
2006	$6,225,560

The Budget Section learned total profits for the Mill and Elevator from 1971 to 2006 were approximately $98.5 million and the mill has transferred $52.5 million to the state general fund during that same time. The mill will transfer $5 million at the end of the 2005-07 biennium. Planned capital expenditures for fiscal year 2007 total approximately $3.8 million, including $1.2 million for the remainder of the C and K mill expansion project, $480,000 remaining for the Buhler packaging system, and $260,000 for a specialty packer palletizing system. Capital spending for the mill for fiscal years 2001 through 2006 was:

Fiscal Year	Total Capital Spending	Major Project
2001	$20,083,884	Renovation and expansion project ($19,500,000)
2002	$684,195	Organic wheat blending system ($240,000)
2003	$1,392,377	Plant electrical generator ($540,000)
2004	$1,094,471	K-mill capacitors ($95,585); bulk flour plant pump room ($82,610)
2005	$2,262,589	Whole wheat mill project ($1,700,000)
2006	$8,556,280	C-mill expansion/K-mill renovation ($5,431,858); Buhler pack line ($363,850); railcar unload system and track ($249,058)

WORKFORCE SAFETY AND INSURANCE

Building Maintenance Account

Workforce Safety and Insurance presented information to the Budget Section regarding the status of the building maintenance account, pursuant to NDCC Section 65-02-05.1. Fiscal year 2006 was the third full year of operations at Century Center--the Workforce Safety and Insurance office building. In addition to Workforce Safety and Insurance, the building houses five other state agencies--the Department of Commerce, the Parks and Recreation Department, the Department of Human Services Child Support Enforcement and Provider Audit Divisions, the Council on the Arts, and the Office of Management and Budget Risk Management Division. The rental rate of $13 per square foot per year for tenant office space and $5 per square foot per year for storage space was set in June 2003. The rental rates will remain the same until July 1, 2007, at which time the rate will increase to $13.50 per square foot per year for tenant office space. The increase is due to rising operating costs, such as property taxes and contract services.

The Century Center's single largest operating expense is the payment of in lieu of taxes made to the city of Bismarck, which was $251,621.44 in 2005 and is approximately one-third of the operating expenses for the building.

The Budget Section learned the Century Center was the first state-operated facility to be awarded the Environmental Protection Agency Energy Star certification in 2004. The use of geothermal heat pump systems and low-voltage controlled lighting systems helped maintain consistent costs of operation. The anticipated ending balance of the building maintenance account of $137,099 for fiscal year 2007 is approximately $65,000 less than the actual ending balance for fiscal year 2006 of $202,484.

GAME AND FISH DEPARTMENT

Land Acquisition Requests

Pursuant to NDCC Section 20.1-02-05.1, the Budget Section received requests from the Game and Fish Department for the approval of land acquisitions.

Walsh and Pembina Counties

The Budget Section learned of the availability for the Game and Fish Department to purchase up to 3,000 acres in Walsh and Pembina Counties. The land is currently under easement to the United States Natural Resources Conservation Service through the emergency watershed protection program. The plan presented to the Budget Section is that the Game and Fish Department would purchase the residual value of the land from the property owner at $250 per acre. The price per acre was determined by Farm Credit Services based on market value of lands in northeastern North Dakota subject to emergency watershed protection easements. The Game and Fish Department reported these types of land would fit into many of the department's long-term goals for fish and wildlife programs.

Pursuant to NDCC Section 20.1-02-05.1, the Budget Section approved the Game and Fish Department request to acquire up to 3,000 acres of land in Walsh and Pembina Counties.

Northwest McKenzie County

The Budget Section learned of the availability of 242.37 acres in northwest McKenzie County. The available property is at the confluence of the Missouri and Yellowstone Rivers 30 miles southwest of Williston and lies between two tracts of land that were purchased in 2003 and 2004 by 18 conservation organizations and agencies. The land acquisition would be made by the American Foundation for Wildlife at a cost of $400,000 with the Game and Fish Department providing funding in the amount of $212,500 through a grant to the foundation. The Game and Fish Department has the funds available in its current budget and will not be asking Emergency Commission approval for additional spending authority. The Game and Fish Department reported 75 percent of its cost is reimbursable through a United States Fish and Wildlife Service grant. Once the purchase is made, the American Foundation for Wildlife will deed the lands to the Game and Fish Department. The Budget Section learned the land would be managed as state wildlife management areas and would be open to public hunting, fishing, and trapping and be available for educational and research uses.

Pursuant to NDCC Section 20.1-02-05.1, the Budget Section approved the Game and Fish Department request to acquire 242.37 acres of land in northwest McKenzie County.

DEPARTMENT OF EMERGENCY SERVICES

Reorganization

The Budget Section received a report from the Department of Emergency Services on the status of the reorganization of the Division of Emergency Management into the Department of Emergency Services. The Budget Section learned the Division of Emergency Management has been restructured as the Department of Emergency Services, pursuant to 2005 House Bill No. 1016. The department, which is under the direction of the Adjutant General, consists of the Division of State Radio and the Division of Homeland Security. The department reported an advisory committee has been formed which is comprised of 11 stakeholder members and is governed by an approved charter. The strategic planning model being used for the reorganization consists of the following components:

- Mission.
- Vision.
- Business operational base.
- Strengths, weaknesses, opportunities, and threats.
- Goals.
- Objectives (action plans).
- Systems.
- Processes.

- Communications infrastructure.
- Values.

The department reported on employee positions affected by the reorganization and justification for any prior salary increases, pursuant to Section 10 of 2005 House Bill No. 1016. Salary increases were analyzed on an individual basis by the Office of Management and Budget Human Resource Management Services Division. The Budget Section learned that, although administrative rules were not originally followed, all salary increases were determined to be within guidelines except for one position. The department reported guidelines have been developed to ensure administrative rules are followed in the future. Controls have been put in place to ensure there is a "paper trail" to support salary increase actions. Salaries were adjusted downward for the directors of the two divisions within the department once they became appointed positions. The salary increases were funded mainly through homeland security funding.

The Budget Section approved the expenditure of $213,493 by the department for salary increases, pursuant to Section 10 of 2005 House Bill No. 1016.

Use of Federal Homeland Security Funds

The Department of Emergency Services presented information to the Budget Section relating to the use of federal homeland security funds at the state and local levels, pursuant to Section 7 of 2005 House Bill No. 1016. The department reported the complexity of homeland security grants increased in 2003. A primary grant in the amount of $3.7 million and a supplemental grant of $8.6 million was received in 2003. In 2004 the grant was divided into two categories--the state homeland security grant program and the law enforcement terrorism protection program. Homeland security funding for 2005 was allocated on a base percentage rate plus population. The grant required 80 percent of the funds to be passed through to local units of government. The department distributed the 2005 funds to jurisdictions through a series of funding formulas based upon threat, vulnerability, and capability of compliance with the state's strategy at that time. Local jurisdictions were provided the flexibility to determine spending based upon federal grant guidance. For 2006 grant guidance, the Division of Homeland Security established eight national priorities that must be considered when spending 2006 grant funds.

The Budget Section learned the department is migrating the State Radio system from an analog to a digital system. Grant funds have not been sufficient to pay for the complete project, so the department has entered into a lease/purchase contract under which funds are spent annually for the project. The department has spent approximately $19 million to purchase digital radios for local jurisdictions across the state. The department reported the last "gap analysis" indicates $21 million is still needed for digital radios for first responders and approximately $60 million is needed to complete the migration project. Five additional towers are needed to eliminate areas across the state where there is no transmission capability. The cost per tower is approximately $500,000. New grant guidelines give the department authority to require jurisdictions to purchase communication equipment that is compatible with the department's State Radio equipment.

JOB SERVICE NORTH DAKOTA

Status of Job Insurance Trust Fund

Pursuant to NDCC Section 52-02-17, the Budget Section received a report on the status of the job insurance trust fund. Job Service North Dakota reported the trust fund balance as of December 31, 2005, was $84.45 million. The target for reserve adequacy was $83.7 million. The fund balance reached the targeted reserve in six years, one year ahead of the legislative timeline of seven years. The Budget Section learned this was due, in part, to a robust economy with growing employment and lower levels of unemployment insurance claims. By reaching the targeted reserve at the end of 2005, Job Service North Dakota was able to reduce the average employer unemployment insurance tax rates for 2006 from 1.5 to 1.35 percent.

Unemployment Insurance Computer System Modernization Procurement Planning

Job Service North Dakota presented information to the Budget Section regarding the status of the unemployment insurance computer system modernization procurement planning. Prior to releasing an RFP for the system's development, Job Service conducted a review of the project for the purpose of making a decision regarding the project direction. The following options were considered in the review:

- Release an RFP for the entire system.
- Release an RFP for the benefits system with the tax system as an optional bid. If no tax system is selected, an additional RFP would be issued at a later date.
- Maintain, enhance, and upgrade the current system.
- Delay the project until there are more systems available in the marketplace.

As a result of the review, both the project's core team and the executive steering committee determined the appropriate direction for the project would be to maintain, enhance, and upgrade the current system. Job Service reviewed the decision with the Governor's office, which concurred with the decision.

Job Service reported the available balance from the 2005 Senate Bill No. 2016 Reed Act appropriation of $525,000 is $212,193. Expenditures from the appropriation have been used for development of the business and system requirements, including system use cases. These requirements will be used as the basis for all future modernization efforts. Job Service will use the remaining appropriations from the Reed Act to create the transition plan and fund the employer registration system. The estimated cost for the transition plan is $82,000 and the employer registration enhancement will cost approximately $162,000. Job Service intends to provide the 60th Legislative Assembly with a transition plan as to how to proceed with the

modernization effort and to request Reed Act funding to conduct the 2007-09 biennium projects.

DEPARTMENT OF TRANSPORTATION

The Department of Transportation reported on additional full-time equivalent positions that have been hired for highway construction, pursuant to Section 4 of 2005 Senate Bill No. 2012. The Budget Section learned a maintenance and engineering services comprehensive plan was developed to provide a safe and reliable transportation system. The plan also calls for a total of 200 additional miles to United States Highway 2 by 2008. The Department of Transportation conducted an analysis and determined it was more cost-effective to hire additional staff to complete the work than to outsource the work to the private sector. The Department of Transportation reported that the Emergency Hiring Council approved the department's request for four new full-time equivalent positions in January 2006. The four positions will be equipment operators in the Tioga section of the Williston district.

The Department of Transportation reported that the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) provided a 30 percent increase in funding over the Transportation Equity Act for the 21st Century (TEA-21) and also requires greater staff coordination, planning, monitoring, and consultation efforts with the Federal Highway Administration and others. The Department of Transportation conducted an analysis and determined it was more cost-effective to hire additional staff to meet the requirements than to outsource the work to the private sector. The Emergency Hiring Council approved the Department of Transportation request for three new full-time equivalent engineering positions in March 2006.

The Budget Section learned the Department of Transportation has seen a 20 percent increase in construction costs, which resulted in the delay of $25 million of 2006 projects until 2007. Approximately $100 million in 2007 projects will be delayed until 2008. Part of the United States Highway 12 project was delayed because bids were 40 percent over engineering estimates.

STATE WATER COMMISSION

Status of the Devils Lake Outlet

The State Water Commission presented information to the Budget Section relating to the status of the Devils Lake Outlet. The commission reported Devils Lake was at a record high level early in 2006. However, the drought and water spilling from Devils Lake into Stump Lake were factors in the lake dropping two feet during the summer. Devils Lake is at 1,447.3 feet and Stump Lake is at 1,446.5 feet. The commission anticipates that Stump Lake will equalize with Devils Lake in 2007. The Devils Lake Outlet has not operated in 2006 because the Sheyenne River is dry at the insertion point for the outlet.

The commission reported construction was completed on the Devils Lake Outlet in 2005. A total of $28 million was budgeted for the outlet, $25.6 million in contracts were signed, and $24.5 million has been paid out to date. There are expected to be additional costs for the project due to lawsuits being filed relating to condemnation. The annual operating budget for the outlet is slightly over $2 million, with the largest expense being electricity. Operating costs were down in 2006 because the outlet has not been operating. The commission reported it requested a modification to the discharge permit to allow for a higher sulfate level in the Sheyenne River. The modification will also allow discharges whenever there is no ice on the river. The commission is facing opposition from the Canadian government regarding the discharge permit. An appeal has been filed by the Canadian government and environmental groups.

The commission reported the cash balance in the water development trust fund as of October 3, 2006, was $14.1 million. The next deposit from the tobacco settlement proceeds will be made in April 2007 and will be approximately $10.3 million. The next bond payment of $2.1 million is due in February 2007 and will be interest only. A principal and interest payment on the bond will be made in August 2007. The commission reported it has spent $12.9 million from the trust fund during the 2005-07 biennium. The commission anticipates spending an additional $12.2 million in the remainder of the 2005-07 biennium for agency operating costs and water project expenditures. The estimated June 30, 2007, ending balance for the water development trust fund is $9.4 million.

The Budget Section learned the commission commits all available money in the water development trust fund. The estimated ending balance of $9.4 million will be carried over to the 2007-09 biennium, $5.4 million will be needed for the bond payment in August 2007, and the remainder will be needed to complete projects. The Budget Section learned the Attorney General's office provides legal services for lawsuits associated with the Devils Lake Outlet, the Risk Management Division will pay some expert witness fees, and the commission will pay for the costs of affidavits relating to the lawsuits.

PERFORMANCE ASSURANCE FUND

The Budget Section received a report from the Public Service Commission on payments and expenditures from the performance assurance fund, pursuant to NDCC Section 49-21-31. The Budget Section learned the performance assurance fund is a special fund created by the 2003 Legislative Assembly for payments that Qwest Corporation makes to the state under Qwest's performance assurance plan. The money received under the plan is to be used by the Public Service Commission to offset the expenses of administering the plan. After the receipts in a biennium reach $100,000, the excess over $100,000 is deposited into the state general fund. The commission reported the July 1, 2005, beginning balance of the fund was $132,207. The amount over the $100,000 cap was $32,207 and that amount plus an additional $4,217 received for May and June 2005 was deposited in the general fund. The fund began incurring expenses in June 2005 relating to a multistate audit of the accuracy of Qwest's performance reporting and payments. North

Dakota's share of the audit contract costs would be approximately $23,100. Actual payments made by North Dakota under the contract through June 30, 2006, were $12,653 and receipts through June 30, 2006, were $5,400, resulting in a fund balance of $92,747 on June 30, 2006.

TRANSFERS TO STATE TUITION FUND

The Budget Section received a report from the Department of Public Instruction regarding duplicative payments received for administrative expenses and any related transfers to the state tuition fund, pursuant to NDCC Section 15.1-02-14. The Department of Public Instruction reported it did not receive any federal or other money for which a general fund appropriation had been provided and, therefore, no transfers were made to the state tuition fund.

CORRESPONDENCE FROM ETHANOL PLANTS

Pursuant to NDCC Section 4-14.1-07, the Budget Section received reports from all North Dakota ethanol plants receiving production incentives from the state. The Alchem, Ltd., LLP, and Archer Daniels Midland Company plants produced a loss for the year ending December 31, 2004, after deducting the payments received from the North Dakota ethanol production incentive program.

Pursuant to NDCC Section 4-14.1-07.1 and Section 1 of 2005 Senate Bill No. 2270, the Budget Section received reports from North Dakota ethanol plants in operation before July 1, 1995, receiving production incentives from the state. The Archer Daniels Midland Company plant in Walhalla was the only plant that received production incentives from the state during calendar year 2005. The Budget Section learned the plant produced a profit for the year ending December 31, 2005, after deducting the payments received from the North Dakota ethanol production incentive program.

STATE AGENCY UNCLAIMED PROPERTY

The Budget Section received reports from the Land Department regarding state agencies that have not submitted a claim for unclaimed property belonging to that agency, pursuant to NDCC Section 47-30.1-24.1. The Budget Section learned the North Dakota Uniform Unclaimed Property Act has been in effect since 1975 and since that time, North Dakota state agencies have been reported as being owners of unclaimed property. The 2003 Legislative Assembly enacted Section 47-30.1-24.1 in an effort to resolve the issue of state agency unclaimed property. Section 47-30.1-24.1 provides that within one year of receipt of state agency property, the administrator of unclaimed property shall notify the agency by certified mail; the commissioner of University and School Lands shall present a report to the Budget Section identifying every state agency that has not submitted a claim for property belonging to that agency within one year of the receipt of the date of the certified mail receipt; and upon approval of the Budget Section, the agency relinquishes its right to recover its property.

The Land Department reported that in January 2004 the Unclaimed Property Division reviewed its data base and identified 28 state agencies with unclaimed property and certified letters were mailed to those agencies. Of the 28 state agencies which confirmed receipt of the certified mailing, 7 agencies claimed the property, 8 agencies signed off on the property, and 13 agencies did not respond.

The Budget Section, pursuant to NDCC Section 47-30.1-24.1, approved the list of state agencies relinquishing their rights to recover unclaimed property.

LEGISLATIVE HEARINGS FOR FEDERAL BLOCK GRANTS

Background

The Budget Section was informed the Legislative Council staff contacted state agencies receiving federal funds to determine which agencies receive block grants that require legislative hearings, and the results of the survey revealed only one block grant with that requirement and that is the community services block grant administered by the Department of Commerce Division of Community Services. The required public hearing will be held as part of the appropriations hearing for the Department of Commerce during the 2007 legislative session.

Recommendation

The Budget Section recommends House Concurrent Resolution No. 3001 to authorize the Budget Section to hold public legislative hearings required for the receipt of new federal block grant funds during the period from the recess or adjournment of the 60th Legislative Assembly through September 30, 2009.

FEDERAL FUNDS

The Budget Section reviewed a report on federal funds anticipated to be received by state agencies and institutions for bienniums ending June 30, 2007, and June 30, 2009. The report indicated for the 2005-07 biennium, state agencies and institutions anticipate receiving $2.293 billion of federal funds, approximately $31.3 million less than the amount appropriated. For the 2007-09 biennium, state agencies and institutions anticipate receiving approximately $2.314 billion of federal funds. Based on estimates, the 2007-09 biennium will require $445.3 million of general fund matching dollars, $81.4 million more than the 2005-07 biennium, if the estimated amounts are appropriated. The 2007-09 amounts are preliminary as several agencies had not filed their 2007-09 budget requests.

LEGISLATIVE COUNCIL STAFF REPORTS

The Budget Section received the following reports prepared by the Legislative Council staff:

- *59th Legislative Assembly Analysis of Changes to the Executive Budget 2005-07 Biennium.* The report provided information on legislative changes to the executive budget, full-time equivalent

changes, major programs, and related legislation for each state agency. The report also includes an analysis of various special funds and statistical information on state appropriations.

- *59th Legislative Assembly Budget Status Report for the 2005-07 Biennium*. The report provided information on the status of the general fund and estimated June 30, 2007, ending balance, legislative changes to general fund revenues, and legislative appropriation changes to the executive recommendation.
- *General Fund Deficiency Appropriations for Utility and Fuel Costs*. This report provided information relating to deficiency appropriations provided by the 1985 through 2005 Legislative Assemblies for utility and fuel costs.
- *Alternatives to Inpatient Civil Commitment of Sex Offenders*. This report provided information relating to alternatives to inpatient civil commitment of sex offenders being used by other states.
- *Oil Pipeline Regulation - Authority of State to Require Transmission of North Dakota Oil*. This report provided information relating to North Dakota limits on eminent domain.

BUDGET TOUR REPORTS

The Budget Section reviewed memorandums summarizing the visitations of the budget committees and the budget tour groups. These memorandums will be compiled into a report, including information regarding state institution land and building utilization and will be submitted to the Appropriations Committees during the 2007 legislative session.

The Budget Committee on Government Services, Representative Al Carlson, Chairman, toured the James River Correctional Center, Missouri River Correctional Center, State Penitentiary, Roughrider Industries, and the Youth Correctional Center.

The Budget Committee on Health Care, Senator Aaron Krauter, Chairman, toured North Dakota Vision Services - School for the Blind, Mill and Elevator, School for the Deaf, East Laboratory, Crime Laboratory, Fraine Barracks, International Peace Garden, and the State Fair Association.

The Budget Committee on Human Services, Senator Dick Dever, Chairman, toured the South Central Human Service Center, State Hospital, Veterans Home, Northeast Human Service Center, Developmental Center, North Central Human Service Center, and West Central Human Service Center.

The Higher Education Committee, Senator Ray Holmberg, Chairman, toured Williston State College, Williston Research Extension Center, Bismarck State College, State College of Science, North Dakota State University, Valley City State University, Minot State University, North Central Research Center, Minot State University - Bottineau, Forest Service, Lake Region State College, Dickinson State University, Dickinson Research Extension Center, University of North Dakota, UND School of Medicine and Health Sciences, and Mayville State University.

AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION

Pursuant to NDCC Section 54-16-04, 54-16-04.1, 54-16-04.2, and 54-16-09, the Budget Section considered agency requests that had been authorized by the Emergency Commission and forwarded to the Budget Section. From the June 23, 2005, meeting to the October 4, 2006, meeting, the Budget Section considered 47 requests, all of which were approved. The 47 Emergency Commission requests approved included expenditure of $87,014,379 of federal funds and $16,392,137 of other funds, line item transfers totaling $4,075,000, and authorization of 49 full-time equivalent positions for the remainder of the 2005-07 biennium. The appendix at the end of this report provides a description of each agency request considered by the Budget Section.

Status of the State Contingency Fund

Six requests authorized by the Emergency Commission were to obtain funds from the state contingency fund. The following is a summary of the state contingency fund:

State Contingency Fund		
2005 legislative appropriation		$500,000
Emergency Commission requests		
Department of Agriculture (#1565)	$131,000	
Attorney General's office (#1570)	97,000	
Department of Agriculture (#1578)	58,669	
Decrease in amount needed for Request #1578	(6,198)	
Adjutant General (#1595)	85,000	
Adjutant General (#1600)	70,000	
Attorney General's office (#1602)	15,000	
Total of Emergency Commission requests for state contingency funds		$450,471
State contingency fund balance - October 2006		$49,529

OTHER REPORTS

The Budget Section received a report from the Legislative Council staff on the legislative applications replacement system project. The Budget Section learned this would be a complete legislative information technology system replacement. The Legislative Council staff reported the technology in the legislative system is obsolete and one company that supported the system is no longer in business. It is estimated to cost approximately $2 million to migrate to a server-based system and approximately $4.2 million for a new system. The migration would not solve the obsolescence problems. It was reported there was $1.5 million available from 2003-05 carryover funds, a consultant was hired and a cost estimate for completion of the project will be available for consideration by the 2007 Legislative Assembly.

The Budget Section received a report from the Industrial Commission regarding oil pipeline transportation issues, oil production, and oil prices. The commission reported Canadian shale oil can be produced at a cost of $12 per barrel and the supply is

expected to triple over the next 13 years. Canada has a minimum of a 100-year supply of oil at a production rate of 4.5 million barrels a day. The Budget Section learned the capacity of pipelines to the West and to the South of North Dakota are impacted by Canadian oil. North Dakota oil will either have to be refined in North Dakota or be moved by pipelines to the East. There is currently not enough pipeline capacity out of North Dakota for refined products. Most of the North Dakota oil moves through the Enbridge pipeline from Trenton to Minnesota. The two largest purchasers of North Dakota oil are Canadian companies. The Budget Section learned the Tax Department and the Attorney General's office conducted research on the impact of discounting of North Dakota oil. The commission reported the limited pipeline capacity has affected the production rate, the active rig count, and the return of wells to production.

The Budget Section received a report from the Office of Management and Budget on Department of Human Services 2003-05 biennium carryover funds that will be used for the State Hospital electrical distribution repair and the potential need for additional funds for the 2007-09 biennium. In late April 2005 the State Hospital became aware that its emergency generator was in need of major repair in order for it to remain operable. The critical need to repair the generator relates to the operation of an automatic transfer switch, which is responsible for the automatic switch to an emergency power supply in the case of a primary power failure. Without the repairs, the power source change would need to be completed manually which imposes certain risks, such as a significant lag time. The estimated cost for this repair is approximately $350,000. The Office of Management and Budget reported that the Department of Human Services requested and received authority from the capital construction carryover committee to carry over $350,000 from its 2003-05 biennium appropriation to the 2005-07 biennium for the cost to repair the State Hospital's emergency generator. The engineering plan for the repair project has been completed and the projected completion date for the project was May 31, 2006. The Office of Management and Budget reported the State Hospital may be requesting funds for the 2007-09 biennium for a second power source at an estimated cost of $300,000. The State Hospital would also like to establish a power loop feed system at an estimated cost of approximately $2.5 million.

This report presents Budget Section activities through October 2006. Because one of the major responsibilities of the Budget Section is to review the executive budget, which by law is not presented to the Legislative Assembly until after December 1, a supplement to this report will be submitted for distribution at the beginning of the 60th Legislative Assembly in January 2007.

APPENDIX

Pursuant to NDCC Section 54-16-04, 54-16-04.1, 54-16-04.2, and 54-16-09, the Budget Section considered 47 agency requests that were authorized by the Emergency Commission. All requests were approved. The following is a list of agency requests approved from June 23, 2005, through October 4, 2006:

Adjutant General

- December 15, 2005 - To increase special funds spending authority by $1.6 million to accept federal funds from the National Guard Bureau for the Army Guard contracts line item and for approval of 28 full-time equivalent positions to expand the deployment of security forces at Fraine Barracks in Bismarck and Camp Grafton in Devils Lake.
- December 15, 2005 - To increase special funds spending authority by $860,000 to accept federal funds from the National Guard Bureau for the Air Guard contracts line item to fund 30 temporary security positions at the North Dakota Air National Guard located at Hector Field in Fargo from January 2006 through September 2006.
- June 14, 2006 - To increase special funds spending authority and the Army Guard contracts line item by $16.6 million to accept federal funds from the National Guard Bureau for the construction of a field maintenance shop in Minot ($12.3 million) and a weapons of mass destruction civil support team building at Fraine Barracks in Bismarck ($4.3 million).
- June 14, 2006 - To transfer $85,000 from the state contingency fund for costs incurred by the North Dakota National Guard for flood relief in Grand Forks, Walsh, and Pembina Counties in April 2006 ($130,853) and estimated costs for the Ward County search in May 2006 ($22,150). Total costs of $153,003, less National Guard emergency funds of $68,457, result in a shortfall of $84,545. The Emergency Commission added the stipulation that the state's contingency fund be reimbursed when the agency receives offsetting federal funds.

Aeronautics Commission

- June 14, 2006 - To increase special funds spending authority and the capital assets line item by $600,000 to accept federal funds from the Federal Aviation Administration for reconstruction of the runway at the International Peace Garden airport.

Department of Agriculture

- December 15, 2005 - To transfer $131,000 from the state contingency fund and approval to increase spending authority and the Board of Animal Health line item to reimburse livestock producers for vaccination and disposal costs associated with the anthrax outbreak during the summer of 2005.
- March 8, 2006 - To increase spending authority by $76,384 to transfer state contingency funds ($58,669) and federal funds from the United States Department of Agriculture ($17,715) for the salary line item ($41,860) and the operating line item ($34,524) and approval of one full-time equivalent position to respond to increased demands for state meat inspectors.
- October 4, 2006 - To increase spending authority by $145,000 to accept federal funds from the United States Department of Agriculture Animal and Plant Health Inspection Service for the salary line item ($35,000) and the operating line item ($110,000) to conduct a potato cyst nematode survey. Temporary employees will be hired to assist in soil sampling.

Attorney General

- March 8, 2006 - To transfer $97,000 from the state contingency fund for additional costs incurred in defending the school finance lawsuit.

Bank of North Dakota

- March 8, 2006 - To transfer $500,000 from the salaries line item to the operating line item to allow for transition from internal to external information technology service providers.
- October 4, 2006 - To increase spending by $85,500 to accept other funds from an Energy Star Exxon grant for the capital assets line item ($85,500) and approval for a line item transfer of $625,000 from the contingency line item to the capital assets line item for items needed related to construction of a new building and for a project contingency fund.

Department of Corrections and Rehabilitation

- September 7, 2005 - To increase other funds spending authority by $68,000 to accept funds from a private individual for the Youth Correctional Center to purchase the Read Right reading program for the Marmot School.
- December 15, 2005 - To transfer $1.5 million from the department's equity pool line item contained in Senate Bill No. 2015 for employee salary equity adjustments to the Juvenile Community Services line item ($66,145), the Field Services line item ($3,543), the Prisons Division line item ($1,254,071), and the Youth Correctional Center line item ($176,241) to allow the payment of equity funds from the applicable line items.

Department of Emergency Services

- September 7, 2005 - To increase the grants line item by $2,498,250 to accept federal funds from the predisaster mitigation grant program to provide awards to the city of Fargo and Barnes County.
- September 7, 2005 - To increase federal and special funds spending authority by $11,621,150 relating to Robert T. Stafford Disaster Relief and Emergency Assistance Act funding ($10,371,150) and state disaster loan proceeds ($1,250,000) for disaster costs associated with the severe storms and flooding in several counties and Indian reservations in June and July 2005. The request includes the authority for the department to obtain a $1,250,000 loan from the Bank of North Dakota, pursuant to NDCC Section 37-17.1-23, to pay the estimated state share of the disaster recovery

costs. Repayment of the loan will be requested as a deficiency appropriation from the 2007 Legislative Assembly. The request will require state general fund dollars to repay the Bank of North Dakota loan of $1,250,000 plus interest.

- December 15, 2005 - To increase special funds spending authority by $3 million to accept federal funds from the federal Department of Homeland Security for the salaries and wages line item ($800,000), the operating line item ($420,000), and the grants line item ($2,500,000) for a temporary public information officer position, staff overtime, development and exercising of a sheltering plan related to large-scale evacuations, providing assistance to requesting states under the Emergency Management Assistance Compact, and providing grants to assisting state agencies and other entities.
- December 15, 2005 - To increase special funds spending authority by $2,238,971 relating to Robert T. Stafford Disaster Relief and Emergency Assistance Act funding ($1,945,783) and state disaster loan proceeds ($293,188) for the salaries and wages line item ($75,000), the operating line item ($150,000), and the grants line item ($2,013,971) for disaster costs associated with the snow disaster in October 2005. The request includes the authority for the department to obtain a $293,188 loan from the Bank of North Dakota, pursuant to NDCC Section 37-17.1-23, to pay the estimated state share of the disaster recovery costs. Repayment of the loan will be requested as a deficiency appropriation from the 2007 Legislative Assembly.
- December 15, 2005 - To increase the salaries and wages line item by $249,825 to accept federal funds from the predisaster mitigation grant program to provide administration and support for grants awarded to the city of Fargo and Barnes County.
- March 8, 2006 - To increase spending authority by $1,657,850 to receive federal funds ($1,465,750) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and a Bank of North Dakota loan ($192,100) for the required state match, pursuant to NDCC Section 37-17.1-23 and the operating line item ($25,000) and the grants line item ($1,632,850) for costs related to the November 2005 snowstorm.
- June 14, 2006 - To increase special funds spending authority by $361,346 and the salaries and wages line item ($32,850) and the grants line item ($328,496) to accept federal funds from the predisaster mitigation grant program for administration and support of grant awards and for planning grants to Billings, Burleigh, and Cass Counties and the city of Medora.
- June 14, 2006 - To increase special funds spending authority by $6,903,780 to receive federal funds ($6,055,100) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and state disaster loan proceeds ($848,680) for the salaries and wages line item ($100,000), the operating expense line item ($270,000), and the grants line item ($6,533,780) for costs related to flooding occurring in the Red River Valley in 2006.

Game and Fish Department

- June 14, 2006 - To increase special funds spending authority by $189,700 to accept federal funds from the United States Department of Agriculture Animal and Plant Health Inspection Service for the operating line item ($189,700) to collect samples for monitoring avian influenza in waterfowl, shorebirds, and other migratory birds and chronic wasting disease from dead or sick deer.
- October 4, 2006 - To increase spending authority by $150,000 to accept federal funds ($112,500 from the United States Fish and Wildlife Service and other funds ($37,500) from the game and fish fund for expenses related to increased need for noxious weed control.
- October 4, 2006 - To transfer $450,000 from the grants line item to the operating expenses line item due to increased travel expenses in the Fisheries and Enforcement Division and for replacement of radios used for enforcement purposes.

State Department of Health

- September 7, 2005 - To transfer $300,000 of federal funds spending authority from the grants line item to the salaries line item for temporary employees, including two quality assurance coordinators, an accountant, and administrative support personnel to implement bioterrorism programs.
- September 7, 2005 - To increase federal funds spending authority by $4,100,000 of funds available from the Environmental Protection Agency for grants relating to the arsenic trioxide superfund project to oversee design and construct an arsenic trioxide remedy site in the Richland, Ransom, and Sargent Counties areas and to transfer $700,000 of federal funds spending authority from the operating line item to the grants line item for the arsenic trioxide superfund project.
- September 7, 2005 - To increase other funds spending authority by $7,200,000 of funds available from Blue Cross Blue Shield of North Dakota for operating expenses to purchase additional vaccines for statewide immunization programs.
- October 4, 2006 - To accept federal passthrough funds from the Department of Transportation relating to a National Highway Transportation Safety Administration grant and to increase spending authority by $60,000 for the salaries and wages line item ($35,000) and the operating line item ($25,000) for the new traffic assessment program, which will address ambulance and emergency health care delivery systems.

- October 4, 2006 - To increase federal funds spending authority by $263,000 and the operating line item ($63,000) and the grants line item ($200,000) to accept funds from the Centers for Disease Control and Prevention for a suicide prevention program targeted toward tribal and rural youth.
- October 4, 2006 - To increase federal funds spending authority by $153,000 and the salaries and wages line item ($82,400), the operating expenses line item ($28,000), and the grants line item ($42,600) to accept funds from the Centers for Disease Control and Prevention to implement a statewide comprehensive cancer control program.
- October 4, 2006 - To increase federal funds spending authority by $1,200,000 and the salaries and wages line item ($90,000), the operating expenses line item ($360,000), the capital assets line item ($100,000), and the grants line item ($650,000) to accept funds from the Centers for Disease Control and Prevention for a pandemic influenza preparedness program.
- October 4, 2006 - To increase federal funds spending authority and the grants line item by $6 million to accept funds from the Environmental Protection Agency to assist a rural water district in designing and operating an arsenic trioxide remedy site to lower drinking water arsenic concentration levels in southeast North Dakota.
- October 4, 2006 - To increase federal funds spending authority and the women, infants, and children (WIC) line item by $1.8 million to accept funds from the United States Department of Agriculture due to increases in the number of participants enrolled in the WIC program and costs for food items, including infant formula.

State Historical Society

- September 7, 2005 - To increase federal funds spending authority by $80,000 to accept federal funds from the Department of Interior Save America's Treasures grant program for the capital assets line item, with $700,000 general fund matching funds approved for carryover from the 2003-05 biennium under NDCC Section 54-44.1-11, for the construction of a protective shelter for the French gratitude train boxcar located on the State Capitol grounds.
- December 15, 2005 - To accept federal passthrough funds from the Department of Transportation related to a transportation enhancement grant and to increase the capital assets line item by $180,000 for costs related to the expansion and renovation of the Chateau de Mores visitor center in Medora.
- March 8, 2006 - To increase the grants line item and federal funds spending authority by $250,000 to accept a Save America's Treasures grant for the emergency archaeological excavation of Beacon Island - Agate Basin site in Lake Sakakawea.

Department of Human Services

- March 8, 2006 - To add 11 full-time equivalent positions for the State Hospital sex offender program. If savings cannot be generated internally within the agency to cover the additional costs, a deficiency appropriation will be requested by the agency from the 2007 Legislative Assembly.
- June 14, 2006 - To add eight full-time equivalent positions for the State Hospital sex offender program. These positions are in addition to the 11 full-time equivalent positions approved for the State Hospital sex offender program at the March 8, 2006, Budget Section meeting.

Information Technology Department

- March 8, 2006 - To increase special funds spending authority from service fees by $500,000 and the salaries and wages line item ($354,000) and the operating line item ($146,000) to provide software development support to the Bank of North Dakota.

Office of Management and Budget

- December 15, 2005 - To increase the operating line item and federal funds spending authority by $100,000 to accept funds from the Department of Homeland Security for training and equipment costs relating to the continuum of government and continuity of operations programs.
- June 14, 2006 - To receive borrowing authority of $5 million to secure a loan from the Bank of North Dakota for funding centers of excellence-approved projects as provided for in Section 13 of 2005 Senate Bill No. 2018.

Protection and Advocacy Project

- October 4, 2006 - To increase spending authority and the protection and advocacy line item by $1 million to accept federal funds from the United States Department of Education for the alternative financial loan program to expand personal financing options to persons with disabilities in purchasing assistive technology devices and services.

Department of Public Instruction

- June 23, 2005 - To increase special funds spending authority by $25 million to accept federal funds from the No Child Left Behind Act of 2001 for grants to school districts prior to the end of the 2003-05 biennium.

Department of Transportation

- June 23, 2005 - To increase federal funds spending authority by $86,000 of funds available from the National Highway Traffic Safety Administration for grants relating to seatbelt usage, blood alcohol .08 incentives, and impaired driving.
- March 8, 2006 - To increase the highways program line item by $76,260 for federal funds available to the state from the Safe Routes to Schools program and for approval of one full-time equivalent position to supervise the program.

Veterans Home

- June 14, 2006 - To increase special funds spending authority from additional resident rent revenue and the operating line item by $116,000 to purchase medications for the Veterans Home pharmacy.

Workforce Safety and Insurance

- October 4, 2006 - To increase special funds spending authority by $250,000 from the Workforce Safety and Insurance fund to cover salary increases authorized by the 2005 Legislative Assembly. The Budget Section added the stipulation that Workforce Safety and Insurance provide a report at the December 6, 2006, Budget Section meeting regarding the reconciliation of salary increase.

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Budget Committee on Government Services was assigned the following responsibilities:

1. Section 12 of Senate Bill No. 2012 (2005) directed the development of a legislative strategic plan, including site and facilities' plans, for the Department of Corrections and Rehabilitation's incarceration and correctional facility needs.
2. Section 1 of House Bill No. 1035 (2005) directed the establishment of a government performance and accountability system pilot project involving up to three executive branch agencies.
3. House Concurrent Resolution No. 3005 (2005) directed a study of state-owned real estate and the utilization of real estate owned by state agencies and institutions, the best use of state-owned real estate, and whether the state should establish and maintain an inventory of state-owned real estate.
4. North Dakota Century Code (NDCC) Section 54-40-01 provides that between legislative sessions a committee of the Legislative Council may approve any agreement entered into by a state agency with the state of South Dakota to form a bistate authority to jointly exercise any function the agency is authorized to perform by law. The Legislative Council assigned this responsibility to the committee.
5. The committee was also given the responsibility of monitoring the status of state agency and institution appropriations.

Committee members were Representatives Al Carlson (Chairman), Randy Boehning, Ron Carlisle, Kari Conrad, Duane DeKrey, Jeff Delzer, Glen Froseth, Eliot Glassheim, Bette B. Grande, James Kerzman, Joe Kroeber, Ralph Metcalf, Darrell D. Nottestad, Ken Svedjan, Blair Thoreson, Dave Weiler, and Alon C. Wieland and Senators Duaine C. Espegard, Aaron Krauter, Ed Kringstad, Elroy N. Lindaas, Stanley W. Lyson, and Dave Nething.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

DEPARTMENT OF CORRECTIONS AND REHABILITATION STRATEGIC PLAN

The committee received information relating to the committee's responsibility, as directed by Section 12 of Senate Bill No. 2015 (2005), to develop a legislative strategic plan, including site and facilities' plans, for the Department of Corrections and Rehabilitation incarceration and correctional facility needs. In its development of a strategic plan, the committee received testimony from representatives of the Department of Corrections and Rehabilitation, regional correctional centers, county jails, and a corporation operating private correctional facilities; reviewed inmate populations; reviewed the condition of the east cellhouse at the State Penitentiary and other existing facilities; reviewed land owned by the Department of Corrections and Rehabilitation; received testimony regarding the state's incarceration guidelines; and reviewed alternatives to incarceration.

Department of Corrections and Rehabilitation

Background

The Department of Corrections and Rehabilitation includes two major programs--juvenile services and adult services. Within each program is an institutional division and a community division. Therefore, the four major areas of the department are the Field Services Division (adult parole and probation), Prisons Division (State Penitentiary, Missouri River Correctional Center, and James River Correctional Center), Juvenile Services, and the Youth Correctional Center.

Correctional Facilities

The State Penitentiary in east Bismarck is the main prison complex, consisting of 550 prison beds, and houses maximum security male inmates as well as some medium security male inmates. The James River Correctional Center in Jamestown has 405 prison beds and is designated to hold medium security male inmates. The Missouri River Correctional Center in southwest Bismarck has 150 prison beds and houses minimum security male inmates. Other male inmates may be held in local correctional centers, in the community placement program, and in other states' facilities through the interstate compact program. The 2005 Legislative Assembly provided funding to continue contract housing for the state’s female inmates at the Dakota Women's Correctional and Rehabilitation Center in New England for the 2005-07 biennium.

The Tompkins Rehabilitation and Correction Center, a combined program located on the campus of the State Hospital in Jamestown, is managed through the department’s Field Services Division and houses both inmates and noninmates. The Tompkins Rehabilitation and Correction Center is the combination of the former Tompkins Rehabilitation and Corrections Unit at the Stutsman County Corrections Center and the Corrections Rehabilitation and Recovery Center (DUI Center). The Tompkins Rehabilitation and Correction Center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males.

The Juvenile Services Division is responsible for the Youth Correctional Center. The center, located west of Mandan, is the state’s secure juvenile correctional institution. The center serves as a detention and rehabilitation facility for adjudicated juveniles who require the most restrictive placement and maximum staff supervision and provides appropriate programming to address delinquent behavior. Juvenile programming at the center includes drug and alcohol programming; child psychiatric and psychological services; a

pretreatment program for juveniles who are difficult to manage; and a security intervention group program to inform, educate, and provide juveniles with alternatives to gang activity and gang affiliation. The center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence.

Community Services

The Field Services Division has offices across the state staffed by parole and probation officers. The division manages offenders sentenced to supervision by a court, released on parole by the Parole Board, sent to community placement by the director of the Department of Corrections and Rehabilitation, and placed at the Tompkins Rehabilitation and Correction Center. The division staff supervise offender compliance with the supervision conditions and provide cognitive behavioral and other forms of counseling services. The division also manages the victim's services program to help mitigate the suffering of crime victims by providing fiscal support and services to crime victims. As of August 1, 2006, the Field Services Division supervised 4,648 individuals.

The Community Services Division of the Juvenile Services Division has eight satellite offices serving the eight human service regions across the state and is staffed to provide supervision to juveniles committed by the courts. The division's case managers supervise about 400 juveniles per day.

2005-07 Biennium Appropriation

The 2005-07 biennium appropriation for the Department of Corrections and Rehabilitation is $128.9 million, of which $101.1 million is from the general fund. The department has requested a general fund deficiency appropriation of $4.7 million for the 2005-07 biennium. Of the $128.9 million, the appropriation for adult services is $107.9 million, of which $85.8 million is from the general fund, and the appropriation for juvenile services is $21 million, of which $15.3 million is from the general fund. There are 677.28 full-time equivalent (FTE) positions authorized for the 2005-07 biennium, an increase of 33.1 FTE positions from the 2003-05 appropriation.

Other Background Information

Missouri River Bank Stabilization

During the 2003-04 interim, the Budget Committee on Government Services learned about a proposed riverbank stabilization project along the riverfront property of the Missouri River Correctional Center. An appraisal of the 785 net usable acres indicated that as of February 2, 2005, the market value of the land without the riverbank stabilization easement is $7.85 million and the market value of the land with the permanent riverbank stabilization easement is $1.96 million. A total of 985 acres is located at the Missouri River Correctional Center site.

Performance Audit

The committee learned the State Auditor's office contracted with a consultant, Criminal Justice Institute, Inc., to conduct a performance audit of the Department of Corrections and Rehabilitation which was completed in November 2004 and included 51 recommendations. The two goals of the performance audit were to determine:

- Is the management and administrative structure of the Department of Corrections and Rehabilitation effective?
- Is the placement of adult offenders providing for the most efficient and effective use of resources?

The Department of Corrections and Rehabilitation identified six major areas addressed in the performance audit:

1. Overcrowding.
2. Female inmate facility.
3. Medical service delivery.
4. Daily rates and departmental improvements.
5. Management and administrative structure.
6. Treatment programs.

The department reported a lack of resources and funding has prohibited implementation of some of the primary recommendations. The top priority identified by the department is to seek $2.7 million of salary equity funding for the 2007-09 biennium to address salary equity issues. The department's estimate of the cost of implementing additional performance audit recommendations include increasing the size of the infirmary at the Penitentiary ($4.2 million), an additional 80.5 FTE positions ($7.2 million), a comprehensive master plan for the facilities ($100,000), integrating the management information systems of the Prisons and the Field Services Divisions ($2.9 million), and expanding the vocational programs available to inmates ($1 million to $3 million).

Dakota Women's Correctional and Rehabilitation Center

Background

The Dakota Women's Correctional and Rehabilitation Center was established in 2003 and is one of three divisions of the Southwest Multi-County Correction Center. The Southwest Multi-County Correction Center was established in 1982 and is owned and operated by six counties--Stark, Dunn, Slope, Bowman, Hettinger, and Billings. The Dakota Women's Correctional and Rehabilitation Center is located in the former St. Mary's School in New England.

Female Inmate Housing Contract

In November 2005 the Department of Corrections and Rehabilitation and the Dakota Women's Correctional and Rehabilitation Center signed a contract for housing female inmates for the 2005-07 biennium. The term of the contract is through June 30, 2015, subject to legislative review and the availability of sufficient legislative appropriations. Thereafter, the agreement may be renewed by mutual consent of the parties on an annual basis, always terminating on June 30. The daily rate for housing female inmates at the center for the

2005-07 biennium is $89.41 per inmate and the per diem rate is reviewed and renegotiated every two years during the term of the agreement. As of October 4, 2006, there were 117 female inmates at the center.

All onsite medical and dental costs are the responsibility of the Dakota Women's Correctional and Rehabilitation Center. All offsite medical expenses are billed directly to the Department of Corrections and Rehabilitation. This allows the center to pay at the state's Medicaid rate. The Department of Corrections and Rehabilitation provides pharmacy services to the center and bills the center for the services.

Facility Renovations

Renovation and capital improvements at the Dakota Women's Correctional and Rehabilitation Center since its establishment include removal of asbestos from the convent building, renovation of a dormitory into a 16-bed unit for new arrivals and construction of a bathroom for the new orientation unit, a new control center for Horizon Hall, a new five-bed administrative segregation unit, a day room, and a segregated recreation yard. The center reported it is working with Energy Services Group to complete a survey of the energy systems at the facility with improvements planned for 2007. Future plans include renovation of a 1,200-square-foot house on the center's property for use as a transitional living unit.

The Dakota Women's Correctional and Rehabilitation Center, in cooperation with the Department of Corrections and Rehabilitation, is working to develop a transitional facility at the Law Enforcement Center in Dickinson. The transitional facility would house up to eight inmates and assist female inmates in their successful release from prison.

Prison Industries

Prairie Industries, the prison industries program at the Dakota Women's Correctional and Rehabilitation Center, has been moved to a larger area and employs 15 inmates. Prairie Industries is a member of the National Correctional Industries Association (NCIA), which provides annual training for the industries' staff. Prairie Industries includes a sewing program that provides the inmates with an opportunity to produce tee shirts, two-piece uniforms, coveralls, robes, medical gowns, chiropractic gowns, dignity napkins, uniform pants, and rainsuits and also includes an assembly program in which inmates assemble locks, electrical boxes and panels, reflector poles, warning signs, and depth chains.

Treatment Programs and Services

The treatment program at the Dakota Women's Correctional and Rehabilitation Center includes two separate chemical dependency groups. A licensed social worker has been hired to work with these groups. The education department offers college credit courses through collaboration with Dickinson State University and has three inmates enrolled. The education department was awarded an Otto Bremer grant of $25,000 to improve the lives of the female inmates residing at the center.

Therapeutic, education, and religious programming for the inmates at the Dakota Women's Correctional and Rehabilitation Center include:

Therapeutic Programming	Education Programming	Religious Programming
Cares and concerns	General educational development (GED)	Meditation
Primary addiction group	Parenting	Baptism and confirmation classes
Lecture	Welding	Grief counseling
Cognitive restructuring	Computers	Native American ceremonies
Sex offender counseling	Prerelease	Muslim and Wicca practices
Self-help meetings	Creative writing	Houses of healing
Anger management group	Refresher courses	Bible study
Treatment plan review	College correspondence and college credit courses	Catholic and Protestant worship services
Recovery and healing "women's mental health" group		"Moms in Touch" prayer group
Women's empowerment "survivors of violence" group		
Medicine wheel program		
Houses of healing "trauma and loss" group		
Aftercare		
Family therapy sessions "knee-to-knee communication"		
Healthy relationships "codependency" group		

The Dakota Women's Correctional and Rehabilitation Center has interactive television capabilities as the result of a grant from the Rural Economic Area Partnership. The interactive television system allows the center to access training through the State Penitentiary, allows inmates to communicate with the Department of Corrections and Rehabilitation Field Services Division staff during orientation classes, allows the classification committee to meet to determine the custody level of new

arrivals, and allows inmates to participate in Parole Board hearings onsite.

Medical Expenses

The committee learned the Dakota Women's Correctional and Rehabilitation Center had medical expenses for the months of November and December 2003 totaling $10,204. For calendar year 2004 medical expenses for the state female inmates at the center totaled $597,643 and from January through October 2005 total medical expenses were $424,871. In March 2005 the center changed the way it handles offsite medical expenses so that all offsite medical expenses are billed directly to the Department of Corrections and Rehabilitation. This allows the center to pay at the state's Medicaid rate. The medical department had several high-risk cases in 2006 and has had to staff the infirmary 24 hours per day. The center has also seen higher costs with the dental program and the pharmacy.

Female Inmate Population

The center has a capacity of 126 beds--70 minimum security beds in Haven Hall, and 40 higher security beds and 16 orientation beds in Horizon Hall. The average sentence length for the female inmates is 50 months and the average length of stay is 18 months. The female inmate population in October 2006 was 117.

Dakota Women's Correctional and Rehabilitation Center Tour

The committee held a meeting and toured the Dakota Women's Correctional and Rehabilitation Center. The tour included Horizon Hall, which is the administration building and houses higher security inmates, and Haven Hall, which houses minimum security inmates.

Inmate Populations

The Department of Corrections and Rehabilitation male inmate population management plan includes housing inmates in nontraditional beds, including treatment programs, assessment programs, and the Bismarck Transition Center, in addition to housing inmates in county jail facilities and in a private prison at Appleton, Minnesota, as necessary. The department originally estimated male inmate population growth rates of 5.62 percent for fiscal year 2006 and 5.67 percent for fiscal year 2007. The department's male inmate population estimate for the 2005-07 biennium was 1,237 inmates in July 2005, increasing to 1,388 inmates by June 2007. After taking into consideration the department's population adjustments, including short-term diversion and relapse programming, the net population estimates for male inmates were 1,198 in July 2005 and 1,262 in June 2007. The department had a total of 991 prison beds available at its facilities to house inmates for fiscal year 2006 and in July 2006 the department's total number of prison beds increased to 1,011 due to the completion of a remodeling project at the James River Correctional Center which converted kitchen pantries into dormitory rooms for inmates.

The Department of Corrections and Rehabilitation originally estimated female inmate population growth rates of 5.60 percent for fiscal year 2006 and 5.61 percent for fiscal year 2007. The department's female inmate population management plan anticipates housing all the state's female inmates at the Dakota Women's Correctional and Rehabilitation Center in New England, the Tompkins Rehabilitation and Correction Center in Jamestown, or in female transition programs in Fargo and Bismarck.

The committee received inmate population information at each meeting summarized as follows:

	Male Inmate Population			Female Inmate Population			Total Inmate Population		
Month	Original Estimate	Actual	Difference	Original Estimate	Actual	Difference	Original Estimate	Actual	Difference
July 2005	1,237	1,212	(25)	134	149	15	1,371	1,360	(11)
August 2005	1,243	1,221	(22)	135	154	19	1,378	1,375	(3)
September 2005	1,249	1,231	(18)	136	155	19	1,385	1,386	1
October 2005	1,256	1,237	(19)	136	148	12	1,392	1,385	(7)
November 2005	1,262	1,257	(5)	137	145	8	1,399	1,402	3
December 2005	1,268	1,259	(9)	138	151	13	1,406	1,410	4
January 2006	1,275	1,249	(26)	139	162	23	1,414	1,411	(3)
February 2006	1,281	1,254	(27)	139	163	24	1,420	1,417	(3)
March 2006	1,287	1,264	(23)	140	167	27	1,427	1,431	4
April 2006	1,294	1,267	(27)	141	161	20	1,435	1,428	(7)
May 2006	1,300	1,247	(53)	141	161	20	1,441	1,408	(33)
June 2006	1,307	1,246	(61)	142	163	21	1,449	1,409	(40)
July 2006	1,313	1,240	(73)	143	165	22	1,456	1,405	(41)
August 2006	1,320	1,236	(84)	143	168	25	1,463	1,404	(59)
September 2006	1,327	1,245	(82)	144	166	22	1,471	1,411	(60)

Of the 1,245 male inmates in September 2006, 513 were at the prison, 403 at the James River Correctional Center, 143 at the Missouri River Correctional Center, 55 at the Tompkins Rehabilitation and Correction Center, 78 at the Bismarck Transition Center, 21 in county jails, 17 at the Rugby center, and 15 in other states. To assist in determining future correctional facility needs, the committee received inmate population projections through fiscal year 2017 from the Department of Corrections and Rehabilitation. In October 2005 the department prepared three different projections for both male and female inmates based on the following assumptions:

1. Current annual growth rates - 17.1 percent for female inmates and 5.9 percent for male inmates.

2. Inmate growth based on a set number of inmates per year - Increase of 20 female inmates per year and increase of 63 male inmates per year.
3. Annual growth rates projected by the 2002 Security Response Technologies, Inc., (SRT) study - 5.3 percent for female inmates and 2.7 percent for male inmates.

The results of the three population projections prepared by the Department of Corrections and Rehabilitation, including the number of estimated additional beds needed are summarized as follows:

Current Annual Growth Rate											
	Female Inmates Current Annual Growth Rate = 17.1%					Male Inmates Current Annual Growth Rate = 5.9%					
	Estimated Additional Beds Needed by Custody Level					Estimated Additional Beds Needed by Custody Level					
Fiscal Year	Gross Inmate Estimated Population	Medium and Maximum	Minimum	Treatment and Transition Beds	Total Additional Beds Needed	Gross Inmate Estimated Population	Maximum	Medium	Minimum	Treatment and Transition Beds	Total Additional Beds Needed
2006	151				0	1,260	39	27	11	13	90
2007	171	1	1	1	3	1,334	12	9	3	4	28
2008	201	9	14	8	31	1,413	40	28	11	14	93
2009	235	19	30	17	66	1,496	73	52	21	25	171
2010	275	30	47	27	104	1,584	108	76	31	37	252
2011	322	43	68	39	150	1,677	145	103	41	50	339
2012	377	59	93	53	205	1,776	184	131	53	63	431
2013	442	77	122	70	269	1,880	226	160	65	78	529
2014	518	98	155	89	342	1,990	270	191	77	93	631
2015	606	123	195	112	430	2,107	316	224	90	109	739
2016	710	152	241	138	531	2,231	366	259	105	125	855
2017	831	186	295	169	650	2,362	418	296	119	143	976

Inmate Growth Rate Based on a Set Number of Inmates											
	Female Inmate Growth Rate Estimated at 20 Inmates per Year					Male Inmate Growth Rate Estimated at 63 Inmates per Year					
	Estimated Additional Beds Needed by Custody Level					Estimated Additional Beds Needed by Custody Level					
Fiscal Year	Gross Inmate Estimated Population	Medium and Maximum	Minimum	Treatment and Transition Beds	Total Additional Beds Needed	Gross Inmate Estimated Population	Maximum	Medium	Minimum	Treatment and Transition Beds	Total Additional Beds Needed
2006	157				0	1,255	37	26	10	13	86
2007	177	2	4	2	8	1,321	7	5	2	2	16
2008	197	8	13	7	28	1,384	28	20	8	10	66
2009	217	14	22	12	48	1,447	53	38	15	18	124
2010	237	19	31	18	68	1,509	78	55	22	27	182
2011	258	25	40	23	88	1,572	103	73	29	35	240
2012	278	31	49	28	108	1,634	128	90	37	44	299
2013	298	36	58	33	127	1,697	153	108	44	52	357
2014	319	42	67	38	147	1,759	178	126	51	61	416
2015	339	48	76	43	167	1,822	202	143	58	69	472
2016	359	54	85	49	188	1,885	227	161	65	78	531
2017	379	59	94	54	207	1,947	252	179	72	87	590

Security Response Technologies, Inc., Annual Growth Rate											
	Female Inmate SRT Annual Growth Rate = 5.3%					Male Inmate SRT Annual Growth Rate = 2.7%					
	Estimated Additional Beds Needed by Custody Level					Estimated Additional Beds Needed by Custody Level					
Fiscal Year	Gross Inmate Estimated Population	Medium and Maximum	Minimum	Treatment and Transition Beds	Total Additional Beds Needed	Gross Inmate Estimated Population	Maximum	Medium	Minimum	Treatment and Transition Beds	Total Additional Beds Needed
2006	145				0	1,248	34	24	10	12	80
2007	147				0	1,284					0
2008	155				0	1,319	2	1		1	4
2009	163				0	1,354	16	11	4	5	36
2010	172	1	1	1	3	1,391	30	21	9	10	70
2011	181	3	6	3	12	1,428	45	32	13	15	105
2012	190	6	10	6	22	1,467	60	43	17	21	141
2013	200	9	14	8	31	1,507	76	54	22	26	178
2014	211	12	19	11	42	1,547	92	65	26	32	215
2015	222	15	24	14	53	1,589	109	77	31	37	254
2016	234	18	29	17	64	1,632	126	89	36	43	294
2017	246	22	35	20	77	1,676	143	102	41	49	335

Based on these projections the number of additional beds needed could range from 77 to 650 for female inmates and from 335 to 976 for male inmates. The additional beds could be addressed by prison beds or other nontraditional beds.

Recidivism and Revocation Rates

The committee received information on recidivism and revocation rates for the Department of Corrections and Rehabilitation. A recidivist is defined as an inmate who is released from incarceration on probation, parole, or expiration of sentence and is returned to the Department of Corrections and Rehabilitation Prisons Division custody within three years of release because of a new offense. Three years is the generally accepted time period for recidivism and the majority of repeat offenders tend to reoffend within the first three years after their release.

The Department of Corrections and Rehabilitation reported the recidivism rates for female and male inmates and the combined recidivism rates are:

Recidivism Rates

Year	Female Inmates Only	Male Inmates Only	Combined Female and Male Inmates
1996	6.7%	20.0%	19.2%
1997	11.1%	22.4%	21.4%
1998	6.3%	18.8%	17.5%
1999	13.0%	23.8%	22.6%
2000	10.6%	26.9%	25.1%
2001	17.0%	24.7%	24.1%

NOTE: Current recidivism rates are not available because the rates are based on a three-year period. The Department of Corrections and Rehabilitation is also in the process of revising its process for calculating recidivism based on new measurement standards adopted by the Association of State Correctional Administrators.

The Department of Corrections and Rehabilitation reported there were 68 paroles granted and 31 paroles denied in August 2006. The parole revocation rate is approximately 18.5 percent and the probation revocation rate is approximately 42.3 percent. Thirty-eight drug court participants have entered treatment at ShareHouse, a chemical dependency treatment center in Fargo, since October 1, 2005. Eight drug court participants have successfully completed treatment at ShareHouse as of August 1, 2006, and four participants were terminated from treatment. Supervision fees are collected from parolees and are used for activities and programs in the Field Services Division. The department reported the collection rate for supervision fees is approximately 60 to 70 percent.

Male Treatment Programs and Services

The committee received information on treatment programs and services available to the Department of Corrections and Rehabilitation for inmate needs.

Tompkins Rehabilitation and Correction Center

The State Hospital presented information to the committee regarding the Tompkins Rehabilitation and Correction Center. The Tompkins center has been in operation since 1999 and is operated as a structured therapeutic community with cognitive behavioral addiction treatment approaches. The center is a residential facility that provides services 24 hours a day 7 days a week. Cognitive restructuring is offered to support the management of the environment and to tie all components of treatment together in a unified approach. The Joint Commission on Accreditation of Hospital Organizations accredits the center and the Department of Human Services Division of Mental Health and Substance Abuse Services licenses the center.

The State Hospital reported over 40 percent of men and 80 percent of women in the Tompkins center have a diagnosis of methamphetamine dependence, usually in combination with other alcohol and drug dependence. The treatment models that are used extensively are the MATRIX model and the WHAT WORKS model. These models are research-based models for the treatment of addicted individuals and offenders and rely on cognitive behavioral treatment methods known to be most effective with this population.

The Tompkins center provides a minimum of 180 days with 100 days in intensive residential treatment and 80 days to one year to transition residents back into the community. Community transition begins during the intensive residential treatment and residents can earn privileges that eventually give them the ability to attend community functions in Jamestown to prepare them for the transition back home. Family involvement in treatment, including family skills training, is an integral part of the community integration.

The Tompkins center has 90 beds and is at capacity at all times. The center has treated a total of 488 men and women. The State Hospital reported over 90 percent of residents show improvement of 10 to 20 percent on criminogenic factors, which are the factors that are predictors of inmate recidivism. The center's population has indicated a 90 percent satisfaction rate with the treatment, with approval scores of three or above on a five-point scale. The center successfully discharged 87 percent of all referrals for treatment in 2004. The center began two-year postdischarge research in July 2005 using the addiction severity index as the research instrument and results will be able to give important outcomes for several variables, including employment, alcohol and drug use, criminal justice involvement, support, psychological, family, and medical.

North Central Correctional and Rehabilitation Center

The North Central Correctional and Rehabilitation Center, located in Rugby, is a multicounty facility that provides jail and treatment services. The facility opened on September 5, 2006, and has 129 beds--89 of which are in the jail and 40 are for treatment. As of October 2006 the facility was housing 31 state inmates in its substance abuse treatment program.

Centre, Inc.

The committee received information regarding the programs and services available through Centre, Inc. The committee learned Centre, Inc., is a North Dakota nonprofit correctional agency formed in the mid-1970s to assist the courts and public agencies in providing community-based offender and client treatment services to establish halfway houses as a cost-effective intermediate sanction as well as an adjunct to parole and

probation supervision. The role of Centre, Inc., has been to provide for public safety by offering specialized programs in the state that can effectively monitor and house offenders outside the institutions and jails. Centre, Inc., programming focuses on treating criminogenic behavior and thinking, with services tailored to offender needs. Addiction programming is mandatory for substance-dependent individuals and vocational counseling, job training, and job placement are priority program objectives for all clients.

Centre, Inc., operates programs at the following locations:

Program	Location
Residential living	Bismarck, Fargo, and Grand Forks
Electronic monitoring services	Bismarck, Fargo, and Grand Forks
Day reporting	Bismarck, Fargo, and Grand Forks
Anger management group	Bismarck, Fargo, and Grand Forks
Intensive outpatient chemical dependency treatment	Bismarck and Fargo
Chemical dependency aftercare	Bismarck and Fargo
Drug education	Bismarck and Fargo
Living skills groups (parenting, money management, and wellness)	Bismarck and Fargo
Social detoxification	Fargo
Drug intervention program	Fargo
Cognitive restructuring group	Bismarck and Fargo
Misdemeanor probation	Bismarck area and surrounding communities
Community service program	Bismarck area

The committee learned that Centre, Inc., provides services daily for approximately 600 individuals placed from the Department of Corrections and Rehabilitation. There are approximately 70 to 75 individuals from the Department of Corrections and Rehabilitation in a Centre, Inc., residential living facility. The daily cost for an individual to stay in a residential living facility is approximately $50 and the Department of Corrections and Rehabilitation is responsible for all medical costs for inmates while they are in the Centre, Inc., residential facility. The average length of substance abuse treatment for Department of Corrections and Rehabilitation placements is 60 to 120 days.

The committee received the results of an outcome study of Centre, Inc., facilities which indicated 82 to 89 percent of residents released are employed and 80 to 89 percent of all residents successfully complete the program. Centre, Inc., plans to add 96 beds in Fargo and 25 to 30 beds in Bismarck.

Teen Challenge

The committee received information regarding the Teen Challenge program and toured the Mandan facility. House Bill No. 1408 (2005) provided $150,000 from the general fund for an extended residential care program pilot project (Teen Challenge). The committee learned Teen Challenge, which is a faith-based solution for drug addiction, first began in 1958 and now has 186 centers in the United States and 450 centers in 60 other nations. When Teen Challenge first opened a center in North Dakota, it was located in Williston. The North Dakota Teen Challenge center relocated its adult male facility to Mandan. As of October 2006 there were over 60 students in the program. In addition to the 175-bed facility for men in Mandan, Teen Challenge has a new facility in Bismarck which has 100 beds for women and 18 beds for children of women residents. Teen Challenge is in the process of building a licensed day care in the women's facility. A licensed addiction counselor has been hired and Teen Challenge will soon be offering a 90-day licensed residential treatment program.

Approximately 85 to 90 percent of the students in Teen Challenge are addicted to methamphetamine and the program has an 86 percent success rate for individuals who complete the Teen Challenge program.

Bismarck Transition Center

The committee toured and received information from the Bismarck Transition Center regarding its programs and services. The Bismarck Transition Center is operated by Community, Counseling, and Correctional Services, Inc., in partnership with the Department of Corrections and Rehabilitation. The committee learned the center is a community-based residential correctional facility providing an alternative to direct release from correctional institutions for selected offenders. The center also serves as an alternative to eligible nonviolent offenders. Offenders eligible to be housed at the center include:

- Offenders committed to the custody of the Department of Corrections and Rehabilitation.
- Offenders approaching release from Department of Corrections and Rehabilitation facilities.
- Offenders who have been placed on probation but have been court-ordered to a more structured supervision.
- Offenders who are parole violators who require less restriction.
- Offenders referred by cities and counties for placement in the work release component of the facility.

The Bismarck Transition Center has a capacity of 63 beds and is expanding its facility to provide an additional 88 beds--48 of which will be designated for state-referred offenders and the remaining 40 beds will be designated for city and county offenders. The current daily rate for state inmates is $50 paid by the Department of Corrections and Rehabilitation. In addition, each resident is charged $13 per day for room and board. The center reported it has been operating in Bismarck for three and one-half years and has served 565 individuals. The recidivism rate for individuals completing the program is 17 percent.

Robinson Recovery Center

The Department of Human Services presented information to the committee regarding the status of the Robinson Recovery Center, the substance abuse treatment pilot project established by 2005 Senate Bill No. 2373. Senate Bill No. 2373 appropriated $500,000 from the general fund and $800,000 from other sources for the pilot project. The Department of Human Services issued a request for proposal (RFP) in August 2005 with a contract awarded to ShareHouse in Fargo in October 2005. The contract, in the amount of $785,858, is for a 20-bed residential treatment program and purchases 9,307 treatment days. The balance of $285,858 will be paid by insurance, self-pay, and ShareHouse reserves. The program, which is referred to as the Robinson Recovery Center, began on January 3, 2006, and provides a residential treatment program for individuals who are chemically dependent on methamphetamine or other controlled substances.

As of May 5, 2006, the program had 16 individuals in treatment and 62 referrals. The program uses the MATRIX model of treatment which is an evidence-based treatment model that has shown effectiveness with individuals dependent on methamphetamine. Referrals to the program are processed through the Department of Human Services' eight regional human service centers and can also be made by private interested parties, such as family members. Although the program is intended to provide treatment for individuals who are not affiliated with the corrections system, individuals on probation who are first-time offenders can access the program.

The Robinson Recovery Center is staffed 24 hours a day with residential house supervisors. The clinical staff consists of two full-time licensed addiction counselors, one full-time licensed social worker, and a case manager.

State Hospital - Sex Offender Unit

The committee received information from the State Hospital and toured the sex offender unit at the State Hospital. The sex offender program has been in operation at the State Hospital since 1997. The State Hospital operates 42 beds for sex offenders in two units in the Gronewald/Middleton Building with a population of 37 committed sex offenders as of July 2006. The State Hospital continues to track possible referrals to the sex offender program through contacts with the Department of Corrections and Rehabilitation and state's attorneys. The State Hospital reported it is likely that the 42 beds at the sex offender unit would be full in the near future and the hospital plans to add a third sex offender unit in the Gronewald/Middleton Building due to the growing occupancy and security issues on the two current units. The sex offender program requires professional staff to provide medical, psychiatric, and treatment and evaluation services.

The committee learned the State Hospital completed an analysis because of the escape of a sex offender from the secure services unit in August 2005. The hospital implemented numerous risk-reduction strategies as a result of this analysis. Major changes include the replacement of windows in the building, the addition of a ventilation system, increased usage of sensors and cameras, securing the common areas, and the use of a fence around the building.

The committee received information regarding the nature of the state's responsibility for providing treatment to individuals who have been civilly committed as sexually dangerous individuals. The committee learned legislation was enacted by the 1997 Legislative Assembly and codified as NDCC Chapter 25-03.3, which created a judicial procedure for the civil commitment of sexually dangerous individuals. Section 25-03.3-17 provides that the executive director of the Department of Human Services has the duty to place a sexually dangerous individual in an appropriate facility or program where treatment is available. If the individual is not already in the custody of the Department of Corrections and Rehabilitation, the Department of Human Services may not place the individual at the State Penitentiary or related penal facilities.

North Dakota Century Code Section 25-03.3-17 provides that the individual's mental condition must be examined once a year and the individual has the right to have an expert conduct the examination at the expense of the Department of Human Services. The department may only release an individual from commitment pursuant to a court order and the court must release the individual once the individual is no longer sexually dangerous. Federal courts have held that a state's responsibility to provide treatment to sexually dangerous individuals cannot be based on whether adequate funds, staff, or facilities are available.

Other Testimony

The committee received testimony from the Attorney General's office and the judicial branch regarding incarceration guidelines and joint exercise of government powers. The committee received testimony from the North Dakota Association of Counties, the Board of Nursing, and the North Dakota Nurses Association relating to exempting correctional facilities from Board of Nursing requirements for distribution of medication to inmates.

Incarceration Guidelines

The committee received information from the Attorney General's office regarding the state's incarceration guidelines and the effects of sentencing and alternatives to incarceration on inmate populations. The Attorney General's office reported a three-pronged approach must be used to successfully deal with the drug problem in North Dakota--law enforcement, treatment, and prevention. In 2002 the North Dakota Commission on Drug and Alcohol Abuse was formed to work on issues in the areas of prevention, tribal government, treatment, tobacco, and law enforcement and the commission includes representatives of the Department of Human Services, the Department of Public Instruction, the State Department of Health, the Attorney General's office, law enforcement agencies, and the Highway Patrol. The commission has learned, with regard to dealing with the state's drug problem, that coordination between law enforcement and treatment

providers is necessary; the "revolving door" in which the same individuals are incarcerated and released repeatedly must be stopped and the state needs to identify individuals who would benefit from alternatives to incarceration and those individuals who need to be incarcerated. The Attorney General's office reported there is also a Governor's Task Force on Violent and Sexual Offenders that is examining the laws and practices with regard to violent and sex offenders.

The Attorney General's office provided information on the five major crime categories that have minimum mandatory sentences:

- Armed offenders.
- Violent offenders.
- Offenders against children and sex offenders.
- Controlled substance (drug) offenders.
- Motor vehicle violations.

The Attorney General's office reported from a law enforcement perspective, the current statutes providing for minimum mandatory sentences are appropriate. The Department of Corrections and Rehabilitation reported mandatory prison sentences are not currently having a major impact on the prison population. Personnel from the judicial branch reported North Dakota's minimum mandatory sentences have an impact on sentence lengths and inmate populations and they are not in favor of minimum mandatory sentences as they restrict judicial authority.

Joint Exercise of Governmental Powers

The committee received information on the statutory authority to allow the state to form an agreement with a county to share prison facilities or to share services between state and county jail facilities. North Dakota Century Code Chapter 54-40 provides for the joint exercise of governmental powers and Section 54-40-08 provides for the use by political subdivisions of state buildings and facilities. Section 54-40-08(1) allows any North Dakota county to enter into an agreement with any North Dakota state agency for the use of buildings and facilities under the control of the state agency for a period of time as the parties may determine to be necessary and that before an agreement is effective, the respective governing body or officer of the state agency must approve the agreement and the Attorney General must determine that the agreement is legally sufficient. Section 54-40-08(2) provides that a political subdivision, pursuant to an agreement for the use of buildings or facilities, may make improvements to the buildings or facilities instead of any rental or other payments, but all improvements must first be approved by the governing body or officer of the state agency and the statute also provides that the buildings and facilities may be moved or replaced at any time during the term of an agreement and the political subdivision may use the buildings and facilities constructed in place of the original buildings and facilities for the remainder of the term of the agreement. The committee learned Chapter 54-40.3 allows the state and a county to jointly construct a building.

Exemption From Nursing Requirements for Medication

The committee received information on requirements of the Nurse Practices Act and rules relating to medication management within jails. The committee learned the Nurse Practices Act and related rules require any correctional officer who dispenses prescription drugs to inmates must receive Board of Nursing-approved training. The dispensing of the drugs must be supervised by a nurse and, in some instances, these rules also apply to over-the-counter medications. The North Dakota Association of Counties reported most Class I facilities already employ medical staff; however, a few Class I facilities as well as Class II and Class III facilities are concerned with the additional costs required to comply with these rules. The Association of Counties proposed exempting Grade 1, Grade 2, and Grade 3 correctional facilities from the nursing requirements relating to the provision of medication similar to the exemption provided in NDCC Section 43-12.1-04(9) for residential treatment centers for children; treatment or care centers for developmentally disabled persons; group homes, residential child care facilities, and adult foster care facilities; and human service centers. The Department of Corrections and Rehabilitation has developed a Medication Administration I course for correctional officers which has been approved by the Board of Nursing.

Other Incarceration Options

The committee received testimony from local and regional authorities, the Commission on Alternatives to Incarceration, and Corrections Corporation of America (CCA), Nashville, Tennessee, regarding other options available for meeting the Department of Corrections and Rehabilitation incarceration and facility needs.

County Jails

The committee toured the Cass County Jail and learned the jail, which opened on September 7, 2002, cost approximately $18 million to build, with an additional $1 million for furniture, fixtures, and equipment. Funding for the facility was from a half-cent sales tax increase that was implemented for up to four years. The Cass County Jail had 256 beds when it opened and the design of the jail allows for expansion to a total of 600 beds. A 96-bed expansion project, construction on which was started in the spring of 2006 and which consists of the addition of two 48-bed pods, is expected to be completed in June 2007. The addition will cost approximately $4.2 million and the additional 96 beds will be minimum security beds. The Cass County Jail has 10 beds for federal prisoners at the daily rate of $60 per day.

The North Dakota Association of Counties presented information to the committee regarding the status of Grade 1 county jails, including information on beds available for state use. The Association of Counties reported there have been significant changes in the availability of county and regional jail space during the 2005-07 biennium. Since the beginning of the 2005-07 biennium, the North Central Correctional and

Rehabilitation Center in Rugby and the new Grand Forks facility have become operational. The total Grade 1 capacity on October 5, 2006, in county and regional jails was 1,245 jail beds and 40 treatment beds. Of the 1,245 beds, 100 to 120 beds could be made available for state contract placement among six different facilities. Approximately 30 of the 100 to 120 beds are already occupied by state inmates. Three additional jail construction projects are expected to be completed by July 1, 2008, and will increase the total capacity to 1,459 beds and the number of beds available for state contract to as many as 200 beds.

The table below provides information on available bed space in county facilities:

Facilities	As of October 2006		As of July 1, 2007		As of July 1, 2008	
	Total Capacity	Available for State Contract[1]	Total Capacity	Available for State Contract[1]	Total Capacity	Available for State Contract[1]
Sheyenne Valley Correctional Center[2]	30	5	30	5	84	40
Bottineau County	9		9		9	
Burleigh County	130		130		130	
Cass County[3]	252		300		300	
Grand Forks County[4]	246	20	246	20	246	20
Lake Region Correctional Center	74	20	74	20	74	20
McKenzie County	12		12		12	
McLean County[5]	11				24	15
Mercer County	20		20		20	
Morton County	32		32		32	
North Central Correctional and Rehabilitation Center[6]	89	25-45	89	25-45	89	25-45
Richland County	33		33		33	
Stutsman County	84	5	84	5	84	5
Southwest Multi-County Correction Center	82	25	82	25	82	25
Ward County	104		104		104	
Williams County[7]	37		37		112	30
Total beds	1,245	100-120	1,282	100-120	1,435	180-200

[1]All Grade 1 jails provide an occasional bed for short-term placement of state prisoners. These beds are not included in the amounts above.

[2]Construction of the Sheyenne Valley Correctional Center is expected to begin in April 2007.

[3]Cass County expects to complete construction of two 48-bed pods in June 2007. However, only one pod will be opened upon completion. The other 48-bed pod will be made available if the total cost for detention can be secured.

[4]The new 246-bed Grand Forks facility opened October 1, 2006. Grand Forks has had discussions with the Department of Corrections and Rehabilitation regarding the conversion of a portion of the vacated 86-bed facility for use as a transition center.

[5]The existing Grade 2 McLean County facility is scheduled for demolition in March 2007. There will be no facility available for 12 to 14 months.

[6]The North Central Correctional and Rehabilitation Center in Rugby also has a 40-bed treatment unit which currently houses 31 state inmates.

[7]Construction of a 112-bed facility in Williams County was approved in June 2006. Construction is expected to be completed in July 2008.

The committee learned some county facilities are not willing to contract with the Department of Corrections and Rehabilitation to house state inmates because the state's reimbursement rate of $50 per day is not enough to cover the actual housing costs and the counties are responsible for the first $150 of medical expenses per inmate per month. Counties are willing to contract to house federal inmates because the federal contracts guarantee a set daily rate for three years, federal agencies are responsible for all medical costs, and federal agencies provide transportation of the federal inmates. A Burleigh County commissioner said he is interested, if the state were to build a new prison, of having the county assessing some of the prison space at the site.

Commission on Alternatives to Incarceration

The committee received periodic reports from legislative members on the Commission on Alternatives to Incarceration regarding the commission's activities. The commission is recommending the Governor include the following funds in the 2007-09 executive budget:

- Expansion of the Robinson Recovery Center - Up to $1.2 million.
- Room and board for individuals admitted to a faith-based program to address addiction problems - $300,000.
- The addition of two FTE positions in the Department of Corrections and Rehabilitation and four FTE positions in the Department of Human Services to assist in the expansion of drug courts - Approximately $600,000.
- Cost-share program with local governments for the operation of community service organizations - $200,000.
- The Cass County Jail Intervention Coordinating Committee mental health project, contingent on the receipt of a federal grant for implementation of the project - $582,000.

The commission also encourages the Governor to assess the need for additional staff to reduce caseloads for licensed addiction counselors, case managers for individuals with serious mental illnesses, and parole and probation officers to attempt to achieve industry caseload standards and the commission is recommending a bill regarding the use of electronic monitoring for offenders.

Private Correctional Facility

The committee received information from CCA regarding options for North Dakota to consider in addressing its incarceration needs. Corrections Corporation of America reported it is the nation's largest provider of outsourced corrections management services to federal, state, and local governments. Corrections Corporation of America manages over 52 percent of all beds under contract with private operators in 63 facilities in the United States. To assist North Dakota in meeting its incarceration and facility needs, CCA said it could:

- Finance, design, build, and operate a facility for the state;
- Design, build, and operate a facility, owned by the state and financed by state resources; or
- Provide beds on an emergency basis at existing CCA facilities.

The committee learned CCA could construct a new in-state facility in 12 to 24 months, with no expenditure from the state until the first inmate is brought into the facility. Location, prevailing wage rates, and property taxes would affect the cost of the project. Construction costs for a new 1,000-multicustody-bed facility would range from $55,000 to $60,000 per bed with an operational per diem of $50 to $57. The operational per diem is based on terms in the contract for services provided. Construction costs for a new 2,500-multicustody-bed facility would range from $50,000 to $55,000 per bed with an operational per diem ranging from $48 to $55. Corrections Corporation of America reported out-of-state beds are available in Georgia, Oklahoma, and Arizona. Responsibility for orientation and transition would remain with the state.

The committee received information regarding the RFP process and related contracts for a private correctional facility in Shelby, Montana, which is owned and operated by CCA. The provisions contained in the RFP included facility specifications and contractor requirements for finding a suitable site for the facility and providing all furniture, fixtures, and equipment. Provisions in the design and construction contract included Montana's unlimited rights to the drawings, designs, and specifications and a requirement for the contractor to pay up to $100,000 for an independent state representative to be onsite as a contract manager during the construction phase. Provisions from the operations and management contract included health and counseling services to be provided by the contractor and Montana's agreement to advance to the contractor the first six months of operating per diem in the amount of $3.6 million. The Shelby facility currently has a population of 510 inmates from the state of Montana and 50 federal inmates, the Montana Men's Prison currently has a population of 1,471 inmates, and the Montana Women's Prison currently has a population of 244 inmates. The daily inmate rate for the Shelby facility is $44.47 for operational costs plus a $9.14 exclusive use fee for a total daily inmate rate of $53.61, the daily inmate rate for the Montana Men's Prison is $61, and the daily inmate rate for the Montana Women's Prison is $80. The RFP provided Montana with the right of first refusal to lease or purchase the building in a buyback option. The exclusive use fee ($9.14) paid as part of the per diem rate for the Shelby facility would be subtracted from the fair market value of the Shelby facility to arrive at a purchase price should Montana act on its option to purchase the facility.

2007-09 Biennium Facility Needs

The committee received information from the Department of Corrections and Rehabilitation regarding the department's facility needs for the 2007-09 biennium.

Missouri River Correctional Center

The committee toured the Missouri River Correctional Center. The committee learned the Missouri River Correctional Center originated in 1941 as the North Dakota State Prison Farm. The center reported plant improvement needs for the 2007-09 biennium include a 12,883-square-foot kitchen/multipurpose building that would replace the current kitchen, repairing and surfacing the gravel road leading into the facility, and replacement of heat pumps that are part of the geothermal heating system. The estimated cost of the new kitchen/multipurpose building is approximately $2.6 million and an additional $18,000 would be needed for demolition of the old kitchen. The estimated cost of repairing and surfacing the gravel road is $150,000 and the cost of the heat pumps is $25,000. The Department of Corrections and Rehabilitation reported $2.7 million in funding for the multipurpose room will be included in the department's 2007-09 biennium budget request as an optional item.

James River Correctional Center

The committee toured the James River Correctional Center facility, including the Jamestown location of Roughrider Industries. The committee learned the food services building is in relatively good shape; however, it is connected to other buildings, including the State Hospital, by large tunnels that are a security concern. The laundry building is structurally sound; however, the roof leaks and needs to be replaced and tuck-pointing of the mortar between the bricks is also needed. The James River Correctional Center is planning to request funding for these repairs for the 2007-09 biennium. The engineering building, used for storage and office space, is in very poor condition but the cost to repair it is prohibitive due to its age and the high levels of asbestos. The old day care building, which houses some offices for the James River Correctional Center, is in good structural shape but needs a new roof and the entire building will require tuck-pointing or siding within the next few years. The committee learned the remodeling project at the James River Correctional Center, which

converted kitchen pantries into dormitory rooms for inmates, was completed in July 2006 and resulted in 20 additional inmate beds.

State Penitentiary

The committee toured the State Penitentiary and received information regarding facility needs at the Penitentiary. During the 2003-04 interim, the Department of Corrections and Rehabilitation requested and received $60,000 from the preliminary planning revolving fund to hire an architect to conduct a study of the replacement of the east cellhouse. The architect's study included findings related to the areas of the east cellhouse, medical facility, segregation, and orientation facility. The architect's recommended changes at the State Penitentiary included:

- Relocating the warehouse.
- Constructing a new vehicle access and a new south tower.
- Demolishing the existing south tower.
- Constructing a new orientation housing unit, an inmate intake/transfer unit, a clinic, an infirmary, a segregation unit, a new visitors' entrance, and a laundry facility.
- Eliminating the east cellhouse.

In March 2006 the department presented information to the committee relating to an expansion and renovation plan that would replace the east cellhouse with a 300-bed cellhouse and include a larger orientation unit, new infirmary and clinic, and a 90-bed administrative segregation unit. The plan also includes a warehouse, a laundry facility, demolition, and site work, including parking. The expansion and renovation plan would result in a net gain of 244 beds. The March 2006 estimated project cost was $38.8 million.

In October 2006 the department reported the estimated project cost has increased to $42 million, and it was estimated that the total project cost would increase by an additional 18 to 20 percent if the project begins in 2008. The department reported it is including a request for funding for the expansion and renovation project in its 2007-09 biennium budget request. The department reported $900,000 in funding for parking lot renovation at the Penitentiary will also be included in the department's 2007-09 biennium budget request as an optional item.

Related Facility Debt

The committee received information relating to the Department of Corrections and Rehabilitation outstanding debt on its current facilities. The committee learned the Department of Corrections and Rehabilitation has bonds outstanding for capital construction projects at the State Penitentiary, the James River Correctional Center, and the Youth Correctional Center and for an energy improvement project at the Missouri River Correctional Center. Each biennium, funds are appropriated to the Department of Corrections and Rehabilitation for the bond payments. For the 2005-07 biennium, $540,052 was appropriated from the general fund to the Youth Correctional Center and $2,498,534 was appropriated from the general fund to the Prisons Division for the bond payments.

The following is a schedule of the bonds outstanding for the Department of Corrections and Rehabilitation capital projects:

Facility/Project (Cost)	Year Approved by Legislative Assembly	Bond Issue (Payoff Year)	Outstanding Principal Service Balance on June 30, 2007
State Penitentiary			
Phase II construction - Female housing unit and south unit ($7,500,000)	1985	1998 Series B North Dakota Building Authority refunding revenue bonds (4.5% to 5% 13-year bonds) - Used to refinance 1991 Series A and 1992 Series A - The 1991 Series A issue was used to refund the 1986 Series A (2011)	$1,975,524
Phase III construction - Education building, food service building, and programs building ($5,000,000)	1989	2003 Series A North Dakota Building Authority refunding revenue bonds (2.35% to 4.07% 7-year bonds) - Used to refund 1993 Series A refunding revenue bonds which were used to refinance 1990 Series A, B, and C (2009)	1,002,963
James River Correctional Center			
Phase II - Food service/laundry renovations ($2,662,890)	2003	2003 Series B North Dakota Building Authority revenue bonds (4.09% 20-year bonds) (2023)	3,494,256
ET building improvements ($980,000); programs building improvements ($584,000)	2005	2005 Series A North Dakota Building Authority revenue bonds (4.21% 20-year bonds) (2025)	2,548,393
Missouri River Correctional Center			
Energy improvement project ($105,326)	2003	2003 Series B North Dakota Building Authority revenue bonds (4.09% 20-year bonds) (2023)	138,783
Youth Correctional Center			
Gymnasium renovation ($1,400,000)	1997	1998 Series A North Dakota Building Authority revenue bonds (4.4% to 5.125% 20-year bonds) (2018)	1,430,091
Pine Cottage ($1,475,000)	1999	2000 Series A North Dakota Building Authority revenue bonds (5.5% 20-year bonds) (2019)	1,777,239
Total debt service balance outstanding as of June 30, 2007			$12,367,249

The committee learned NDCC Section 54-17.2-23 limits the amount of lease payments paid from the general fund for a biennium to 10 percent of an equivalent one-cent sales tax based on the projected sales, use, and motor vehicle excise tax collections presented to the Legislative Assembly at the close of the most recently adjourned regular legislative session. The general fund limit for bond payments for the 2005-07

biennium is $19,587,060 and the estimated general fund debt service for the 2005-07 biennium is $18,021,705. Based on the Office of Management and Budget August 2006 revenue forecast for the 2007-09 biennium, the general fund limit for bond payments will increase from $20.3 million to $22.7 million. This will increase the amount of bonding that may be approved by the 2007 Legislative Assembly, while remaining within the bonding limit guideline, from $37.5 million to $46.6 million with two-year interest capitalization or $51.2 million with three-year interest capitalization. Debt service payments on this issue would begin in the 2009-11 biennium. Outstanding bonds issued by the North Dakota Building Authority total $138,505,000 as of June 30, 2006.

The North Dakota Building Authority estimated the following debt service requirements to finance a construction or renovation project for the Department of Corrections and Rehabilitation assuming a project cost of $38.8 million, plus bond issue costs, an interest rate of 4.73 percent, and a two-year period for capitalizing interest:

Biennium	Principal	Interest	Total
2009-11	$3,505,000	$3,929,299	$7,434,299
2011-13	3,825,000	3,609,199	7,434,199
2013-15	4,180,000	3,254,487	7,434,487
2015-17	4,575,000	2,856,254	7,431,254
2017-19	5,025,000	2,407,519	7,432,519
2019-21	5,530,000	1,903,686	7,433,686
2021-23	6,095,000	1,337,901	7,432,901
2023-25	6,725,000	706,029	7,431,029
2025-27	3,621,079		3,621,079
Total	$43,081,079	$20,004,374	$63,085,453

NOTE: Current bond payments to be made from the general fund in the 2007-09 biennium total approximately $20 million.

OTHER CONSIDERATIONS

The committee considered bill drafts to address the Department of Corrections and Rehabilitation future facility needs that would have provided for:

- The construction of a new state correctional facility and related land acquisition at a cost not to exceed $62,800,000 and the development of a prison facility master site plan. Roughrider Industries would either be moved to the new location or inmates would be transported back and forth to the existing facility.
- The appraisal of State Penitentiary land to assist in the sale of the state prison site if a new state correctional facility is constructed.
- The renovation and expansion of the State Penitentiary at a cost of $38 million from the general fund.
- The Department of Corrections and Rehabilitation being required to issue an RFP for the design, construction, and operations and management of a new correctional facility.

Recommendations

The committee recommends Senate Bill No. 2025 providing an exemption from nursing requirements for employees providing medication to inmates within a correctional facility as defined in NDCC Section 12-44.1-01. The bill also adds a new section to Chapter 12-44.1 relating to the training requirements for correctional facility staff who are authorized to provide medication to inmates of a correctional facility.

The committee recommends House Bill No. 1026 providing for an appropriation of $38 million from the general fund for the renovation and expansion of the State Penitentiary, including replacement of the east cellhouse.

PERFORMANCE AND ACCOUNTABILITY SYSTEM PILOT PROJECT

Background

The committee received information relating to its responsibility, as directed in 2005 House Bill No. 1035, to establish a government performance and accountability system pilot project involving up to three executive branch agencies during the 2005-06 interim. The committee learned performance budgeting for the state of North Dakota began during the 1993-94 interim with the development of a pilot project to incorporate service efforts and accomplishments into the budgeting process. The Office of Management and Budget chose 12 agencies to be involved in the program-based performance budgeting pilot project for the 1995-97 biennium, and the appropriation bills for these agencies included program line items rather than object code line items. The 1995 Legislative Assembly chose to appropriate funds on a program basis rather than object code basis for 7 of the 12 pilot agencies. The 1999 Legislative Assembly directed the Office of Management and Budget to discontinue the program-based performance budgeting pilot project when preparing the 2001-03 executive budget. The primary reasons the Legislative Assembly chose to discontinue the performance budgeting pilot project were:

- The system focused too much on detailed inputs and outputs of agency programs, rather than outcomes or results.
- The detailed performance budgeting information required more time to analyze than was available during a legislative session.
- The performance measures were selected by agencies, with little input from legislators.
- The focus was on agencies wanting program rather than object code line items in the appropriation bills.

The committee learned the 2003-04 interim Government Performance and Accountability Committee studied state government performance and accountability practices, including a review of other states' performance budgeting practices and strategic planning efforts and how those practices and efforts may apply to North Dakota and improve its budgeting process. The Government Performance and Accountability Committee recommended 2005 House Bill No. 1035, which was amended to provide for the government performance and accountability system pilot project assigned to the 2005-06 interim Budget Committee on Government Services.

Pilot Project Agencies

The Office of Management and Budget presented information to the committee regarding the establishment of a government performance and accountability system pilot project, including recommendations for the pilot agencies. The Office of Management and Budget reported all state agencies were requested to provide their performance measures to the Office of Management and Budget when they submitted their 2005-07 biennium budget request. The information received by the agencies was compiled into the *2005-07 Performance Measures*, which was provided to the 2005 Legislative Assembly. The Office of Management and Budget plans to provide similar information to the 2007 Legislative Assembly. The Office of Management and Budget suggested the committee consider the following items in selecting the three pilot project agencies:

- The agencies should be willing participants.
- The agencies should have the basic elements of a strategic plan and performance measures already in place.
- The agencies' staff and resources should be sufficient to fulfill the pilot project requirements.
- The agencies should understand what the committee expects the results of the pilot project to be and how the committee will use those results.

The Office of Management and Budget presented information on current performance measure information prepared by state agencies and whether selected agencies could participate in the government performance and accountability system pilot project. The Office of Management and Budget suggested the committee, in its decision to choose up to three agencies to participate in the pilot project, consider the Department of Transportation, the Parks and Recreation Department, and the Highway Patrol.

The committee approved designating the Department of Transportation, the Parks and Recreation Department, and the Highway Patrol as participants in the government performance and accountability system pilot project and that the Information Technology Department, the Department of Veterans Affairs, and the Department of Commerce be asked to provide information to the committee regarding their performance and accountability systems.

Department of Transportation

The Department of Transportation provided information to the committee on the department's strategic planning and performance measurement process which it began in 2001. The committee learned the department has developed a six-year strategic plan that contains 5 goals and 29 objectives. The department continually monitors its progress in achieving its objectives and goals. Every two years the department prepares a performance report card that presents the department's performance trends. Managers within the department monitor and report more detailed performance measures relating specifically to their programs. The department reported it hired a local consulting firm to assist the department in the preparation of its initial strategic plan and performance measures. Since that time, the department updates and revises its system internally.

The Department of Transportation presented information to the committee on the use of the agency's performance and accountability system in developing the agency's 2007-09 budget request. The department reported it relies on department processes and customer satisfaction surveys to determine if the department is meeting its performance goals. The department's strategic plan outlines the goals, objectives, and action plans used by the department in measuring its performance.

Highway Patrol

The Highway Patrol presented information to the committee on the department's system of performance and accountability. The Highway Patrol reported it began monitoring performance in the 1990s and in 2004 began a strategic planning process that resulted in the following operational goals:

- Concentrate efforts toward patrolling highways and being visible.
- Reduce crashes and investigate when they do occur.
- Impact alcohol abuse relating to driving under the influence and underage consumption and the tragedies that happen on our highways as a result.
- Impact drug abuse relating to possession, use, manufacturing, and transportation of illegal drugs occurring on our highways.
- Protect highway infrastructure and provide for the safe movement of goods and services through an effective motor carrier system.
- Provide quality service to the public.
- Hold individuals, not groups or districts, accountable for their actions, good or bad.

The Highway Patrol reported it monitors its progress in achieving its goals through monthly performance reports completed by district commanders. The Highway Patrol hired a facilitator to assist it in planning the initial strategic plan and is currently in the process of updating its strategic plan and goals. The Highway Patrol receives input from its employees as well as the public as it develops and updates its strategic plan.

The Highway Patrol presented information to the committee on the use of the department's performance and accountability system in developing the agency's 2007-09 budget request. The Highway Patrol has a program-based budget with performance measures that were developed in 1995. The budget consists of three programs--field operations, the training academy, and administration. The department's performance measures include outcome and output measures. The Highway Patrol reported the agency's 2007-09 budget request will include requests relating to increasing the road patrol hours from 302,000 to 326,000 hours, increasing coverage in the Fargo area to 24-hour coverage, increasing northern border-related trooper assignments, increasing academy utilization to

640 classroom days per fiscal year, and providing for an employee equity compensation plan.

Parks and Recreation Department

The Parks and Recreation Department provided information to the committee on the department's performance and accountability system. The department reported it began its strategic planning and performance measurement system in 2000 by hiring a consultant to assist it in developing a five-year strategic plan. The department reviews its strategies and progress in meeting performance each month. The department sets goals and objectives annually based on its strategic plan.

The Parks and Recreation Department presented information on the use of the agency's performance and accountability system in developing the agency's 2007-09 budget request. The department has three primary focus areas--enhance visitor services, stewardship of physical and natural resources, and provide outdoor recreation opportunities. The department has three program areas--natural resources, recreation, and administration. The department's performance goals for the budget are:

- Review program/division goals - Public input.
- Set agency priorities for the biennium.
- Assess physical/financial asset needs.
- Review with public.
- Adjust priorities and assets.
- Incorporate program measures.
- Introduce budget plan.

Information Technology Department

The Information Technology Department provided information to the committee on the department's strategic planning and performance measurement process. The committee learned the department has developed a plan based on its mission statement. The plan has four vision statements that are centered around the customer. The plan has 7 goals and 18 objectives that are each tied to a vision statement. The department reported it issued its first statewide Information Technology Department plan in 1998 and its first annual report in 2001. The department reported it received outside assistance in developing its strategic plan.

Department of Commerce

The Department of Commerce provided information to the committee on the department's performance and accountability system. The department reported its accountability measures are included in the department's appropriation bill--2005 Senate Bill No. 2018. The accountability measures include the six economic goals and associated benchmarks identified in the North Dakota Economic Development Foundation's strategic plan. The department reports annually to the Budget Section regarding these measures.

The department reported the strategic plan was developed with the assistance of a group of consultants that included AngelouEconomics, MGT of America, Inc., and Paragon Decision Resources. The plan was finalized in September 2002 and updated in June 2005. The plan outlines the following goals for economic development in North Dakota:

- Develop a unified front for economic development based on collaboration, accountability, and trust.
- Strengthen linkages between the state's higher education system, economic development organizations, and private businesses.
- Create quality jobs to retain North Dakota's current workforce and attract new high-skilled labor.
- Create a strong marketing image to build on the state's numerous strengths, including workforce, education, and quality of place.
- Accelerate job growth in diversified industry targets to provide opportunities for the state's long-term economic future.
- Strengthen North Dakota's business climate to increase global competitiveness.

Department of Veterans Affairs

The Department of Veterans Affairs provided information to the committee on the status of the department's strategic plan and performance measures. The department reported that, with the assistance of a consultant, the department completed its strategic plan in October 2004. The department prepared the plan based on a recommendation contained in a performance audit of the department conducted by the State Auditor's office in 2003-04. The department has also prepared its operational plan, which is the department's performance measurement document and is used to implement the goals and objectives of its strategic plan.

Recommendation

The committee does not make any recommendation regarding the government performance and accountability system pilot project.

STATE-OWNED REAL ESTATE

Pursuant to 2005 House Concurrent Resolution No. 3005, the committee received information identifying state-owned real estate and studied the utilization of real estate owned by state agencies and institutions, the best use of state-owned real estate, and whether the state should establish and maintain an inventory of state-owned real estate. A survey was sent to state agencies requesting them to provide the following information to the committee regarding any state-owned real estate and vacant buildings:

- Restrictions on the use of the property.
- Restrictions on use of proceeds from the sale of the property.
- Mineral rights.
- Easements.
- Leases and lease income.

From the results of the survey of 38 state agencies and institutions that own land and buildings, the committee learned total state-owned land as reported by state agencies and institutions totals 1,057,333 acres with an estimated value of $405.6 million. The

1.1 million acres of state land comprises 2.4 percent of all land in North Dakota compared to federally owned land that totals 1.9 million acres, or 4.2 percent of all land in the state. Agencies and institutions own 1,820 buildings totaling 21.8 million square feet with a total estimated value of $1,675,000,000. Agencies reported total debt on these buildings of $207,500,000.

The committee learned the Land Department is reviewing small tracts of land that it owns as part of state trust fund lands and that upon approval of the Board of University and School Lands, the land may be sold and any proceeds would be deposited into the trust fund that owns the land. The Land Department reported the state has sold 1.8 million acres of the 2.5 million acres originally granted to the state, leaving 700,000 acres. The Land Department provides 5 percent of any income earned on state lands to the county in which the land is located.

The committee received information relating to the sale of real property of the state. The committee learned the Department of Corrections and Rehabilitation is authorized under NDCC Section 54-23.3-04 to sell land without legislative approval. The proceeds from the sale are to be deposited into the Penitentiary land fund. The committee learned the usual practice for the sale of state land is that it is authorized by a specific bill passed by the Legislative Assembly. The common practice to initiate a sale would be to obtain a current appraisal and prepare a bill authorizing the land sale.

The committee considered a bill draft that would have required the Office of Management and Budget to maintain an inventory of state-owned assets. The Office of Management and Budget reported it maintains an inventory of state-owned buildings and could add state-owned land to the inventory system and a bill draft is not necessary to accomplish the inventory.

Recommendation

The committee does not make any recommendation regarding the utilization of real estate owned by state agencies and institutions, the best use of state-owned real estate, and whether the state should establish and maintain an inventory of state-owned real estate.

MONITORING THE STATUS OF STATE AGENCY AND INSTITUTION APPROPRIATIONS

Reorganization of the Department of Emergency Services

The committee received a report from the Department of Emergency Services on the status of the reorganization of the Division of Emergency Management into the Department of Emergency Services. The committee learned the Division of Emergency Management has been restructured as the Department of Emergency Services, pursuant to 2005 House Bill No. 1016. The department, which is under the direction of the Adjutant General, consists of the Division of State Radio and the Division of Homeland Security. The department reported an advisory committee has been formed which is comprised of 11 stakeholder members and is governed by an approved charter. The strategic planning model being used for the reorganization consists of the following components:

- Mission.
- Vision.
- Business operational base.
- Strengths, weaknesses, opportunities, and threats.
- Goals.
- Objectives (action plans).
- Systems.
- Processes.
- Communications infrastructure.
- Values.

State Agency and Institution Appropriations

Because of time constraints and other study responsibilities, the committee did not directly monitor the status of state agency and institution appropriations. However, the Legislative Council staff prepared reports on agency compliance with legislative intent for the 2005-07 biennium and on the status of state trust funds, which were distributed to legislators and are available on the Legislative Council's web site.

AGREEMENTS BETWEEN NORTH DAKOTA AND SOUTH DAKOTA

North Dakota Century Code Section 54-40-01 provides that an agency, department, or institution may enter into an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function the entity is authorized to perform by law. Any proposed agreement must be submitted to the Legislative Assembly or, if the Legislative Assembly is not in session, to the Legislative Council or a committee designated by the Council for approval or rejection. The agreement may not become effective until approved by the Legislative Assembly or the Legislative Council. The Budget Committee on Government Services was assigned this responsibility for the 2005-06 interim.

The committee received information regarding the history of the bistate authority legislation. The 1996 South Dakota Legislature enacted a law creating a legislative commission to meet with a similar commission from North Dakota to study ways North Dakota and South Dakota could collaborate to provide government services more efficiently. The North Dakota Legislative Council appointed a commission to meet with the South Dakota commission. As a result of the joint commission, the North Dakota Legislative Assembly enacted legislation relating to higher education and the formation of cooperative agreements with South Dakota. The South Dakota commission proposed several initiatives, but the South Dakota Legislature did not approve any of the related bills.

The committee received information on other states' bistate or multistate agreements, including a New York bistate planning agreement relating to health regulations, a South Carolina multistate lottery agreement, and a

West Virginia multistate agreement for purchasing prescription drugs for the state's Medicaid program.

During the 2005-06 interim, no proposed agreements were submitted to the committee for approval to form a bistate authority with the state of South Dakota.

BUDGET TOURS

During the interim the Budget Committee on Government Services also functioned as a budget tour group of the Budget Section and visited the James River Correctional Center, the Missouri River Correctional Center, the State Penitentiary, Roughrider Industries, and the Youth Correctional Center. The committee heard about facility programs, institutional needs for major improvements, problems institutions or other facilities may be encountering during the interim, and information on land and building utilization. The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 2007 legislative session.

BUDGET COMMITTEE ON HEALTH CARE

The Budget Committee on Health Care was assigned the following study responsibilities:

1. Section 11 of 2005 House Bill No. 1010 directed a study of the need for a comprehensive long-range study of the state's current and future health care needs in order to address issues, such as the aging population of the state, the phenomenon of health care cost-shifting to the private sector, the trend of uncompensated health care services, shortages in the number of health care professionals, duplication of technology and facilities, and any other factors that might affect the health care system in North Dakota in the year 2020.
2. Section 6 of 2005 House Bill No. 1280 directed a study of the feasibility and desirability of creating an allied health professions board to regulate the practice of members of allied health professions, including the feasibility and desirability of a North Dakota allied health professions board entering joint professional licensure agreements with neighboring states.
3. Section 2 of 2005 Senate Bill No. 2269 directed a study of the feasibility and desirability of establishing an umbrella licensing organization for a group consisting of counselors, psychologists, marriage and family therapists, and social workers.
4. Section 1 of 2005 Senate Bill No. 2171 directed a study of the licensure and regulation of acupuncturists practicing in the state as well as the possibility of multistate joint licensure and regulation programs.
5. To make a recommendation of a private entity, after receiving a recommendation from the Insurance Commissioner, for the Legislative Council to contract with to provide a cost-benefit analysis for legislative measures mandating health insurance coverage of services or payment for specified providers of services, or an amendment that mandates such coverage or payment, pursuant to North Dakota Century Code (NDCC) Section 54-03-28.

The committee was also assigned the responsibility to receive reports from:

- The Board of Nursing on its study of the nursing educational requirements in this state and the nursing shortage in this state and its implications for rural communities, pursuant to NDCC Section 43-12.1-08.2.
- The Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program state plan, pursuant to NDCC Section 50-29-02.
- The State Department of Health regarding the department's basic care survey pilot project, including a recommendation of whether the unannounced survey process should continue for all basic care facilities, pursuant to Section 26 of 2005 Senate Bill No. 2004.

Committee members were Senators Aaron Krauter (Chairman), John M. Andrist, Richard L. Brown, Ralph L. Kilzer, Judy Lee, Tim Mathern, Carolyn Nelson, and Russell T. Thane and Representatives William R. Devlin, Lee Kaldor, Gary Kreidt, Shirley Meyer, Vonnie Pietsch, Todd Porter, Louise Potter, Clara Sue Price, Robin Weisz, and Alon C. Wieland.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

COMPREHENSIVE STUDY OF NORTH DAKOTA HEALTH CARE NEEDS

Section 11 of 2005 House Bill No. 1010, the appropriation bill for the Insurance Commissioner's office, directed a study of the desirability of proposing a comprehensive health care and health insurance study to be performed during the 2007-08 interim. The 2005-06 interim study was to include consideration of whether there is a need for a comprehensive long-range study of the state's current and future health care needs in order to address the following issues:

- The aging population in the state;
- The phenomenon of health care cost-shifting to the private sector;
- The trend of uncompensated health care services;
- Shortages in the number of health care professionals;
- Duplication of technology and facilities; and
- Any other factors that might affect the health care system in North Dakota in the year 2020.

If the study results in a recommendation for a comprehensive health care and health insurance study, the proposal is to address the parameters of the proposed study and how the proposed study will be designed in order to allow for significant consumer input. The Legislative Council assigned this responsibility to the Budget Committee on Health Care.

North Dakota Health Care Issues

The committee learned that it is expected that the state's current population over age 65 will increase from the current population of 97,800 to approximately 149,600 by 2020. The state's population over age 85 is expected to increase from the current population of 15,300 to approximately 24,300 by 2020. Because of the anticipated increases in the number of elderly, there may be a need to relocate or add skilled nursing home beds. In addition, future demand for Alzheimer's and dementia-related services will greatly depend on the availability of new treatment options.

The committee learned that:

- North Dakota's elderly receive high-quality care despite the fact that Medicare spends considerably less on care for North Dakota

beneficiaries. Medicare in certain areas of the country is implementing a new model of linking payment to quality of care delivered referred to as "paying for performance." This model has resulted in substantial improvements in the quality of care provided.

- Total personal health care expenditures in North Dakota in 2000 were approximately $2.9 billion, or 16.2 percent of the gross state product, an increase from the 1990 total personal health care expenditures of $1.7 billion, or 14.4 percent of the gross state product.
- Approximately 58 percent of North Dakotans travel 5 miles or less to receive health care; approximately 9 percent travel 21 to 50 miles; and approximately 20 percent travel more than 50 miles to access health care services. Studies have shown that greater distances people must travel to receive health care services result in underutilization of health care services.
- Between 1994 and 2003 there were 789 identified suicides in North Dakota. Suicide rates among American Indians on reservations is anywhere from 2 to 10 times higher than the rest of the state's population.

The committee heard testimony from a representative of the University of North Dakota School of Medicine and Health Sciences Center for Rural Health regarding North Dakota health care needs. North Dakota is 1 of 13 states that does not participate in the healthcare cost and utilization project (HCUP), which is a federal data base for patient-level health care data relating to a broad range of health policy issues, including cost and quality of health services, medical practice patterns, and access to health care programs. The Center for Rural Health uses the HCUP national data to determine key rural health trends across the states; however, the data does not reflect findings associated with North Dakota. Participation would require North Dakota to obtain data from third-party payers, including purchasing Medicare data. It is estimated that it would cost approximately $50,000 per year to update the Medicare data set.

Governor's Health Insurance Advisory Committee

The committee learned the Governor's Health Insurance Advisory Committee managed the Health Resources and Services Administration federal grant program to study health insurance coverage in North Dakota. The State Department of Health received a total of $1,151,702 from the Health Resources and Services Administration over a three-year period for the study. Research related to the study, which was completed in August 2006, was conducted by the University of North Dakota School of Medicine and Health Sciences Center for Rural Health. Based on the study findings, approximately 8.2 percent of North Dakota's population does not have health insurance, compared to the national rate of 15.2 percent. The North Dakota percentage represents about 52,000 residents of the state, including approximately 11,000 children under age 18. American Indians are far more likely to be uninsured (31.7 percent) compared to Caucasians (6.9 percent). Residents living in a household with an annual income of less than $10,000 are twice as likely to be uninsured (16.6 percent), compared to the overall state rate of 8.2 percent.

Blue Cross Blue Shield of North Dakota

A representative of Blue Cross Blue Shield of North Dakota provided testimony regarding a potential comprehensive long-range study of the state's current and future health care needs. Blue Cross Blue Shield of North Dakota supports a study of future health care needs in North Dakota and is willing to provide funding to assist with the study.

University of North Dakota School of Medicine and Health Sciences

The committee heard testimony from representatives of the University of North Dakota regarding the status of the medical school. The committee learned there are 1,461 licensed physicians in North Dakota. Of the state's 328 practicing family medicine physicians, approximately 68 percent graduated from the University of North Dakota with a medical degree, residency training, or both. Family medicine physicians provide the majority of patient care in rural areas. However, in North Dakota and throughout the United States, the number of medical student graduates choosing a residency in family medicine is decreasing. This decrease in the number of family medicine physicians is primarily due to lower salaries and more "on-call" hours as compared to specialty practice physicians.

The committee reviewed information for the period 1990 through 2000 regarding University of North Dakota School of Medicine and Health Sciences graduates who continue to reside in North Dakota:

	Number of Graduates Remaining in North Dakota/Total Graduates	Percentage of Graduates Remaining in North Dakota
Medical school graduates	182/497	37%
Residency training graduates	161/409	39%
Combined medical school and residency training graduates	343/906	38%

In comparison, approximately 25 percent of all University of North Dakota graduates (all majors) continue to reside in state after graduation. The committee reviewed a historical comparison of federal, state, tuition, and other funding sources received by the University of North Dakota School of Medicine and Health Sciences and an overview of the utilization of state funding. The state funding is primarily used for educational purposes, and research is supported with federal and private grants.

The committee toured the University of North Dakota School of Medicine and Health Sciences, including the federal research laboratory, classrooms, and study

group sections. Approximately 62 students are accepted into the doctor of medicine (M.D.) program each year.

The committee learned that students at the University of North Dakota School of Medicine and Health Sciences generally receive their M.D. degree after four years of successful study. The students generally complete the first two years at the Grand Forks campus. For the third year, the majority of the students are assigned to do clerkship rotations within clinical settings. Approximately six to eight third-year students are chosen to participate in the rural opportunities in medical education (ROME) program. In the fourth year, students complete internships designed to teach students how to function in a hospital setting.

The University of North Dakota School of Medicine and Health Sciences has developed a curriculum that focuses on patient-centered learning. Patient-centered learning curriculum allows first- and second-year medical students to interact with actual patients, allowing them to learn the dynamics of doctor/patient relationships, how to interview patients, and how to conduct physical examinations. The University of North Dakota School of Medicine has received national acclaim for its patient-centered learning curriculum, which has been copied by many other prestigious medical schools.

The small group learning sessions for first- and second-year medical students are designed to facilitate the integration of the basic sciences with clinically relevant cases. The medical students are separated into small groups for 8- to 10-week periods to study various sections of basic sciences and clinical medicine curriculum. The small group sessions stress independent learning to strengthen individual problem-solving skills.

The ROME program allows third-year medical students to live and train in a nonmetropolitan community under the supervision of physician preceptors. A goal of the ROME program is to expose students to practicing medicine in rural areas throughout North Dakota.

Physician Loan Repayment Program

The committee reviewed information regarding the physician loan repayment program. The physician loan repayment program provides funding for educational loan repayments incurred while recipients were attending an accredited four-year medical program in exchange for a commitment to serve a community. Pursuant to NDCC Chapter 43-17.2, each physician is limited to a $45,000 maximum loan repayment from the state paid over a two-year period. Additional funding for the loan repayment is to be provided by the selected community in an amount that equals or exceeds the amount of loan repayment provided by the state. Senate Bill No. 2266 (2005) increased the maximum amount of state match from $40,000 to $45,000 and provided the loan be repaid over two years rather than four years. The total 2005-07 biennium appropriation for this program is $75,000 from the general fund.

In order to receive funding from the physician loan repayment program, physicians must commit to practice in the sponsoring community for a two-year period. Historically, approximately 80 percent of the physicians have remained in the community after completing their commitment. Individuals are not "turned down" for the program but go on a "waiting list" until additional funding is available.

The committee learned that all available 2005-07 biennium physician loan repayment funding has been committed. Currently, four medical doctors and two physician assistants are participating in the program.

Other Reports and Testimony

The committee heard other reports and testimony regarding:

- Blue Cross Blue Shield of North Dakota's decision to decrease payment rates to pharmacies for prescription drugs.
- Health care technology and legal and marketing issues.
- Healthy North Dakota worksite wellness programs.

Recommendation

The committee recommends that the 60th Legislative Assembly consider providing for a comprehensive Legislative Council study of health care and health insurance during the 2007-08 interim and that a consultant be hired, as necessary, to assist with the study.

ALLIED HEALTH PROFESSIONS BOARD STUDY

Section 6 of 2005 House Bill No. 1280 directed a study of the feasibility and desirability of creating an allied health professions board to regulate the practice of members of allied health professions, including the feasibility and desirability of a North Dakota allied health professions board entering joint professional licensure agreements with neighboring states. The Legislative Council assigned this responsibility to the Budget Committee on Health Care.

Allied health professions are boards and commissions involved with delivery of health care or related services pertaining to identification, evaluation, and prevention of diseases and disorders; dietary and nutrition services; and rehabilitation and health systems management. Allied health professions may include professions, such as dental hygienists, dieticians, medical technologists, occupational therapists, polysomnographic technologists, respiratory therapists, speech-language pathologists, and radiologic technologists.

Pursuant to NDCC Section 43-51-07, a board may establish, by administrative rule, conditions and procedures for foreign practitioners to practice in this state pursuant to written compacts or agreements between the board and one or more other states or jurisdictions or pursuant to any other method of license recognition that ensures the health, safety, and welfare of the public. An example of a multistate licensure agreement is the Nurse Licensure Compact, which allows a nurse to have one license (in the nurse's state

of residence) and to practice in other states as long as that nurse acknowledges that he or she is subject to each state's practice laws and discipline.

North Dakota's Health-Related Boards and Commissions

The committee received information on 23 state health-related boards and commissions, including the number of individuals licensed, education and training requirements, examination requirements, and continuing education requirements. Each of these health boards and commissions are provided for in the North Dakota Century Code; however, licensure and regulation requirements for each board are not consistently provided for in statute. The state health-related boards include:

Board/Commission	Professions or Groups Licensed (and Number Licensed)	Education and Training Requirements	Examination Requirements	Continuing Education Requirements
Board of Addiction Counseling Examiners	Licensed addiction counselors (308)	Bachelor's degree in addiction studies or a closely related field and complete 1,400 hours of clinical training in a board-approved clinical training program	National Association of Alcoholism and Drug Abuse Counselor exam or International Certification and Reciprocity Consortium exam and the Board of Addiction Counseling Examiners oral exam	60 hours of continuing education every three years
Board of Athletic Trainers	Certified athletic trainers (124)	Bachelor's degree (based on requirements of certification established by the National Athletic Trainers' Association Board of Certification (NATABOC))	NATABOC exam	80 hours over a three-year period as required by NATABOC
Board of Examiners on Audiology and Speech-Language Pathology	Speech-language pathologists and audiologists (405)	Master's degree in speech-language pathology or audiology	Praxis exam	10 hours per year of training directly related to profession
State Board of Chiropractic Examiners	Doctors of chiropractic (312)	Doctor of chiropractic degree from an accredited college of chiropractic	National Board of Chiropractic Examiners exam (5 parts) and a jurisprudence exam	20 hours per year, including 4 hours of boundary issues every three years
Board of Clinical Laboratory Practice	Clinical laboratory scientists/medical technologists (CLS/MTs), clinical laboratory technicians/medical laboratory technicians (CLT/MLTs), and clinical laboratory specialists (915)	CLS/MTs are required to obtain a bachelor's degree in a science-related discipline; specialists are required to obtain a bachelor's or higher degree with a major in chemical, physical, or biological sciences; and CLT/MLTs must successfully complete a two-year academic program recognized by the board	Licensees are required to pass one of four board-approved national exams	20 hours of continuing education every two years
Board of Counselor Examiners	Licensed professional counselors (LPCs) and licensed professional clinical counselors (LPCCs) (336)	Licensed professional counselors must obtain a master's degree from an accredited institution in guidance and counseling, an LPCC must also complete an additional 12 semester hours in clinical courses	The National Counseling exam; LPCCs must also pass the National Clinical Mental Health Counseling exam	LPCs are required to earn 30 hours of continuing education every two years; LPCCs are required to earn 40 hours of continuing education every two years
Board of Dental Examiners	Dentists, registered dental hygienists, registered dental assistants, and qualified dental assistants (1,450)	Dentists are required to have a doctor of dental surgery or doctor of dental medicine degree from a dental college recognized by the board;	Dentists and dental hygienists are required to pass a written National Board Dental exam and a jurisprudence exam;	Dentists are required to complete 32 hours of continuing education every two years; dental hygienists are required to complete 16 hours

Board/Commission	Professions or Groups Licensed (and Number Licensed)	Education and Training Requirements	Examination Requirements	Continuing Education Requirements
		dental hygienists must hold a bachelor's or associate degree from a school of dental hygiene which is approved by the American Dental Association; a registered dental assistant must attend an accredited assisting program or successfully "challenge" the Dental Assisting National exam; a qualified dental assistant is required to be registered by the state but because of less training is limited to performing less expanded functions	certified dental assistants must successfully complete an accredited dental assisting program or pass an exam administered by the Dental Assistants National Board	every two years; dental assistants are required to complete 8 hours of continuing education every year; all dentists, hygienists, and assistants are required to have 2 hours of infection control and 2 hours of CPR every two years
Board of Dietetic Practice	Licensed registered dietitians (LRDs) and licensed nutritionists (LNs) (312)	LRDs are required to have a bachelor of science degree plus be registered by the Commission on Dietetic Registration of the American Dietetic Association; and LNs are required to have a degree which includes advanced nutrition requirement	LRDs must complete the registered dietitian exam sponsored by the Commission on Dietetic Registration	75 continuing education hours in a five-year period
Board of Hearing Aid Specialists	Audiologists who hold hearing instrument dispensing licenses and hearing instrument dispensers (68)	High school diploma and pass written and practical exams (no formal training program)	A written exam administered by the National Institute of Hearing Instrument Specialists and a practical exam administered by the State Board of Examiners for Hearing Instrument Dispensers	10 continuing education hours per year
Marriage and Family Therapy Licensure Board	Marriage and family therapists (The 2005 Legislative Assembly approved Senate Bill No. 2269 creating NDCC Chapter 43-53 and provided for the Governor to appoint a North Dakota Marriage and Family Therapy Licensure Board.)	Master's degree or a doctoral degree in marriage and family therapy from a recognized educational institution or a graduate degree in an allied field from a recognized educational institution and graduate level coursework which is equivalent to a master's degree in marriage and family therapy and two calendar years of work experience in marriage and family therapy under qualified supervision	A national exam administered by the board	To be established by the board

Board/Commission	Professions or Groups Licensed (and Number Licensed)	Education and Training Requirements	Examination Requirements	Continuing Education Requirements
State Board of Medical Examiners	Doctor of medicine (MD), doctor of osteopathy (DO), and physician assistants (2,941)	Doctor of medicine or doctor of osteopathy degree from a medical school approved by the board or by an accrediting body approved by the board; physician assistants are required to have a bachelor's degree, be certified by the National Commission on Certification of Physician Assistants, and be under contract to provide patient services under the supervision of an MD or DO	Physicians must pass the United States Medical Licensing Exam, the Comprehensive Osteopathic Medical Licensing Exam, or the Medical Council of Canada Evaluating Exam; physician assistants must pass the National Commission on Certification of Physician Assistants exam	Physicians are required to earn 60 hours of continuing medical education every three years; physician assistants are required to earn 100 continuing education units every two years
Board of Nursing	Registered nurses (RNs), licensed practical nurses (LPNs), advanced practice registered nurses (APRNs), unlicensed assistive persons, and medication assistants I, II, and III (16,309)	RNs - Minimum two-year associate degree; LPNs - Minimum one-year certificate; APRNs - Bachelor of science and master's degrees; medication assistant I - Completion of a training module and clinical component; medication assistant II - 40 hours of theory, 8 hours of lab, and 32 hours of clinical training; medication assistant III - Associate degree and completion of training program; unlicensed assistive person - Trained by employer	The NCLEX-RN and NCLEX-PN exams administered by the National Council of State Boards of Nursing, Inc.	Registered nurses and licensed practical nurses are required to obtain 12 contact (continuing education) hours within the previous two years; advanced practice registered nurses with prescriptive authority are required to have 15 contact hours within the previous two years; the Board of Nursing requires 400 practice hours within the previous four years for license renewal
State Board of Examiners for Nursing Home Administrators	Nursing home administrators (151)	Bachelor's degree from an accredited college or university and completion of a 480-hour administrator in training program	The Nursing Home Administrator exam	20 hours per year by a recognized sponsor
Board of Occupational Therapy Practice	Occupational therapists (OTs) and occupational therapy assistants (OTAs) (488)	OTs are required to have a bachelor's degree or higher and OTAs are required to have a certificate or associate degree for occupational therapy assistant	The National Board of Certification for Occupational Therapy exam (both OTs and OTAs exams are provided)	20 hours of continuing education every two years
State Board of Optometry	Optometrists (213)	Doctorate of optometry	National Board of Examiners exam (3 parts) and the state jurisprudence exam	50 hours every three years
State Board of Pharmacy	Pharmacists, technicians, interns, pharmacies, and wholesalers (4,934)	Pharmacists must have a doctor of pharmacy degree from an Accreditation on Council Pharmacy Education-approved school; technicians must successfully complete	Pharmacists must complete the North American Pharmacists Licensure exam or the Foreign Pharmacists Equivalence Exams and the multistate jurisprudence exam	Pharmacists must complete 15 hours of continuing education per year/30 hours in a two-year renewal cycle; technicians must complete 10 hours of continuing education per

Board/Commission	Professions or Groups Licensed (and Number Licensed)	Education and Training Requirements	Examination Requirements	Continuing Education Requirements
		either a two-year associate of applied science degree program, a one-year pharmacy technician certificate program, or a noncredit certificate of completion in pharmacy technology program; in addition the State Board of Pharmacy offers the only accredited on-the-job pharmacy technician training program in the country		year/20 hours in a two-year renewal cycle
State Examining Committee for Physical Therapists	Physical therapists (PTs) and physical therapist assistants (PTAs) (796)	PTs must have a master of arts degree and PTAs must complete a two-year degree	National Physical Therapists exam (PTs and PTAs exams)	25 hours every two years
Board of Podiatric Medicine	Podiatrists (26)	Doctorate degree from an accredited school and minimum one year of surgical residency	Three-part National Board exam covering basic science, clinical, and the licensing exam	20 hours per year or 60 hours over three years
State Board of Psychologist Examiners	Psychologists (186)	Doctorate degree in psychology from an accredited school or college and two full years of supervised professional experience, 2,000 hours predoctoral and 2,000 hours postdoctoral	A written exam for the professional practice of psychology and an oral exam by the State Board of Psychologist Examiners that focuses on ethical and legal issues in the practice of psychology in North Dakota	40 continuing education credits every two years in categories specified by the board in its rules
Board of Reflexology	Reflexologists (76)	Minimum 100 hours of training, including 40 hours of classroom training and 25 hours of hands-on practice	A 100-question written exam and a practical exam administered by the Board of Reflexology	12 continuing education hours over three years
State Board of Respiratory Care	Temporary, certified, and registered respiratory therapists (currently in the process of adopting rules for licensure and regulation of polysomnographic technologists, pursuant to 2005 House Bill No. 1280) (404 - Number is anticipated to increase in 2006 with addition of polysomnographic technologists)	Successful completion of an accredited four-year respiratory care training program	National Board of Respiratory Care exam	10 continuing education units per year
Board of Social Work Examiners	Licensed social workers (LSWs), licensed certified social workers (LCSWs), and licensed independent clinical social workers (LICSWs) (2,251)	An LSW must have a bachelor's degree in social work from a college or university; an LCSW must obtain a doctorate or master's degree in social work from a college or university; an LICSW must obtain a doctorate or master's degree in social work from a	Association of Social Work Boards exam	30 continuing education hours every two years

Board/Commission	Professions or Groups Licensed (and Number Licensed)	Education and Training Requirements	Examination Requirements	Continuing Education Requirements
		college or university and successfully complete within four years, 3,000 hours of supervised post-master's clinical social work experience		
State Board of Veterinary Medical Examiners	Veterinarians and veterinary technicians (661)	Veterinarians must have a doctor of veterinarian degree from an accredited or approved college of veterinary medicine and veterinarian technicians are required to complete a two-year accredited program in veterinary technology	Veterinarians must successfully complete the North American Veterinary Licensing exam and a state written exam and veterinary technicians must successfully complete the Veterinary Technician National exam	24 hours every two years for veterinarians and 8 hours every two years for veterinary technicians

Consolidation Efforts in Other States

The committee received information regarding recent efforts to consolidate professional boards in other states, including California, Montana, Nebraska, Texas, and Minnesota. The committee learned that often centralization efforts involve boards and commissions that are interdisciplinary in nature and deal with related occupations. In some states, boards have maintained all of their regulatory authority and a central agency merely performs "housekeeping" duties, such as payroll and printing. In other states, boards merely serve in an advisory capacity to the directors of the umbrella agencies.

Autonomous Boards Versus Central Agencies - Comparison

The committee reviewed information regarding various perceived benefits of autonomous boards and perceived benefits of central agencies as identified by the Council on Licensure, Enforcement and Regulation. The Council on Licensure, Enforcement and Regulation is a resource organization based in Kentucky for groups and individuals involved in licensure or registration of regulated occupations and professions. The benefits of autonomous boards may include:

1. Need for professional expertise - Assures appropriate peer review of professional practice standards, qualified personnel to investigate complaints, and professional perspective of the public interest.
2. Administrative efficiency - Provides for efficient decisionmaking capabilities, greater visibility to the public, and a deterrent to potential violators.
3. Accountability - Provides for greater controls over allocation of funds and clearer levels of accountability.

The benefits of central agencies may include:

1. Administrative efficiency - Provides for consolidation of staff, space, time, and equipment and the capability to hire more professional staff to assist the boards.
2. Coordination - Provides executive and legislative branches with a single point of contact for consumer questions and complaints.
3. Oversight - Increases equity through uniform application of criteria for board decisions.

The committee considered a bill draft that would have required an interim Legislative Council study of any new allied health profession wanting to be established. Each study would have to consider the feasibility and desirability of having an agency or existing occupational or professional board regulate the new allied health profession.

Recommendation

The committee recommends Senate Bill No. 2026 establishing an allied health professions board. The bill:

1. Defines "allied health professions" as clinical health care professions distinct from the medical and nursing professions.
2. Provides that board membership includes three to five individuals who are licensed members from each allied health profession regulated by the board. The members are appointed by the Governor for three-year terms.
3. Provides the duties of the board include regulating each of the allied health professions the board is directed to regulate, including the issuances of licenses and the regulation of licensees. The board is to meet at least once a year and annually select a president, vice president, and any other officers from its members.
4. Provides an option for existing allied health professions that choose not to be "stand-alone" boards to petition for membership in the allied health professions board. The allied health professions board and the entity submitting the petition are required to prepare and request introduction of a bill during the next legislative session to accomplish the request for inclusion.
5. Provides that a "new" allied health profession that is not regulated by an existing occupational

or professional board of the state or by a state agency will be required to submit a petition to the allied health professions board requesting inclusion as a profession regulated by the board. The allied health professions board will be required to determine whether to prepare and request introduction of a bill to accomplish the requested inclusion.

6. Provides a general fund appropriation of $4,000 for related costs of the board, including per diem costs and legal fees. The board will not have any other revenue source until an allied health profession is approved by the Legislative Assembly for inclusion in the allied health professions board. The board's primary revenue source will be from member dues.

STUDY OF ESTABLISHING AN UMBRELLA LICENSING ORGANIZATION FOR COUNSELORS, PSYCHOLOGISTS, MARRIAGE AND FAMILY THERAPISTS, AND SOCIAL WORKERS

Section 2 of 2005 Senate Bill No. 2269 directed a study of the fiscal impact and the feasibility and desirability of establishing an umbrella licensing organization for a group consisting of counselors, psychologists, marriage and family therapists, and social workers. The Legislative Council assigned this responsibility to the Budget Committee on Health Care.

Counselors, psychologists, marriage and family therapists, and social workers provide the following services:

- Counseling is an application of human development and mental health principles in a therapeutic process and professional relationship to assist individuals, couples, families, and groups in achieving more effective emotional, mental, marital, family, and social or educational development and adjustment.
- Psychology is the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health.
- Marriage and family therapy is the diagnosis and treatment of mental and emotional disorders, whether cognitive, effective, or behavioral, within the context of marriage and family systems.
- Social work practice consists of the professional application of social work values, principles, and techniques in helping people obtain tangible services, counseling, psychotherapy, and providing social casework, social work education, social work research, or any combination of these.

The committee considered a bill draft that would have consolidated the Board of Addiction Counseling Examiners, Board of Counselor Examiners, Board of Social Work Examiners, and the North Dakota Marriage and Family Therapy Licensure Board into a single board--the allied council professionals board.

The committee received testimony from representatives of the counseling professions opposing consolidation, including:

1. A consolidated board could result in one profession subsidizing the cost of another profession.
2. Individual professionals and consumer representatives of the existing boards are familiar only with their own laws, rules and regulations, and professional codes of ethics.
3. Complaints can be multifaceted in content and often require a full-day meeting to address. As a result, a consolidated board could require meetings that extend for several days.
4. Decisions made by an umbrella board relating to adjudication of complaints would be more vulnerable to legal challenges.
5. Each of the professions differ widely in regard to ethical codes, education and training requirements, licensing examinations and procedures, and general practices.

Recommendation

The committee makes no recommendation relating to its study of the fiscal impact and the feasibility and desirability of establishing an umbrella licensing organization for a group consisting of counselors, psychologists, marriage and family therapists, and social workers.

LICENSURE AND REGULATION OF ACUPUNCTURISTS STUDY

Section 1 of 2005 Senate Bill No. 2171 directed a study of the licensure and regulation of acupuncturists practicing in the state as well as the possibility of multistate joint licensure and regulation programs. The Legislative Council assigned this responsibility to the Budget Committee on Health Care. Senate Bill No. 2171, as introduced, provided for the State Board of Medical Examiners to license acupuncturists. The bill would have provided for similar licensing requirements as are required in Minnesota.

Acupuncture practice is a comprehensive system of health care using Oriental medical theory and its unique methods of diagnosis and treatment. Its treatment techniques include the insertion of acupuncture needles through the skin and the use of other biophysical methods of acupuncture point stimulation.

The committee learned that the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) was established in 1982 to develop and administer a national certification process based on the nationally recognized standards of competence and education. The NCCAOM is the only nationally recognized certification available to qualified practitioners of acupuncture and Oriental medicine. Certification is granted to those who meet the eligibility and education criteria and pass an examination of an

individual's knowledge and skills necessary for safe and effective acupuncture practice. In addition, individuals must agree to follow "clean needle techniques" and the NCCAOM code of ethics and disciplinary process. The education component, which is a three-year program, includes training on the theory of Chinese medicine, "point location," "needling" techniques, and Western medicine.

The committee learned that according to the NCCAOM, 44 of 50 states license traditional acupuncturists. Approximately 97 percent of these states require completion of the NCCAOM test as part of their licensure process for acupuncturists and approximately one-half of these states require NCCAOM certification for licensure.

"Traditional" Acupuncturists

The committee learned that there are approximately three individuals practicing traditional acupuncture in North Dakota who are not chiropractors or medical doctors. Traditional acupuncture is significantly different from acupuncture services provided by chiropractors or medical doctors. It is not illegal to practice traditional acupuncture in North Dakota; however, other than the State Department of Health requirement for the use of sterilized disposable needles, the profession is not regulated.

Chiropractors and Medical Doctors Practicing Acupuncture

Acupuncture services offered by chiropractors and medical doctors are regulated by the State Board of Chiropractic Examiners and the State Board of Medical Examiners, respectively.

The committee learned that the State Board of Chiropractic Examiners requires a chiropractor to complete a minimum of 100 hours of training and education in order to provide acupuncture services. All licensed chiropractors are required to complete 20 hours of continuing education per year. There are many continuing education courses relating to acupuncture services available to chiropractors; however, there are no additional requirements for chiropractors to receive continuing education specifically related to acupuncture. A total of 72 of the 261 chiropractors practicing in North Dakota also provide acupuncture services.

The committee learned that the State Board of Medical Examiners does not regulate individual procedures; however, all physicians are required to meet certain "standards of care." If the board determines that these "standards of care" are not being met, the physician would be subject to disciplinary action. Based on a survey of 11 large hospitals in North Dakota, conducted by the State Board of Medical Examiners, there are approximately four physicians in North Dakota who provide acupuncture services.

Options for Regulating Acupuncture

The committee reviewed various options for regulation of acupuncture, including:

- Licensure is the most restrictive form of state regulation. Under licensure laws, it is illegal for a person to practice a profession without first meeting the standards imposed by the state. It is illegal for unlicensed individuals to perform acts within the statutorily defined scope of practice.
- Certification under which title protection is granted to persons who have met the predetermined qualifications. Those not certified may perform the services of the profession or occupation but may not use the title.
- Registration is the least restrictive form of state regulation, usually consisting of requiring individuals to file their name, address, and qualifications with a government agency before practicing the profession.

The committee reviewed information regarding licensure options. The committee learned that licensure is the only method that provides for a system under which professional standards are set and an individual is prohibited from practicing unless those standards are met. Licensure of a profession in North Dakota is typically conducted by a legislatively created board; however, there are examples of executive state agencies performing this function. The degree of expertise required of an agency charged with regulating a profession would in large part depend on the standards required.

The committee heard testimony from an acupuncturist practicing in Grand Forks who indicated the primary reason for regulation should be to identify those acupuncturists who have obtained the proper training and to prevent unqualified people from practicing in the state. The committee was told that because acupuncturists are not licensed in North Dakota, self-funded insurance plans cannot include acupuncture services as a benefit.

The committee learned the State Department of Health would incur one-time startup costs of approximately $18,000 to $20,000 for development and implementation of a licensure program for acupuncturists. Licensure fees generated by three acupuncturists would not be sufficient to cover possible complaint investigations and the costs related to a hearing process if needed. The department does not have qualified staff to conduct onsite investigations of complaints related to the quality of care of services provided by acupuncturists.

The committee reviewed information regarding registration options. The committee learned that with registration an individual could be prohibited from practicing acupuncture unless that individual registered with the identified state agency. It appears very little expertise would be required to regulate acupuncture through a registry. Failure to register is a relatively basic issue to prove and enforce.

The committee reviewed information regarding reciprocity. The committee learned that reciprocity addresses the mutual exchange, recognition or enforcement of licenses, privileges, or obligations between states. In order to establish reciprocity agreements with another state, both states are required to establish some method of regulation.

The committee considered a bill draft that would have required all individuals practicing acupuncture in North Dakota, including those who practice within a scope of a profession in which they are licensed, to register with the State Department of Health.

Recommendation

The committee recommends Senate Bill No. 2027 to require individuals practicing acupuncture in North Dakota, excluding those individuals who practice acupuncture under the scope of a profession for which they are licensed, to register with the State Department of Health. The bill:

1. Provides that a person may not practice acupuncture or hold oneself out as practicing acupuncture in North Dakota unless that person holds a valid certification of registration issued by the State Department of Health. The regulation requirement exempts from registration those individuals who practice acupuncture under the scope of a profession for which they are licensed, such as physicians and chiropractors.
2. Defines "acupuncture" as the insertion and manipulation of needles to an individual's body for the prevention, cure, or correction of any disease, illness, injury, pain, or other condition. The term does not include the insertion and manipulation of needles to an animal's body.
3. Provides that any person who fails to obtain a certificate of registration as required is guilty of a Class B misdemeanor.
4. Provides that the State Department of Health is to designate on the certificate of registration whether the registrant is a diplomat in good standing of the National Certification Commission for Acupuncture and Oriental Medicine, its successor organization, or a comparable organization as may be determined by the registrar.
5. Provides for an annual registration fee of $100.
6. Provides that registration does not exempt a person who practices acupuncture from the regulatory provisions of any other profession for which that person is licensed.

MANDATED HEALTH INSURANCE COVERAGE

North Dakota Century Code Section 54-03-28 provides that the Legislative Council is to contract with a private entity, after receiving one or more recommendations from the Insurance Commissioner, to provide a cost-benefit analysis of every legislative measure or amendment mandating health insurance coverage of services or payment for specified providers of services. The committee was assigned the responsibility to make a recommendation regarding this contract.

Pursuant to NDCC Section 54-03-28, a legislative measure mandating health insurance coverage may not be acted on by any committee of the Legislative Assembly unless accompanied by a cost-benefit analysis. The Insurance Commissioner is to pay the cost of the contracted services, and the cost-benefit analysis must include:

1. The extent to which the proposed mandate would increase or decrease the cost of services.
2. The extent to which the proposed mandate would increase the use of services.
3. The extent to which the proposed mandate would increase or decrease administrative expenses of insurers and the premium and administrative expenses of insureds.
4. The impact of the proposed mandate on the total cost of health care.

59th Legislative Assembly Cost-Benefit Analyses

During the 2005 legislative session, a total of $13,929 was paid to Milliman and Associates for conducting cost-benefit analyses relating to two bills--House Bill No. 1381 ($6,598) and Senate Bill No. 2169 ($1,725) and for general project work ($5,606). House Bill No. 1381, which was not approved by the Legislative Assembly, would have created a new section to NDCC Chapter 54-52.1 providing for insurance coverage of prescription drugs for outpatient hormone replacement therapy, contraceptives, infertility therapy, and osteoporosis treatment. Senate Bill No. 2169, which was not approved by the Legislative Assembly, would have created a new section to Chapter 54-52.1 providing for colorectal cancer screenings. The 59th Legislative Assembly authorized $55,000 from the insurance regulatory trust fund, the same as the 2003-05 biennium appropriation, for payment of cost-benefit analyses of the 2007 Legislative Assembly measures mandating health insurance coverage.

Insurance Commissioner Recommendations

The Insurance Commissioner recommended that based on the work done during the 59th Legislative Assembly, the Legislative Council contract with Milliman and Associates for cost-benefit analyses during the 60th Legislative Assembly.

Recommendations

The committee recommends that the Legislative Council contract with Milliman and Associates for cost-benefit analyses of future legislative measures mandating health insurance coverage, pursuant to NDCC Section 54-03-28.

BOARD OF NURSING REPORT

North Dakota Century Code Section 43-12.1-08.2, which is effective through September 30, 2006, provides that the Board of Nursing may review and study the nursing educational requirements and the nursing shortage in this state and the implications for rural communities. The Board of Nursing is to report annually on the progress of the study, if undertaken, to the Legislative Council. The Legislative Council assigned this responsibility to the Budget Committee on Health Care.

Nursing Shortage Study

The committee learned that the Board of Nursing contracted with the University of North Dakota Center for Rural Health in 2002 for a study of nursing education requirements, the nursing shortage in North Dakota, and implications for rural communities. The Board of Nursing approved a 10-year timeline for the study which began in 2002. The Board of Nursing approved $54,850 of funding for the nursing needs study for the fiscal year ended June 30, 2006. The study findings include:

1. Based on a survey of 568 North Dakota high school students, 38 percent of the students indicated an interest in pursuing a career in the health care profession; however, 46 percent of the students indicated an interest in more than one profession.
2. Of the students interested in the health care profession, 38 percent indicated an interest in nursing, 30 percent indicated an interest in medicine, and 25 percent indicated an interest in physical therapy.
3. The 2006 statewide vacancy rate for licensed practical nurses (LPNs) was 7 percent, which is an increase from the 2005 vacancy rate of 5 percent.
4. The 2006 statewide vacancy rate for registered nurses (RNs) is 7 percent, which is a decrease from the 2005 vacancy rate of 11 percent.
5. The 2006 statewide employee turnover rate for LPNs is 12 percent, compared to the 2005 turnover rate of 21 percent.
6. The 2006 statewide employee turnover rate for RNs is 17 percent, compared to the 2005 turnover rate of 20 percent.
7. Based on the 2006 employee turnover and vacancy rates, it appears that the shortage of RNs may be lessening; however, there is some indication of an increasing shortage of LPNs.
8. There are approximately 632 advanced practice registered nurses (APRNs), 8,468 RNs, and 3,365 LPNs in North Dakota.
9. The average age of North Dakota RNs is 45, the same as the national average, and the average age of North Dakota LPNs is 41, which is slightly younger than the national average of 43.
10. In 2005 North Dakota RNs were paid an average of $19 per hour, compared to the national average of approximately $27 per hour.
11. In 2005 LPNs were paid an average of $14 per hour, compared to the national average of approximately $17 per hour.

Out-of-State Nursing Employment Agencies

The committee learned there are numerous reasons hospitals use employment agencies or "registries" for short-term personnel needs, including sudden disease outbreaks, short-term staff vacancies, and position vacancies that require a specific professional skill-set. Sometimes hospitals cannot meet personnel needs locally and, in those instances, employment agencies or "registries" are a valued resource.

Nursing Education Licensure Requirements

The committee reviewed information regarding nursing licensure requirements. Pursuant to NDCC Section 43-12.1-09, the Board of Nursing is to license and register nursing applicants. North Dakota Administrative Code (NDAC) Section 54-02-05-05.1 requires a minimum of 400 hours in clinical practice within the preceding four years for licensure renewal of RNs, LPNs, and APRNs. North Dakota Administrative Code Section 54-02-05-08 requires RNs, LPNs, and APRNs to complete a minimum of 12 contract or continuing education hours within the previous two years for licensure renewal.

Nursing Education Loan Program

The committee reviewed information regarding the nursing education loan program. The Board of Nursing maintains a nursing education loan program funded through licensure fees of $10 for each RN and LPN biennial renewal fee or $5 for each RN and LPN annual renewal fee. The loans may be provided to students accepted into nondegree LPN programs, associate degree LPN or RN programs, baccalaureate RN programs, and master's or doctoral nursing programs and for LPNs or RNs to take board-approved refresher courses. The committee received information regarding the total amount and number of nursing education loans provided:

	2001-02	2002-03	2003-04	2004-05
Total amount of loans (number of loans)	$57,350 (35)	$59,410 (35)	$48,575 (30)	$64,100 (67)

Nursing Programs

The committee received information regarding the approval process of the two-year registered nurse and one-year certificate practical nurse programs. The Board of Nursing granted conditional approval for the Dakota Nurse practical nurse program (Bismarck State College, Williston State College, Lake Region State College, and Minot State University - Bottineau) and continued initial approval for the Dakota Nurse registered nurse program through November 2007. The Board of Nursing granted initial approval of the State College of Science registered nurse program through March 2007.

CHILDREN'S HEALTH INSURANCE PROGRAM REPORT

North Dakota Century Code Section 50-29-02 requires the Department of Human Services to report annually to the Legislative Council regarding enrollment statistics and costs associated with the Healthy Steps program (children's health insurance program). The Legislative Council assigned this responsibility to the Budget Committee on Health Care.

The committee learned that the Legislative Assembly provided funding of $12.1 million, of which $2.9 million is from the general fund and $9.2 million is from federal funds for Healthy Steps for the 2005-07 biennium.

Compared to the 2003-05 legislative appropriation, the funding provided is a $2.6 million increase, $768,000 of which is from the general fund and $1.8 million of which is from federal funds. The Legislative Assembly continued eligibility requirements for the program at 140 percent of poverty level and anticipated an insurance premium rate of $181.87 per child per month, an increase of 17.5 percent compared to the 2003-05 premium rate of $154.78. The Legislative Assembly provided funding to serve an average of 2,971 children per month.

The committee learned that due primarily to outreach efforts conducted by the Dakota Medical Foundation, the June 2006 enrollment in Healthy Steps was 3,547 children, which is an increase of 1,127 children since July 1, 2005, and 576 more children than the 2,971 used to calculate the 2005-07 biennium appropriation. The premium rate is $181.71 per non-Native American child and $183.35 per Native American child. Based on the current enrollment and premium, the total estimated expenditures for Healthy Steps will be $14.9 million. The total estimated expenditures are $2.8 million more than the total appropriation, including $700,000 from the general fund. The Department of Human Services anticipates "covering" the $700,000 budget shortfall within its existing total appropriation authority.

Recommendations

The committee makes no recommendations regarding the children's health insurance program state plan.

ANNOUNCED BASIC CARE SURVEYS PILOT PROJECT

Section 26 of 2005 Senate Bill No. 2004, the appropriation bill for the State Department of Health, provides that the State Department of Health is to develop a pilot project to test an announced basic care survey process. Previously, all basic care surveys were unannounced. The pilot project is to begin with 50 percent of the state-licensed basic care providers surveyed receiving an unannounced survey. The State Department of Health is to evaluate the results of the pilot project and provide a report to the Legislative Council during the 2005-06 interim. The Legislative Council assigned this responsibility to the Budget Committee on Health Care.

The committee learned that the State Department of Health is responsible for establishing standards and rules for basic care facilities. The department is required to inspect all places and grant annual licenses to basic care facilities that conform to the standards established and the rules prescribed. It is illegal for a basic care facility to operate without a license. The licenses are issued by the State Department of Health and each license is not valid for more than one year. Any license may be revoked by the department for violations of standards and rules adopted by the department.

Pursuant to NDAC Section 33-03-24.1-03, the State Department of Health may, at any time, inspect a facility that the department determines meets the definition of a basic care facility. The department is to perform, as deemed necessary, unannounced onsite surveys to determine compliance with established rules and regulations.

The committee learned that a workgroup was formed to develop this pilot project consisting of representation of the North Dakota Long Term Care Association, basic care providers, AARP, Protection and Advocacy Project, the Department of Human Services, including Medicaid and the ombudsman program, and the State Department of Health. Before initiation of the pilot project, a basic care survey pilot project plan was developed by the State Department of Health and reviewed and agreed upon by the workgroup. The guidelines for announcing surveys consisted of sending a fax to the basic care facility one week prior to the announced survey which was then followed up with a telephone call to make sure the facility received the message.

The pilot project covered the period July 1, 2005, through May 31, 2006. The committee reviewed the State Department of Health study findings, including:

1. Both providers and surveyors indicated that information is more readily available in most cases when the survey is announced.
2. Both providers and surveyors reported some improvement in communications with announced surveys.
3. Surveyors reported no increase in communication or contact initiated by family, residents, or staff resulting from announcing the surveys.
4. Providers indicated that in their opinion the results of the announced surveys are the same as if the surveys were unannounced.
5. Review of deficiency statements reveals that approximately twice as many deficiencies result from unannounced surveys as from announced surveys.

Number of Surveys Completed	Average Number of Citations
13 announced program surveys	4.4
10 unannounced program surveys	9.1
11 announced Life Safety Code surveys	3.8
11 unannounced Life Safety Code surveys	5.8

The committee also received information regarding the impact of additional federal health care facility regulations on the Department of Human Services and the Medicaid budget.

State Department of Health Recommendation

The State Department of Health recommendation to the committee was that basic care surveys continue to be unannounced. The reasons for supporting unannounced surveys include:

1. The national standard is for surveys to be conducted unannounced to get a true picture of the day-to-day care and services provided to residents.
2. Announcing surveys allows facilities to make changes that have the potential to alter survey findings.
3. The greater number of findings with unannounced surveys indicates that facilities are

possibly fixing problems for the announced survey visits rather than developing a system to ensure continued compliance.
4. Citation of a deficient practice and the resulting plan of correction have a more significant impact on a facility's ability to deliver services in an improved manner over a longer period of time.
5. During announced surveys certain deficiencies can be missed. For example, the absence of staff in a facility would be missed if the survey were announced.

North Dakota Long Term Care Association Response

The committee learned that the North Dakota Long Term Care Association surveyed basic care facilities regarding their experience with the announced basic care pilot project. The survey findings indicate that all the facilities that have experienced the announced survey process encouraged its continuation based on the following:

1. Residents and families have an opportunity for more meaningful involvement.
2. Assures essential staff will be present and available for announced surveys.
3. Paperwork was efficiently delivered to surveyors for announced surveys.
4. Facility staff was more comfortable and better able to perform routine work during announced surveys.
5. Review of past payroll records could identify attempts to manipulate staffing during announced surveys.
6. Various methods of gathering data makes it difficult to cover up a long- or short-time facility practice.

Recommendation

The committee makes no recommendation regarding the pilot project to test an announced basic care survey process.

BUDGET TOURS

During the interim, the Budget Committee on Health Care functioned as a budget tour group of the Budget Section and visited North Dakota Vision Services - School for the Blind, Mill and Elevator, School for the Deaf, East Laboratory, Crime Laboratory, Fraine Barracks, International Peace Garden, and State Fair Association. The committee received testimony regarding facility programs, overviews of clients or individuals served, and problems that facilities may be encountering during the interim. The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 60th Legislative Assembly.

The committee learned that the International Peace Garden does not have sufficient funding for operating and maintenance costs. In addition, the International Peace Garden can only offer minimum wages and cannot maintain a consistent workforce because of the competitive job marketplace. The International Peace Garden plans to submit a request for an additional appropriation of $1,317,000 from the 2007 Legislative Assembly, of which $384,000 is for salaries and operating costs and $933,000 is for needed repairs to existing infrastructure.

OTHER REPORTS

Pharmacy Payment Policy and Medicaid

The Budget Committee on Health Care met with the Budget Committee on Human Services to receive information from Dr. Stephen Schondelmeyer, Professor of Pharmaceutical Economics, University of Minnesota, regarding the cost of dispensing pharmaceuticals and the Medicaid program. The committee learned that the cost of prescription drugs as a percentage of total United States Medicaid expenditures increased from 5.5 percent in 1990 to 14.1 percent in 2005. The average United States Medicaid drug product cost has increased from $17.72 in 1990 to $67.68 in 2004, while the average dispensing fee payment has only increased from $3.81 to $4.15 for the same period.

The committee learned the Deficit Reduction Act of 2005, which is scheduled to go into effect January 1, 2007, will change the formula that determines the payment to pharmacies for prescription drugs under the Medicaid program. The new formula, which will be based on the average manufacturer's price, has not yet been finalized. However, it is anticipated that payments to pharmacies for prescription drugs will be less under the new formula.

North Dakota's Medicaid prescription drug dispensing fee paid to pharmacists is $5.60 per generic drug and $4.60 per brand name drug. The current rate, which was implemented in August 2003, was negotiated between the Department of Human Services and representatives of pharmacies to provide a "fair" prescription drug dispensing fee. However, according to a report on the cost of dispensing pharmaceuticals prepared by PharmAccounts, the average cost of dispensing medications for 80 percent of the community pharmacies is $11.73.

The percentage of a pharmacy's total revenues from Medicaid prescriptions averages between 12 to 15 percent throughout the United States. The percentage of revenues from Medicaid prescriptions averages between 20 to 25 percent for independent pharmacies. Depending on the location of a pharmacy, the percentage of revenues can vary significantly.

Children With Special Health Care Needs

The Budget Committee on Health Care met with the Budget Committee on Human Services to receive reports from the Department of Human Services regarding options for providing Medicaid services for children with special health care needs, on waivers surrounding states have submitted for programs for children with special health care needs, and on the status of the department's waiver request.

BUDGET COMMITTEE ON HUMAN SERVICES

The Budget Committee on Human Services was assigned the following responsibilities:

1. Section 21 of Senate Bill No. 2004 (2005) directed a study of the state's public health unit infrastructure and the ability of public health units to respond to public health issues. The section also provided the study include an assessment of the efficiency of the operations and the effectiveness of services of the public health units and the efficiency of the food and lodging investigation services provided by the State Department of Health and public health units.
2. Section 5 of House Bill No. 1459 (2005) directed a study of the Medicaid medical reimbursement system, including costs of providing services, fee schedules, parity among provider groups, and access to services.
3. The Legislative Council assigned the committee responsibility to receive the following reports from the Department of Human Services relating to the medical assistance program:
   a. A five-year Medicaid analysis report, pursuant to North Dakota Century Code (NDCC) Section 50-06-25.
   b. A report on the status of the department's amendment to the North Dakota Medicaid state plan allowing the disregard of assets for individuals owning long-term care insurance policies, pursuant to Section 1 of House Bill No. 1217 (2005).
   c. Status reports of activities of the prescription drug monitoring workgroup and implementation of a prescription drug monitoring program, pursuant to House Bill No. 1459 (2005).
   d. A report on the status of development of management initiatives for the Medicaid program, pursuant to Section 4 of House Bill No. 1459 (2005).
   e. A report regarding the department's progress in developing and implementing a plan for the implementation of the Medicare prescription drug program, pursuant to Section 2 of House Bill No. 1465 (2005).
4. Section 20 of Senate Bill No. 2004 (2005) provided for a study of the costs and benefits of adopting a comprehensive Healthy North Dakota and workplace wellness program.
5. Section 15 of House Bill No. 1012 (2005) provided for a study of the services provided by residential treatment centers and residential child care facilities and the appropriateness of the payments provided by the state for the services.
6. House Concurrent Resolution No. 3054 (2005) provided for a study of state programs providing services to children with special health care needs to determine whether the programs are effective in meeting these special health care needs, whether there are gaps in the state's system for providing services to children with special health care needs, and whether there are significant unmet special health care needs of children which should be addressed.
7. The Legislative Council assigned the committee responsibility to receive reports from the Department of Human Services on the status of the Medicaid waiver to provide in-home services to children with extraordinary medical needs who would otherwise require hospitalization or nursing facility care, the number of applications the department received for the in-home services, and the status of the program's appropriation, pursuant to Section 5 of Senate Bill No. 2395 (2005).
8. The Legislative Council also assigned the committee responsibility to receive the following reports:
   a. A report from the Department of Human Services regarding the department's review of its budget, programs, and services to determine the extent to which the department can provide additional general fund requirements resulting from changes in the federal medical assistance percentage (FMAP) for North Dakota without affecting the level of services provided by the department, pursuant to Section 11 of House Bill No. 1012 (2005).
   b. A report from the Department of Human Services on the department's plan to transfer appropriate individuals from the Developmental Center to community placements, including the anticipated number of individuals that will be transferred during the biennium as required by Section 16 of House Bill No. 1012 (2005).

Committee members were Senators Dick Dever (Chairman), Richard L. Brown, Tom Fischer, Aaron Krauter, Judy Lee, Russell T. Thane, and John M. Warner and Representatives Jeff Delzer, William R. Devlin, Lee Kaldor, James Kerzman, Gary Kreidt, Ralph Metcalf, Jon O. Nelson, Vonnie Pietsch, Chet Pollert, Todd Porter, Louise Potter, Clara Sue Price, Sally M. Sandvig, Ken Svedjan, Gerald Uglem, and Alon C. Wieland.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

PUBLIC HEALTH UNIT STUDY

Section 21 of Senate Bill No. 2004 (2005) directed a study of the state's public health unit infrastructure and the ability of the health units to respond to public health issues. The study was to include an assessment of the efficiency of operations, given the personnel and

financial resources available, and the effectiveness of services, given the lines of governmental authority of the current infrastructure. In addition, the study was to include the efficiency of the food and lodging investigation services provided by the State Department of Health and the public health units and the development of a plan maximizing efficiencies through a coordinated system and fee structure.

Current Public Health Structure

The committee learned the state has 28 public health units--7 multicounty health districts, 10 single-county health districts, 3 city/county health departments, 1 city/county health district, and 7 single-county health departments.

North Dakota Century Code Chapter 23-35 includes provisions relating to establishing public health units, including the establishment of multicounty or city/county health districts and authority for health districts to merge into a single health district. Chapter 54-40.3 allows public health units to enter into joint powers agreements with other public health units upon approval of each governing body to provide shared services. The committee learned a public health district has a separate governing board, while a public health department is an agency within a city or county government.

Mill Levies for Public Health

North Dakota Century Code Section 23-35-07 limits public health district budgets to an amount that does not exceed the amount of revenue that can be raised by a levy of five mills of the taxable valuation of the district. The statutory provisions limiting the mill levy of a health district began in 1943. The following schedule shows a history of changes to the number of mills a health district may levy:

1943	.50 mill
1953	.75 mill
1965	1.00 mill
1975	1.50 mills
1981	2.50 mills
1991	5.00 mills

The committee received a report showing for 2004, by county, the value of one mill of property tax, the number of mills levied and the funding generated for each county's general fund, and the number of mills levied and funds generated for public health districts. In 2004, 46 counties levied mills for health districts with an average of 3.58 mills, which generated $3,255,415.

State General Fund Support

Since 1977 each Legislative Assembly has appropriated funding from the general fund for state aid to public health units. The following schedule presents the funding appropriated for each biennium since 1977:

Biennium	General Fund Appropriation
1977-79	$600,000
1979-81	$525,000
1981-83	$1,000,000
1983-85	$1,000,000
1985-87	$1,000,000
1987-89	$950,000
1989-91	$600,000
1991-93	$975,000
1993-95	$1,000,000
1995-97	$950,000
1997-99	$990,000
1999-2001	$1,100,000
2001-03	$1,100,000
2003-05	$1,100,000
2005-07	$1,100,000

The state aid funds are distributed to each health unit pursuant to a formula developed by the State Department of Health. The formula provides each public health unit a $6,000 base allotment per biennium with the remainder of the funding being distributed on a per capita basis.

Core Functions and Essential Services

North Dakota Century Code Section 23-35-02 authorizes the State Health Council to issue rules defining the core functions of a public health unit; however, state law is not specific regarding the duties and responsibilities of public health units.

The committee learned the American Public Health Association Committee on Administrative Practice has adopted core functions and 10 essential services to guide public health decisionmaking and operations. The core functions are:

1. Assessment - Activities to evaluate the current health level and current threats to health in the community.
2. Policy development - Developing policies to address the identified health threats and problems.
3. Assurance - Implementation of policies to improve public health.

Each of the core functions includes essential services that provide the framework for measuring and improving public health practice. According to the American Public Health Association, the following 10 essential public health services should be provided to citizens by the public health system:

1. Monitor health status to identify community health problems.
2. Diagnose and investigate health problems and health hazards in the community.
3. Inform, educate, and empower people about health issues.
4. Mobilize community partnerships to identify and solve health problems.
5. Develop policies and plans that support individual and community health efforts.
6. Enforce laws and regulations that protect health and ensure safety.
7. Link people to needed personal health services and assure the provision of health care when otherwise unavailable.
8. Assure a competent public health and personal health care workforce.

9. Evaluate effectiveness, accessibility, and quality of personal- and population-based health services.
10. Research new insights and innovative solutions to health problems.

The committee heard the results of a 2002 national survey of local public health units involving the assessment of the three core functions of public health. The survey results indicated local public health units serving fewer than 25,000 people do not have the capability to conduct the core functions. The committee learned that in North Dakota 20 of the state's 28 local public health units serve fewer than 25,000 people each.

Survey of Public Health Units

The committee surveyed all public health units in the state regarding their funding, programs, demographics, and essential services. The following schedule summarizes funding of the public health units as reported on the survey:

Total 2005 Funding Sources of North Dakota Public Health Units		
Source	**Funding**	**Per Capita Average**
State (general fund, community health trust fund, and abandoned automobile fund)	$2,987,195	$5.44
Federal	9,869,053	13.44
County	5,120,574	10.98
City	4,354,328	1.92
Fee collections	2,958,376	3.48
Other	1,257,844	1.44
Total	$26,547,370	$36.70

The health units estimated spending approximately 12.7 percent of their annual budgets on administrative responsibilities. Regarding the number of grant applications and awards submitted and received by public health units during 2005, the public health units reported spending an estimated 6,075 hours preparing 406 grant applications, 353 or 87 percent of which were approved.

The schedule below lists the 10 essential services as defined by the American Public Health Association and an administrative cost category and comparison of the public health units' estimate of the "Best Practice" or "Ideal" percentage for each category to the units' estimate of actual spending for 2005.

	Essential Services and Administrative Costs	Average "Best Practice" or "Ideal" Percentage	Public Health Units' Percentage of 2005 Costs	Variance
1	Monitor health status to identify community health problems	12.5%	9.6%	2.9%
2	Diagnose and investigate health problems and health hazards in the community	11.9%	9.6%	2.3%
3	Inform, educate, and empower people about health issues	17.0%	21.1%	(4.1%)
4	Mobilize community partnerships to identify and solve health problems	10.6%	5.4%	5.2%
5	Develop policies and plans that support individual and community health efforts	8.2%	4.9%	3.3%
6	Enforce laws and regulations that protect health and ensure safety	7.3%	6.1%	1.2%
7	Link people to needed personal health services and assure the provision of health care when otherwise unavailable	14.3%	28.5%	(14.2%)
8	Assure a competent public health and personal health care workforce	6.5%	6.8%	(.3%)
9	Evaluate effectiveness, accessibility, and quality of personal and population-based health issues	4.0%	1.7%	2.3%
10	Research for new insights and innovative solutions to health problems	.5%	.3%	.2%
	Indirect or administrative costs	7.2%	6.0%	1.2%
Total		100.0%	100.0%	0.0%

Public health units indicated 2005 essential services percentages may differ from "Best Practice" or "Ideal" percentages because:

1. Programs provided must follow grant guidelines and funding levels.
2. Demands for direct patient care, grant reporting and requirements, and attendance at meetings make it difficult to provide other essential services.
3. Private health care providers cannot meet the demand for health services, especially in rural areas, resulting in the public health units arranging for or directly providing a wide variety of health services.
4. New methods of gathering community input to prioritize services are needed.
5. Additional funding flexibility is needed to address local priorities and needs.
6. The formula for distributing state aid to health units should consider the socio-economic conditions of each unit's residents.
7. Additional funding for state aid to health units is necessary to allow the units more discretionary funding to address the essential services currently not being adequately provided.

8. Additional funding for staff is needed, especially for environmental health, school nursing, and administration.
9. Additional funding to increase staff salaries and benefits would help recruit and retain staff.
10. Additional funding is needed for monitoring and understanding local health issues, analyzing local health data, and evaluating local public health services.
11. A credentialing process for public health employees to assure a competent workforce is not in place.

Other States' Public Health Units

The committee received information on other states' models of public health unit administration and accreditation. The committee learned some states have developed an accreditation process for public health units in order to encourage the provision of core services.

Nebraska has a decentralized public health structure similar to North Dakota's. In 2001 the Nebraska Legislature approved legislation promoting the formation of multicounty health departments consisting of at least three contiguous counties or serving at least 30,000 people. Each health department is required to provide the 10 essential services.

Minnesota has a decentralized public health structure similar to North Dakota's. In 2003 the Minnesota Legislature streamlined administrative requirements and combined several grants. The legislation requires community health boards to serve a population of at least 30,000. Minnesota health units deliver services and community health boards provide administration and management of the health units. State general fund support and maternal and child health block grant funds distributed to community health boards require a 75 percent local match, which is intended to encourage community health boards to develop other funding for addressing public health needs in the community. Minnesota has also created a committee of state and local public health representatives to advise, consult with, and make recommendations to the commissioner of health on matters relating to the development, maintenance, funding, and evaluation of public health services. Community health boards are required to document their progress toward providing essential local health services.

North Carolina is in the process of developing and implementing an accreditation process for public health units. A public health task force in North Carolina identified a uniform set of activities that all local health departments are expected to meet. The activities are based on the core functions and 10 essential services of public health. The state recently piloted the accreditation process with 10 local health departments.

North Dakota Public Health Assessment and Planning Process

The committee learned the State Department of Health conducted an assessment of the state's public health system. The state level assessment resulted in identifying the following priority areas:

1. Diagnose and investigate health problems and health hazards.
2. Monitor health status to identify health problems.
3. Enforce laws and regulations that protect health and safety.
4. Inform, educate, and empower people about health issues.

At the local level, 12 of the 28 health units completed the voluntary assessment. According to assessments completed, the following essential services and activities were identified as needing improvement:

1. Monitor health status to identify community health problems:
   a. Population-based community health profile.
   b. Access to and utilization of current technology.
2. Research for new insights and innovative solutions to health problems:
   a. Capacity for epidemiological policy and service research.
   b. Fostering innovation.
   c. Linkage with institutions of higher learning and research.
3. Develop policies and plans that support individual and community health efforts:
   a. Community health improvement process.
   b. Public health policy development.
   c. Strategic planning on alignment with the community health improvement process.
4. Evaluate effectiveness, accessibility, and quality of personal and population-based health services:
   a. Evaluation of population-based services.
   b. Evaluation of local public health systems.
5. Mobilize community partnerships to identify and solve health problems:
   a. Constituency development.
   b. Community partnerships.

The committee learned the State Department of Health held public health planning meetings across the state to determine the public health services North Dakota residents should have available to them regardless of where they live in the state. Preliminary observations and recommendations generated as a result of these meetings include:

1. The majority of public health infrastructure services should be considered minimum essential services and should be provided locally or regionally.
2. Population-based and personal health services, including those relating to communicable diseases, tobacco use prevention, maternal and child health, immunizations, prenatal and infant care, and clinical prevention screenings, should be considered minimum essential services. Services identified as not being adequately provided at the present time are violence prevention, asthma, mental health, alcohol abuse prevention, substance abuse prevention, infant care, and physical activity.

3. Infectious disease services are considered minimum essential services.
4. Promulgating rules and policies for environmental health services, enforcement, monitoring, and consultation are considered minimum essential services. A local and state partnership to deliver environmental health services should be considered. Statewide consistency of rules regarding environmental health is needed.
5. Services for disaster preparedness and response had the highest scores for being adequately provided. These services have adequate funding and regional coordination. This system could serve as a model for other service delivery systems of public health units.
6. Quality and accessibility of health services are considered a minimum essential service with both local and state responsibility.

The State Department of Health has established a public health task force to review and analyze the data gathered and to develop strategies for building local public health capabilities. Some of these strategies may involve legislative changes that will be presented to the 2007 Legislative Assembly.

Public Health Unit Comments and Suggestions

The committee heard reports from a number of public health units across the state regarding the services and funding of each unit and suggestions for improving public health services in the state. Public health units reporting to the committee were Fargo Cass Public Health Department; Bismarck-Burleigh Health Department; Custer District Health Unit, Mandan; Emmons County District Health Unit; Wells County District Health Unit; First District Health Unit, Minot; Lake Region District Health Unit, Devils Lake; Central Valley Health District, Jamestown; Grand Forks Public Health Department; Walsh County Health District; and Upper Missouri District Health Unit, Williston. Comments, concerns, and suggestions of representatives of these health units included:

1. A more uniform set of services should be established for all local public health units. Currently the level of services vary widely by unit across the state.
2. Smaller health units have chosen not to combine with other health units because currently:
   a. Funds remain within the community.
   b. The board controls its own program.
   c. The units meet the health needs of their areas.
3. A more standardized system of environmental health regulations should be developed for all public health units to provide more consistency in environmental health regulations from one jurisdiction to another.
4. Counties with tribal lands are unable to generate adequate county funding because tribal lands are not subject to property taxes.
5. Federal funding sources are available to implement new programs; however, funding is not always adequate for the costs necessary to manage the new programs.
6. The statutory mill levy for public health is limited to five mills, which does not allow additional funding to be raised at the local level for meeting program needs.
7. Additional flexible funding from the state could be used to meet various program needs of the health units.
8. Additional funding is needed to provide for core public health functions and to respond to health-related issues.
9. Discretionary funding provided by state aid and local mill levy revenues is important to meet the program needs of each unit.
10. The Fargo Board of Health developed an ordinance describing the Fargo Cass Public Health Department's function and role in the city. The ordinance was approved and provides for the purpose, authority, duties, and essential services of the public health department in Fargo based on the 10 essential services developed by the American Public Health Association.

Grant Writing Assistance

The committee considered options for providing grant writing assistance to public health units. The State Department of Health does not have a central function for grant writing for the department or for public health units. Many program managers or division directors within the State Department of Health inform local health workers of grant opportunities. Many also offer assistance or training on how to prepare a grant proposal or assist by reviewing the proposal. Areas of assistance identified as being needed by public health units include planning, training, obtaining community-level data, and technical assistance for grant applications. The committee learned the department, within its current staff and resources, may be able to:

1. Improve communications with local public health units through the local public health liaison to formally make the units aware of grant funding available, grant writing seminars, department data available, and other technical assistance available from the department.
2. Link local public health units with other resources, such as the University of North Dakota and Dakota Medical Foundation for possible grant writing assistance.
3. Continue to seek funding for community public health projects.

Food and Lodging Investigation Services

North Dakota Century Code Section 23-09-16 requires any food or lodging establishment to be licensed either by the State Department of Health or by a local health unit. Section 23-09-11 requires each establishment to be inspected at least once every two years. The State Department of Health Food and Lodging Division is responsible for licensing and inspecting restaurants, bars, lodging facilities, mobile home parks, campgrounds, bed and breakfast facilities,

retail food stores, meat markets, bakeries, schools, salvage food establishments, small food manufacturers and processors, assisted living facilities, and jails and other correctional facilities. Under an agreement with the Department of Human Services, the division also inspects preschools and day care centers that prepare food. The division also serves as the federal Food and Drug Administration liaison in the state on issues relating to manufactured food and pesticide residues in food.

The mission of the Food and Lodging Division is to ensure safe and sanitary food and lodging establishments in North Dakota through education and inspection of licensed facilities. The division licenses facilities annually on a calendar basis. Generally one inspection per food facility is conducted each year to ensure that the facility meets both sanitation and certain life and fire safety standards before opening to the public and while in operation. Nonfood facilities, such as lodging facilities and mobile home parks, are generally inspected once every two years.

The division has six staff members--inspectors located in Dickinson, Jamestown, Fargo, and Grand Forks and two administrative positions in Bismarck.

The department may enter into agreements with local health units allowing the health units to provide some of the inspection and licensing functions within their areas of jurisdiction. The department has seven agreements in place--three with city/county health units and four with multicounty health units. The local health units establish their own license fees to provide funding for their operations. Under these agreements, the local health units must follow state laws and rules or they must have adopted local ordinances that are at least as stringent as state laws and rules. Summaries of the agreements include:

1. Fargo Cass Public Health - Responsible for all retail food, food service, and lodging facilities in Fargo and West Fargo.
2. Grand Forks Public Health - Responsible for all retail food and food service facilities within the city of Grand Forks.
3. Bismarck Fire and Inspections - Responsible for all retail food, food service, and lodging with food service within the city of Bismarck.
4. First District Health Unit, Minot - Responsible for all food and lodging facilities within its seven-county health unit, including Bottineau, Burke, McHenry, McLean, Renville, Sheridan, and Ward Counties.
5. Custer District Health Unit, Mandan - Responsible for all retail food and food service facilities within its five-county health unit, including Grant, Mercer, Oliver, Sioux, and Morton Counties.
6. Southwest District Health Unit, Dickinson - Responsible for food service facilities within its eight-county health unit, including Stark, Adams, Billings, Slope, Golden Valley, Bowman, Dunn, and Hettinger Counties.
7. Upper Missouri District Health Unit, Williston - Responsible for food service facilities within the city of Williston.

The agreement with First District Health Unit in Minot provides the unit authority over all food and lodging facilities, which results in the State Department of Health having no jurisdiction or inspection activity within that health unit. In the other six health units, the department still has some inspection responsibilities, mainly in the areas of lodging, mobile home parks, trailer parks, and campgrounds.

Prior to July 1, 2005, annual license fees for food and lodging establishments were set in statute and the collections were deposited in the state general fund. Funding for providing food and lodging inspection services in the State Department of Health was primarily from the general fund. The 2005 Legislative Assembly in Senate Bill No. 2004 changed the funding source for these services from primarily the general fund to primarily special funds from food and lodging license fee collections deposited in the department's operating fund. Statutory references to the food and lodging license fee rates were also removed. The State Department of Health was authorized to establish license fees by rule. The 2005-07 biennium budget for these services in the State Department of Health is:

Salaries and wages	$600,634
Operating expenses	147,241
Total	$747,875
General fund	$125,000
Federal funds	79,429
Other funds	543,446
Total	$747,875

The following schedule compares the license fees for food and lodging facilities across the state:

North Dakota Food and Lodging License Fees

Department or Health Unit	Restaurant	Limited Restaurant	Mobile Food	Retail Food	Bakery
State Department of Health					
Statutory fee prior to July 1, 2005	$60, $80, $85	$50	$40	$50, $60	$50, $60
Fees effective July 1, 2005	$75 flat fee $.50/seat, $150 maximum	$75	$75	$75, $85, $95	$75, $85, $95
Fargo Cass	$150 base $1.50/seat, $250 maximum	$100	$125	$75	$75
Grand Forks	$135 base $.30-$1.30/seat		$55	$60, $115, $130	$90, $180, $215
Bismarck	$175	$175	$50	$100, $150	$100
First District, Minot	$85, $105, $110	$75	$25, $50, $75 (number of days)	$75, $100	$75, $100

Department or Health Unit	Restaurant	Limited Restaurant	Mobile Food	Retail Food	Bakery
Southwest District, Dickinson	$55, $65	$55	$45		$45
Upper Missouri, Williston	$60, $80, $85				
Custer Health, Mandan	$70, $80, $90	$60		$70, $80	$50, $60
Department or Health Unit	**Food Processors**	**Lodging**	**Mobile Home Parks**	**Bed and Breakfast**	**Schools**
State Department of Health					
Statutory fee prior to July 1, 2005	$25	$20-$80	$50-$120	$15	N/A
Fees effective July 1, 2005	$35	$35-$150	$75-$160	$25	$90
Fargo Cass		$100-$400			$60, $85
Grand Forks	$105, $195, $230	$75, $145	$115 + $2.15/lot	$75	$70, $140
Bismarck	$50, $75				$75
First District, Minot*	$50	$20-$80	$50-$120	$30	$0
Custer Health, Mandan					$0
Southwest District, Dickinson					$0
Upper Missouri, Williston					$0**

*First District does not currently charge a license fee for schools but will be approaching its board to do so in the near future.

**Upper Missouri currently does not charge for school inspections but if reinspections are needed after several visits because of continued problems, a flat $25 fee is charged for those inspections.

The committee learned the State Department of Health is considering legislation to allow the department to immediately fine or close an establishment that does not pay its annual license renewal fee by February 1. Each year many establishments do not pay their license renewal fees by the deadline, resulting in the department's staff spending a considerable amount of time and resources trying to collect the fees.

The department suggested a statutory change to allow the department to assess a reinspection fee if a facility has a number of critical violations. In addition, a statutory change could be made to require all high-risk establishments to be inspected annually rather than biennially. High-risk food establishments are those that cook some menu items from scratch or prepare large batches of food that are cooled and reheated later for service to the public. Annual inspections would require additional resources for the department either from additional general fund support or increased fees.

Other Reports

The committee heard other reports, including:

1. A report on action taken by the Public Employees Retirement System (PERS) affecting health insurance premium rates for public health units. Currently, health districts pay the blended single/family health insurance premium. Because the blended rate was intended only for state agencies, PERS was considering whether the health districts should be paying the separate single premium rate and family premium rate as do other political subdivisions. The Public Employees Retirement System is delaying a final decision on this issue until after the 2007 legislative session.
2. A report on the University of North Dakota School of Medicine and Health Sciences' role and involvement with local public health units. The committee learned the medical school and local public health units collaborate primarily in the following areas:
   a. Technical assistance and research.
   b. Education support.
   c. Information dissemination.
3. A report regarding the involvement of public health units in the cleanup of methamphetamine laboratories. The committee learned public health units have had very little involvement with the cleanup of methamphetamine laboratories during the past year.
4. A report on potential federal fund reductions affecting public health services. The committee learned the state may be receiving less federal funds under a number of federal grants, including the grant for chronic disease and tobacco prevention, the Environmental Protection Agency performance partnership grant, the emergency preparedness and response grants, and the preventive health block grant.
5. A report from the Indian Affairs Commission regarding the coordination of public health services on Indian reservations. Concerns in the report include:
   a. Structure - The structure of the state public health system is not organized to work with the North Dakota Indian public health system.
   b. Health disparities - The federal Indian Health Service, which provides health services on Indian reservations, does not meet the health service needs on Indian reservations.
   c. Health disparities - Tribal governments do not have adequate funding to provide quality health care for the residents of the reservations.
   d. Lack of culturally trained staff - Staff of public health units are unable to coordinate effectively with the tribal public health system.
6. A report on the nursing program at the University of North Dakota. The report indicated the need for increasing the number of students entering the nursing profession to adequately provide health services in North Dakota in the future due to the increasing number of nurses who will be retiring.

Recommendations

The committee made no recommendation regarding its study of public health units. The public health task force, established to review and analyze data and develop strategies for building local public health capabilities, may have recommendations for the 2007 Legislative Assembly to assist in implementing these strategies.

MEDICAID STUDY AND REPORTS

The committee was assigned a Medicaid medical reimbursement system study as well as the responsibility to receive reports from the Department of Human Services relating to a five-year Medicaid analysis, asset disregard for long-term care insurance, prescription drug monitoring program, Medicaid management initiatives, and Medicare prescription drug implementation.

Medicaid Study

Section 5 of House Bill No. 1459 (2005) provided for a study of the Medicaid medical reimbursement system, including costs of providing services, fee schedules, parity among provider groups, and access to services.

2005-07 Funding

For the 2005-07 biennium, the Legislative Assembly appropriated $976.1 million for medical assistance, of which $307 million is from the general fund. Of the $976.1 million total, $385.6 million is for medical services, $343 million is for nursing home services, $211.6 million is for developmental disabilities grants, $12.1 million is for Healthy Steps, and $23.8 million is for other services, including personal care services, targeted case management, and waiver services. The 2005 Legislative Assembly provided funding for 2.65 percent annual inflationary increases for Medicaid providers for the 2005-07 biennium. In addition, the Legislative Assembly added $170,940, of which $60,000 was from the general fund for increasing ambulance services payment rates.

Federal Medical Assistance Percentage

Medicaid costs are shared between the federal and state governments. The federal medical assistance percentage determines the federal share of Medicaid costs with the state paying the remaining amount. The FMAP changes each October 1 and is based on the federal fiscal year (October through September). The FMAP is calculated using a three-year average of state per capita personal income compared to the national average per capita personal income. A state with an average per capita personal income has an FMAP of 55 percent. A state's FMAP may not be less than 50 percent nor more than 83 percent. Two programs have an enhanced FMAP--the children's health insurance program and breast and cervical cancer treatment services. The enhanced FMAP is calculated by reducing each state's share of the regular FMAP by 30 percent.

North Dakota's estimated and actual FMAPs for the 2005-07 biennium are:

	Estimated	Actual
2005	67.49%	67.49%
2006	65.85%	65.85%
2007	62.37%	64.72%

As a result of the increased FMAP for 2007, the department anticipates collecting an additional $8.8 million of federal Medicaid funds, which will result in an estimated $8.8 million of general fund savings for the biennium.

Payment Methodology

The committee learned Medicaid pays based on a fee-for-service concept. Payments for physicians and their allied providers are based on a relative value process. Each procedure is assigned a value based on the type of procedure being performed. The relative value for each procedure is multiplied by a conversion factor to arrive at the payment amount. The rate for fiscal year 2006 was $34.02 per unit, compared to the Medicare rate of $37.90 per unit.

Dentists, ambulances, and other similar providers are also paid on the basis of established procedure codes. Fees were established decades ago and generally increase only when the department receives specific direction regarding inflation or other increases from the Legislative Assembly.

Inpatient services are paid based on a diagnostic-related group (DRG) which classifies each hospital stay based on the diagnosis and procedures that are performed. Currently, there are about 540 different groups. Each group has a particular value based on its complexity. That value is multiplied by the established rate to arrive at the payment for each hospital stay.

Outpatient hospital services are based on the established cost-to-charge ratio for each facility with no cost settlements.

Pharmacies are paid on the basis of average wholesale price (AWP) minus 10 percent plus a dispensing fee of $5.60 for a generic drug and $4.60 for a brand name drug. In addition, payments for approximately 12,000 generic drugs are based on the maximum allowable cost process that estimates the actual cost of the drug. This pricing process has saved the state an estimated $3.8 million per year since it was implemented in 2002.

Nursing facilities are paid based on allowable costs that are submitted annually. Facilities that have costs below established limits will receive these costs plus inflation, operating margins, and incentives. Providers over the limits have their cost reimbursed only up to the limit recognized for the ratesetting process. The limits are currently calculated based on costs submitted by providers for the cost reporting year ending June 30, 2003, and will be "rebased" for the rate year beginning January 1, 2006.

The committee learned the Medicaid payment process is similar to systems used by other third-party payers; however, a concern expressed by providers is that the Medicaid program pays less for similar services than Medicare or other third-party payers.

Medicaid Expenditures - Medical Services

The committee received a report on final medical assistance-related expenditures by category for the 2003-05 biennium compared to the 2003-05 biennium budget and to appropriations provided for the 2005-07 biennium. In total, actual 2003-05 medical assistance-related expenditures for medical services totaled $407.8 million, $37.8 million more than the $370 million appropriated for the 2003-05 biennium. Compared to the 2005-07 appropriations, including Healthy Steps of $397.6 million, 2003-05 actual expenditures were $10.2 million more; however, the 2003-05 actual expenditures include $28.3 million of intergovernmental transfer payments that will not occur in the 2005-07 biennium.

For long-term care expenditures, the committee learned 2003-05 actual expenditures totaled $336.2 million, which is $21.9 million less than the 2003-05 appropriation of $358.1 million. For the 2005-07 biennium, appropriations for long-term care are $394 million, $57.8 million more than the 2003-05 actual expenditures.

The committee reviewed Medicaid prescription drug expenditures since fiscal year 2000 as follows:

Fiscal Year	Expenditures	Percentage Increase From Previous Year
2000	$30,186,107	
2001	$35,162,327	16.5%
2002	$41,599,151	18.3%
2003	$40,759,110	(2.0%)
2004	$45,974,797	12.8%
2005	$47,031,726	2.3%

Medicaid Provider Testimony

The committee received testimony from providers receiving payments under the Medicaid program on the availability and accessibility of services across the state and on the appropriateness of the amounts paid by Medicaid.

Regarding pharmacy services, the committee learned the North Dakota Pharmacists Association is recommending increasing the dispensing fee for generic medication from $5.60 to $15. The committee learned this increase would cost an estimated $6.8 million for the 2007-09 biennium, of which $2.5 million would be from the general fund.

The committee learned the following concerns affect the future of community pharmacies in North Dakota:

1. Payment levels under the Medicare Part D prescription drug program.
2. Reductions in pharmacy reimbursements effective January 2006 by Blue Cross Blue Shield of North Dakota.
3. The impact of decreases affecting state Medicaid programs included in the federal Deficit Reduction Act of 2005.

The committee was provided information on a cost of dispensing study by Dr. Michael Rupp, Midwestern University, Phoenix, Arizona, involving 43 community pharmacies in North Dakota. Dispensing costs of these pharmacies ranged from $4.77 to $15.04, with the median cost being $8.59.

The State Board of Pharmacy anticipates over 50 percent of the licensed, practicing pharmacy owners in North Dakota will retire during the next 10 years and unless pharmacy payment rates are increased, it is likely that many of these pharmacies will close when the current owners retire. The committee received information on a proposed medication therapy management services initiative. Medication therapy management is a collaborative effort involving physicians and pharmacists to resolve drug therapy problems for Medicaid patients. The committee learned these initiatives have lowered health care costs in several states.

Regarding long-term care services, the committee learned North Dakota operates under a rate equalization system, meaning the amounts paid by Medicaid for long-term care services determine the amounts paid by all payers, except Medicare. The North Dakota Long Term Care Association testified that the 2.65 percent annual inflationary increases approved by the 2005 Legislative Assembly have not been adequate to meet the increasing costs incurred by nursing homes. Concerns of the long-term care industry include the ability to recruit and retain staff and facilities' actual costs exceeding payment rates. The North Dakota Long Term Care Association suggested the 2007 Legislative Assembly consider providing larger inflationary increases for long-term care service providers.

Regarding developmental disabilities services, the committee learned developmental disabilities service providers are concerned with their ability to recruit and retain staff. Providers are experiencing a turnover rate of 46 percent. The developmental disabilities service providers plan to ask the 2007 Legislative Assembly to provide inflationary increases of at least 4 percent for each year of the 2007-09 biennium to provide funding to increase wages by at least $1.15 per hour for all community provider staff and to allow a 3 percent increase in the allowable fringe benefit rate for providers.

Regarding hospital services, the committee learned North Dakota residents expect physician and hospital services to be available close to home and 24 hours a day 7 days a week. Based on a 2004 study, the committee learned that in North Dakota Medicaid pays 70 percent of the actual costs incurred by a hospital in providing services. In the past, hospitals have been able to shift this payment shortfall to commercial payers and the self-insured; however, commercial insurers are no longer willing to pay increased rates to offset the low payments paid by the Medicaid program. The North Dakota Healthcare Association suggested that adequate inflationary adjustments are needed for hospitals to cover their actual cost of services.

Regarding physician services, the committee learned the primary concern of physicians is that the Medicaid payment methodology has systematically resulted in payments being substantially less than the actual cost of service. Medicaid payments for physician services are estimated to cover only 74 percent of the actual cost of providing the services. The North Dakota Medical

Association suggested the 2007 Legislative Assembly address payment rates for physicians and hospitals to more adequately cover the cost of services.

The committee received a copy of a September 2005 resolution relating to medical assistance rates in North Dakota prepared by the North Dakota Medical Association. The resolution, approved by the 2005 House of Delegates of the North Dakota Medical Association, encouraged the Governor and legislative leaders to address the unfairness of state Medicaid rates that do not cover practice costs for physicians and hospitals in North Dakota.

Other Reports

The committee heard other reports, including a report by Dr. Stephen Schondelmeyer, University of Minnesota, on issues and research findings relating to prescription drugs and pharmacy services. The committee learned the cost of prescription drugs as a percentage of the total United States Medicaid program expenditures increased from 5.5 percent in 1990 to 14.1 percent in 2005. The average United States Medicaid prescription drug product cost has increased from $17.72 in 1990 to $67.68 in 2004, while the average dispensing fee payment has increased from $3.81 to $4.15 for the same period. The primary factors contributing to the change in drug expenditures are increases in utilization and the drug manufacturer's prices.

The committee reviewed schedules of total billed charges by provider type, the amount of billed charges paid by Medicaid, and the percentage of the billed amount paid. For 2004 the percentage of billed amount paid by provider type varied from 30.5 percent for ambulance services to 95.5 percent for hearing aid dealers. For 2005 the total percentage of billed amount paid by provider type varied from 32.4 percent for ambulance services to 92.7 percent for hearing aid dealers.

Five-Year Medicaid Analysis Report

North Dakota Century Code Section 50-06-25 requires the Department of Human Services to present a biennial report to the Legislative Council providing a five-year historical analysis of the number of persons receiving services under the medical assistance (Medicaid) program, the cost of the services by program appropriations, the budget requested, the budget appropriated, and actual expenditures for each of the five preceding fiscal years. The report is to include a comparison of the state's experience to surrounding states and, using actuarial tools, must project estimated usage trends and budget estimates for meeting those trends for the succeeding five-year period.

The committee received the biennial Medicaid report from the department. The committee learned the department contracted with Milliman, Inc., for actuarial services for completing the report at a cost of $100,000, $50,000 of which is from the general fund and $50,000 is from federal Medicaid administrative funding.

The report includes information on medical-related costs of the Medicaid program but does not include information on long-term care or developmental disabilities services. The report includes schedules comparing North Dakota medical assistance funding to similar funding in South Dakota, Minnesota, and Montana and information on the unduplicated number of recipients by eligibility categories. The following schedule compares selected North Dakota payment rates to South Dakota, Minnesota, and Montana:

Service Category	Ratio of South Dakota to North Dakota	Ratio of Minnesota to North Dakota	Ratio of Montana to North Dakota
Dental*	N/A	103.5%	110.4%
Laboratory	96.6%	95.2%	100.6%
Mental health	53.2%	127.0%	98.0%
Outpatient hospital	97.8%	110.0%	99.9%
Physical therapy	77.0%	153.6%	146.8%
Physician	85.3%	81.8%	103.4%
Radiology	100.1%	141.8%	99.9%
Speech therapy	82.1%	144.3%	141.7%

*Minnesota figures are relative to 2005 fee-for-service experience. Dental services in South Dakota are provided through a capitated, managed care program.

The following schedule compares North Dakota payment rates to payment rates of Medicare, Workforce Safety and Insurance, and Blue Cross Blue Shield of North Dakota:

Service Category	Ratio of Medicare to North Dakota Medicaid	Ratio of North Dakota Workforce Safety and Insurance to North Dakota Medicaid	Ratio of Blue Cross Blue Shield (BCBS) of North Dakota to North Dakota Medicaid
Dental*	N/A	167.2%	222.9%
Inpatient hospital	107.0%	130.6%	134.7%
Laboratory	100.0%	203.8%	169.8%
Mental health**	106.4%	124.0%	N/A
Outpatient hospital	113.9%	252.4%	236.4%
Patient therapy**	135.0%	175.8%	N/A
Physician	113.5%	156.3%	168.8%
Radiology	110.6%	185.3%	180.6%
Speech therapy**	105.6%	162.1%	N/A

*Medicare does not cover dental services.

**Mental health care, physical therapy, and speech therapy (BCBS) - Fee schedule not provided by BCBS.

Based on the actuary's baseline forecast for Medicaid expenditures through fiscal year 2011, projected expenditures for the 2005-07 biennium are $378 million and projections for the 2007-09 biennium are $417.7 million, an increase of 10 percent. Factoring in a 1 percent inflationary rate, 2007-09 projected expenditures would total $422 million. The following schedule presents the Milliman, Inc., baseline annual forecast for the North Dakota Medicaid program:

State Fiscal Year	Expenditures	Percentage of Growth
2005	$184,923,700	
2006	$193,360,600	4.6%
2007	$184,238,300	(4.7%)
2008	$198,860,300	7.9%
2009	$218,831,300	10.0%
2010	$230,488,200	5.3%
2011	$247,337,100	7.3%

NOTES:
The lower growth rates in state fiscal years 2006 and 2007 correspond to implementation of Medicare Part D pharmacy benefits, effective January 1, 2006.

The increased growth rate for paid state fiscal year 2009 corresponds to a 53-week payment pattern (i.e., 53 Tuesdays) for the fiscal year.

For the 2007-09 biennium, Milliman, Inc., projects that North Dakota Medicaid expenditures would total $438.3 million if it paid claims based on the Medicare fee schedule compared to the North Dakota Medicaid baseline forecast for the same period of $417.7 million. The additional cost is estimated to total $20.6 million for the 2007-09 biennium, of which $7.5 million would be from the general fund.

The committee learned the department does not anticipate using the Milliman, Inc., projections as it prepares its 2007-09 biennium budget request. The department plans to use the same methodology involving historical trend data it has used for preparing previous budget requests.

Asset Disregard for Long-Term Care Insurance Report

Section 2 of House Bill No. 1217 (2005) required the Department of Human Services to report to the Legislative Council before November 1, 2005, regarding the status of an amendment to North Dakota's Medicaid state plan allowing the disregard of assets if an individual has received or is entitled to receive benefits under a long-term care insurance policy. House Bill No. 1217 (2005) allows individuals to own and retain assets and still be eligible for Medicaid benefits if the individuals own a long-term care insurance policy. The section becomes effective on the date the department certifies to the committee that an amendment to the Medicaid state plan has been approved by the federal government allowing these provisions.

The committee learned the department is collaborating with the Insurance Department to develop a long-term care insurance partnership program. The program will allow a person who purchases long-term care insurance to protect assets equal to the amount the insurance has paid if the person needs to apply for Medicaid. The Insurance Department's role is to ensure the insurance policies meet the criteria required by the federal Deficit Reduction Act of 2005. The program will not begin until acceptable insurance policies are available in North Dakota and a state plan amendment has been approved by the federal Centers for Medicare and Medicaid Services.

Prescription Drug Monitoring Report

House Bill No. 1459 (2005) established a prescription drug monitoring working group and required the Department of Human Services and the working group to provide periodic status reports to the Legislative Council regarding the activities of the working group and the implementation of the prescription drug monitoring program. According to provisions of the bill, the working group was to:

1. Identify problems relating to the abuse and diversion of controlled substances and how a prescription drug monitoring program could address these problems.
2. Identify a strategy and propose a prescription drug monitoring program to address the problems.
3. Establish how the program will be implemented, the fiscal requirements of the program, and the timeline for implementation.
4. Consider possible performance measures the state could use to assess the impact of the program.
5. Provide proposed administrative rules to the department to implement the program.

The committee learned the department received a $372,315 grant from the federal Department of Justice for implementation of the prescription drug monitoring program. The working group determined the program would be administered by the State Board of Pharmacy and the working group may propose legislation for consideration by the 2007 Legislative Assembly to:

1. Allow the program to require medications in addition to controlled substances to be submitted.
2. Address liability concerns.
3. Ensure compliance with the Health Insurance Portability and Accountability Act (HIPAA).

The department and the State Board of Pharmacy will be releasing a request for proposal to secure a vendor to develop and operate the necessary computer and data services for the program. To expedite the development and implementation of the program, the working group is considering asking the Governor to allow emergency rules for the program.

Medicaid Management Initiatives Report

Section 4 of House Bill No. 1459 (2005) provided that the Legislative Council receive a report from and provide input to the Department of Human Services regarding the development of recommendations relating to the management of the Medicaid program. A number of recommendations resulted from the report provided to the 2005 Legislative Assembly by Muse and Associates, the consultants that conducted a review of the North Dakota Medicaid program during the 2003-04 interim. House Bill No. 1459 (2005) includes the following management initiatives for the Medicaid program:

1. Provide statewide targeted case management services focusing on the 2000 Medicaid recipients with the highest cost for treatment of chronic diseases and the families of neonates which can benefit from case management services. The case management services must focus on the recipients in these groups which will result in the most cost-savings considering available resources and may include a primary

pharmacy component for the management of Medicaid recipient medication.

2. Require Medicaid providers to use the appropriate diagnosis or reason and procedure codes when submitting claims for Medicaid reimbursement. Review and develop recommendations to identify instances that a provider of services is not properly reporting diagnosis or reason and procedure codes when submitting claims and review and recommend any specific providers from which a potential benefit might be obtained by requiring additional diagnosis or reason and procedure codes.
3. Review and develop recommendations for the improvement of mental health treatment and services, including the use of prescription drugs for Medicaid recipients.
4. Review and develop recommendations regarding whether the number of Medicaid recipients placed in out-of-state nursing homes should be reduced.
5. Review and develop recommendations regarding whether use of post-office addresses or street addresses are the appropriate mailing addresses for Medicaid recipients.
6. Review and develop recommendations regarding whether to require Medicaid providers to secure prior authorization for certain high-cost medical procedures.
7. Review and develop recommendations regarding whether a system for providing and requiring the use of photo identification Medicaid cards for all Medicaid recipients should be implemented.
8. Review and develop recommendations regarding whether Medicaid providers should be required to use tamper-resistant prescription pads.
9. Develop a plan to provide information to blind and disabled Medicaid recipients who may be eligible for Medicare Part D benefits.
10. Review and recommend a plan for implementing the necessary infrastructure to permit risk-sharing arrangements between the department and Medicaid providers.

The 2005 Legislative Assembly provided $565,000, of which $282,500 is from the general fund, for costs associated with implementing these initiatives during the 2005-07 biennium and reduced funding for Medicaid grants by $1,530,000, of which $537,030 is from the general fund, to reflect savings from implementation of these initiatives.

Regarding the targeted case management/disease management initiative, after a review of the top 2000 high-cost Medicaid recipients and the respective disease conditions, the department chose to target disease case management efforts on those recipients with asthma, diabetes, congestive heart failure, chronic obstructive pulmonary disease, and depression. The department selected Specialty Disease Management Services, Inc., of Florida, to provide health management services to Medicaid recipients with these selected chronic conditions. The department is in the process of submitting a state plan amendment and waiver application to the Centers for Medicare and Medicaid Services for authority to operate the health management program. Once the amendment and waiver are approved, the department will enter into a contract with Specialty Disease Management Services, Inc., and begin the program. Once operational, the program should avert more costly health care services, such as emergency room visits or unnecessary physician visits or hospitalizations for the recipients.

Regarding the development of risk-sharing agreements or managed care programs, the department is planning to implement a program for all-inclusive care for the elderly (PACE). The program will be for individuals age 55 and older and will provide a comprehensive package of acute and long-term care services through an interdisciplinary team of professionals. The intent of the program will be to provide necessary services to prevent these individuals from moving to a more costly level of care, such as skilled nursing care. However, if an individual requires care in a skilled nursing facility, the private PACE agency will be responsible for those costs within its capitated payments. The department is considering two agencies to provide the PACE program.

Regarding diagnosis and reason codes, the committee learned the following providers are not required to submit diagnosis and reason codes:

- Dental providers.
- Pharmacy providers.
- Developmental disabilities service providers.
- Qualified service providers.
- Basic care providers.
- Nursing homes.
- Intermediate care facilities.
- Nonemergency transportation providers.

Regarding out-of-state nursing home usage, the committee learned during the 2005-06 interim, 55 North Dakota Medicaid-eligible residents were in Minnesota nursing facilities and 35 Minnesota Medicaid-eligible residents were residing in North Dakota nursing facilities. Since 1993 North Dakota has had a reciprocity agreement with Minnesota for determining the state of residence for individuals entering nursing facilities in both states. The 2005 average cost to North Dakota Medicaid for all nursing facility residents was $130 per day. The average cost to North Dakota Medicaid for residents in Minnesota facilities is $126 per day. On an annual basis, the total funds North Dakota Medicaid pays Minnesota facilities is approximately $800,000 more than the amount Minnesota Medicaid pays North Dakota facilities.

Regarding post-office box or street addresses, the committee learned addresses reported by Medicaid clients, whether a street location or post-office box, are entered into the eligibility system by staff at the time of enrollment. The department is not aware of any problems encountered in the current system and recommends no action be taken to require certain types of addresses to be used.

Regarding prior authorization for high-cost medical procedures, the committee learned the department has reviewed procedures to consider for prior authorization, including magnetic resonance imaging (MRI), positron emission tomography (PET) scans, and computed tomography (CT) scans.

Regarding photo identification on Medicaid identification cards, the department estimates the cost of adding a photo identification to the card would be $80,000.

Regarding tamper-resistant prescription pads, the department recommended the Legislative Assembly pursue the use of tamper-resistant prescription pads and consider assigning the responsibility to an entity with statewide all-prescriber responsibilities, such as the State Board of Pharmacy or the State Board of Medical Examiners.

Regarding the development of a plan to provide information to blind and disabled Medicaid recipients who may be eligible for Medicare Part D benefits, the committee learned the Department of Human Services collaborated with the State Library to inform visually impaired persons of the changes through distribution of a newsletter and through public service announcements on the Dakota Radio Information Service for visually impaired persons. In addition, the Medical Services Division and the Vocational Rehabilitation Division cross-referenced eligibility information to develop a list of visually impaired Medicaid/Medicare recipients.

Medicare Prescription Drug Implementation Plan Report

Section 2 of House Bill No. 1465 (2005) required the Department of Human Services to report to the Legislative Council regarding the department's progress in developing and implementing a plan for the Medicare prescription drug program effective January 1, 2006. House Bill No. 1465 included an appropriation of $50,000 from the general fund to the department for costs associated with developing and implementing a plan.

Prior to implementation of the Medicare prescription drug program, individuals eligible for both the state Medicaid program and the federal Medicare program received their prescription drug coverage under the state Medicaid program. Effective January 1, 2006, under the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, these individuals began receiving coverage for their prescription drugs under the federal Medicare program. The Act, however, requires states to pay a portion of the Medicaid "savings" to the federal government each year. This "clawback" provision requires states to pay 90 percent of the estimated state "savings" during the first year. The percentage gradually decreases to 75 percent by 2014.

The committee learned the department contracted with Muse and Associates, Washington, D.C., to develop the department's implementation plan for the transition to the Medicare Part D prescription drug benefit.

The committee learned approximately 10,500 North Dakota residents are eligible for both Medicare and Medicaid (dual-eligibles) and that under provisions of House Bill No. 1465, the department had authority to provide prescription drug coverage in an emergency to dual-eligible individuals during the first 45 days of 2006. Under this provision, the department paid approximately $303,000 in Part D claims for approximately 1,900 recipients due to problems with these recipients accessing their new prescription drug plan. The department submitted a federal demonstration project application, which was approved, authorizing the department to make these payments and to be reimbursed by the federal government for any state costs incurred.

For the final 18 months of the 2005-07 biennium, the department estimated North Dakota's "clawback" payment would total $15.8 million, all of which would be from the general fund. Based on revised federal "clawback" calculations, the committee learned North Dakota's "clawback" payment was reduced to an estimated $14,135,727 for the remainder of the 2005-07 biennium, $1,715,982 less than the department's original estimate.

The committee received information from Muse and Associates, based on trend data from North Dakota prescription drug expenditures for dual-eligibles from calendar years 1999 through 2005, estimating North Dakota would spend $110 million in prescription drugs for dual-eligible beneficiaries between calendar years 2006 and 2015 under the program prior to Medicare Part D. Under Medicare Part D, Muse and Associates estimates North Dakota's drug payments plus the "clawback" payments will total $123 million. As a result, the cost of the Medicare Part D program to North Dakota will be an estimated $13 million over this 10-year period.

The committee also received information from the Insurance Department regarding its plans for educating and assisting the public in understanding the Medicare prescription drug benefit program.

Medicaid Management Information System Replacement Project

The 2005 Legislative Assembly appropriated $29.2 million of federal and special funds to the Department of Human Services to design, develop, and implement a replacement Medicaid computer system, which includes Medicaid management information system (MMIS), decision support system, and pharmacy point-of-sale system. The committee learned the department received one proposal for the MMIS portion of the project, two proposals for decision support, and three proposals for a point-of-sale system. Based on the best and final offers received, the department revised the total project cost to $56.8 million.

The Budget Section approved a motion expressing the Budget Section's support for the department proceeding with preliminary work on the project with final direction decision to be made by the 2007 Legislative Assembly. The motion encouraged the department to begin preliminary work on the project which would be required for all of the following options:

1. Acceptance of the current Affiliated Computer Services, Inc., bid.
2. Rebidding of the MMIS project.

3. Joint development with another state.
4. Use of a fiscal agent.
5. Outsourcing the billing and payment components.

In addition, the motion encouraged the Department of Human Services to contract for an independent analysis of the above options, including a cost-benefit analysis, and to arrange for the information to be available to the Legislative Assembly by January 8, 2007.

The committee learned the department has submitted and received approval from the Centers for Medicare and Medicaid Services of the proposed MMIS contract and the department entered into an agreement with Affiliated Computer Services, Inc., in June 2006. The department selected a vendor to complete an independent analysis of the various options to be considered by the 2007 Legislative Assembly, began Phase 1 of the project, and established a stakeholder committee to gather input regarding the development of a new system and to provide communications regarding the design and operations of the new system.

Other Medicaid-Related Reports

The committee received a report regarding the activities associated with the Real Choice Rebalancing Grant. The grant funds will be used to assist the state in complying with provisions of the Olmstead decision and the President's New Freedom Initiative, both of which are intended to improve access and choice of continuum of care services for the elderly and people with disabilities. The committee learned the goal of the grant is to:

1. Develop a mechanism to balance state resources for continuum of care services, including long-term care and home and community-based services.
2. Develop a system to provide a single point of entry for continuum of care services.
3. Develop practical and sustainable public information services for all continuum of care services in North Dakota.

Recommendations

The committee recommends the 2007 Legislative Assembly consider the value of the biennial medical assistance report and the importance of continuing funding for the report for the actuarial analysis and other information that may be useful for the Legislative Assembly and its Appropriations Committees in the development of the Department of Human Services' appropriation.

HEALTHY NORTH DAKOTA STUDY

Section 20 of Senate Bill No. 2004 (2005) provided for a Legislative Council study of the costs and benefits of adopting a comprehensive Healthy North Dakota and workplace wellness program in collaboration with the State Department of Health, health insurers, other third-party payers, Workforce Safety and Insurance, interested nonprofit health-related agencies, and others who have an interest in establishing accident and disease prevention programs.

Background

The committee learned Governor John Hoeven initiated the Healthy North Dakota program in January 2002. The mission of the initiative is to inspire and support North Dakotans to improve physical, mental, and emotional health for all by building innovative statewide partnerships. The Healthy North Dakota Advisory Committee was formed in March 2002. Priority areas of Healthy North Dakota include:

1. Tobacco use.
2. Substance abuse - Mental health.
3. Healthy weight - Nutrition.
4. Healthy weight - Physical activity.
5. Health disparities.
6. Worksite wellness.
7. Community engagement.
8. Third-party payers - Insurance.

Committees have been formed to focus on each of these areas across the state.

Funding

For the 2005-07 biennium, the Legislative Assembly appropriated $485,746 of federal and other funds for the State Department of Health's Healthy North Dakota and worksite wellness program. Federal funds of $350,746 are from the federal preventive health block grant and are used, in part, for funding 1.5 full-time equivalent (FTE) positions within the department. The $135,000 of other funds was to be raised by the department for the worksite wellness program. For the 2007-09 biennium, the State Department of Health is requesting $200,000 to $300,000 from the community health trust fund to provide a more consistent source of funding for the program.

Status of Focus Areas

The committee received a report on the status of the focus areas of Healthy North Dakota, including:

1. Healthy weight - Healthy North Dakota has involved more than 500 state, local, and county government employees in the "five-a-day challenge" program designed to increase the amount of fruits and vegetables eaten daily. In addition, 17 community coalitions promote healthy eating and physical activity with the potential to reach more than 70 percent of the state's population.
2. Health disparities - The Health Disparities Committee received a grant to establish an office of special populations within the State Department of Health. The Tribal/State Health Task Force was formed at the request of the Indian Affairs Commission to identify the common health needs of North Dakota's American Indian population. Key issues identified include:
   a. Little public health infrastructure exists on the reservations.
   b. State/tribal communications are problematic.
   c. Access to health care is poor.

3. Tobacco use - The Tobacco Quitline began in September 2004 and is demonstrating high rates of success in assisting people to quit smoking. The 6-month quit rate is 36 percent and the 12-month quit rate is 27 percent.
4. Cancer - The cancer coalition is developing a cancer control plan for the state. The plan provides a starting point to improve cancer care.
5. Early childhood - The Early Childhood Alliance completed its early childhood comprehensive systems state plan. Key areas of the plan include access to health insurance and medical home, mental health and social/emotional development, early care and education/child care, parent education, and family support.
6. Oral health - The oral health coalition completed its state plan. The plan is important for establishing the vision to improve the oral health and well-being of North Dakota citizens. An oral health conference is scheduled for September 2006.
7. Injury - Healthy North Dakota assisted in the formation of the North Dakota injury prevention coalition. The coalition works to address prevention or intervention of intentional injuries, such as domestic violence, sexual assault, and suicide, and unintentional injuries, such as motor vehicle accidents and playground injuries.
8. Environmental quality - Environmental health partners provided expertise needed to develop objectives in the prevention section of North Dakota's cancer control plan and further collaboration opportunities have been identified.

Strategic Assessment

The committee learned Healthy North Dakota completed a strategic assessment process and identified the following recommendations:

1. Designate focus areas for Healthy North Dakota and prioritize Healthy North Dakota resources accordingly.
2. Develop written rule and function descriptions for coordinating, advisory, and executive committees.
3. Develop legislative priorities for the 2007-09 biennium.
4. Determine the appropriate legal identity for Healthy North Dakota.

Worksite Wellness

The committee learned the goal of worksite wellness programs is to create an environment that meets the health improvement needs of both the employee and the employer. A 2001 study by Winkleman Consulting indicated that more than 80 percent of North Dakota businesses believe that healthier employees have lower insurance costs, better morale, fewer sick days, and better productivity. At the time, fewer than 10 percent of the businesses had conducted a worksite needs assessment or prepared a worksite wellness plan. The committee learned a similar survey was conducted and preliminary results would be available in October 2006.

The Healthy North Dakota Worksite Wellness Committee developed a state-level framework to provide technical assistance and resources to businesses interested in implementing worksite wellness programs. Healthy North Dakota has provided two worksite training programs to expand the pool of trained consultants who have expertise to assist businesses in development of worksite wellness programs.

Healthy North Dakota contracted with North Dakota State University to evaluate current worksite wellness programs being piloted in the state. Pilot programs being evaluated include three programs funded by the Dakota Medical Foundation as well as programs implemented by schools in the Hettinger area, Farmers Union, Public Employees Retirement System, and North Dakota Vision Services - School for the Blind.

The committee received information on the worksite wellness program operated by Hedahl's, Inc., Bismarck. The committee learned the Hedahl's worksite wellness program began in 1992 and provides cash incentives to employees for maintaining weight within standard guidelines, limiting alcohol use, and refraining from tobacco usage. Each employee and spouse is eligible for up to $75 per month in additional compensation for maintaining these health standards. In addition, employees can receive up to $25 for each of the following tests completed annually:

1. Cancer screening.
2. Cholesterol check.
3. Blood pressure check.
4. Blood sugar check.

The committee learned health insurance premiums for Hedahl's, Inc., decreased each year for the first six years following implementation of the program.

The 2003 Legislative Assembly authorized PERS to develop an employer-based wellness program for state employees (NDCC Section 54-52.1-14). The program must encourage employers to adopt a board-developed wellness program by either charging extra health insurance premiums to nonparticipating employers or reducing premiums for participating employers. For the 2005-07 biennium, PERS charged an additional health insurance premium of 1 percent for employers that do not participate in the wellness program.

In order to qualify for the wellness program, each agency's representative must sign a commitment agreement, appoint a wellness coordinator, develop an annual wellness program, distribute educational materials on a monthly basis, and promote the smoking cessation program. For the 2005-07 biennium, 102 of the 104 state agencies participated in the program.

The committee learned PERS is implementing a pilot program for an integrated worksite wellness program in four agencies. Two of the agencies--the Tax Department and the Department of Commerce--are participating in a high-level program that involves conducting a personal behavioral health profile and providing health coaching, onsite screening, and additional services related to stopping smoking, healthy weight, and stress reduction. The other two agencies--the Office of Management and Budget and the State Historical Society--are participating in a medium-level

program that involves a personal behavioral health profile.

Other Reports

The committee heard reports from other interested persons regarding the value of the Healthy North Dakota initiative and worksite wellness programs. The committee learned worksite wellness programs:

1. Improve performance and productivity of employees.
2. Improve worker morale.
3. Decrease absenteeism.
4. Help attract and retain key personnel.
5. Achieve greater employee allegiance.
6. Lower health and insurance premiums.
7. Improve the public image of the company.

The committee received a report on tobacco cessation efforts across the state and the outcomes of those programs. The committee learned the North Dakota Tobacco Quitline began in September 2004 and served 2,342 individuals for the 2003-05 biennium at a cost of $529,869. The average cost per individual served was $226. The Tobacco Quitline provides counseling, nicotine replacement therapy (a 28-day supply of the patch or gum) to individuals whose income is less than 200 percent of the federal poverty level, relapse prevention, and followup services. The committee learned the 6-month quit rate was 39 percent for individuals under the program and the 12-month quit rate was 33 percent. The committee also learned local public health units have established cessation programs in 69 locations in 42 counties. For the 2003-05 biennium, these programs served 1,662 tobacco users. The department is still working on collecting statistical data from the local programs.

For the 2003-05 biennium, the committee learned five counties provided cessation programs and served 85 clients at a cost of $29,205 with an average cost per client of $344 and the six-month quit rate ranges from 36 to 46 percent.

For the 2003-05 biennium, the committee learned the state employee cessation program served 169 clients at a cost of $35,301 or an average cost per client of $209. Under these programs, the 6-month quit rate was 24 percent and the 12-month quit rate was 10 percent.

Recommendations

The committee made no recommendations regarding its Healthy North Dakota study.

FOSTER CARE FACILITY PAYMENT SYSTEM STUDY

Section 15 of House Bill No. 1012 (2005) provided for a Legislative Council study of the services provided by residential treatment centers and residential child care facilities and the appropriateness of the payments provided by the state for these services.

Facilities and Funding

The committee learned 10 licensed group homes and residential child care facilities operate in the state providing 281 beds. The daily rate for room and board (maintenance) ranges from $94 to $218 per day. Although the service and treatment costs at these facilities range from 28 cents per day to $32.73 per day, the Department of Human Services' reimbursement for service costs could not exceed $11.51 per day during the 2003-05 biennium.

The committee learned there are six licensed residential treatment centers operating in the state providing 84 licensed beds. The room and board (maintenance) rate for these facilities ranges from $45.95 to $110.11 per day. The treatment or service rate for these facilities ranges from $179.60 to $364.15 per day.

The committee learned the 2005 Legislative Assembly added $475,944, of which $71,630 was from the general fund, to the Department of Human Services' appropriation for increasing the maximum treatment services payment rate for residential child care facilities by $3.49 per day from $11.51 to $15 per day. The following schedule presents the Department of Human Services' estimate of foster care payments made to residential child care facilities and group homes and residential treatment centers for the 2003-05 and 2005-07 bienniums:

	General	Federal	Other	Total
2003-05 Biennium				
Residential child care facilities/group homes				
Room and board	$3,122,288	$14,594,140	$3,768,676	$21,485,104
Treatment/services	477,094	1,273,964	71,989	1,823,047
Total	$3,599,382	$15,868,104	$3,840,665	$23,308,151
Residential treatment centers				
Room and board	$932,632	$4,359,289	$1,125,709	$6,417,630
Treatment/services	3,140,857	7,191,998		10,332,855
Total	$4,073,489	$11,551,287	$1,125,709	$16,750,485
2005-07 Biennium				
Residential child care facilities/group homes				
Room and board	$2,993,360	$16,611,999	$4,676,382	$24,281,741
Treatment/services	910,982	1,719,872	139,982	2,770,836
Total	$3,904,342	$18,331,871	$4,816,364	$27,052,577
Residential treatment centers				
Room and board	$894,120	$4,962,026	$1,396,841	$7,252,987
Treatment/services	3,817,404	6,945,700		10,763,104
Total	$4,711,524	$11,907,726	$1,396,841	$18,016,091

Children in Foster Care

The committee received information on the number of children in foster care. The following schedule presents the number of children in foster care by placement type since federal fiscal year (FFY) 2000:

Placement Type	FFY 2000	FFY 2001	FFY 2002	FFY 2003	FFY 2004	FFY 2005
Preadoptive home	154	166	157	160	207	228
Relative placement	237	240	276	328	383	507
Family foster care	875	835	824	932	912	896
Group home	125	109	127	125	120	96
Facility (RTC and RCCF)	577	540	619	604	555	552
Total	1,968	1,890	2,003	2,149	2,177	2,279
Children aging out of foster care	43	45	56	66	60	65

The following schedule presents the number of out-of-state residential foster care placements on selected dates:

Date	Number of Out-of-State Placements
January 2003	33
July 2003	43
January 2004	50
July 2004	56
January 2005	62
July 2005	53
September 2006	72

Of the 72 children placed in out-of-state facilities in September 2006, the committee learned that 58 were in residential care and 14 were in family foster homes or relative care. Of the 58 children placed in residential care out of state, 39 were in these facilities for treatment services, 9 because of a lack of bed space in an in-state facility, and 10 due to the close proximity to family members.

Change in Federal Payment Procedures

The committee learned the federal Centers for Medicare and Medicaid Services changed the regulations affecting the method of paying foster care providers for rehabilitation and treatment services. The federal changes require the state to use a 15-minute, fee-for-service billable unit for services, rather than the daily rate method previously used by the department.

To make this change, the department and providers developed the following strategies to comply with the federal regulation changes:

1. Residential treatment centers will seek accreditation status allowing them to become accredited residential treatment centers enabling them to continue to bill using the daily rate.
2. Residential child care facilities will begin billing Medicaid for the rehabilitation services on a 15-minute unit basis.

The committee learned beginning July 1, 2006, residential child care facilities and therapeutic foster care homes began billing Medicaid under the new federally required methodology for dates and services. The department will monitor payments each quarter to ensure the providers are receiving no more than the maximum $15 per child per day for rehabilitation costs authorized by the 2005 Legislative Assembly. For residential treatment centers, five of the six centers have been accredited allowing them to bill Medicaid for both rehabilitation and maintenance. The remaining center--the Ruth Meier's facility in Grand Forks--has not yet been accredited to receive payment by the federal Centers for Medicare and Medicaid Services; however, the department anticipates the facility to be accredited in December 2006.

Other States' Payment Systems

The committee received information on the Kansas system of reimbursing its foster care providers. Kansas contracts with a foster care provider for a capitated rate and the provider is required to provide the full range of foster care services in the provider's designated area and to:

1. Place each child in the least restricted environment and close to family.
2. Develop a wraparound plan for the family, foster family, and other persons important to the life of the child within two weeks.
3. Place the child in a home that enables the child to continue in the child's current education placement which enables a child to maintain friendships, continue extracurricular activities, and be close for reunification efforts with the family.

The committee learned that Kansas reduced its number of children in residential services to 5 percent by implementing this model. North Dakota has 25 percent of its children in residential services while Wyoming has over 60 percent of its foster care children in residential facilities. The committee learned that while residential facilities continue to serve a critical function in Kansas, their focus has changed to providing crisis stabilization and reconnecting children with the community and as a result has reduced lengths of stay in foster care.

Residential Treatment Center Tour

The committee conducted a tour of Pride Manchester House in Bismarck and learned that the residential treatment center serves eight children ages 5 through 13 with an average length of stay for each child of five to six months. The committee learned during the last two years the facility has had 100 percent occupancy and always has a waiting list. The center has begun providing outreach services to children referred to the facility and of the 74 referrals in 2005, 36 were diverted because of the center's outreach program. The committee learned of the importance of providing transition services in each child's home upon discharge from the facility. Concerns expressed by the center related to financial reimbursement not being available from the state for providing outreach services or for transition services provided outside of the facility.

Provider Testimony

The committee received testimony from foster care providers regarding the study. Comments included:

1. Consider increasing the rehabilitation rate to more accurately reflect the actual cost of services provided to these children.
2. Children placed in residential child care facilities are requiring increasingly intensive services to meet their needs.
3. Concern that the current system for providing payments to residential child care facilities is based on costs incurred in previous years; therefore, the payment amount is not representative of current costs.
4. Concern that the Kansas system, which requires services to children close to home, may be difficult to achieve in a rural state.
5. Consider allowing facilities to develop creative ways to use funding received from the state more efficiently and effectively.

Recommendations

The committee made no recommendations regarding its foster care facility payment system study.

CHILDREN WITH SPECIAL HEALTH CARE NEEDS STUDY

House Concurrent Resolution No. 3054 (2005) provided for a study of state programs providing services to children with special health care needs to determine whether the programs are effective in meeting these special health care needs, whether there are gaps in the state system for providing services for children with special health care needs, and whether there are significant unmet special health care needs of children which should be addressed. In addition, Section 5 of Senate Bill No. 2395 (2005) required the Department of Human Services to report to the Legislative Council regarding the status of the Medicaid waiver to provide in-home services to children with extraordinary medical needs who would otherwise require hospitalization or nursing facility care, the number of applications the department received for the in-home services, and the status of the program's appropriation.

2005 Legislative Action

The 2005 Legislative Assembly approved Senate Bill No. 2395, which authorized the Department of Human Services to provide services to children with Russell-Silver Syndrome. The bill authorized the department to pay up to $50,000 per child per biennium for medical food and growth hormone treatment at no cost to the children who have been diagnosed with Russell-Silver Syndrome, regardless of the family's income. The bill appropriated $150,000 from the general fund for providing these services for the 2005-07 biennium.

Section 3 of the bill required the department to apply for a Medicaid waiver to provide in-home services to children with extraordinary medical needs who would otherwise require hospitalization or nursing facility care which, if approved, will allow the services to be provided under the Medicaid program. The department may limit the waiver to 15 participants and may prioritize the applicants by degree of need.

Children's Special Health Services Program

North Dakota Century Code Chapter 50-10 provides for aid to crippled children in North Dakota, which is the basis for the Department of Human Services' children's special health services program. The program is administered by the Medical Services Division and assists in the cost of medical services for eligible North Dakota residents up to 21 years of age who require health-related services beyond those needed by most children. The program provides assistance for diagnostic and treatment services for over 100 eligible medical conditions.

The annual budget for North Dakota's children's special health services program is approximately $960,000. Of this amount, $396,000 is from the general fund and $564,000 is from federal and other funds. The federal and other funds consist of approximately $500,000 of federal maternal and child health block grant funds. In addition, the 2005 Legislative Assembly in Senate Bill No. 2395 appropriated $150,000 from the general fund for providing medical food and growth hormone treatment services to children with Russell-Silver Syndrome.

The program is administered by the Department of Human Services and employs eight FTE positions, including a director, nurse, program administrator, two eligibility and claims staff members, and two administrative support positions. The program has a Medical Advisory Council consisting of a nine-member group of health care providers that meets annually.

The program serves approximately 1,400 children per year. Financial eligibility is not required for diagnostic services; however, for treatment services, families at or below 185 percent of the federal poverty level receive services at no cost. If a family's income exceeds 185 percent of the federal poverty level, the child may still be eligible but the family shares in the cost of the services. Approximately 300 to 325 families receive financial assistance from the program. The maximum financial assistance a family may receive each year on behalf of a child is $20,000. The department spends approximately $160,000 per year providing financial assistance to families for diagnostic and treatment services.

The primary responsibilities of the program are to:

1. Plan, organize, and manage specialty clinics for children with special health care needs by bringing in specialists to provide services for the children. The state provides for the cost of the services.
2. Provide financial assistance to families. Families with incomes up to 185 percent of the federal poverty level receive specialty care services at no cost.
3. Coordinate with county and public health staff to assist families in accessing services and resources for their child with special health care needs.
4. Provide information and resources to assist families, including offering a toll-free telephone line for families to use to obtain information.

5. Distribute food and formula for children with phenylketonuria and maple syrup urine disease.
6. Provide payment for services relating to children with Russell-Silver Syndrome.

The following schedule shows the unduplicated number of children served since federal fiscal year 2000:

Federal Fiscal Year	Unduplicated Number of Children
2000	1,604
2001	1,570
2002	1,514
2003	1,403
2004	1,371

The following schedule shows the number of children receiving treatment or diagnostic services since federal fiscal year 2000:

Federal Fiscal Year	Children Receiving Treatment Services	Children Receiving Diagnostic Services
2000	235	174
2001	228	162
2002	238	127
2003	220	92
2004	210	107

The numbers reported do not include individuals served through the metabolic food program, the Russell-Silver program, or the information resource center.

Children with the following five conditions were served most frequently in federal fiscal year 2004--asthma, cleft lip/palate, diabetes, heart conditions, and handicapping malocclusion.

The Department of Human Services provided the following comments and concerns:

1. Use of the condition list for determining medical eligibility is of concern. The list identifies the population to be served; however, the list is arbitrary and not all-inclusive when using a broad definition of children with special health care needs.
2. Out-of-pocket costs for children's medical expenses can be a burden for families.
3. The pilot study recommended by the program's Medical Advisory Council to determine if it is viable to address currently noncovered conditions should be continued. Other areas that could be considered include genetic syndromes, mental health conditions, mitochondrial disorders, and conditions leading to blindness; however, financial constraints of the program may be an issue.
4. Additional services could be covered, including respite care and transportation; however, financial constraints within the program may be an issue.
5. The Medical Advisory Council at times has difficulty agreeing on what constitutes a "special health care need" but typically the conditions chosen have been chronic and complex.
6. Many children are excluded from coverage simply because the condition which affects them has never been discussed by the Medical Advisory Council.
7. Because the Medical Advisory Council only meets annually, rapid advances in medical care can make it difficult to keep the list current.
8. Few health care providers have any knowledge of the list or the program as a possible resource for children under their care.
9. Some members of the Medical Advisory Council believe the medical director should be given broader authority to determine medical eligibility.
10. The Medical Advisory Council has developed a grid which may be used to evaluate potential eligible conditions.

Waiver Request

The committee received status reports at each of its meetings regarding the Department of Human Services' Medicaid waiver request that if approved would allow the state to provide in-home services to children with extraordinary medical needs. The committee learned the department convened a medical needs task force to assist in gathering information to better understand the unmet special health care needs of children and to provide recommendations regarding the Medicaid waiver.

The committee learned the department anticipates the draft of the waiver application to be available for public comment during the fall of 2006 and the waiver application to be submitted with a July 1, 2007, effective date contingent upon legislative appropriations to operate the waiver during the 2007-09 biennium.

The committee received the following information on the various options under federal law for states to provide Medicaid services to children with special health care needs:

	Waiver	Medicaid Buy-In	Katie Beckett Eligibility Option
Description	A home and community-based waiver is designed to reduce extended hospitalizations and prevent skilled nursing facility placements for children who are medically fragile by providing assistance for families who require long-term support and services to maintain their child at home while meeting the child's medical needs.	The Family Opportunity Act, authorized by Congress in 2006 as part of the Deficit Reduction Act, allows states to create Medicaid buy-in programs for children who meet the Social Security standard for disability, but whose family income is above standard Medicaid eligibility limits. States need legislative approval and Centers for Medicare and Medicaid Services approval.	The Katie Beckett eligibility option is an optional eligibility category that allows children with long-term disabilities or complex medical needs, living at home, to access Medicaid services.

	Waiver	Medicaid Buy-In	Katie Beckett Eligibility Option
Covered population	Medically fragile children aged 2 to 18. Medically fragile children are at times medically stable but still may require skilled nursing care, specialized therapy, and specialized medical equipment and supplies to enhance or sustain their lives.	Disabled children aged 18 and under whose family income does not exceed 300 percent of poverty (could be lower at state option). In 2006 for a family of four, this amount would be $6,668 per month (**net income**). Assets are not considered. Eligibility will be phased in starting in October 2007 for children aged 6 and under, in October 2008 for children aged 7 to 13, and October 2009 for children aged 12 to 18.	Children aged 18 and under who do not have income or assets in their name in excess of the current standards for a child living in an institution. Without the Katie Beckett eligibility option, the income of legally liable relatives is counted when the individual is cared for at home.
Medical conditions of group	Children must meet institutional (hospital or nursing facility) level-of-care criteria in order to qualify for waiver services. If not for the waiver, the child would require services in a hospital or nursing facility. Initial enrollment will be based on the greatest need.	Children must be determined to be disabled under Social Security Act guidelines.	Children must be determined to be disabled under Social Security Act guidelines and require a level of care at home that is typically provided in an institution.
Number of children covered	Limited to 15	Estimated 778 (includes about 31 that would switch from medically needy)	Not available
Estimated cost per year	The estimated cost per year would be $44,769 per child ($671,535 total for 15 children). This includes both the Medicaid state plan and waiver services.	$2,066,245 per biennium. This includes an offset of premiums estimated to be $800,000.	Not available
Services offered	All Medicaid services Proposed waiver services include: • In-home support • Respite care • Excess medical-related expenses not covered by the state plan • Case management (Medicaid waivers are required to be cost-neutral. The overall cost of the waiver services may not exceed the cost of institutionalization.)	All Medicaid services	The cost to Medicaid cannot exceed the cost Medicaid would pay if the child were in an institution.
Cost to family	The family will not incur a Medicaid recipient liability because family income and assets will not be an eligibility consideration.	Premium equal to 5 percent of the family's gross income. The law requires participating families to first take advantage of available employer-sponsored health insurance options. These premiums would be offset by the family's private insurance premiums. Recipient liability would not apply.	Premiums and/or recipient liability would not apply.
Program caps/limits	Waivers allow a cap on enrollment. States may also determine the individual cost limit at less than institutional costs or have no individual cost limit. The Department of Human Services is proposing a waiver that caps the number of individuals enrolled and the amount of waiver services each individual may obtain per year.	All who meet program requirements would be allowed to buy in. Limits within the Medicaid program would apply.	All who meet eligibility requirements would access Medicaid. Limits within the Medicaid program would apply.

Other States' Programs

The committee reviewed information on surrounding states' programs for children with special health care needs and selected results from a 2004 United States Department of Health and Human Services report of a 50-state national survey of parents of children with special health care needs. The committee learned South Dakota and Montana provide financial assistance to families with children with special health care needs, while Minnesota discontinued providing financial assistance in 2003. The committee learned that Montana has an advisory board for its program, but Minnesota and South Dakota do not.

The committee learned that Montana does not have a waiver for providing in-home services to children with special health care needs, South Dakota has a family support waiver that provides in-home services for children with mental retardation, and Minnesota has a community alternatives waiver for disabled individuals that provides in-home services for disabled individuals under age 65.

Anne Carlsen Center Tour

The committee conducted a tour of the Anne Carlsen Center for Children in Jamestown which provides services to the state's most vulnerable and fragile children. The committee learned a concern of the facility

is that actual costs for caring for children with serious medical fragility are increasing faster than state reimbursement for the services.

Other Comments and Suggestions

The committee received information from families with children with special health care needs and other interested persons. Comments and suggestions include:

1. It is important to define which children will be considered to be those with special health care needs.
2. Public assistance is generally available for children with special health care needs up to age 3; however, for older children much of the assistance is no longer available.
3. The waiver being developed by the Department of Human Services will benefit only a limited number of families.
4. The state should consider developing a Medicaid buy-in program to allow more families to access Medicaid services for their children with special health care needs.
5. The Legislative Assembly should continue to review information on all programs and services available for these children and how to better coordinate and inform families of children with special health care needs.
6. Based on a survey of families raising children with special health care needs, the following suggestions were made:
   a. Coordination of care and communication among providers are essential and must be improved to ensure quality of care for children with special needs and to reduce health care costs.
   b. Families with children with special health care needs require access to more information and assistance to ensure a health system that works for their children and families.
   c. Additional opportunities should be made available for family involvement at the state policy level.
7. The state should identify children who are not accessing the state's current system of services and identify services that are lacking to assist families of children with special health care needs.
8. Change the eligibility criteria for the program to allow additional families to access the program.
9. Because obtaining services for children with special health care needs is difficult and services are inadequate and inadequately coordinated, the following changes should be made to the system:
   a. Develop a simpler system of accessing quality services.
   b. Provide care coordination.
   c. Provide transition services.
   d. Improve screening services.
   e. Address the shortage of specialty providers and expand interdisciplinary clinics.

Recommendations

The committee made no recommendations regarding the children with special health care needs study.

OTHER RESPONSIBILITIES

Department of Human Services' Budget Review Report

Section 11 of House Bill No. 1012 (2005) required the Department of Human Services to report to the Legislative Council by July 1, 2006, regarding the department's review of its budget, programs, and services to determine the extent to which the department can provide for additional general fund requirements resulting from changes in the federal medical assistance percentage for North Dakota without affecting the level of services provided by the department.

The committee learned the actual FMAP for North Dakota for federal fiscal year 2007 is 64.72 percent, a decrease of 1.13 percent from the 2006 FMAP of 65.85 percent but an increase of 2.35 percent compared to the 62.37 percent estimate used by the 2005 Legislative Assembly in developing the Department of Human Services' 2005-07 biennium budget. The 2007 FMAP will affect the final 10 months of the 2005-07 appropriation and will result in an estimated $8.8 million of reduced general fund matching requirements for the Medicaid program for state fiscal year 2007.

The department reported FMAP changes anticipated for the 2007-09 biennium will require an additional $11.9 million of general fund appropriations for the 2007-09 biennium. Other estimated budget increases reported by the department include:

1. The North Dakota Medicare Part D "clawback" payment will increase by $3.8 million during the 2007-09 biennium as a result of the payment being made for 24 months rather than 18 months.
2. Information received from Blue Cross Blue Shield of North Dakota indicates the monthly premium payment for the children's health insurance program will increase by 20.3 percent or $36.94 per month per contract over the current monthly premium of $181.71.
3. Additional funding of $1.4 million, $615,000 of which is from the general fund, will be needed to provide for the Information Technology Department rate increases for the 2007-09 biennium.

The department provided information relating to the Medicaid program, including eligibility categories and expenditures, mandatory and optional services, current service limits and copayments, and input received from Medicaid providers.

The committee received a report from the Department of Human Services regarding its organizational restructuring and learned that effective January 1, 2006, the department implemented a six-member cabinet under the executive director.

Department of Human Services' Plan to Transfer Individuals From the Developmental Center to Community Placements

Section 16 of House Bill No. 1012 (2005) required the Department of Human Services to report to the Legislative Council during the 2005-06 interim on the department's plan, developed with input from developmental disabilities service providers, to transfer appropriate individuals from the Developmental Center to community placements and to begin the transfers during the 2005-07 biennium.

The committee received the report from the Department of Human Services and learned the department was serving 139 individuals with developmental disabilities--134 at the Developmental Center and 5 at the State Hospital. Because community capacity needs to be expanded and resources need to be in place to meet the current and projected needs of the individuals to be transferred into the community from the Developmental Center, the following action steps were reported by the department in order to allow for these transfers:

1. Ensure that every person with developmental disabilities at the Developmental Center and State Hospital has a placement plan in order to place the person in an appropriate community setting;
2. Expand community capacity by having:
   a. A statewide crisis prevention response system that is based on a zero-reject model;
   b. Crisis intervention services, including crisis beds, out-of-home crisis residential services, in-home technical assistance, followup services after a crisis residential services placement, and training for staff;
   c. Increased capability and capacity to serve young adults with developmental disabilities; and
   d. Increased consultation services available.
3. Make changes to funding and staffing by:
   a. Changing administrative rules that are a disincentive for independent supported living arrangement placements;
   b. Increasing funding for independent supported living arrangement placements; and
   c. Improving recruitment and retention of staff.
4. Reduce the number of residents at the Developmental Center to 127 by July 1, 2007, to 97 by July 1, 2009, and to 67 by July 1, 2011.
5. Develop a transition budget as part of the Department of Human Services' 2007-09 budget request.
6. Determine the long-term future of the Developmental Center services system, including clinical, health care, residential, and vocational components.

BUDGET TOURS

During the interim, the Budget Committee on Human Services functioned as a budget tour group of the Budget Section and visited the South Central Human Service Center, Northeast Human Service Center, West Central Human Service Center, North Central Human Service Center, State Hospital, Veterans Home, and Developmental Center. The committee heard budget reports from the Lake Region Human Service Center, Southeast Human Service Center, Badlands Human Service Center, and Northwest Human Service Center.

During the budget tours, the committee also learned about facility programs, major improvement needs, and problems the institutions' facilities may be encountering during the interim. The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 2007 legislative session.

The committee received comparative funding and statistical data from each human service center. The committee learned the human service centers were having difficulty recruiting and retaining clinical specialists at the human service centers, particularly licensed addiction counselors, nurses, psychologists, psychiatrists, and social workers. In addition, the committee learned the human service centers were experiencing an increasing number of individuals being referred by the Department of Corrections and Rehabilitation for treatment services. As a result of these concerns, the committee received:

1. Information on selected clinical specialty programs of the University System.
2. Information on the number of psychiatrists, psychologists, licensed addiction counselors, and social workers in the state.
3. A report on the effect on human service center services of addiction counselor vacancies. The committee learned the Board of Addiction Counseling Examiners may request statutory changes during the 2007 Legislative Assembly to allow more flexibility in administrative rules regarding licensing of addiction counselors which may result in more addiction counselors being available in the state.
4. Information from the Department of Human Services and the Department of Corrections and Rehabilitation on the process involved in providing treatment for inmates during incarceration and as a condition of parole and probation and on the cost of providing these treatment services by the Department of Corrections and Rehabilitation and at the human service centers.

OTHER REPORTS

The committee received a report on federal changes affecting the temporary assistance for needy families program and reviewed activities of the department to comply with the federal changes. The committee learned that with the plans in place, the department anticipates that North Dakota will avoid penalties for failure to comply with the work participation rate changes.

COMMISSION ON ALTERNATIVES TO INCARCERATION

The Commission on Alternatives to Incarceration was created by 2005 House Bill No. 1473. The bill required the Legislative Council chairman to select the chairman and vice chairman of the commission and provided for the membership of the commission as follows:

1. Three members appointed by the Governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
2. The Attorney General or the Attorney General's designee;
3. Two members appointed by the Chief Justice of the Supreme Court;
4. The director of the Department of Corrections and Rehabilitation;
5. The director of the Department of Human Services;
6. Two local law enforcement officers appointed by the Attorney General;
7. One state's attorney appointed by the North Dakota State's Attorneys Association;
8. Three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives;
9. Three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate; and
10. One representative of the North Dakota Association of Counties appointed by the Association of Counties.

House Bill No. 1473 required the commission to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. The bill authorized the commission to request funding for consultant services from the Legislative Council and other interested entities if the commission determined that consultant services were necessary to assist the commission in conducting its assigned studies.

House Bill No. 1473 required the commission to provide to the Governor information and recommendations for the Governor's consideration in time for inclusion of the recommendations in the biennial executive budget. The bill establishing the commission is effective until June 30, 2009.

Commission members were Representatives Joe Kroeber (Chairman), Ron Carlisle, and Lawrence R. Klemin; Senators Dick Dever, Larry J. Robinson, and Thomas L. Trenbeath; Governor's appointees Edward Brownshield, Deborah Ness, and Dr. Gary Rabe; Attorney General's designee Sandi Tabor; Chief Justice's appointees Judge Gail Hagerty and Justice Mary Muehlen Maring; Director of the Department of Corrections and Rehabilitation Leann K. Bertsch; Director of the Department of Human Services Carol K. Olson; Attorney General's law enforcement officer appointees Chris Magnus, who resigned in November 2005, and Paul Hendrickson; North Dakota State's Attorneys Association appointee John Mahoney; and North Dakota Association of Counties appointee Duane Johnston.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

BACKGROUND

Between 1995 and 2003, the number of incarcerated adults in the United States increased by an average of 3.4 percent annually to a total of 1,470,045 inmates at the end of 2003. Of those inmates, 1,296,986 were under state jurisdiction. United States Department of Justice Bureau of Justice Statistics estimates suggest that the lifetime chances of an individual going to prison for a male are over 11 percent. The Bureau of Justice Statistics projects that if recent incarceration rates were to remain stable, 1 of every 15 persons will serve time in a prison during that person's lifetime.

Department of Corrections and Rehabilitation

The North Dakota Department of Corrections and Rehabilitation reported that as of July 5, 2005, the total inmate population was 1,356, of which 1,208 were males and 148 were females. Using current growth rates, it is estimated that the state could have approximately 2,200 individuals incarcerated by 2017. For fiscal year 2004, the daily cost of incarceration at the State Penitentiary was $68.07; the James River Correctional Center was $69.28; the Missouri River Correctional Center was $46.41; and the Dakota Women's Correctional and Rehabilitation Center was $83.55.

The Department of Corrections and Rehabilitation includes two major programs--juvenile services and adult services. Within each of the two programs is an institutional division and a community division. The four major areas of the department are the Prisons Division, the Juvenile Services Division, the Youth Correctional Center, and the Field Services Division. The Department of Corrections and Rehabilitation has contracted with the Dakota Women's Correctional and Rehabilitation Center to house female inmates since late 2003, and in 2005 the Legislative Assembly appropriated funds to continue to contract with the facility for the 2005-07 biennium. In addition, inmates can be held in local correctional centers, in the community placement program, and in other states through the interstate compact program.

Prisons Division

North Dakota Century Code (NDCC) Section 12-47-01 provides for the establishment of the State Penitentiary. The main prison complex in Bismarck

consists of 550 prison beds and houses maximum security male inmates. The James River Correctional Center at Jamestown is classified as a medium security housing facility and has 405 prison beds and houses medium security male inmates. The Missouri River Correctional Center is south of Bismarck and has no walls or barriers to contain the inmates. The Missouri River Correctional Center has approximately 150 prison beds and houses minimum security male inmates whose sentences are not less than 30 days nor more than one year.

Division of Juvenile Services and Youth Correctional Center

The Community Services Division of the Division of Juvenile Services has eight regional offices serving the eight human service regions across the state and is staffed to provide supervision to juveniles committed by the courts. The division's case managers supervise about 400 juveniles per day.

The Division of Juvenile Services also oversees the Youth Correctional Center, which is located west of Mandan and is the state's secure juvenile correctional institution. The Youth Correctional Center serves as a secure detention and rehabilitation facility for adjudicated juveniles who require the most restrictive placement and maximum staff supervision and provides appropriate programming to address delinquent behavior. Juvenile programming at the Youth Correctional Center includes drug and alcohol programming, child psychiatric and psychological services, sex offender programming, a pretreatment program for juveniles who are difficult to manage, and a security intervention group program to inform, educate, and provide juveniles with alternatives to gang activity and gang affiliation. The Youth Correctional Center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence.

Field Services Division

The Field Services Division has offices across the state staffed by parole and probation officers. The division manages offenders sentenced to supervision by a court, released to parole by the Parole Board, sent to community placement by the director, or placed at the Tompkins Rehabilitation and Correction Center. The division staff supervises offender compliance with the supervision conditions and provides cognitive behavioral and other forms of counseling services.

The Tompkins Rehabilitation and Correction Center, a combined program located on the campus of the State Hospital in Jamestown, is managed through the Field Services Division and houses both inmates and noninmates. The center is the combination of the Tompkins Rehabilitation and Corrections Unit from the Stutsman County Corrections Center and the Corrections Rehabilitation and Recovery Center. The center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males.

Dakota Women's Correctional and Rehabilitation Center

During the 2003-05 biennium, the Department of Corrections and Rehabilitation began to contract with the Dakota Women's Correctional and Rehabilitation Center to house its female inmates. The Dakota Women's Correctional and Rehabilitation Center is owned and operated by the Southwest Multi-County Correction Center Board, which consists of one member from each of the six counties represented in the Southwest Multi-County Correction Center. The six counties are Stark, Slope, Billings, Bowman, Dunn, and Hettinger.

The prison at the Dakota Women's Correctional and Rehabilitation Center consists of facilities for minimum and higher security inmates and for administrative segregation.

Mandatory Sentences

During the 1980s and early 1990s, many states, including North Dakota, enacted laws providing for mandatory minimum sentences for certain offenses. Mandatory minimum sentencing laws require that a judge impose a sentence of at least a specified length if certain criteria are met. The proponents of mandatory minimum sentencing laws contended that the certainty and severity of the mandatory minimum sentences would reduce crime by deterring individuals from committing crimes and keeping criminals incarcerated longer. However, critics of the laws argued that the requirements unduly removed discretion from judges and would ultimately result in significant increases in the number of individuals incarcerated.

In 1983 the Legislative Assembly enacted Senate Bill No. 2373, which established mandatory minimum terms of imprisonment for offenders with multiple driving while under the influence offenses.

In 1991 the Legislative Assembly enacted House Bill No. 1062, which established mandatory minimum terms of imprisonment for the manufacture, delivery, or possession with the intent to deliver certain controlled substances. The bill amended NDCC Section 19-03.1-23 to provide specified minimum sentencing requirements based upon the classification of the controlled substance and whether the offender had previous offenses. The bill also established mandatory minimum sentences if the violation occurred within 1,000 feet of a school and if the offender were over the age of 21 and used a minor in the commission of the crime. Additionally, the bill amended Section 12.1-32-02.1 to impose mandatory sentences if the offender possessed a dangerous weapon or firearm while in the course of committing the offense. The bill created Section 19-03.1-23.2, which prohibits a court from deferring imposition of a sentence and from suspending a mandatory term unless the court finds that the offense was the defendant's first violation and that extenuating or mitigating circumstances exist to justify the suspension.

Subsequent Legislative Assemblies, including the Legislative Assembly in 2005, have established minimum mandatory sentences for sex offenders and

imposed requirements with respect to the service of sentences.

North Dakota Century Code Section 12.1-32-09.1, which was enacted by the Legislative Assembly in 1995 and amended in 1997, provides that an individual convicted of a crime that classifies the individual as a violent offender and who is sentenced to imprisonment is not eligible for release from confinement on any basis until 85 percent of the sentence imposed by the court has been served or the sentence is commuted.

North Dakota Century Code Section 12.1-20-03.1, which was adopted by the Legislative Assembly in 1997 and amended in 2005, prohibits a court from deferring imposition of a sentence of an individual convicted of the continuous sexual abuse of a child. In 2005 the Legislative Assembly, in House Bill No. 1313, further provided that if, as a result of injuries sustained during the course of the offense classified as gross sexual imposition, the victim dies, the offense is a Class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

Drug Courts

In 2001 the Legislative Assembly enacted House Bill No. 1218, which permitted an individual convicted of a third or subsequent driving under the influence offense to serve the mandatory minimum terms of imprisonment by serving at least 10 days' imprisonment and then successfully completing a drug court program approved by the North Dakota Supreme Court. The legislation contained an expiration date of July 31, 2003. In 2003 the Legislative Assembly enacted House Bill No. 1191, which removed the expiration date from the 2001 legislation and made the drug court program permanent law.

Before the enactment of House Bill No. 1218 (2001), the South Central Judicial District Court began implementation of a drug court in Burleigh and Morton Counties. That court held its first session on January 5, 2001. The announced goals of the drug court program were to reduce recidivism and increase safety for the community by providing an alternative sentence that would provide meaningful treatment and probation supervision while reducing incarceration for nonviolent offenders. In July 2001 the Supreme Court was awarded a grant of nearly $300,000 from the United States Department of Justice to provide for the operation of the drug court program over a three-year period.

The Supreme Court established a Juvenile Drug Court Study Committee in October 1998 to study whether a juvenile drug court should be implemented in North Dakota. As a result of the findings of that committee, the Supreme Court applied for and received a grant of $30,000 from the United States Department of Justice to assist in the planning for implementation of a juvenile drug court. The juvenile drug court program in this state began on May 1, 2000, with the establishment of pilot programs in Fargo and Grand Forks. In October 2002 the juvenile drug court program was expanded to Bismarck.

TESTIMONY AND COMMISSION CONSIDERATIONS

Mandatory Sentences

The commission received testimony indicating that other states have reconsidered minimum mandatory sentencing laws because the laws have resulted in significant increases in incarceration rates, while limiting judicial discretion. Proponents of reexamining minimum mandatory sentencing laws contended that if judges are allowed the discretion to provide alternative sentences for offenders and direct offenders into treatment programs, particularly nonviolent drug offenders, incarceration rates and recidivism rates would be reduced.

Department of Corrections and Rehabilitation Programs

The commission received reports from representatives of the Department of Corrections and Rehabilitation regarding alternatives to incarceration programs implemented by the department. The testimony revealed that the department has implemented or cooperated with other entities to operate a number of programs to divert offenders from incarceration and to move adult offenders from prison into the community. In addition, through the Division of Juvenile Services, the department has implemented programs to divert juveniles from incarceration and move incarcerated juveniles back into the community.

Faith-Based Community Housing Initiative

In 2005 the Legislative Assembly enacted House Bill No. 1408, which appropriated $150,000 for the purpose of reimbursing a nonprofit faith-based organization for room and board costs associated with an extended residential care program in northwestern North Dakota for indigent adults with alcohol or other substance abuse issues as a pilot project. Although the department awarded the contract for the program to North Dakota Teen Challenge in Williston, the Teen Challenge program was moved to a facility in Mandan. The program provides residential treatment to individuals over a 13-month to 19-month period.

Last Chance Program

Under the last chance program, an offender on probation under the supervision of the Department of Corrections and Rehabilitation who has violated the provisions of the offender's probation may be diverted from incarceration for the probation violation. The program provides addiction treatment for approximately 20 individuals through therapeutic treatment with supervision. The program uses a cognitive behavioral approach to attempt to reduce risky behavior.

Assessment Center Program

Under the assessment center program, an assessment team conducts an evaluation of an offender's risk and treatment needs, which lasts from 10 to 60 days. The evaluation is used to determine the

appropriate level of treatment through a department or court-approved treatment program.

Day Report Program

Under the day report program, a parole or probation officer works with an offender to ensure that the offender is utilizing available resources and services that target common risks which may assist in reducing recidivism.

Three-Day Parole Hold

If an offender has a recovery relapse or a minor technical parole violation that may require detention as a means to continue treatment, the Department of Corrections and Rehabilitation may temporarily detain the individual to evaluate the individual's likelihood of reoffending and determine the risk to the community. With this evaluation, parole or probation officers can determine whether an offender's risk to reoffend may be reduced and managed with community corrections treatment and supervision of the offender.

Rapid Intervention Program

Under the rapid intervention program, a parole violator who would be subject to arrest and a return to prison may be placed in an appropriate treatment program for up to 90 days to address an addiction and any underlying criminal thinking before being placed back in the community.

Tompkins Rehabilitation and Correction Center

Treatment at the Tompkins Rehabilitation and Correction Center requires between 100 and 150 days of residential treatment and subsequent community supervision. Treatment at the Tompkins Rehabilitation and Correction Center may be utilized as a method to divert an offender from incarceration or as a means to assist the offender in transitioning from incarceration to the community.

Transition Programs

The Department of Corrections and Rehabilitation has contracted with the Bismarck Transition Center and Centre, Inc., to provide facilities and programs to transition offenders from incarceration to the community. Centre, Inc., provides residential beds in Bismarck and Fargo to assist in the continuum of treatment and counseling of female offenders as the offenders prepare to return to their communities. The Bismarck Transition Center provides transitional treatment and educational and employment services to male offenders who do not have a history of serious violent crimes.

The department also contacts with Centre, Inc., for halfway houses and the Quarter House facility in Fargo. The purpose of the halfway houses is to provide community-based correctional treatment services. The Quarter House facility serves parole and probation violators who are completing or enrolled in corrections treatment programming to support recovery or risk reduction.

Parole

The commission received testimony indicating that the Parole Board has implemented a policy that has increased the number of individuals on parole. Although the parole ratio was increased to approximately 4.5 inmates to one parolee, the revocation rate has increased only 3 percent and remains significantly below the national average. Testimony suggested that the use of transition programs has assisted in increasing the number of individuals eligible for parole, while not compromising public safety.

Electronic Monitoring

The Department of Corrections and Rehabilitation began implementation of global positioning systems technology to monitor offenders' movements and activities after release from incarceration. Representatives of the department testified that implementation of electronic monitoring systems has been done cautiously so that staff can be properly trained and appropriate policies and procedures can be implemented. In addition, the implementation of electronic monitoring requires sufficient staff at the state and local levels to monitor the offenders. Although gaps in cellular telephone coverage in rural areas of the state have hindered the implementation of electronic monitoring of offenders in rural areas, the department has cooperated with the Department of Human Services and local law enforcement agencies to establish sex offender containment task forces in Bismarck, Fargo, Grand Forks, and Jamestown to identify sex offenders who may be appropriate subjects for electronic monitoring. Representatives of the department testified that the short-term goal of the electronic monitoring program is to have 25 to 35 offenders monitored by electronic systems by the end of 2006. The department began implementation of a pilot program to test remote alcohol monitoring technology.

The commission considered a bill draft that provides a framework through which the department may implement an electronic home detention and global positioning system monitoring program. The bill draft requires that before entering an order for commitment for electronic home detention or global positioning system monitoring, a court, the Parole Board, or the department must inform the participant and other individuals residing in the residence of the nature and extent of the approved electronic monitoring devices by securing the written consent of the participant in the program and ensuring that the approved electronic devices be minimally intrusive upon the privacy of the participant and other individuals residing in the residence. The proponents of the bill draft stated that the intent of the proposal is to provide the department specific authority to implement electronic monitoring programs and provide uniform standards for all individuals subject to electronic monitoring.

Juvenile Programs

Because a juvenile is substantially more likely to reoffend once the juvenile has been incarcerated, there are 13 nonsecure holdover sites throughout the state

which are staffed only when needed and at which juveniles may be held temporarily so that further problems can be avoided and the issues with the juvenile can be addressed without adjudication. The sites are operated through the North Dakota Association of Counties.

The commission also received a report indicating that in addition to the vocational education, alcohol and drug treatment programs, and basic sex offender treatment program administered at the Youth Correctional Center, the Department of Corrections and Rehabilitation, through the Division of Juvenile Services, provides a continuum of programs to divert juveniles from incarceration and to return juveniles to their homes and communities. Those programs include in-home treatment, therapeutic foster care, residential foster care, and residential treatment. The division also provides aftercare services through its eight regional offices.

Judicial Branch Programs

Juvenile Drug Court

The juvenile drug courts in Bismarck, Fargo, and Grand Forks have been administered in cooperation with state's attorneys, the Department of Human Services, and contract services from Lutheran Social Services. The drug courts operate with full-time case managers, with part-time coordinators in Fargo and Grand Forks, and with a full-time coordinator in Bismarck. The approximate cost of each juvenile drug court is $64,500 per year. Testimony indicated that a juvenile drug court will likely be implemented in Minot during 2007 and that there is interest among individuals in Williston in implementing a juvenile drug court.

Adult Drug Court

The adult drug courts in Bismarck and Fargo operate as a cooperative venture among district judges, parole and probation officers, and treatment providers. In Bismarck, treatment services are provided through the West Central Human Service Center. Treatment services for the Fargo drug court are provided on a contract basis pursuant to a contract between the Department of Corrections and Rehabilitation and ShareHouse.

The commission received testimony indicating that the regional human service centers generally do not have sufficient staff to provide counseling and treatment services for drug courts. Testimony indicated that the cost to the Department of Human Services to add an addiction counselor to serve the drug courts would be approximately $96,000 per position for the biennium. Testimony also indicated that expansion of the drug courts to Grand Forks and Minot would require the addition of a full-time parole officer position in each of those cities, at a cost of approximately $100,000 per position for the biennium.

Department of Human Services' Programs

The commission received reports stating that in addition to participation with the drug courts, the Department of Human Services is involved with prearrest, postbooking, and postadjudication diversion programs through the regional human service centers. Because a significant percentage of adult and juvenile offenders suffer from cooccurring substance and mental health problems, the department's participation is focused on substance abuse and mental health issues. The department also cooperates with the Superintendent of Public Instruction in supporting community and school-based prevention programs and provides funding for 12 prevention coordinators statewide.

Testimony indicated that some of the regional human service centers were experiencing difficulty in hiring addiction counselors and that the caseloads for addiction counselors and case managers generally exceeded recognized industry standards. Testimony and commission discussion also revealed concern for the lack of treatment programs and the availability of aftercare for individuals who have completed treatment programs. The availability of treatment and aftercare appeared to be especially evident in rural areas of the state.

Testimony indicated methamphetamine addiction is a growing problem, and treatment of individuals addicted to the drug poses unique challenges and requires an intensive, structured process. In 2005 the Legislative Assembly enacted Senate Bill No. 2373, which required the Department of Human Services to implement a substance abuse treatment pilot program consisting of up to 20 beds at the State Hospital or at a private treatment facility through a grant as determined by the department for the treatment and rehabilitation of individuals who are chemically dependent on methamphetamine or other controlled substances. The bill required the department to issue a statewide request for proposal seeking providers for the program. The bill also appropriated $500,000 from the general fund and $800,000 from other sources to the department for treatment costs under the pilot program.

Pursuant to Senate Bill No. 2373, the department contracted with ShareHouse in Fargo to establish the Robinson Recovery Center. During the first eight months of operation of the Robinson Recovery Center, 94 individuals were referred to the center and 42 individuals were admitted to the program. Of the individuals admitted, 22 were male and 20 were female. As of September 2006, 11 individuals had successfully completed the program.

Superintendent of Public Instruction Programs

In addition to receiving information regarding the cooperation between the Department of Human Services and the Superintendent of Public Instruction with respect to prevention programs, the commission received a report from a representative of the Superintendent of Public Instruction relating to the administration of federal safe and drug-free school grant funds.

Commission members engaged in discussion relating to the need for providing information to parents and children which addresses alcohol and drug use and suicide and other mental health issues. The commission members also discussed the correlation between

reducing a juvenile's likelihood of engaging in at-risk behaviors and keeping the juvenile enrolled in school.

Local Government Programs

Community Service Agencies

Since the early 1990s, the state has provided funding to assist community service programs. The 14 community service agencies throughout the state provide community-based alternatives to incarceration and allow juvenile and adult offenders to perform court-ordered community service obligations for the benefit of nonprofit organizations and local communities.

The commission received testimony indicating the Department of Corrections and Rehabilitation ceased providing the grants after June 30, 2006. Representatives of various community service agencies testified that the level of reliance on state funds varies depending upon local funding sources. Representatives of the Department of Corrections and Rehabilitation testified that in 2005 the Legislative Assembly reduced funding for the department's Field Services Division and that concerns with funding made the decision to end the grant program necessary. In addition, they contended, when the state first began providing funding for the agencies, it was intended the agencies would eventually become fully funded at the local level.

CounterAct Program

The commission received a report regarding the CounterAct program implemented by the Burleigh County Sheriff's Office. Under the program, law enforcement officers go into schools and interact with youth and students. The law enforcement officers provide information regarding drugs and violence and work with students to develop skills for avoiding and counteracting the use of drugs and other negative behaviors.

Cass County Jail Intervention Coordinating Committee Project

The commission received testimony regarding a proposal to implement a program to divert mentally ill individuals from incarceration after the individuals have been arrested. Under the program, when an individual is brought to a jail, jail personnel would attempt to identify whether a mental health problem underlying the individual's criminal behavior could be addressed without incarceration.

Representatives of the Cass County Jail Intervention Coordinating Committee testified the committee has submitted an application for a federal grant to implement the program. However, to implement the program, they indicated that additional funding would be necessary. Because about 10 percent of the approximately 250 individuals sent from Cass County to the State Penitentiary suffer from mental health problems, proponents of the program contended that the program could reduce the number of individuals sent to the Penitentiary from Cass County by about 25 per year.

Nongovernmental Program

The commission received a report from a representative of the Central Dakota RSVP program regarding the receipt of a federal grant for implementation of a program to provide mentors for children of incarcerated parents. The report indicated that studies have shown that 70 percent of children with an incarcerated parent will eventually become incarcerated if the children do not have a positive influence in their life. In addition, those studies have also indicated that a child with a mentor is more likely to have improved test scores and is less likely to use alcohol and drugs.

RECOMMENDATIONS

Electronic Monitoring Bill

The commission recommends Senate Bill No. 2029 to provide standards under which the Department of Corrections and Rehabilitation may implement an electronic home detention and global positioning system monitoring program and to require that before entering an order for commitment for electronic home detention or global positioning system monitoring, a court, the Parole Board, or the department must inform the participant and other individuals residing in the residence of the nature and extent of the approved electronic monitoring devices by securing the written consent of the participant in the program and ensuring that the approved electronic devices be minimally intrusive upon the privacy of the participant and other individuals residing in the residence.

Executive Budget and Funding Issues

The commission recommends the Governor include in the executive budget $300,000 for room and board expenses for individuals admitted to a faith-based program to address addiction problems.

The commission recommends the Governor include in the executive budget approximately $600,000 for the addition of two full-time equivalent positions for the Department of Corrections and Rehabilitation and four full-time equivalent positions for the Department of Human Services to assist in the expansion of drug courts.

The commission recommends the Governor include in the executive budget up to $1.2 million for the expansion of the Robinson Recovery Center.

The commission recommends the Governor include in the executive budget $200,000 to be administered on a cost-share basis with local governments for the operation of community service programs.

The commission recommends the Governor include in the executive budget $582,000 to assist in implementing the Cass County Jail Intervention Coordinating Committee mental health project, to be contingent upon the receipt of a federal grant for the implementation of the project.

The commission expresses its support for an appropriate level of funding, staffing, and training for electronic monitoring programs and the continued use and expansion of the secure continuous remote alcohol monitoring program.

The commission encourages the Governor to assess the need for reducing caseloads for licensed addiction counselors, case managers for individuals with serious mental illnesses, and parole and probation officers to attempt to achieve industry caseload standards. The commission also recommends the provision of adequate funding for mental health and substance abuse programs.

The chairman of the commission sent a letter to the Governor outlining the commission's recommendations for inclusion in the Governor's budget for the 2007-09 biennium.

Other Recommendations and Statements

The commission encourages the Department of Human Services to work with treatment providers to identify gaps in recovery support services and to assist in the implementation of programs to provide early mental health screenings.

The commission encourages school districts to operate alternative schools to assist in keeping adolescents in school.

The commission encourages the continued study of the effectiveness of substance abuse treatment programs.

The commission encourages state agencies and other entities to place additional emphasis on education and awareness of substance abuse issues.

The commission expresses support for the work of the Prevention Council appointed by the Governor, including the identification of methods for strengthening families and healthy communities.

The commission expresses support and encouragement for private initiatives, such as the program that provides mentors for children of incarcerated individuals.

ECONOMIC DEVELOPMENT COMMITTEE

The Legislative Council assigned the Economic Development Committee two studies and charged the committee with receiving 13 agency reports. Section 17 of Senate Bill No. 2032 (2005) directed a study of the state's business climate through a business climate initiative, including receipt of agency reports regarding economic development legislation introduced by the Legislative Council during the previous legislative session, participation in business climate focus groups across the state, and participation in a Business Congress. Section 18 of Senate Bill No. 2032 directed a study of issues relating to venture and risk capital and whether and how some of these issues may be negatively impacting business development in the state.

The Economic Development Committee was charged with receiving the following reports regarding economic development legislation introduced by the Legislative Council and passed during the 2005 legislative session, agency studies, and ongoing statutory reports by agencies:

1. Biennial report from the Commissioner of Commerce on the process used and factors considered by the commissioner in identifying target industries on which economic development efforts are focused and the special focus target industry under North Dakota Century Code (NDCC) Section 54-60-11.
2. Report from the Commissioner of Commerce on the status of the American Indian Business Development Office and the status of the International Trade and Business Office under NDCC Sections 54-34.3-06(1) and 54-34.3-14.
3. Report from the Commissioner of Commerce on the status of the certification program through which the Division of Economic Development and Finance provides training services to local economic developers under NDCC Section 54-34.3-15.
4. Report from the Commissioner of Commerce on the status of the image information program under NDCC Section 54-60-12.
5. Report from the Commissioner of Commerce on the status of the business hotline program under NDCC Section 54-60-13.
6. Report from the Commissioner of Commerce on the status of the Dakota Manufacturing Initiative created under Section 45 of Senate Bill No. 2018.
7. Report from the Commissioner of Commerce before July 1, 2006, on the outcome of the Department of Commerce study of the state's intellectual property laws as they relate to the protection of intellectual property rights. The study and reporting requirement were created by Section 51 of Senate Bill No. 2018.
8. Report from the Commissioner of Commerce before July 1, 2006, on the outcome of the Department of Commerce study of the state's economic development incentives. The study and reporting requirement were created by Section 52 of Senate Bill No. 2018.
9. Report from the president of the Bank of North Dakota on the status of the Bank's investment in alternative and venture capital investments and early-stage capital funds under NDCC Section 6-09-15(4)(c).
10. Report from the State Board of Higher Education and the Centers of Excellence Commission on the status of the centers of excellence program under NDCC Chapter 15-69.
11. Report from the chancellor of the University System before July 1, 2006, on the outcome of the State Board of Higher Education study of incentives the state could adopt to serve as catalysts for stimulating more efficient commercialization of new technologies. The study and reporting requirement were created by Section 22 of Senate Bill No. 2032.
12. Report from the director of the Office of Management and Budget on the status of providing procurement information through the Internet under NDCC Section 54-44.4-14 and on the outcome of the director's procurement assistance center study.
13. Annual reports from the Department of Commerce Division of Community Services on renaissance zone progress under NDCC Section 40-63-03.

Committee members were Representatives Rick Berg (Chairman), Dawn Marie Charging, Donald L. Clark, Donald D. Dietrich, Mark A. Dosch, Eliot Glassheim, Pam Gulleson, Jim Kasper, Bob Martinson, Lisa Meier, Eugene Nicholas, Kenton Onstad, Dan J. Ruby, Elwood Thorpe, and Clark Williams and Senators April Fairfield, Nicholas P. Hacker, Duane Mutch, Randy A. Schobinger, John O. Syverson, Ryan M. Taylor, and John M. Warner.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

REPORTS

One-Time Status Reports

American Indian Business Development Office and International Trade and Business Office

The committee received a report from the Commissioner of Commerce on the status of the American Indian Business Development Office and the status of the International Trade and Business Office. The reporting requirement provides:

> During the 2005-06 interim, the commissioner of commerce shall report to the legislative council on the status of the North Dakota American Indian business development office and the status of the international business and trade office; whether the North Dakota American Indian business development office

and international business and trade office should continue; whether the division of economic development and finance should continue to contract with a third party for international business and trade office services; and whether there are potential changes that could be made to enhance the support of American Indian businesses and to enhance the support of international trade by North Dakota businesses.

The Commissioner of Commerce reported the American Indian Business Development Office and the International Business and Trade Office should continue to exist and the Department of Commerce should continue to contract with a third party to provide the services of these offices.

The Commissioner of Commerce reported potential changes that could be made to enhance the support of American Indian businesses in the state include exploration of beginning a North Dakota chapter of the National Minority Supplier Development Council. The commissioner reported potential changes that could be made to enhance the support of international trade by North Dakota business include:

1. Establish a mechanism using the Bank of North Dakota to help exporters bridge the finance gap for entry-level exporters. A state finance program would help exporters build their businesses to the level at which they would qualify for federal assistance from the United States Export-Import Bank, the Small Business Administration Export Finance Division, or private insurance and funding organizations.
2. Create an export business expansion fund through which companies could competitively approach the International Business and Trade Office Board of Directors for funds to expand their international business by executing solid business plans. These would be soft dollars, typically not offered by banks or federal funding mechanisms, particularly for manufacturing firms. This fund would operate under a model similar to the Agricultural Products Utilization Commission (APUC).
3. Draft a clear and concise legislative directive to solve North Dakota's statewide intermodal transportation challenges.
4. Expand international business expertise through the use of foreign student graduates. This would entail expanding existing foreign student recruitment, bringing sorely needed new tuition dollars, new students, and international business expertise into the state's economy.
5. Continue the International Business and Trade Office core business growth with required increases for rent, capital equipment, two additional senior managers, associated operating expenses, education, and seminar funds.
6. Expand North Dakota's public relations efforts to include high-level international publications that could put North Dakota and North Dakota companies on the map and bring them viable business leads.

Local Economic Developer Certification Program

The committee received a report from the Commissioner of Commerce on the status of the certification program through which the Department of Commerce Division of Economic Development and Finance provides training services to local economic developers under NDCC Section 54-34.3-15. The reporting requirement provides:

> During the 2005-06 interim, the commissioner of commerce shall report to the legislative council on the status of the certification program through which the division of economic development and finance provides training services to local economic developers. The report must include information regarding what services have been provided under the program to assist local economic developers, to whom the services were provided, local economic developer level of satisfaction with the program, whether the program should continue, and whether there are changes that could be made to better assist local economic developers.

The Commissioner of Commerce provided the committee with information regarding the status of implementation of the local economic developer certification program, including a summary of the services provided, to whom the services are provided, and the level of satisfaction of local economic developers receiving certification. The commissioner reported the program should continue with appropriate funding. In addition to providing the certification, the commissioner reported the Department of Commerce developed and implemented an orientation program to assist new developers to understand the programs and services available through the Department of Commerce and other partner agencies. The commissioner did not recommend any changes to the certification program.

Image Information Program

The committee received a report from the Commissioner of Commerce on the status of the image information program under NDCC Section 54-60-12. The reporting requirement provides:

> During the 2005-06 interim, the commissioner of commerce shall report to the legislative council on the status of the image information program. The report must include information regarding what information the program provides to state agencies and state agencies' employees, the manner in which the information is provided, the state agencies reached through the program, whether the program has been expanded to provide information to the private sector, whether the program should continue, and whether there are potential changes that could be made to better enhance the state's and private sector's ability to present a positive image of the state.

The Commissioner of Commerce reported on the status of the implementation of the image information program through the KnewView workshop, information provided to attendees of KnewView workshops, the manner through which workshop information is presented to attendees, and which state agencies have participated in KnewView workshops.

The Commissioner of Commerce reported the image information program should continue and recommended the Legislative Assembly consider expanding the program to the private sector.

Business Hotline Program

The committee received a report from the Commissioner of Commerce on the status of the business hotline program under NDCC Section 54-60-13. The reporting requirement provides:

> During the 2005-06 interim, the commissioner of commerce shall report to the legislative council on the status of the business hotline program. This report must include information regarding what information the program provides to callers; the number of calls made to the business hotline number; the manner in which the information is provided to callers; followup data; how the program is marketed; whether the program should continue; and whether there are potential changes that could be made to improve the dissemination of business information to businesses in the state, to persons planning on starting a business in the state, and to businesses wishing to do business in the state.

The Commissioner of Commerce reported on the status of the implementation of the business hotline program; the number and features of calls made to the hotline from February 1, 2006, through July 17, 2006; the nature of the information provided to these callers for this period; and how the hotline has been marketed. The commissioner reported it was too early to determine whether the hotline program should continue. Additionally, the commissioner recommended a potential change that could be made to improve the dissemination of business information to businesses may include providing a web-based one-stop shop for business questions.

Dakota Manufacturing Initiative

The committee received a report from the Commissioner of Commerce on the status of the Dakota Manufacturing Initiative. The reporting requirement provides:

> During the 2005-06 interim, the commissioner of commerce shall report to the legislative council on the status of the Dakota manufacturing initiative. This report must include information regarding how the initiative has been established and regarding the activities of the Dakota manufacturing extension partnership, incorporated. The commissioner shall include in the report whether the state should continue this initiative or whether the goal of assisting manufacturers would be better served by alternative means. The commissioner shall report whether there are potential changes that could be made to improve the networking of manufacturing businesses and other suppliers in this state.

The Commissioner of Commerce reported The Dakota Manufacturing Extension Partnership (TD MEP) entered a contract with the Department of Commerce to:

- Complete a feasibility study of how manufacturers can best benefit through a membership organization and what TD MEP would need to do to be of value in developing and supporting that membership; and
- Implement a consortium of major manufacturers--original equipment manufacturers--that will be committed to improving the quality of the existing supply base and that believe this consortium can be a tool to enhance the long-term collaborative relationships with supplier companies.

The Commissioner of Commerce reported a membership of collaboration to address key manufacturing issues, needs, and opportunities should be supported by the state through TD MEP. However, the commissioner reported TD MEP should not support an independent manufacturing association at this time but should rather focus on an acceleration of the mission and scope of TD MEP in North Dakota.

The Commissioner of Commerce reported a strategy should be developed to further the success that has been started this biennium by the North Dakota original equipment manufacturers and their supplier companies. The commissioner reported the initiative should be extended to assist suppliers that are seeking to strengthen their own lean manufacturing skills.

The Commissioner of Commerce reported potential changes that could be made to improve the networking of manufacturing businesses and other suppliers in this state include:

1. Increase the state's support for TD MEP beyond the baseline amount of $475,000 per year--the amount of the federal MEP level of support--by an additional $500,000 per year for the 2007-09 biennium. This increased funding would allow TD MEP to participate in national initiatives and partnerships of the federal MEP as well as other state and regional initiatives of MEP centers in the national MEP system.
2. Develop strategies to provide that manufacturers that receive state assistance seek to develop effective outcome-based partnerships with TD MEP.

Investment in Alternative and Venture Capital Investments

The committee received two reports on the status of the Bank of North Dakota investment in alternative and venture capital investments and early-stage capital funds under NDCC Section 6-09-15(4)(c). The reporting requirement provides:

> During the 2005-06 interim, the president of the Bank of North Dakota shall report to the

legislative council on the status of the Bank's investments in alternative and venture capital investments and early-stage capital funds under subdivision c of subsection 4 of section 6-09-15. The president shall inform the legislative council whether this investment program should continue and whether there are potential changes that could be made to improve the state's venture capital and early-stage capital investment structure.

As part of the report provided on October 26, 2005, the committee received the following information regarding the 12 projects the Bank committed to:

Name	Amount Committed
Alien Technology	$2,450,000
Dynasecco, Inc.	75,000
Grizella Corporation	300,000
Feed Management	500,000
Vanguard Manufacturing	385,000
Red Trail Energy	500,000
Hensley Aircraft	75,000
Vtrenz	275,042
GYG Technologies	100,000
SEO Precision	50,000
Results Unlimited	300,000
Gruby Technologies	150,000
Total	$5,160,000[1]

[1]Of the total amount committed, only $1,045,037 has been funded.

It was reported that of these 12 projects, 8 were structured as equity investments and the other 4 were structured as loans. Generally, these projects were startup companies and the committee received testimony that the fund typically does not commit more than $300,000 per project.

As part of the report provided July 19, 2006, the committee received information that as of June 30, 2006, the Bank had funded three loans for $605,000, had entered four investments for $1,431,360, had issued commitments for an additional $3,062,874, and had reserved an additional $1 million for a large North Dakota project. It was reported that as of the date of the second report, remaining funds available under the program totaled $3.9 million. The president of the Bank reported the $10 million cap on the program is adequate at this time and recommended that no changes be made to the program.

Centers of Excellence Program

The committee received two reports from the State Board of Higher Education and the Centers of Excellence Commission on the status of the centers of excellence program under NDCC Chapter 15-69. The reporting requirement provides:

During the 2005-06 interim, the state board of higher education and the centers of excellence commission shall report to the legislative council on the status of the centers of excellence program under section 4 of this Act. The report must include information regarding approved and rejected applications; funding; private sector participation; accomplishments of each center of excellence, including information regarding how each center of excellence is meeting, or will meet, the criteria under section 4 of this Act; and whether there are potential changes that could be made to improve the centers of excellence program.

The committee received the first report on the centers of excellence on October 26, 2005, and the second report on August 30, 2006. The reports included information on the application process, including the funding criteria used, the funding approval process, and the funding distribution criteria; the approved and rejected center applications; the funding for approved centers; private sector participation for each approved center; and potential changes that could be made to improve the centers of excellence program. A representative of the Centers of Excellence Commission testified that because each of the centers of excellence only recently received funding, there has not been adequate time to record and track their accomplishments.

The committee received a copy of the center of excellence application. The following 11 criteria of proposed centers are listed in the center application as factors the commission considers in making center designation and funding recommendations:

1. Whether the proposed center will use university or college research to promote private sector job growth and expansion of knowledge-based industries or use university or college research to promote the development of new products, high-tech companies, or skilled jobs in this state.
2. Whether the proposed center will create high-value private sector employment opportunities in this state.
3. Whether the proposed center will provide for public-private sector involvement and partnerships.
4. Whether the proposed center will leverage other funding, such as using funds to enhance capacity, enhance infrastructure, and leverage state, federal, and private sources of funding.
5. Whether the proposed center will increase research and development activities that may involve federal funding from the National Science Foundation experimental program to stimulate competitive research.
6. Whether the proposed center will foster and practice entrepreneurship.
7. Whether the proposed center will promote the commercialization of new products and services in one of the following industry clusters--advanced manufacturing, energy, information and technology, tourism, value-added agriculture, or an industry, including the aerospace industry, or an industry cluster specifically identified by the Department of Commerce as an industry that will contribute to the gross state product.
8. Whether the proposed center will become financially self-sustaining.
9. Whether the proposed center will establish and meet a deadline for acquiring and expending all

public and private funds specified in the application.

10. Whether the proposed center has established community support.
11. Whether the proposed center has established collaboration among institutions.

The first nine criteria factors were statutorily created and the last two criteria factors were created by the Centers of Excellence Commission.

The report provided the following 11 centers have been approved:

Name of Center of Excellence			
Award	**Matching Funds**	**Private Sector Partners**	**Job Creation**
University of North Dakota Energy and Environmental Research Center National Center for Hydrogen Technology			
$2.5 million	$8,875,900 at time of approval - Over $20 million in contracts at time of report	ePower, Kraus Global, Inc., Basin Electric, Phoenix Industries, and Xcel Energy	100
North Dakota State University Center for Advanced Electronics Design and Manufacturing			
$3 million	$6 million	Alien Technology Corporation, Crane Aerospace and Electronics, and Clinical Services Management	Successful outcome of research will lead to dozens of new high-paying jobs.
Bismarck State College Energy Center of Excellence			
$3 million	Up to $12,232,000	Great River Energy, Basin Electric, Reliant Energy, MDU, North American Coal, Westmoreland Coal, and Minnesota Power/BNI Coal	Energy industry anticipated 3,350 new construction jobs and 728 new technician jobs will be created as a result of new plants being constructed.
Lake Region State College Dakota Center for Technology Optimized Agriculture			
$450,000	$1,317,650	Agri ImaGIS, Total-Crop Farming Systems, and Summers Manufacturing	Jobs will be created through product development work at partnering technology companies; testing and evaluation work at the farm and experiment station sites; and expanded manufacturing jobs resulting from new product enhancements.
University of North Dakota Research Foundation Center of Excellence in Life Sciences and Advanced Technologies			
$3.5 million	$10,258,000	Alion, Avianax, Agragen, BORDERS, Ideal Aerosmith, Intraglobal Biologics, MC Strategies, Prologic, Cangene, Cirrus, SEI, and ImClone	100 to 150
North Dakota State University Center for Surface Protection			
$2 million	$4 million	Gremada Industries, Tecton, Gamry, AKZO-Nobel, and Marvin Windows & Doors	40 to 45
North Dakota State University Center for Agbiotechnology: Oilseed Development			
$2 million	$10,750,000	Monsanto, Archer Daniels Midland, and Dakota Skies Biodiesel	2,472
University of North Dakota Center of Excellence for Unmanned Aerial Vehicle and Simulation Applications			
$1 million	$4.2 million	Lockheed Martin, Alion Science & Technology, Frasca International, and Cirrus Aircraft	15 private and 10 public
Williston State College Petroleum Safety and Technology Center			
$400,000	$1,343,468	Hess, Halliburton Energy Services, Sanjel, S & S Chemical, Baker Oil Tools, Nabors Well Service, Penkota Wireline Services, Sun Well Service, Schlumberger, Nabors Drilling, Natco, Encore, Tioga Gas Plant, Basint Tubin' Testin', Bear Paw Energy, Double EE, Enbridge Pipelines, Key Energy, Red River Supply, and SK & S Oilfield Services	400 per year with 1,600 by 2010
Valley City State University Institute for Customized Business Solutions			
$1 million	$4,912,046	Eagle Creek Software, Eide Bailly Technology Consulting, GEM Car, and MeritCare	200 by 2010
Dickinson State University Center for Entrepreneurship and Rural Revitalization - Institute for Technology and Business			
Unreported	$2,981,442	Killdeer Mountain Manufacturing	Up to 120 over five years

The report provided the following seven applications were submitted but did not receive a designation recommendation by the commission:

1. Mayville State University Center for Security and Protection Applications and Research;
2. Minot State University Center for Creativity;
3. Minot State University - Bottineau Entrepreneurial Center for Horticulture;
4. North Dakota State College of Science Nanoscience Technician Center of Excellence;
5. University of North Dakota Center of Excellence for Aerospace Applied to Earth System Science;
6. University of North Dakota Center of Excellence in Aviation Software Development; and
7. University of North Dakota Center for Rural Service Delivery.

The report included the following potential changes that could be made to the centers of excellence program:

- Allow the commission to access centers of excellence funds for the purpose of conducting technical review of applications as necessary.
- Designate the Department of Commerce as the primary agency to provide administrative staff support to the commission, while continuing to have North Dakota University System involvement.
- Allocate centers of excellence funds to the Department of Commerce for the purpose of conducting the due diligence reviews on proposals and assisting the commission in continuing followup and monitoring approved centers.
- Allow noncash types of match for the private sector match.
- Support flexibility to allow the centers of excellence eligibility requirements to address a dynamic economy.
- Recognize that each center of excellence is demand-driven by private sector partners that have a majority influence in determining priority needs.

Addressing a committee concern that the centers of excellence program is being used as a workforce program instead of a job creation program, a representative of the Centers of Excellence Commission and a representative of the State Board of Higher Education testified that although workforce is not a statutory criteria for center of excellence designation, workforce is a positive spin-off of center designation because having a prepared workforce provides a competitive edge to businesses. They testified workforce is a recognized component of job creation and economic development.

Addressing the committee concern that the institutions of higher education are driving the center application and designation process, a representative of the Centers of Excellence Commission and a representative of the State Board of Higher Education testified although the recommended centers have been industry-requested programs and the commission ensures due diligence is taken to make sure there is a private sector need and private sector support for the proposed center, the first round of center of excellence applications was unique because several of the university and private sector interests had been sitting, waiting for the opportunity to apply for center designation. Future round applications will likely differ in this respect.

Addressing the committee concern that a private sector partner could withdraw from participation, a representative of the Centers of Excellence Commission testified that if a center of excellence project is approved but does not pull together its required funding, the state funding will not be disbursed.

A representative of the Centers of Excellence Commission testified it is very important that there be a scientific review at the front end of the centers of excellence application process, but the commission needs flexibility in determining whether to conduct an independent study or review of the application.

Procurement Web Site

The committee received a report from a representative of the director of the Office of Management and Budget on the status of providing procurement information through the Internet under NDCC Section 54-44.4-14.

A representative of the Office of Management and Budget reported the existing online bidders list system was enhanced to provide for the procurement information web site. The Office of Management and Budget contracted with the Information Technology Department to perform this enhancement.

The report indicated the new web site allows state agencies, the State Board of Higher Education, political subdivisions, and public education entities to log into the system to upload bid documents. The public can access the system from the state procurement online web site to search for current bid opportunities and bid results as well as to search archives of closed bidding opportunities. The system provides businesses that are on the state bidders list will receive e-mail or fax notification of solicitations posted to the web site.

The report provided that in addition to implementing NDCC Section 54-44.4.14, the new system also implements 2005 House Bill No. 1341, which provided for notification of bidders regarding an agency's intent to make a limited, noncompetitive, or cooperative purchase instead of conducting a fully competitive procurement process.

Study Reports

Procurement Assistance Center Study

The committee received a report from a representative of the director of the Office of Management and Budget on the outcome of the director's procurement assistance center study.

The recommendations outlined in the study report were:

1. Fund a North Dakota procurement technical assistance center to assist businesses in obtaining federal, state, and local government contracts;
2. Designate the Office of Management and Budget as the host agency of the North Dakota procurement technical assistance center; and
3. Once the federal procurement technical assistance center grant application is announced, the Office of Management and Budget or an entity designated by the Office of Management and Budget should submit an application for federal grant funds in order to expand the services offered by the North Dakota procurement technical assistance center.

The report indicated the recommendation of the Office of Management and Budget was that a North Dakota procurement technical assistance center be funded with state funds and not be dependent on federal funds for its continued existence. Federal grant money

that may be available should be used to expand the statewide program.

The study concluded legislation would not be required to create a North Dakota procurement technical assistance center, which would require the following appropriation and budget authority for the 2007-09 biennium:

- State fund appropriation of $400,000;
- Federal funding spending authority of $350,000; and
- Authorization for five full-time equivalent positions.

Economic Development Incentives Study

The committee received a report from the Commissioner of Commerce on the outcome of the Department of Commerce study of the state's economic development incentives. The study and reporting requirements provide:

> During the 2005-06 interim, the department of commerce shall conduct a study of the state's economic development incentives. The study must include an inventory of all of the state's economic development incentives, a review of the nature of each incentive, an indication of the targeted class of recipients of each incentive, an indication of the stage of business targeted by each incentive, an analysis of possible barriers to using the incentives, an analysis of possible gaps and overlaps in the state's economic development incentive system, a review of the effectiveness of each incentive and how to gauge the effectiveness of each incentive, and a review of economic development incentive best practices and how the state's incentives compare to best practices. The department of commerce may contract with a third party in performing this study. Before July 1, 2006, the commissioner of commerce shall report to the legislative council the outcome of the study and identify proposed legislative changes necessary to implement any recommended changes to the state's economic development incentive system to make the state's business environment more effective, efficient, and competitive.

The Commissioner of Commerce testified that in conducting the study, the Department of Commerce compiled an inventory of all the state's economic development incentives and contracted with two consultants to perform the analysis of the items in the inventory.

As part of the report, the committee received an inventory of the state's economic development incentives which specified for each incentive:

- The stage of business for which the incentive applies;
- The statutory site providing for the incentive;
- The amount of the incentive and the specified conditions to qualify for receipt of the incentive;
- A description of the incentive;
- The number of users of the incentive;
- The program funds distributed over the course of the 2003-05 biennium;
- Whether the terms of the distribution of funds is statutory or discretionary;
- If the incentive is a tax credit:
  - Whether the credit allows for a carryforward and for what period of time;
  - Whether the credit is refundable; and
  - Whether the credit is marketable;
- Whether the incentive is location-specific and, if so, what location;
- Whether the incentive specifically addresses a target industry;
- Whether the incentive has a job creation requirement;
- Whether the incentive has an investment requirement;
- Whether the incentive has a wage requirement;
- The sources of funding for the incentive; and
- The effective date and any expiration date of the law providing for the incentive.

The committee also received a copy of the consultants' analysis of the economic development incentives entitled *Economic Development Incentives in North Dakota - A Study for the North Dakota Department of Commerce*. The consultants reviewed the legislative background for performing the study, the steps taken in conducting the study and related analysis, the central themes that emerged in the course of conducting the analysis, and the recommendations that followed as a result of this study and analysis.

The recommendations included in the report included:

- The state needs a reliable means for notifying qualified businesses, in advance, about the possible constraints posed by the annual ceiling on the seed capital investment tax credit.
- The state should select the most relevant tax incentives and make these eligible for use on both the short form and long form. The remaining tax incentives should be allowed to expire.
- The Legislative Assembly should reexamine the validity of even having the long form for taxes. If an incentive is worthy of being placed in statute, the incentive should be allowed to be used by the taxpayers.
- North Dakota should consider utilizing refundable credits that can put cash in the hands of smaller businesses.
- North Dakota should consider funding soft skills training and transition assistance for workers trying to upgrade their job skills. Furthermore, North Dakota needs to consider programs aimed at recruiting workers from out of state and retention of existing workers, including internship programs that can address the needs of employers while exposing young people to opportunities in North Dakota.
- North Dakota should consider an adjustable scale for jobs and cost per job and allowing businesses

of local importance to qualify for assistance, regardless of whether the business is a primary sector business.

- North Dakota should consider initiating a fund for commercialization of new technologies as other states--such as Michigan--are pursuing this course rather aggressively.
- North Dakota should explore options for offering incentives to attract tourism facilities and incubators.
- North Dakota should explore adding more inclusive incentives for the use of machinery and tools.
- North Dakota should explore a statewide program option for supporting the development of infrastructure for the 21st century.
- If the research and development tax credit cannot be made more user-friendly, North Dakota should explore other means of encouraging research and development, including grants and loans.
- North Dakota should consider adding a special fund that would take emerging research ideas from the laboratory or research facility to the product stage.
- North Dakota should consider modifying the business incentive accountability law to require every incentive program to develop, implement, and report on an acceptable performance measurement system.
- North Dakota should undertake a study to review the cost and benefits of the state's tax expenditures.

The consultants testified the recommendation regarding a performance measurement system for economic development incentives is not because the incentive programs are not performing ongoing evaluations of their own performance but instead is recommended because it would provide for consistency and transparency.

One of the consultants testified that the recommendation regarding attracting tourism facilities addresses an issue that is not unique to North Dakota. Many states unintentionally exclude the tourism industry in the states' economic development incentives. One way to address this is to specifically include tourism as a qualified recipient in economic development programs.

Commercialization of New Technologies and Intellectual Property Studies

The committee received a combined report from the chancellor of the North Dakota University System and the Commissioner of Commerce on the combined studies of the State Board of Higher Education study of incentives the state could adopt to serve as catalysts for stimulating more efficient commercialization of new technologies and the Department of Commerce study of the state's intellectual property laws as they relate to the protection of intellectual property rights. The study and reporting requirements provide:

> During the 2005-06 interim, the state board of higher education shall conduct a study of incentives the state could adopt to serve as catalysts for stimulating more efficient commercialization of new technologies. The study must include roundtable discussions; include consideration of leveraging research, capital, and entrepreneurs; include consideration of successful actions taken by other states to increase technology commercialization; and focus on approaches that are specifically tailored to the state's unique circumstances. The board may contract with a third party to conduct the study. Before July 1, 2006, the chancellor of the North Dakota university system shall report to the legislative council the outcome of the study and identify proposed legislative changes necessary to implement any recommendations to stimulate technology commercialization in this state.
>
> During the 2005-06 interim, the department of commerce, in consultation with the state board of higher education, shall conduct a study of the state's intellectual property laws as they relate to the protection of intellectual property rights. The study must include a review of the state's intellectual property laws, including barriers that may inhibit research and development in the state, and must include consideration of successful actions taken by other states to improve the protection of intellectual property rights. The department shall contract with a third party in performing this study. Before July 1, 2006, the commissioner of commerce shall report to the legislative council the outcome of the study and identify proposed legislative changes necessary to implement any recommendations to improve the protection of intellectual property rights.

The Commissioner of Commerce and the chancellor of the North Dakota University System reported they decided to work together and combine their resources in performing the two studies. The chancellor testified he looks forward to having the State Board of Higher Education implement some of the recommendations that resulted from this study. The Commissioner of Commerce testified that the contract to perform the two studies was awarded to an independent, nonprofit research organization that serves academic, government, and commercial clients worldwide.

The consultant presented the report on the two studies *Intellectual Property and Technology Commercialization in North Dakota*. Because commercialization and intellectual property rights are topics that are so intertwined, the two studies were combined and performed as one. The six areas of focus and related recommendations specifically pertaining to technology transfer addressed:

1. Research capacity;
2. Intellectual property and technology transfer;
3. Entrepreneurship;
4. Access to capital;
5. Cluster-based economic development; and

6. Organizing to support science and technology-based economic development.

The five areas of focus and related recommendations specifically pertaining to intellectual property addressed:

1. Open meetings and open records;
2. Research foundations as public entities;
3. Trade secrets;
4. Noncompete agreements; and
5. State Board of Higher Education policies.

Statutory Reports

Renaissance Zone Progress

Under NDCC Section 40-63-03, the committee received annual reports from the Department of Commerce Division of Community Services on renaissance zone progress.

Target Industries

Under NDCC Section 54-60-11, the committee received the biennial report from the Commissioner of Commerce on the process used and factors considered by the commissioner in identifying target industries on which economic development efforts are focused and the special focus target industry. Section 54-60-11 provides:

> **Target industries - Report to legislative council.** The commissioner shall identify target industries on which the commissioner shall focus economic development efforts. The commissioner shall designate one of these target industries as a special focus target industry. In identifying and updating target industries, the commissioner shall solicit the advice of the foundation and the North Dakota university system. The commissioner may contract for the services of a third party in identifying target industries. The commissioner shall report biennially to the legislative council. This report must include information regarding the process used and factors considered in identifying and updating the target industries, the specific tactics the department has used to specifically address the needs of the target industries, the unique tactics and the specific incentives the department has used to support the growth of the special focus target industry, and any recommended legislative changes necessary to better focus economic development services on these industries.

The Commissioner of Commerce reported the five target industries were formalized and adopted by Governor John Hoeven and the North Dakota Economic Development Foundation as part of the state's strategic plan for economic development. The target industries identified were energy, value-added agriculture, technology-based businesses, advanced manufacturing, and tourism. The commissioner reported that although the five target industries have not changed this interim, efforts will be taken to narrow the focus within these target industries on areas with the most opportunities for long-term growth. Additionally, the commissioner reported the Department of Commerce continually analyzes the target industries to keep abreast of the dynamics at play in each industry and to identify opportunities and tactics for growth.

The Commissioner of Commerce reported the energy industry was the special focus target industry. Energy was chosen because of its increasingly important role in North Dakota's economy. With petroleum production rising in western North Dakota and renewable energy projects being developed across the state, renewable fuels, such as ethanol and biodiesel, are not only important energy sources, but are also a form of value-added agriculture.

With a special focus on the target industry of energy, the Commissioner of Commerce provided a summary of the activities relating to each of the target industries. The three key recommendations of the report were:

1. Refine the state's economic development targets to focus more exclusively on projects that can be defended in a global economy, including:
   a. Narrowing the focus within each of the state's target industries to those niche areas that can be best defended from offshore competition;
   b. Creating a strategy office within the Department of Commerce to help drive this new activity; and
   c. Defining what it means to be a highly responsive economic development entity and then holding the various divisions of the Department of Commerce accountable to those standards.
2. Develop an explicit people development strategy to address the growing shortage of highly trained labor in the state, including:
   a. Defining and implementing programs to recruit smart entrepreneurial individuals to the state and to encourage those individuals already here to stay by:
      (1) Expanding university academic scholarship programs to draw high-level candidates; and
      (2) Investing in infrastructure that will help improve quality-of-life amenities in North Dakota cities.
   b. Expanding the current support for entrepreneurial ventures by:
      (1) Reauthorizing and growing the centers of excellence program; and
      (2) Developing a venture capital fund and other new venture programs to focus on the existing individuals and intellectual capital infrastructure in the state.
   c. Reviewing the state's secondary and undergraduate education systems to bolster the state's competitive position in the global economy by:
      (1) Enhancing the business-professional preparation available at four-year

undergraduate institutions in the state; and

(2) Raising the profile of competitive, disciplined, and entrepreneurial academic activities to match the attention paid to interscholastic and intercollegiate athletics.

3. Engage in rapid results projects to achieve concrete program results, including:
   a. Employing a back-planning approach to determine what things will need to change, and the sequence of that change, in order to achieve the state's vision in each of its target industries within prescribed time-frames.
   b. Initiating and completing a series of 100-day projects to quickly create momentum and generate real progress toward these objectives.

The four specific legislative changes recommended in the report were:

1. Establish a state-funded visitor information center program in an effort to encourage visitors to stay longer and return for future trips. This program could assist with staffing cost in order to extend the hours, allowing visitors to access information later in the evening and on weekends. The Department of Commerce could provide training for visitor information center personnel.
2. Create a small pilot grant program for the expansion or development of tourism-based businesses and destinations.
3. Provide a matching fund program for communities to improve the look of their towns to become more attractive to tourists.
4. Consider recommendations from the Department of Commerce-commissioned study, *Global Competition and North Dakota's Target Industries*, in light of the current business climate study process.

Recommendations

The committee recommendations relating to the reports are addressed in **BUSINESS CLIMATE STUDY**, **Recommendations**.

BUSINESS CLIMATE STUDY

In addition to working with the Department of Commerce, the committee received assistance from the Greater North Dakota Chamber of Commerce in conducting the business climate study. The Legislative Council contracted with two private consultants to provide professional services to plan, facilitate, report on, and coordinate followup for the focus groups and Business Congress.

North Dakota Legislative Background

The 2005-06 North Dakota business climate initiative is part of a three-interim initiative of the Legislative Council. During the 2003-04 interim, in accordance with House Bill No. 1504 (2003), the Legislative Council's Economic Development Committee conducted a primary sector business climate study. That committee recommended Senate Bill No. 2032 (2005), which under Section 17 provides for a two-interim continuation of the activities begun under House Bill No. 1504 (2003). Through the course of the 2005 legislative session, several of the provisions of Senate Bill No. 2032, as introduced, were relocated to Senate Bill No. 2018, the appropriation bill for the Department of Commerce. Therefore, the initiatives of the 2003-04 Economic Development Committee are identified as being from either Senate Bill No. 2032 or Senate Bill No. 2018.

2005 Legislation

The Legislative Assembly enacted a majority of the programs recommended by the 2003-04 interim Economic Development Committee as part of the business climate initiative bill. As enacted, Senate Bill No. 2032, the business climate initiative bill, recommended by the committee:

- Extended and expanded the Bank of North Dakota's authority to invest its funds in North Dakota alternative and venture capital investments and early-stage capital funds.
- Rewrote the centers of excellence law, repealing the existing North Dakota Century Code section and creating a new chapter.
- Modified the membership of the Emergency Commission.
- Directed the Office of Management and Budget to establish a procurement information Internet web site.
- Modified the seed capital investment tax credit laws.
- Repealed the laws relating to venture capital corporations and the Myron G. Nelson Fund, Inc., effective August 1, 2007.
- Required the two studies assigned to the Economic Development Committee--the North Dakota business climate initiative and venture and risk capital.
- Required multiple agency studies and reports to the Legislative Council, a majority of which the Legislative Council assigned to the Economic Development Committee.

As enacted, Senate Bill No. 2018, the Department of Commerce appropriation, included several provisions that came from the recommendations of the 2003-04 interim Economic Development Committee. These provisions:

- Modified the organization of the Department of Commerce Division of Economic Development and Finance, renaming and modifying the International Business and Trade Office and clarifying the duties of the North Dakota American Indian Business Development Office.
- Created a Department of Commerce Division of Economic Development and Finance program for local economic developer certification.
- Required the Commissioner of Commerce to identify target industries.

- Provided for a Department of Commerce program for North Dakota image information.
- Provided for a Department of Commerce business hotline program.
- Provided for a Dakota Manufacturing Initiative, through which the Department of Commerce was directed to seek to contract with TD MEP.
- Required multiple agency studies and reports to the Legislative Council, a majority of which were assigned to the Economic Development Committee.

2005-06 Interim Studies

In addition to the activities of the Economic Development Committee during the 2005-06 interim, there were several committees charged with economic development-related studies and receipt of economic development-related reports.

The economic development-related charges of the interim Agriculture and Natural Resources Committee included a study of the utilization of the state's abundant energy resources to attract energy-intensive economic development projects to the state.

The economic development-related charges of the Budget Section included:

1. Approve, with the Emergency Commission, borrowing of up to $5 million by the Office of Management and Budget as requested by the Centers of Excellence Commission for the purpose of providing funding to centers of excellence;
2. Receive a report from the Department of Commerce after July 1, 2006, on the use of grant funds provided to the Rural Development Council to match federal funds;
3. Receive a report from the Department of Commerce after July 1, 2006, on the use of grant funds provided to the Red River Valley Research Corridor to match federal funds;
4. Receive a report from the Department of Commerce after July 1, 2006, on the use of grant funds provided to the North Dakota center for technology program;
5. Receive a report from the Department of Commerce after July 1, 2006, on the use of funding for grants in the partners in marketing grant program; and
6. Receive a report from the Commissioner of Commerce annually during the 2005-06 interim regarding North Dakota economic goals and associated benchmarks.

The economic development-related charges of the interim Industry, Business, and Labor Committee included:

1. Study the unemployment insurance tax rate structure; the structure's impact on the unemployment insurance trust fund, with special focus on the impact of the current unemployment insurance tax structure on new businesses; the historical cyclical risks faced by the industries in which new businesses are beginning to operate; and whether the unemployment insurance tax impact is reasonably favorable to the desired economic development of the state;
2. Receipt of report from the Agricultural Research Board on its annual evaluation of research activities and expenditures;
3. Receipt of report from Workforce Safety and Insurance on recommendations based on the safety audit of Roughrider Industries work programs and performance audit of modified workers' compensation coverage program; and
4. Receipt of report from the Insurance Commissioner before July 1, 2006, on the outcome of the commissioner's compilation of existing data regarding the state's liability insurance marketplace.

The economic development-related charges of the interim Transportation Committee included receipt of a report from the Upper Great Plains Transportation Institute on the outcome of the institute's study of how improvements to the transportation infrastructure of this state might enhance the business climate and the state's competitive position in economic development.

2003-04 Interim Studies

Under House Bill No. 1504 (2003), the 2003-04 Economic Development Committee studied the state's business climate, including the creation of an index of key objective measurements that address the state's competitiveness with other states, the consideration of methods of creating business partnerships with North Dakota Indian tribes in order to increase primary sector business growth in the state, and active participation in the activities of the Primary Sector Business Congress. In conducting the study, the Legislative Council was directed to conduct a Primary Sector Business Congress. The purpose of the congress was to assist in the business climate study, evaluate the impact of existing state economic development programs on primary sector businesses, identify methods to increase primary sector business job growth in the state, and prioritize for the Legislative Council the state's primary sector business economic development programs and initiatives.

The Economic Development Committee held nine meetings, which included a joint meeting with representatives of the North Dakota American Indian tribes; six business community focus group discussions, with participation by the business communities of Grand Forks, Fargo, Bismarck, Minot, eastern rural North Dakota, and western rural North Dakota; one focus group discussion specifically for economic developers in the state; and a Primary Sector Business Congress held at the State Capitol in the House chamber.

Using the information gathered during the course of the committee meetings, focus group discussions, and Primary Sector Business Congress, the committee crafted a business initiative and related legislative recommendations. In crafting the committee's business climate initiative, the committee considered the following 21 action items:

1. External image.

2. Internal image.
3. Marketing available resources.
4. International business development.
5. Support for local economic developers.
6. Manufacturing.
7. Procurement.
8. Ongoing consultation on strategies.
9. Targeting industry.
10. Taxes.
11. Tribal businesses.
12. Technology commercialization.
13. North Dakota University System.
14. Venture capital.
15. Workforce development.
16. Education.
17. Intellectual property protection.
18. Liability and insurance.
19. Energy.
20. Transportation.
21. Gauging return on investment for economic development.

The 21 action items fell into one or more of the following five major categories:

1. General business climate;
2. Business services;
3. Image and marketing;
4. Support for local economic development; and
5. Education partnerships.

For each of these 21 action items, the committee took one or more of the following actions:

1. Drafted proposed legislation.
2. Referred the issue to relevant lead agencies or private entities to report additional information to the committee.
3. Directed long-term further study.

The committee drafted and reviewed bill drafts addressing the action items. Written action item-related information provided by agencies and private sector entities was considered in drafting and revising the bill drafts. To address accountability for the committee's business climate initiative following the Primary Sector Business Congress, each bill draft considered by the committee provided for a report to the Legislative Council during the 2005-06 interim on the status of the implementation of the legislation.

After receiving and reviewing all the bill drafts, the committee determined whether to include each separate bill draft in a consolidated bill draft that would reflect the business climate initiative resulting from the Primary Sector Business Congress. Ultimately, the committee recommended two bills. Senate Bill No. 2032 addressed a broad range of economic development and business climate issues and was enrolled. House Bill No. 1031, which did not pass the Senate, would have modified the law relating to tax exemptions within urban renewal development or renewal areas.

Focus Group Activities

During the 2005-06 interim, the committee, with the assistance of the Department of Commerce, held seven half-day focus groups--four for business leaders, two for local economic developers, and one for young professionals. The business leader focus groups were held in Grand Forks, Fargo, Minot, and Bismarck; the local economic developer focus groups were held in Fargo and Bismarck; and the focus group for young professionals was held in Bismarck. The committee followed the same format for the four business leader focus groups, a slightly modified format for each of the two local economic developer focus groups, and a more informal, abbreviated format for the young professional focus group. The basic format of the focus groups was:

- Welcome and introductions;
- Review of the 2005 legislative package resulting from 2003-04 business climate study;
- Visioning exercise;
- Group interview; and
- Closing remarks.

At each of the focus groups, except the young professional focus group, committee members sat at tables with business leaders and local economic developers while one or both of the two consultants facilitated the focus group. The young professional focus group was organized in response to the input received during the business leader and economic developer focus groups and was an evening focus group attended by young professionals from the Bismarck-Mandan community and facilitated by one of the committee's consultants.

At each focus group, a representative of the Department of Commerce reviewed the Department of Commerce's ongoing activities in the five targeted industries.

Visioning Exercise

Following the welcome and review of 2005 legislation, the consultants conducted a visioning exercise. For this portion of each focus group, the participants received a list of 20 written statements in a survey format, for which participants were asked to note whether they strongly agree, agree, disagree, or strongly disagree with each statement or whether they had no opinion regarding the statement. The consultants recorded participant responses to each of the following statements:

1. North Dakota is a great place to grow my business.
2. If venture capital were more readily available locally, there would be more business growth.
3. Tax policies in North Dakota are, for the most part, supportive of business growth.
4. The cost and availability of energy is not a problem for North Dakota businesses.
5. There is little more that North Dakota universities could do to facilitate economic development.
6. Most businesses are aware of state programs that can assist them.
7. There are plenty of qualified workers available to support business growth in North Dakota.
8. Capital is too expensive and too hard to obtain for businesses in North Dakota.
9. North Dakota should put most of its emphasis on attracting target industries to locate in the state.

10. North Dakota needs to commit more resources to enhancing the availability of qualified workers in the state.
11. North Dakota has transportation constraints that hinder business growth.
12. Government should pay more attention to housing, health care, and other quality of life factors that affect business growth.
13. I know which industries are being targeted by the state for expansion and attraction.
14. Government policies and incentives have little effect on the commercialization of new technologies.
15. There are neighboring states that have more business-friendly environments than North Dakota.
16. State and local economic developers need more incentives to encourage business growth in the state.
17. Government-administered business finance programs do not have a big impact on business growth in North Dakota.
18. North Dakota could do more to ensure that we have a well-prepared qualified workforce.
19. More resources need to be committed to programs that support the growth of existing businesses in North Dakota.
20. There is little that government can do to improve the state's image to the business community inside and outside of North Dakota.

Group Interview

After the visioning exercise, one of the committee consultants facilitated a group interview, which included soliciting participants' responses to questions that were shown as part of a computer presentation. The participants of the business leader focus groups provided responses to the following questions:

1. Doing business in North Dakota:
   a. What is the best reason for your business to be in North Dakota?
   b. What is the biggest barrier to doing business in North Dakota?
2. Workforce:
   a. Are your workforce needs being met in North Dakota?
   b. Are there ways in which state government influences your ability to meet your workforce needs?
   c. Is there more that the state can do to have a positive influence?
3. Partners:
   a. What one thing could the state do to help your business expand in North Dakota?
   b. How could North Dakota universities be utilized more effectively as partners for your business?
4. Venture capital:
   a. Have you found it difficult to obtain venture capital, or any other type of capital, in North Dakota?
   b. Are there any specific changes needed in legislation, regulation, funding, program, etc., that might make capital more available?
   c. Would incentives help leverage more capital for business?
5. Industry targets:
   a. Are you aware that the state has identified target industries and is refining its targets?
   b. What industries would you target?
   c. What kinds of incentives would you offer to target industries?
6. Technology opportunities:
   What could the state do to further encourage the commercialization of new technologies?
7. Transportation and taxes:
   a. Is transportation a constraint upon the growth of your business?
   b. Are state or local taxes constraints upon the growth of your business?
   c. If so, what might be done to improve the situation?
8. Infrastructure:
   a. Is the physical infrastructure in place for business growth in North Dakota?
   b. Is high-tech infrastructure adequate to support business growth in North Dakota?
   c. What can government do to help?
9. North Dakota image issues:
   a. Does the state have an "image problem?"
   b. Is this an internal or external issue?
   c. What more could be done to enhance North Dakota's image?

The participants of the local economic developer focus groups provided responses to the following questions:

1. What is your general take on the business climate and has there been progress since the previous business climate study?
2. What are the top issues that impact business climate in North Dakota?
3. What is most in need of improvement?
4. What should the legislature focus on?
5. Do local economic development professionals have the tools they need?
6. Does the state have all the tools it needs?
7. Are there state programs that are especially effective?
8. Are there opportunities for collaboration with other localities or with the state which might be more aggressively pursued?
9. What would you do to enhance current state tools?
10. Can the state do more to market or publicize its services and assistance?
11. Is workforce the No. 1 challenge for businesses in North Dakota?
12. Is more, or less expensive, venture capital needed?
13. Are other types of capital in short supply or too expensive?

14. Could local universities play a greater role in economic development?
15. Can state efforts at industry targeting enhance economic development?
16. Are you aware of the state's industry targets and are there ways this effort could be strengthened?
17. How much hindrance or help are energy and transportation?
18. Does image hold North Dakota back, and if so, is it internal, external, or both?
19. Can internal marketing and current state efforts help?
20. Can state and local economic developers do more to enhance North Dakota's image?
21. What one thing could be done to enhance the business climate and help you do your jobs?
22. Is there a specific state action or program that would help?

Business Congress Activities

Following the seven focus group discussions, the committee held and participated in the Business Congress at the State Capitol on April 19, 2006. The invitation list for this event included individuals invited to and individuals who attended the seven focus groups. The Business Congress received from the two committee consultants the report entitled *North Dakota Business Congress: Bismarck 2006, North Dakota Business Climate Study - Round II*. This report included an overview of the focus group activities and identified five key issues and corresponding proposed actions to address the key issues. The proposed action items were identified from ideas from focus group activities, surveys, the North Dakota Commerce Cabinet, and the two committee consultants. The following is the list of key issues and related proposed action items:

1. Workforce development:
   a. Internship program for target industries;
   b. State grant program to promote school-business partnerships;
   c. Central web site for information and resources;
   d. Marketing and incentives to recruit workers; and
   e. Early career counseling;
2. North Dakota's image:
   a. Tourism marketing;
   b. Media relations;
   c. Ambassadors program;
   d. Online resources and toolkit for teachers and speakers; and
   e. Incentives for tourism facilities;
3. Attracting and retaining young people:
   a. Entrepreneur programs;
   b. Governor's awards for young entrepreneurs;
   c. Entrepreneurial training;
   d. Business mentors;
   e. Targeted marketing to young people;
   f. Focus groups for young professionals; and
   g. Recruit for college and technical schools;
4. Transportation:
   a. Upper Great Plains Transportation Institute study;
   b. Expansion of air transportation;
   c. Incentives to airlines;
   d. Freight rail improvement;
   e. Certified cities program; and
   f. Commerce Cabinet recommendations; and
5. University participation in economic development:
   a. Inventory avenues for communication with business;
   b. Fund commercial evaluation of new technologies;
   c. Awards program to technology companies;
   d. Centers of excellence followup;
   e. Incentives to students for technology courses;
   f. Add ways for business to interact with and advise universities;
   g. Speakers bureau for business lecturers; and
   h. Recruit faculty in target disciplines.

Additionally, the Business Congress received from the North Dakota Commerce Cabinet the report entitled *Current Actions to Address Five Key Issues - Commerce Cabinet Task Force Report to 2006 Business Congress*.

Following receipt of the reports, the Business Congress participants broke into three small groups to:

- Review existing programs addressing the five key issues, utilizing the document prepared by the North Dakota Commerce Cabinet, *List of Proposed Actions for 5 Key Issues - Reference Document for Small Group Activities*;
- Review proposed actions to address the five key issues;
- Consider proposed actions and whether additional actions should be proposed;
- Prioritize the proposed actions; and
- Consider whether there are performance measures to track the progress in the prioritized proposed actions.

Resulting Business Initiative

Using the information gathered through the focus group process, through the Business Congress activities, through receipt of reports, on the activities of other interim committees as they related to the key issues identified by the committee, and through traditional committee meetings the committee crafted a business climate initiative and the related legislative recommendation. In crafting this initiative, the committee reviewed, revised, received testimony regarding, and discussed in detail each of the key issues and related proposed action items. The committee requested and received action item-related information from a broad spectrum of sources, including:

- Committee consultants;
- Department of Commerce;
- Bank of North Dakota;
- State Board of Higher Education;

- Department of Career and Technical Education;
- Job Service North Dakota;
- Tax Commissioner;
- Greater North Dakota Chamber of Commerce;
- Housing Finance Agency;
- Aeronautics Commission;
- Department of Transportation;
- Office of Management and Budget;
- Governor's office;
- Centers of Excellence Commission;
- North Dakota Economic Developers Board; and
- Members of the private sector.

In response to the significant amount of information received and reviewed by the committee, the committee continuously revised the proposed action items for the key issues and the key issues and final action items were addressed in the committee bill drafts.

During the committee meetings following the Business Congress, the committee crafted the business initiative. The committee considered 18 bill drafts--17 of which were committee-sponsored and 1 that was sponsored by an individual committee member. Some of the bill drafts addressed a single key issue and others were broader, addressing more than one key issue. Additionally, some of the testimony received by the committee and some of the committee discussion addressed more than one key issue. The following key issues follow the basic framework established by the committee consultants, with the addition of the bill draft considered as a result of the recommendations of the Department of Commerce business incentive study report. Following consideration of each of the bill drafts, the committee determined whether amendments were desired and whether the committee wished to include the text of the bill draft in the final, single business initiative bill.

Workforce - Internships

The committee requested and received information regarding how some of the workforce needs in the state may be addressed through preparation of students from institutions of higher education for jobs in the state through internships and other creative partnerships between institutions of higher education and businesses. Additionally, the committee requested and received information regarding possible tax incentives that could be used to increase the use of higher education internships.

A representative of the Governor's office provided the following suggested changes to improve internship use in the state:

- Enhance the followup information on North Dakota education and training (FINDET) system report;
- Increase education and awareness, including improved data, public relations, and networking;
- Encourage community engagements;
- Provide reverse dollars for scholars;
- Provide higher education scholarships, which may include reprioritizing current scholarship programs;
- Improve coordination, including alignment of resources across the system, alignment of inventory, and elimination of student barriers;
- Enhance data tracking;
- Enhance marketing;
- Provide economic incentives, which may include community grants, state scholarships, nonprofit grants, and tax incentives;
- Support the Governor's internship program; and
- Address university career centers by providing more outreach and additional coordination.

The committee received testimony from the Tax Commissioner that the state's economy is growing and with that growth comes increased workforce needs. Possible ways to address the workforce needs in the state may include tax incentives for higher education internships.

The committee considered a bill draft that in part would have created a tax credit for employers to encourage use of higher education internships. This tax credit, as amended, is included in the business initiative bill.

The committee reviewed the background of the Governor's internship program, received an overview of the internship program, reviewed positive and negative experiences of the internship program, reviewed a summary of data relating to the internship program, and received suggestions to enhance the internship program.

The committee received testimony that the FINDET system data indicates that paid internships result in a 15 percent increase in retention over unpaid internships and 40 percent of students with a paid internship are still employed with that same employer one year following graduation. However, a weakness of this data is that the determination of whether an intern is in a paid internship is established by determining whether that student had any income, regardless of the source of that income.

The committee received testimony that the cost per credit for internships may be a barrier to increased use. Some students may not be signing up for internships because of the credit cost; however, because each institution of higher education does things differently, this may not be a barrier at every university.

The committee received testimony that internships are very valuable, especially if a business has a need for an experienced workforce. One thing internships do is provide members of the workforce with a headstart following school.

The committee considered a bill draft that in part would have expanded the duties of the Department of Commerce Division of Workforce Development to include administration of a higher education internship program and administration of the FINDET system and would have provided for the Department of Commerce to study workforce intelligence and higher education internships. These internship provisions are included in the business initiative bill.

Workforce - Career Education

The committee requested and received information regarding how some of the workforce needs of the state might be addressed through preparation of kindergarten

through grade 12 students for jobs through creation of a program aimed at promoting partnerships between schools and local businesses and through providing early career counseling and education.

The committee received an overview of the career education program used by the Grand Forks School District, which actually serves the school districts of Grand Forks, Central Valley, Emerado, Grand Forks Air Force Base, Larimore, Manville, Northwood, and Thompson. Overall, the program reaches approximately 800 students at each grade level. The testimony indicated that the program in Grand Forks does not take away from the education process but instead is an integrated program and, as a result of this program, students are better able to choose their electives and basic coursework.

The testimony distinguished the Grand Forks career education model from the traditional career counselor model. Approximately 177 schools in North Dakota have funded career counselors. Under the Grand Forks model, there is a career center and this is a different mindset from the career counselor or guidance counselor approach. The committee received testimony that the West Fargo and Fargo School Districts are beginning to implement some of the elements of the Grand Forks program and other school districts around the state have recognized the success of the Grand Forks program and have implemented component pieces of the Grand Forks program.

A representative of the Department of Career and Technical Education testified that, although academics need to remain strong, each student learns differently and the education system needs to recognize this and be prepared to teach students accordingly. Recognizing the importance of students knowing career opportunities available in the state, the education system should prepare students for the jobs they want, and should not just limit career education to those jobs available in North Dakota.

A representative of the Department of Career and Technical Education testified that joint powers agreements may be good vehicles to consider in providing a career education program throughout the state. Although the Grand Forks program is a good model to implement statewide, it is important to recognize that statewide implementation would require a large financial commitment from the state and the school districts.

The committee considered a bill draft that would have required the Department of Commerce Division of Workforce Development to develop and implement a career education program and a career promotion program for students and would have provided for the Department of Commerce to perform a career education study. This career education program, career promotion program, and study, as amended, are included in the business initiative bill.

The committee considered a bill draft that in part would have provided for an innovation matching grant program to be administered by the Department of Career and Technical Education. This grant program is included in the business initiative bill.

Workforce - Services for and Recruitment of Workers

The committee received information regarding housing issues that affect the ability to recruit workers. A representative of the Housing Finance Agency testified that developing a housing strategy is an integral part of the state's efforts toward economic development and workforce recruitment. The Housing Finance Agency priorities for 2006 include providing technical assistance to developing communities as well as proposing several programs that will provide financial assistance to communities to assist in developing new housing and to improve the quality of existing housing. However, testimony indicated NDCC Chapter 54-17 may need to be amended to allow the agency to implement its plans.

The committee considered a bill draft that would have expanded the Housing Finance Agency mortgage loan financing program and housing grant program and would have provided for a Legislative Council study of housing needs. The housing provisions and study are included in the business initiative bill.

The committee requested and received information regarding:

- How some of the workforce needs in the state may be addressed through new or existing workforce programs and through addressing the population of unemployed workers;
- The characteristics of unattached unemployed in the state; and
- The status of federal funding of Job Service North Dakota programs.

The committee reviewed some of the activities of Job Service North Dakota which address workforce needs in the state, including Workforce 20/20; the federal Workforce Investment Act, through which training funds are made available to employers and employees and in high-demand occupations, primary sector businesses, and growing industries; the Work First Project, a demonstration project through which reemployment services were provided to claimants; and pilot projects in Dickinson and Grand Forks through which services are provided to individuals delinquent in child support payments. The review stressed that labor market information is key to helping employers and job seekers make good decisions and that Job Service North Dakota services are demand-driven.

A representative of Job Service North Dakota testified Job Service North Dakota is preparing to submit a proposal to the United States Department of Labor which would allow Job Service North Dakota to continue its reemployment initiatives and to conduct a study into the root causes of chronic unemployment. The purpose of submitting this supplemental budget request is to better position Job Service North Dakota to identify the underlying reasons for unemployment. With information gained through this study, Job Service North Dakota would be able to more accurately identify whether chronic unemployment is the result of attitudinal factors, behavioral factors, or skill deficiencies. The results of the study would produce a body of information that would provide Job Service North Dakota with a greater

ability to identify trends and areas needing intensified focus on reemployment services.

The committee received information regarding the unattached unemployed, including the number of unemployment insurance claimants; average duration of claim; exhaustion rate; and demographics, including geographic area, education level, gender, occupation before layoff, and age.

A representative of Job Service North Dakota testified that approximately 70 percent of the currently unemployed individuals in this state are classified as "job-attached," which means these are individuals who experience a short term of unemployment. This means approximately 30 percent of the unemployed population in the state is non-job-attached. Testimony indicated the individuals who make up this 30 percent are unemployed for a variety of reasons, including that they may lack hard skills, soft skills, or the desire to work. Testimony indicated some individuals learn these hard skills, soft skills, and desire early through their public education and others do not.

The committee also received testimony regarding the demographics of repeat unemployment insurance claimants. On an annual basis, the state's unemployment insurance system receives 13,000 to 20,000 claims. For each claim an evaluation is performed on whether each individual is job-attached. The unemployment insurance system does see reoccurring claimants and typically classifies these individuals as job-attached. With 15,000 to 17,000 unemployment insurance claimants, it could be estimated approximately 5,000 to 6,000 of these individuals would not be job-attached.

As part of the committee discussion regarding the importance of focusing services, a representative of Job Service North Dakota testified the current data collection system does not specifically code the reason for a claimant leaving employment and the system does not collect long-term data regarding an individual's contact with Job Service North Dakota.

The committee received testimony that typically the state provides responsive services to address needs, but preventative services, such as internships, mentorships, and career education in kindergarten through grade 12, could be implemented to help address the problem of reoccurring unemployment.

The committee requested and received information regarding the state's talent strategy and the key issues of workforce and attracting and retaining young people and young families. The committee received testimony that North Dakota is faced with barriers to implementing an effective statewide talent initiative to address the workforce skill shortages in the state, including:

- Lack of quantitative data or workforce intelligence from business on current and projected worker shortage and skill requirements;
- Lack of a coordinated statewide talent recruitment strategy; and
- The fact that North Dakota employers are not proactive enough in addressing their workforce issues.

The committee received information that the North Dakota Workforce Development Council, the North Dakota Youth Development Council, and the North Dakota State Commission on National and Community Service have begun strategic planning regarding workforce and skill shortages. In the strategic planning process, it was determined the role of the system should be to prepare the workforce. The primary considerations in carrying out this role include:

- Workforce intelligence needs to be the basis for all decisions;
- Career promotion needs to replace career information;
- There needs to be a move to a demand-driven service industry model, which focuses on target industry clusters;
- There is a need to expand the workforce participation rates;
- It is important to provide timely customized workforce training to meet business demands; and
- The state should adopt a common statewide talent strategy.

The outcome goals of the North Dakota talent strategy adopted as a result of the strategic planning are to increase the quantity and quality of North Dakota's workforce and to transition from a workforce to a talent force through a workforce improvement focus.

A representative of the Division of Workforce Development testified that 10 areas that need continuous improvement are:

1. Ensure council and commission leadership in attracting, retaining, and expanding talent by:
    a. Making all decisions based on workforce intelligence;
    b. Seeking both vertical and horizontal alignment with demand;
    c. Building strategic talent partnerships with the private sector and targeted industry clusters;
    d. Forging workforce system partnerships to achieve success in all talent initiatives; and
    e. Developing broad public awareness and understanding of North Dakota's workforce needs.
2. Develop a dynamic workforce intelligence system with the vital information needed to confront North Dakota's talent crisis and to assess progress in ameliorating the crisis.
3. Disseminate key workforce intelligence to all stakeholders, businesses, and partner leadership and staff so all North Dakotans may take appropriate actions to meet the workforce needs of individuals and businesses.
4. Focus on workforce improvement, preparation, and lifelong learning by improving the quality and quantity of training and education available to North Dakota's residents, ensuring the offerings respond to employer and skill demand, and making these development opportunities affordable and accessible.

5. Increase the labor force participation rate and expand the available talent pool by reaching, serving, preparing, and connecting those not currently in the labor force, including target populations.
6. Give emphasis to the emerging worker talent pipeline by focusing on young people, improving the connections between school and work, promoting demand careers, and encouraging workers to stay in North Dakota.
7. Build stronger workforce system partnerships to increase efficiency, effectiveness, and accountability through reducing duplication; sharing resources; and adopting a common action agenda and strategies for talent attraction, retention, and expansion.
8. Improve the workforce system interface with employers and targeted industry trade associations to more effectively meet their workforce needs by developing strategic partnerships and ensuring service responsiveness.
9. Promote North Dakota as a great place to live and work to attract and retain talent.
10. Promote inclusion of soft skills and work readiness into all training and education offerings.

The committee received the following specific recommendations to support the work of the Economic Development Committee:

1. Provide for workforce intelligence studies;
2. Create an out-of-state talent attraction initiative;
3. Provide for foreign worker recruitment;
4. Implement youth retention strategies, which include:
    a. A state-funded internship program;
    b. Funds for the North Dakota University System to provide expanded technical assistance and outreach to employers to increase participation in the higher education internship program;
    c. Study, develop, and implement a career promotion program for target industry occupations as a method to supplement the work of career counselors and formal career guidance programs in secondary schools; and
    d. Expand the Job Service North Dakota software that will provide options to data mine and track numbers of job listings to a Level IV spider; and
5. Formalize the role of the Department of Commerce Division of Workforce Development.

The committee considered a bill draft that would have required the Department of Commerce to establish and implement a program to attract out-of-state workers and would have required the Division of Workforce Development to study, develop, and implement strategies to assist North Dakota businesses in recruitment of permanent immigrants to fill high-demand, high-skill jobs. These attraction and recruitment provisions, as amended, are included in the business initiative bill.

The committee considered a bill draft that would have provided for a Job Service North Dakota study of chronic unemployment and soft skills training and would have provided for an appropriation to expand the Job Service North Dakota web site spider program to identify job listings available in North Dakota. These study and appropriation provisions are included in the business initiative bill.

The committee considered a bill draft that in part would have expanded the duties of the Department of Commerce Division of Workforce Development to include development and implementation of the state's talent strategy, development and implementation of a statewide intelligence coordination strategy, and administration of the FINDET system; would have provided for the Commissioner of Commerce to make biennial reports on the status of workforce development; and would have provided for the Department of Commerce to study workforce intelligence. These workforce provisions are included in the business initiative bill.

Attracting and Retaining Young People and Young Families - Marketing and Incentives

As a result of the small group discussions during the Business Congress, the committee modified this key issue to reflect the need to attract young families as well as young people. The committee requested and received information regarding possible legislative actions that could be taken to address the key issue of attracting and retaining young people and young families.

The committee considered a bill draft that would have modified the structure of the business climate study for the 2007-08 interim to include young professionals in the focus groups and Business Congress. This business climate study provision is included in the business initiative bill.

The Tax Commissioner testified that although the Tax Commissioner plays a role in economic development, one challenge that the Legislative Assembly needs to recognize is because the Tax Department performs tax regulation, it is important for the department to keep at arm's length in business dealings. The Tax Commissioner is addressing this challenge through reorganization of the department and the Tax Commissioner requested legislative support as this reorganization is undertaken.

As it related to retention of young people and young families, the committee discussed the difficulties of establishing appropriate criteria for tax incentives for workforce retention.

The committee considered a bill draft that in part would have created a tax credit for business expenses associated with recruitment of employees. This tax credit, as amended, is included in the business initiative bill.

At the committee's request, a representative of the Bank of North Dakota provided the committee with background information and suggested improvements

regarding the beginning entrepreneur loan guarantee program, partnership in assisting community expansion (PACE) program, and Biodiesel PACE program. Suggested improvements were:

- Beginning entrepreneur loan guarantee program - Increase the total volume that the Bank of North Dakota can guarantee under the program to $8 million in outstanding loans and update definitions;
- PACE program - Provide a higher appropriation amount for the next biennium; and
- Biodiesel PACE program - Maintain the 2007-09 biennium appropriation at the same level as the 2005-07 appropriation and update definitions.

The committee received testimony that as interest rates increase the PACE program becomes a more valuable incentive.

The committee considered a bill draft that would have increased from $4 million to $8 million the amount of loans outstanding the Bank of North Dakota may guarantee under the beginning entrepreneur loan guarantee program; that would have updated the eligibility requirements under the beginning entrepreneur loan guarantee program, updating the definition of biodiesel production facility for purposes of the Biodiesel PACE program; and that would have appropriated funds for the Biodiesel PACE fund and the PACE fund. These business incentive provisions, as amended, are included in the business initiative bill.

The committee received testimony that Bank of North Dakota student loans may be another area in which the state can positively impact the attraction and retention of young people and young families. Over the last couple years, interest rates have been at historic lows with fixed rates at between 3 and 4 percent. However, there have been federal changes that impact new loans, resulting in fixed rates at 6.8 percent. Testimony indicated that student debt increases as tuition costs increase and interest rates increase, with a current average student debt of $19,000.

The committee received testimony that the Bank of North Dakota is doing three things related to student loans. First, the Bank has a fixed rate option that is a state alternate loan program for students who have reached the maximum available from traditional loans; second, current federal loans have a 3 percent initiation fee that the Bank pays; and third, the federal government is silent on who pays the 1 percent guarantee fee and the Bank has chosen to pay this expense.

The committee received testimony from representatives of the Department of Commerce regarding current efforts and proposals to target marketing and offer incentives to young people and young families.

The committee received information regarding the North Dakota ambassadors program, including a program overview, review of current marketing and incentive efforts, the greatest challenges being faced by the program, greatest opportunities that can be recognized through the program, proposed modifications to current marketing and incentive efforts, and specific program improvement suggestions.

Testimony indicated there are approximately 1,000 North Dakota ambassadors who reside in 26 states and six countries. One of the challenges the program faces is finding ways to contact the 2.1 million former North Dakotans who are living outside the state. Actions that have been taken to address this challenge include contacting alumni organizations, considering expanding the audience, and increasing the relationship with Job Service North Dakota to get information into the schools in the state.

Attracting and Retaining Young People and Young Families - Higher Education Recruitment and Responsiveness

The committee requested and received information from the North Dakota University System regarding current efforts and proposals to recruit students to North Dakota institutions of higher education; current and proposed efforts to promote seamless lifelong learning; and current and proposed efforts to provide a demand-driven education that is responsive to job market needs in the state. The committee members received a broad range of information from representatives of the North Dakota University System, including information regarding:

- The North Dakota University System enrollment management-service plan, which includes enrollment strategies of expanding the state's population base;
- Recruitment of international students as well as statistics on international educational exchange in North Dakota;
- Online education services, which although they do not automatically bring students to this state, they do take a first step in getting out-of-state students familiar with North Dakota and the North Dakota University System; and
- Articulation and transfer between North Dakota institutions as well as the possibility of addressing articulation and transfer with out-of-state education programs.

The committee received testimony from a representative of the North Dakota University System that the state's future is tied to education from preschool to graduate school and the P-16 Education Task Force has been active in evaluating what kind of changes need to be made to keep up with the state's needs. Additionally, the committee received testimony that the North Dakota University System is taking actions to address incentives for nonresident students to attend school in North Dakota, is considering flexibility for tuition, and is expanding recruitment in the states that have university systems that have reached capacity.

The committee received an overview of the services of CCbenefits, Inc. Under the services of CCbenefits, Inc., the North Dakota community colleges perform studies and forecasts on the economic impact of the college, enhancing the college's ability to better serve its stakeholders while addressing economic development.

The committee considered a bill draft that would have specified the information provided in the State Board of Higher Education annual performance and accountability report to include economic development information and student recruitment information, would have created a higher education new program startup matching grant program to be administered by the State Board of Higher Education, and would have provided for a State Board of Higher Education study of the implementation of the services of CCbenefits, Inc. These higher education provisions are included in the business initiative bill.

Image - Marketing, Message Training, and Tourism

The committee requested and received information regarding current efforts and proposals regarding the key issue of image and the related action items of supporting and funding tourism marketing, media relations, and internal image campaign; expanding message training for service sector employees; and authorizing incentives for tourism facilities.

The committee received testimony that the strategy of the Department of Commerce Division of Tourism includes continuing to communicate the legendary brand and focus on what makes North Dakota rich in culture and history. Lewis and Clark and Sakakawea will continue to be featured legends; additionally, a broader city experience strategy has been developed, consistent with the legendary brand but focusing on the city weekend getaway experience.

The committee reviewed the Division of Tourism statistics regarding the 2005 return on investment for the advertising campaign, indicating for every $1 spent, $81 was returned. Research shows advertising improves image. Some of the greatest challenges faced by the Division of Tourism include limited resources. The division's resource challenges include funding dedicated staff, providing funding to host all of the travel writers who express an interest in writing about North Dakota, and the cost of funding travel expenses to bring media members to the state.

The committee received information regarding the current efforts and proposals of the Department of Commerce regarding business media relations and the internal image campaign. The Department of Commerce specifically addresses image in its business media relations and internal image campaign. For purposes of business relations, areas with room for improvement include providing outgoing media trips, creating and distributing media kits, creating a business photo gallery, and creating an enhanced resource network. In response to the initiative of the 2005 Business Congress, the Department of Commerce implemented an internal image campaign that was launched in March 2006.

The committee received information regarding the current efforts and proposals of the Department of Commerce regarding message training for employees. Current efforts include the Lewis and Clark hospitality training program and the rest area brochure fulfillment program. Future goals include a statewide visitor information center employee training program and a statewide hospitality training program. Specific challenges related to message training for service sector employees include establishing the required buyin and support from businesses and the high rate of labor turnover in the hospitality industry.

The committee received information regarding current and proposed incentives of the Division of Tourism for tourism facilities. Challenges faced by the Division of Tourism include the minimal amount of dedicated tourism dollars available, the lack of a central coordinator for tourism facilities, and the typical funding requirement that a business be a primary sector business in order to qualify for incentive dollars.

The committee considered a bill draft that would have expanded the Department of Commerce image information program to include the private sector and would have created a Department of Commerce Division of Tourism visitor information center program. These provisions are included in the business initiative bill.

The committee considered a bill draft that would have created a tourism PACE fund and would have created a rural community tourism enhancement grant program to provide matching funds to communities. The rural community tourism enhancement grant program provision is included in the business initiative bill.

The committee considered a bill draft that in part would have created a tax credit for contributions to tourism organizations. This tax credit was not included in the business initiative bill.

The committee considered a bill draft that in part would have provided assistance for research, development, technology, and marketing needs to aid in the expansion of existing and development of new tourism-based businesses. This tourism business assistance provision, as amended, is included in the business initiative bill.

Transportation

The committee requested and received information from regional Part 135 private charter airline operators regarding actions that the state might take to increase economic development through private air charter businesses. Part 135 operators are a federal class of operators who meet Federal Aviation Administration requirements that allow them to charge for their services.

The committee requested information from Part 135 operators in the communities of Grand Forks, Fargo, Bismarck, Dickinson, and Williston asking if the state's objective is to increase economic development through private air charter businesses, how the current system could be modified focusing on changes that could be made at the state level and identification of specific improvements that could accomplish this goal of increasing economic development through private air charter businesses. The committee received written responses from Part 135 operators in Bismarck and Dickinson and received testimony from a Part 135 operator from Bismarck.

The two written responses raised the issues of the cost of doing business, including insurance requirements. Additionally, the Bismarck operator raised the concern of how some operators have found a way to avoid the cost of having to meet the Part 135

requirements, including avoiding the high cost of commercial insurance and raised a concern regarding the city of Bismarck's financial support to a startup operation and how this negatively impacts the private sector that is competing with the startup.

The committee received testimony from one of the committee consultants that this high cost of doing business for Part 135 operators is related to several factors, including the cost of fuel, equipment, and insurance. Because North Dakota private air charter operators do not have a high volume of flights, the costs are proportionately higher for these businesses than for similar businesses in states that have higher volumes of flights. However, Part 135 operators in other states have concerns similar to those in North Dakota.

The committee received a report prepared by the Upper Great Plains Transportation Institute entitled *Impacts of Transportation Infrastructure on the Economy of North Dakota*, which was prepared in response to the directive of Section 23 of Senate Bill No. 2032, a recommendation of the last interim's business climate study. The report included an evaluation of how improvement to the transportation infrastructure of this state might enhance the business climate and the state's competitive position in economic development. The 2005-06 interim Transportation Committee also received this report.

A representative of the Upper Great Plains Transportation Institute testified that the institute will work with the Department of Transportation to help address transportation issues during the 2007 legislative session. A representative of the Department of Transportation testified the Department of Transportation worked closely with the Upper Great Plains Transportation Institute in performing the study and preparing the report. The committee received testimony that although the Department of Transportation is already implementing some of the recommendations in the report and the report results will assist the department in making future decisions in transportation investments, it is important for the department and policymakers to continue to be sensitive to the business needs in the state.

A representative of the Department of Transportation testified that as the Legislative Assembly makes decisions in the future, the department requests the following key points be taken into account:

- Investing in the transportation system is a good and sound investment with an average cost-benefit ratio return of 4.89 percent on projects in the state.
- North Dakota's investment in the transportation system is critical to the long-term growth of its economy.
- Construction inflation, which has been approximately 25 percent, will not allow the state to proceed at the baseline analysis that was used in the report. The funding level is closer to a 75 percent funding level when inflation is taken into account.

A representative of the Department of Transportation testified that one item that was not addressed in the report was the issue of intermodal transportation and its role in growing the state's economy. Intermodal facilities are essential to the state's ability to continue to efficiently and effectively move goods to the marketplace and grow the state's economy. Testimony indicated the department is working with communities to address intermodal transportation issues and at this point there is no need to modify state law because the laws allowing for the creation of a port authority and a commerce authority, as well as the ability to enter joint powers agreements, allow the state to proceed with the development of intermodal projects.

The committee considered a bill draft that would have created an airport economic development fund to be administered by the Aeronautics Commission and would have provided for an appropriation. These airport economic provisions, as amended, are included in the business initiative bill.

Higher Education - Commercialization of New Technologies and Intellectual Property

The committee used the recommendations of the Department of Commerce and State Board of Higher Education study of commercialization of new technologies and intellectual property as a basis for discussing the action items of commercialization and intellectual property.

Testimony indicated that if North Dakota provided for a 25 percent tax credit for research and development, North Dakota would be the leader in the country by offering the highest tax incentive for research and development.

One of the committee's consultants testified the definition of the term "base" used in calculating the research and development tax credit could be changed. The base requirement could be taken away entirely or it could be modified to limit the base calculation to research and development performed within the state of North Dakota. Another change offered by the consultant was that the committee could consider allowing a business to sell tax credits that remain unused. The committee discussed the fact that most companies in the state do not need the tax credit and therefore the value of transferability is limited.

The committee considered a bill draft that in part would have modified the open records law relating to research and development performed by public entities, would have created a Department of Commerce Division of Innovation and Technology, and would have expanded the research and technology tax credits. The Division of Innovation and Technology and the research and technology tax credit provisions are included in the business initiative bill.

The committee considered a committee member-sponsored bill draft that would have expanded the research and technology tax credits, including an incentive to conduct research in rural areas in the state. This research and technology tax credit provision was not included in the business initiative bill.

The committee considered a bill draft that in part would have created a business and tourism acceleration commission to provide assistance for the research,

development, technology, and marketing needs of businesses and entrepreneurs in the state to aid in innovation for new or existing businesses. This business assistance provision, as amended, is included in the business initiative bill.

The committee considered a bill draft that would have expanded the agricultural business investment tax credit to include investments in livestock feeding, handling, milking, or holding operations that use distillers grain produced as a byproduct at an ethanol or biodiesel plant. This tax credit provision, as amended, is included in the business initiative bill.

Higher Education - Centers of Excellence

The committee used the recommendations of the State Board of Higher Education and Centers of Excellence Commission provided as part of the report on the status of the centers of excellence as a basis for discussing the action items relating to the centers of excellence program.

The committee considered a bill draft that would have modified the centers of excellence program, including providing for independent, expert review at the application phase and requiring followup monitoring after designation as a center of excellence; would have distinguished between centers for commercialization, workforce, and infrastructure; and would have provided that the Department of Commerce provide administrative services for the Centers of Excellence Commission. These centers of excellence provisions are included in the business initiative bill.

Trade and Other Items

The committee used the recommendations of the Commissioner of Commerce provided as part of the report on the status of the International Trade and Business Office as a basis for discussing the key issue of trade.

A representative of the Department of Commerce Division of Economic Development and Finance International Business and Trade Office testified the International Business and Trade Office does not expect the Bank of North Dakota to change its mode of operation; however, it supports having a program through which a North Dakota business can request financial assistance in accomplishing its first experience with international exports.

The committee considered a bill draft that in part would have created a business and tourism acceleration commission to provide assistance for the research, development, technology, and marketing needs of businesses and entrepreneurs in the state to aid in growth of international business through trade. This trade business provision, as amended, is included in the business initiative bill.

In response to the recommendations included in the Department of Commerce study of business incentives, the committee considered a bill draft that would have required biennial tax expenditure reports and business incentive reports, would have increased the cap on the seed capital investment tax credit, would have provided sales tax exemptions for tourism equipment and wireless service provider equipment, would have repealed the beginning entrepreneur income tax deduction, and would have provided for a Legislative Council study of issues relating to wireless service providers. These business incentive provisions, as amended, are included in the business initiative bill.

Recommendation - Business Initiative Bill

The committee recommends House Bill No. 1027 to address the broad range of economic development and business climate issues addressed through the business climate study, through the venture and risk capital study, and as a result of the receipt of reports. The bill consolidates, as amended, the bill drafts considered by the committee into a single business initiative bill. The resulting bill:

- Amends Section 17 of 2005 Senate Bill No. 2032, the provision that provides for a two-interim business climate study. This provision retains the requirement of a minimum of six focus group discussions but removes the specific references to what groups need to specifically be addressed at each focus group and adds young professionals to the already existing two groups that need to be addressed in the focus groups.
- Creates a new section to NDCC Chapter 2-05 relating to the Aeronautics Commission. This provision creates a rural airport economic development fund and provides for a $5 million appropriation. The money in the fund may be used for matching fund grants to a public airport that is owned or operated by a public entity or airport operated by an airport authority. A recipient may use funds for the following purposes:

  Automated weather-reporting facilities;

  Computers and terminals to obtain weather information relating to flight plans;

  Equipment to enhance flight operational safety;

  Obstruction removal to facilitate global positioning satellite all-weather instrument approach technology;

  Construction, rehabilitation, or extension of runway areas; and

  Development of airport infrastructure.
- Amends NDCC Section 54-17-07.3, which authorizes the Industrial Commission, acting as the Housing Finance Agency, to establish certain housing finance programs. Specifically, the scope of the mortgage loan financing program is expanded to include assistance in the development of low-income to moderate-income housing or to assist a developing community address unmet housing needs or alleviate a housing shortage and the scope of the housing grant program is expanded to include assisting a developing community address unmet housing needs or alleviate a housing shortage.

- Provides for a Legislative Council study of housing needs during the 2007-08 interim.
- Expands the definition of "agricultural commodity processing facility" for purposes of the agricultural business investment tax credit law, to provide an agricultural commodity processing facility may include a livestock feeding, handling, milking, or holding operation that uses a byproduct from an ethanol or biodiesel plant located in this state.
- Amends the laws relating to the beginning entrepreneur loan program by amending the definition of "beginning entrepreneur" by simplifying the net worth limitations and increasing from $4 million to $8 million the maximum amount the Bank of North Dakota may guarantee in loans under the beginning entrepreneur loan program.
- Amends the laws relating to the Biodiesel PACE program and provides appropriations for the Biodiesel PACE program and the PACE (flex PACE) program. Specifically, the provisions amend the definition of "biodiesel production facility" for purposes of the Biodiesel PACE program; appropriates $1.2 million of general fund money to the Bank for the Biodiesel PACE program; and appropriates $8 million to the Bank for the PACE (flex PACE) program.
- Creates a Department of Commerce-administered rural community tourism enhancement grant program, which provides matching funds to cities of under 8,000 for the purpose of helping rural communities access public or private grants for helping communities identify and enhance their unique characteristics in attracting visitors and improve the appearance of the rural communities. The maximum grant is $10,000 per applicant, with a maximum total of $100,000 per biennium.
- Creates a Department of Commerce Division of Tourism visitor information center assistance program.
- Expands the Department of Commerce image information program to require services be offered to the public sector.
- Creates a business and tourism acceleration commission to administer grant programs for innovation, tourism, and international trade. The language is modeled on the APUC law and directs the commission to provide necessary assistance for the research, development, technology, and marketing needs of businesses and entrepreneurs to aid in innovation for new or existing businesses, expansion of existing and development of new tourism-based businesses, and growth of international business through trade.
- Requires the Commissioner of Commerce to create a biennial tax expenditure report and a state business incentive expenditure report.
- Increases the annual cap of the seed capital investment tax credit from $2.5 million to $5 million.
- Expands the sales tax exemptions to include tourism equipment and wireless service provider equipment.
- Provides for a Legislative Council study of wireless service providers during the 2007-08 interim.
- Repeals the beginning entrepreneur income tax incentives.
- Creates a tax credit for business expenses associated with recruitment for hard-to-fill employment positions.
- Creates an internship employment tax credit.
- Creates a Department of Commerce Division of Innovation and Technology.
- Creates a new section to NDCC Chapter 15-20.1 directing the Department of Career and Technical Education to administer a program to provide matching fund grants to teachers and schools for the purpose of funding innovative science, technology, or innovation programs for students in kindergarten through grade 12. The maximum amount of a grant is $7,500, the department is required to consult with the Department of Commerce Division of Innovation and Technology in making award decisions, and $45,000 is appropriated to the Department of Career and Technical Education for the funding of the innovation grants.
- Amends NDCC Section 57-38-30.5 increasing the research and experimental expenditures tax credit from 8 percent of the first $1.5 million in research expense and 4 percent of research expenses in excess of $1.5 million to 25 percent of the first $100,000 in research expenses and 20 percent of research expenses in excess of $100,000; redefining "base period research expenses" to only include research conducted in North Dakota; and allowing taxpayers to "assign" unused tax credits.
- Modifies the requirements of the Department of Commerce target industries report to the Legislative Council during the 2007-08 interim to include a study of cluster industries related to the state's target industries, and to include an inventory of innovation assets relevant to the target and cluster industries, how target and cluster industries may be better aligned with state economic development activities, and how to stimulate development in target and cluster industries.
- Provides statutory requirements for required elements of the State Board of Higher Education annual performance and accountability report, including economic development information and student recruitment information.
- Creates a new startup grant program for higher education programs through which grants are awarded on a competitive basis with a matching fund requirement. The State Board of Higher Education is required to consult with the

Department of Commerce and Job Service North Dakota in making award determinations.

- Requires the Department of Commerce Division of Economic Development and Finance International Business and Trade Office to work with the State Board of Higher Education to implement international business expertise with students of higher education.
- Provides for the State Board of Higher Education to study implementation of services of CCbenefits, Inc., and report to the Legislative Council during the 2007-08 interim.
- Modifies the centers of excellence program to provide for making a distinction among three types of centers--commercialization, workforce, and infrastructure; to provide that the Department of Commerce provide the Centers of Excellence Commission with staff services, including assisting with preaward reviews and postaward monitoring; requiring the commission to provide for independent expert review of complete applications to establish viability and likelihood of desired economic impact; requiring the commission to conduct postaward monitoring of centers for 6 to 10 years; requiring an applicant to show due diligence in putting together the proposal and high likelihood of viability and success; and clarifying that funds are not to be distributed if private sector participants stop participating.
- Provides for a Job Service North Dakota study and report to the Legislative Council during the 2007-08 interim regarding chronic unemployment and soft skills training for the chronically unemployed and as an element of workforce training; the evaluation of costs and effectiveness of current unemployment, reemployment, and workforce training used by Job Service North Dakota; the progress and results of the chronic unemployment demonstration project; and consideration of appropriate funding for implementing recommendations.
- Provides a $600,000 appropriation to Job Service North Dakota for increasing the level of the web site spider program used to identify job listings available in North Dakota.
- Expands the duties of the Department of Commerce Division of Workforce Development adding the duties of developing and implementing the state's talent strategy and a statewide intelligence coordination strategy, which includes establishing details of the talent strategy, developing a consolidated biennial statewide strategic plan for the state's system for workforce development, workforce training, and talent attraction; continuously reviewing the state's workforce development system; developing a system of performance and accountability measures for the state's workforce development system; requiring that intelligence be disseminated to partners; requiring that FINDET data be a central source of intelligence; and requiring that the Division of Workforce Development administer the FINDET system.
- Provides for a Department of Commerce study of workforce intelligence needs in the state and a report to the Legislative Council during the 2007-08 interim.
- Requires the Division of Workforce Development to administer a higher education internship program to increase use of higher education internships, including focusing on internships in target industries; providing services to employers, communities, and business organizations; collecting and analyzing data on use of internships; marketing internships to private and public sector employers; consulting with the State Board of Higher Education to develop strategies to decrease barriers to use of internships; and developing a program to provide incentives for state and local government employers to use internships.
- Provides for the Department of Commerce, in consultation with the State Board of Higher Education, during the 2007-08 interim to study and report to the Legislative Council the status of higher education internship opportunities in the state and strategies to increase higher education internships in the state.
- Provides for the Department of Commerce to provide career education and career promotion services.
- Provides for the Department of Commerce, in consultation with the Department of Career and Technical Education, Job Service North Dakota, and the Superintendent of Public Instruction, to study and report to the Legislative Council during the 2007-08 interim regarding career education needs of public school students.
- Provides for a Department of Commerce-administered talent attraction program to attract workers from out of state.
- Provides for a Division of Workforce Development program for foreign worker recruitment to implement strategies to assist North Dakota businesses in recruitment of permanent legal immigrants to fill occupations that are in high demand and require high skill.

VENTURE AND RISK CAPITAL STUDY

Legislative Background

2005 Legislation

House Bill No. 1133 modified the definition of "business" for purposes of eligibility under the PACE program, expanding the definition from allowing for targeted service industries as defined by the Bank of North Dakota to allowing for targeting industries as defined by the Bank.

House Bill No. 1526 required the Industrial Commission to establish at the Bank of North Dakota a guaranty program for a business located in the state which contracts with a business located in the state which is either owned by one of the five North Dakota

Indian tribes or which is an American Indian-owned small business located in the state. The Industrial Commission is required to limit participation in the guaranty program so that the cumulative value of the guaranteed portion of the receivables under the program does not exceed $5 at any one time. The bill is effective through June 30, 2007.

Senate Bill No. 2032 is addressed under **BUSINESS CLIMATE STUDY**.

Senate Bill No. 2147 authorized the Agriculture Commissioner to develop a source-verified and process-verified beef marketing program and authorized APUC to administer grants related to nature-based tourism and to provide a technical assistance grant program for value-added businesses. This bill also directed the Bank of North Dakota to establish and administer a livestock loan guarantee program, which will expire June 30, 2009.

Senate Bill No. 2217 created the Biodiesel PACE fund to buy down the interest rate on loans to qualified biodiesel production facilities. The Bank of North Dakota administers the fund.

Senate Bill No. 2281 made the agricultural business investment tax credit available to corporations, limited the credit to investments in the first 10 businesses that qualify, increased from $20,000 to $50,000 the annual credit a taxpayer may obtain for agricultural business investments and imposed a lifetime limit of $250,000 in credits, reduced from 15 to 5 years the time which an investment tax credit may be carried forward, and allowed a credit for a taxpayer whose investment in an agricultural commodity processing facility was made before 2005 and did not qualify for the tax credit because of the limitation on the seed capital investment tax credit. This credit is 30 percent of the amount invested by the taxpayer, but the taxpayer may claim no more than one-fourth of the credit in any taxable year.

2003-04 Interim Study

Under House Bill No. 1504 (2003), the Economic Development Committee studied the state's business climate, including the creation of an index of key objective measurements that address the state's competitiveness with other states; the consideration of methods of creating business partnerships with North Dakota Indian tribes in order to increase primary sector business growth in the state, with a focus on business opportunities that may be available to North Dakota Indian tribes through the United States Small Business Administration 8(a) business development program; and active participation in the activities of the Primary Sector Business Congress. The committee recommendations for the 2005 legislative session included Senate Bill No. 2032, which among other things, provided for this venture and risk capital study. Provisions of the bill which directly address venture capital are addressed under **BUSINESS CLIMATE STUDY**.

2001-02 Interim Study

Under Section 16 of Senate Bill No. 2019 (2001), the interim Commerce Committee studied the availability of venture capital, tax credits, and other financing and research and development programs for new or expanding businesses, including an inventory of the programs available; a review of the difference between public and private venture capital programs; an assessment of the needs of business and industry and the research and development efforts of the North Dakota University System; and a review of the investments of the State Investment Board and the feasibility and desirability of investing a portion of these funds in North Dakota. The committee did not make any recommendations with respect to this study.

1999-2000 Interim Study

Under Section 16 of House Bill No. 1019 (1999), the interim Commerce and Labor Committee studied the economic development efforts in the state, including the provision of economic development services statewide and the related effectiveness; the potential for the privatization of the Department of Economic Development and Finance; and the appropriate location of the North Dakota Development Fund, Inc., including the potential transfer of the fund to the Bank of North Dakota. While conducting this study, the committee received extensive testimony from a broad range of state, local, regional, and private sector parties interested in economic development, including the Bank of North Dakota, Department of Economic Development and Finance, Division of Community Services, Indian Affairs Commission, Job Service North Dakota, University System, Workforce Development Council, local development associations, Economic Development Association of North Dakota, Greater North Dakota Association, job development authorities, regional planning councils, and the Small Business Center. The committee considered the issues of venture capital, privatization and consolidation of state economic development efforts, population retention and demographics, and workforce development. In performing this study, the committee surveyed state agencies to determine the amounts of money being spent for economic development efforts. The committee recommendations for the 2001 legislative session included:

- House Bill No. 1039 - State venture capital fund. This bill would have provided for a North Dakota venture capital fund program under which a seven-member North Dakota venture capital authority would have designated a for-profit investment fund for lending to and investing private money in seed and venture capital partnerships and would have provided for a one-time issuance of $5 million of state tax credits to the authority to offset losses under the program. The bill failed to pass the House.
- House Bill No. 1040 - Entrepreneur seed fund. This bill would have established a North Dakota entrepreneur seed fund program under which a nine-member North Dakota entrepreneur seed fund board would administer the fund, which was designed to be available to local entrepreneur seed fund applicants on a 500 percent local fund match basis to invest in North Dakota early-stage companies and small companies through equity or

equity-type investments. The bill would have provided for a $3 million appropriation from the general fund to fund the program for the 2001-03 biennium. The bill failed to pass the House.

- House Bill No. 1041 - Seed capital investment tax credit requirements. This bill would have allowed the seed capital tax credit to be claimed on the state income tax short form, lessened the requirements to be classified as a qualified business under the seed capital investment tax credit law, allowed taxpayers to claim the seed capital investment tax credit for any amount up to $50,000, allowed a seed capital investment tax credit to exceed 50 percent of the taxpayers' tax liability, provided seed capital investment tax credits for investments in one qualified business may not exceed $250,000, decreased certain limitations on how a qualified business may use a seed capital investment, and increased the annual aggregate amount of seed capital investment tax credits from $250,000 to $500,000. Although the bill failed to pass the House, House Bill No. 1413, which was very similar to House Bill No. 1041, did pass.
- House Bill No. 1042 - Venture capital corporation incorporation requirements. This bill decreased the financial requirements for venture capital corporations to incorporate in the state.
- Senate Bill No. 2032 - Commerce Department. This bill consolidated the Division of Community Services, Department of Economic Development and Finance, and Tourism Department into the Department of Commerce administered by the Commissioner of Commerce; created the North Dakota Commerce Cabinet; and allowed for creation of a privately funded North Dakota Economic Development Foundation.
- Senate Bill No. 2033 - Renaissance zones. This bill revised the renaissance zone law. Among the changes, the bill authorized a statewide renaissance fund corporation, provided that an income tax exemption is effective beginning the year of the purchase or lease, removed the requirement that a petition for investment in a renaissance zone must include a plan for sale or refinancing that results in proceeds equal to or in excess of the proportional investment made by the renaissance fund corporation, provided that a taxpayer must be current on all taxes in order to be eligible for a tax exemption or credit under the renaissance zone law, and allowed a city with a zone of less than 20 blocks to expand up to 20 blocks and allow these expanded blocks to have renaissance zone status for up to 15 years.

1997-98 Interim Study

Under Section 12 of Senate Bill No. 2019 (1997), the interim Commerce and Agriculture Committee studied the economic development functions in this state, including the Bank of North Dakota programs, Technology Transfer, Inc., North Dakota Development Fund, Inc., the Department of Economic Development and Finance, and other related state agencies. The committee did not make any recommendations with respect to this study.

Testimony and Committee Considerations

The committee conducted the venture and risk capital study as part of the business climate study and also considered relevant reports received by the committee. The business climate study focus group activities specifically addressed the issue of venture and risk capital. Additionally, the committee received a report from the Bank of North Dakota regarding the status of the Bank's investments in alternative and venture capital investments and early-stage capital funds under NDCC Section 6-09-15(4)(c), a report from the Department of Commerce on the department's study of business incentives, and a combined report from the Department of Commerce and the chancellor of the University System on the outcome of the study of incentives the state could adopt to serve as catalysts for stimulating more efficient commercialization of new technologies and of the study of the state's intellectual property laws as they relate to the protection of intellectual property rights.

Recommendations

The committee recommendations relating to the venture and risk capital study are addressed under **BUSINESS CLIMATE STUDY**, **Recommendation - Business Initiatives Bill**.

EDUCATION COMMITTEE

The Education Committee was directed by Section 16 of House Bill No. 1013 to study the state's elementary and secondary education system, including key measurements of student progress, programs that address the state's competitiveness with other states, costs incurred by the state relating to implementation of the No Child Left Behind Act, and the most effective means of using taxpayer dollars at the state and local levels to ensure the best possible education for the children of this state.

The Legislative Council assigned to the committee the responsibility to receive reports regarding the financial condition of schools, school district employee compensation, student scores on recent statewide tests of reading and mathematics, requests for and waivers of accreditation rules, requests for and waivers of statutory requirements governing instructional time for high school courses, the failure of any school board to meet the statutory threshold for increasing teacher compensation, implementation of a policy to assess the English communication skills of faculty members and teaching assistants at institutions of higher education, and the State Board of Higher Education's long-term finance plan.

Committee members were Senators Layton W. Freborg (Chairman), Robert S. Erbele, Michael A. Every, Tim Flakoll, Gary A. Lee, Tom Seymour, and Harvey Tallackson and Representatives Stacey Dahl, C. B. Haas, Gil Herbel, Bob Hunskor, Dennis Johnson, RaeAnn G. Kelsch, Lisa Meier, David Monson, Phillip Mueller, Mike Norland, John Wall, and Steven L. Zaiser.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

PROVISION OF EDUCATION STUDY

Background

Constitution of North Dakota

Article VIII, Section 1, of the Constitution of North Dakota provides:

> A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Section 1 has not been changed since its enactment in 1889. Article VIII, Section 2, of the Constitution of North Dakota follows with the directive that:

> The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

Article VIII, Section 3, of the Constitution of North Dakota requires that "instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind."

Finally, Article VIII, Section 4, of the Constitution of North Dakota directs the Legislative Assembly to "take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements."

Although the Constitution of North Dakota makes no reference to the manner in which education should be funded, the system that was enacted by the Legislative Assembly has twice been the subject of a lawsuit.

Bismarck Public School District No. 1 v. State of North Dakota

In 1989, legal action was initiated for the purpose of declaring North Dakota's system of education finance unconstitutional. The complaint in *Bismarck Public School District No. 1 v. State of North Dakota* charged that disparities in revenue among the state's school districts had caused corresponding disparities in educational uniformity and opportunity and that these disparities were directly and unconstitutionally based upon property wealth.

On February 4, 1993, after hearing 35 witnesses and examining over 250 exhibits, the district court issued 593 findings of fact and 32 conclusions of law. The court also identified the following "constitutionally objectionable" features of the state's education funding system:

- Disparities in revenue that resulted from variations in school district taxable wealth;
- A 22-mill equalization factor that failed to equalize because it was so far below the state average general fund mill levy;
- Resources that were not taken into account by the education funding formula;
- A level of state support for education that failed to ensure substantial equality of resources for students in similarly situated districts;
- Inaccurate cost weighting factors;
- A flat-grant distribution system for tuition apportionment;
- A transportation aid formula that allowed some districts to obtain reimbursements in excess of their actual costs;

- A special education aid formula that advantaged some higher spending districts;
- A vocational education aid formula that exacerbated existing resource disparities;
- A school construction aid formula that was based on the unequal taxable wealth of districts;
- The maintenance of large ending fund balances by some wealthy districts; and
- The state's failure to ensure that resource differences among school districts were based on factors relevant to the education of students rather than on the unequal taxable wealth of school districts.

The district court declared the North Dakota school financing system to be in violation of Article VIII, Sections 1 and 2, and Article I, Sections 21 and 22, of the Constitution of North Dakota. The court directed the Superintendent of Public Instruction to prepare and present to the Governor and the 1993 Legislative Assembly plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

1993 Legislative Proposal by the Superintendent of Public Instruction - Legislative Response

The proposal that was prepared by the Superintendent of Public Instruction and presented to the Legislative Assembly in 1993 recommended:

- Per student payments be raised to $3,134;
- Special education be funded by reducing the 13 disability categories to 3 broad categories and assigning weighting factors to each;
- Vocational education be funded by assigning weighting factors to high-cost and moderate-cost programs;
- Transportation reimbursements be based on six density categories;
- The state fund education at the 70 percent level;
- There be a uniform county levy of 180 mills;
- Tuition apportionment be distributed in the same manner as foundation aid;
- Federal and mineral revenues in lieu of property taxes and districts' excess fund balances be considered in the funding aid formula;
- Districts be allowed to impose an optional levy of 25 mills above the 180-mill uniform county levy;
- All land be part of a high school district;
- Districts having fewer than 150 students be eliminated; and
- $25 million be placed in a revolving school construction fund.

Rather than implement the proposal of the Superintendent of Public Instruction, the Legislative Assembly increased per student payments to $1,572 and $1,636 for the first and second years of the biennium, respectively; increased the mill equalization factor from 21 to 23 and then 24; set weighting factors at 25 percent and then 50 percent of the five-year average cost per category; and capped transportation reimbursements at 100 percent and then 90 percent of the actual costs incurred by districts. The response of the Legislative Assembly generally was guarded because the case was on appeal to the North Dakota Supreme Court.

Bismarck Public School District No. 1 v. State of North Dakota - Appeal - North Dakota Supreme Court Decision

On January 24, 1994, the North Dakota Supreme Court issued its decision in *Bismarck Public School District No. 1 v. State of North Dakota*, 511 N.W.2d 247 (N.D. 1994). A majority of the Supreme Court justices indicated that there were three principal areas in need of attention--in lieu of revenues, equalization factors, and transportation payments. Three of the justices voted to declare the state's education funding system unconstitutional. Article VI, Section 4, of the Constitution of North Dakota, however, requires the affirmative vote of four justices before a statute can be declared unconstitutional.

Legislative Response

Each session since the Supreme Court's decision, the Legislative Assembly has increased funding for elementary and secondary education and changed the manner in which that funding was to be distributed. In 2005 the Legislative Assembly provided for per student funding of $2,765 for the first year of the biennium and $2,879 for the second year. The equalization factor was set at 38 mills and the Legislative Assembly provided for an increase of 3 mills each year thereafter. Weighting categories were reconfigured as were supplemental payments. Only school districts that levied at least 180 mills and maintained ending fund balances of less than 35 percent of their actual expenditures plus $20,000 could be eligible for supplemental payments. Minimum teacher salaries were set at $22,000 for the first year of the biennium and $22,500 for the second year, and $50.9 million was appropriated for teacher compensation payments.

In 1995 the Legislative Assembly appropriated $521,185,833 for elementary and secondary education. In 2005 the Legislative Assembly appropriated $702,605,996 for elementary and secondary education, including $33.5 million for transportation aid, $52.5 million for special education, and $71.6 million for tuition apportionment.

Williston Public School District No. 1 v. State of North Dakota

Allegations

Despite the ongoing efforts of the Legislative Assembly, another education funding lawsuit was filed in October 2003. In the case of *Williston Public School District No. 1 v. State of North Dakota*, nine school districts alleged that the state's system of funding education is inadequate and that it unfairly and arbitrarily results in widely disparate funding, inequitable and inadequate educational opportunities, and unequal and inequitable tax burdens. The districts also alleged:

- State funding for education is constitutionally inadequate, as evidenced by a 2003 Department of Public Instruction study, and further evidenced

by the fact that school districts are forced to make up the difference through increased taxation;

- The No Child Left Behind Act requires states to adopt challenging academic content standards and student achievement standards and to develop an accountability system, and the plaintiff districts lack adequate funds to operate and administer the programs and services necessary to meet these standards;
- Per student spending in a majority of school districts falls below the level needed to provide an adequate education to students;
- Plaintiff districts have lower than average costs per student and therefore fall below the standard of adequacy imposed by the state's constitution;
- Plaintiff districts lack adequate funds to purchase necessary textbooks, equipment, and supplies;
- The state provides no aid for the capital costs of school facilities other than through a low-interest state loan fund;
- Even districts with high property values are unable to generate sufficient revenue to meet the adequacy standards imposed by the state's constitution;
- Plaintiff districts have significantly less taxable valuation per student and must therefore tax at a higher rate than property wealthy neighbors;
- Mill levies vary significantly from district to district;
- Some districts have the authority to levy unlimited amounts while others cannot exceed 185 mills without a vote of the people or legislative authorization;
- The equalization factor does not sufficiently equalize or provide for the maintenance of an adequate and uniform system of public education;
- Each mill of school tax above the deduct contributes to inequities in school spending based on taxable wealth;
- Certain types of taxable wealth, such as revenues from oil, gas, and coal taxes paid in lieu of property taxes, are not subject to any equalization;
- The disparity in taxable valuation among districts is increasing;
- Disparities in average costs per student are not adequately equalized;
- Wealthy and poor districts receive the same tuition apportionment payment per student;
- North Dakota students are at risk of failing to become active and productive citizens; and
- Property poor districts are not as able as property wealthy districts to meet their students' education needs and to prepare them for college and the world of work.

The complaint included the following constitutionally objectionable features:

- Inadequate state funding;
- Disparities in costs per student;
- An equalization factor that fails to equalize;
- Low levels of state aid that fail to ensure adequacy and equality of resources;
- Inaccurate weighting factors;
- A flat-grant tuition apportionment payment that fails to recognize differences in taxable wealth;
- A special education funding formula that gives higher spending districts an advantage in obtaining state reimbursements;
- A vocational education funding formula that exacerbates existing resource disparities;
- A school facilities funding system that relies on the unequal taxable wealth of the districts;
- The payment of state aid to wealthy districts that maintain large ending fund balances; and
- The failure of the state to ensure that resource differences among school districts are based on factors relevant to the education of students and not on the unequal taxable wealth of districts.

Claim for Relief

In their claim for relief, the plaintiff school districts of Williston, Devils Lake, Grafton, Hatton, Larimore, Surrey, Thompson, United, and Valley City suggested:

- The state has a duty to establish an educational system and to maintain and adequately fund that system;
- Because of inadequate funding, the plaintiff districts cannot provide the educational opportunities mandated by the Constitution of North Dakota;
- The right to an adequate and equal educational opportunity is a constitutionally guaranteed fundamental right; and
- The present school finance system is constitutionally inadequate and infringes upon the plaintiff's right to an adequate and equal education.

The trial had been scheduled to begin in February 2006.

Agreement to Stay Litigation - Terms

One month before the start of the trial, the plaintiffs and the defendants in *Williston Public School District No. 1 v. State of North Dakota* determined:

> [I]t is desirable and beneficial for them and for the citizens of the State of North Dakota to stay this Act and provide the North Dakota Legislative Assembly the opportunity to settle, compromise, and resolve this Action in the manner and on the terms and conditions set forth in this Agreement.

The terms and conditions required that the Governor, by executive order, create the North Dakota Commission on Education Improvement and submit to the Legislative Assembly in 2007 an executive budget that includes at least $60 million more in funding for elementary and secondary education than the amount appropriated by the Legislative Assembly in 2005. In return, the plaintiffs agreed to stay the litigation until the close of the 2007 legislative session and at that time to dismiss the action without prejudice if the Legislative Assembly appropriated at least the additional $60 million and approved a resolution adopting the North Dakota

Commission on Education Improvement as a vehicle for proposing improvements in the system of delivering and financing public elementary and secondary education. The plaintiffs also agreed that if the conditions are met, they will not commence another action based upon the same or similar allegations before conclusion of the 2009 legislative session.

North Dakota Commission on Education Improvement

The North Dakota Commission on Education Improvement consists of the Governor or the Governor's designee, three school district administrators, a school district business manager, the chairman of the Senate Education Committee, the chairman of the House Education Committee, the Senate minority leader, one legislator appointed by the chairman of the Legislative Council, and the Superintendent of Public Instruction. The commission also has three ad hoc members--one representing the North Dakota Council of Educational Leaders, one representing the North Dakota Education Association, and one representing the North Dakota School Boards Association. Ad hoc members are entitled to participate in all discussions and deliberations but are not entitled to cast a vote. The commission is chaired by the Lieutenant Governor in his capacity as the Governor's designee.

Report of the Commission

The North Dakota Commission on Education Improvement was instructed to recommend ways in which the state's system of delivering and financing public elementary and secondary education could be improved and, within that charge, to specifically address the adequacy of education, the equitable distribution of funding, and the allocation of funding sources between the state and its school districts. The commission made periodic reports to the interim Education Committee. Although still in draft form, the report currently proposes an amalgamation of funding previously distributed as foundation aid, teacher compensation reimbursement, tuition apportionment, special education per student payments, and supplemental payments, with any new money appropriated by the Legislative Assembly in 2007.

Each school district would be given a single weighting factor that reflects the relative cost of providing education by that district and all current educational programs are likewise given their own factor. The base payment would be adjusted for school districts with per student taxable valuations that exceed 150 percent of the state average and for school districts that levy fewer than 170 mills. The amount of per student aid to which each school district is entitled is to be no less than 102 percent nor greater than 107 percent of the state aid allocated per new weighted student unit during the previous school year. The calculation for the 107 percent cap excludes equity payments received by a district.

The equity payment is a replacement for the existing supplemental payment and is designed to offset the loss of certain revenues by any school district whose imputed taxable valuation per student is less than 90 percent of the state average. Changes in the area of special education would require the state to assume liability for all excess costs incurred by school districts in serving the most costly 1 percent of students with disabilities. Changes in the area of school construction involve new equity criteria to determine school district eligibility for low-interest loans and financial incentives for school districts that are considering a reorganization.

The commission is suggesting that the Legislative Assembly provide incentives for the development of area career and technology education centers and for other cooperative efforts resulting in the delivery of career and technology education. In addition, the commission is suggesting that the Legislative Assembly provide funding to defray the startup costs of two additional area career and technology education centers.

Educational associations governed by joint powers agreements were viewed as a means by which school districts could provide equitable and adequate educational services despite the challenges posed by declining student numbers. As a result, the commission is suggesting that the general fund appropriation for such associations be increased to $2 million and that they be eligible for an additional $1 million in contingency funds.

The commission directed its efforts this year toward educational equity. In the future, the commission will address educational adequacy.

Committee Consideration

In documentation submitted to the committee, it was stated that the "proliferation of [education] programs has created a lack of simplicity and transparency, thereby making it difficult to understand how much financial support is actually being given to each school district." The commission's proposal was touted as providing both simplicity and transparency.

Committee members found it challenging to envision the consequences of the proposed formula changes and to understand fully the impact that such changes would have on school districts within their legislative districts and on school districts across the state. More importantly, the committee recognized that the proposal it had been given was still considered a draft, subject to revision by the commission. Because the commission had not officially recommended the report by the conclusion of the committee's study, the committee determined that it would be inappropriate for the committee to support or elect not to support the proposal. Therefore, the committee makes no recommendation on the report.

CURRENT STATE OF EDUCATION

At the same time that the committee was trying to comprehend the changes being proposed by the North Dakota Commission on Education Improvement, the committee also was examining the current state of education.

Student Enrollment

The fall enrollment reports for 2005 indicated that 97,120 public school students were enrolled in kindergarten through grade 12. The committee was told that preliminary reports from the fall 2006 count indicate that the student enrollment will be approximately 96,000.

Number of School Districts

During the 2005-06 school year, there were 204 school districts--159 high school districts, 34 graded elementary districts, 5 one-room rural districts, and 6 nonoperating districts. The committee was told that the number of school districts had fallen to 198 by the start of the 2006-07 school year--156 high school districts, 34 graded elementary districts, 5 one-room rural districts, and 3 nonoperating districts.

Statewide Average Levies - Ending Fund Balances

The latest available figures presented to the committee indicate a state average general fund levy of 194.33 mills and a state average total levy of 223.37 mills. School districts hold $168,281,374--approximately 20 percent of school districts' general fund expenditures--as ending fund balances.

School District Employee Compensation

For the 2005-06 school year, the average amount of compensation paid to a teacher was $51,693. This represented a 6.6 percent increase between the 2003-04 school year and the 2005-06 school year. The state average teacher compensation increase during that two-year period was $3,195. The average teacher compensation in 107 school districts did not reach that state average. The average number of days a teacher was employed for purposes of calculating the base salary was 180 days, and 184 days was the average number of days a teacher was employed.

The total compensation paid to school district administrators for the 2005-06 school year averaged $85,004 and represented an increase of 8.2 percent between the 2003-04 school year and the 2005-06 school year. The average number of days an administrator was employed ranged from 251 for a superintendent to 212 for a principal.

Student Achievement

The No Child Left Behind Act requires each state to demonstrate adequate yearly progress toward meeting academic achievement standards. This measurement is applied to the state itself, to each of its school districts, and to all of its public schools. During the 2004-05 school year, North Dakota administered state assessments to 53,000 students in grades 3 through 8 and 11. Alternate assessments were administered to 825 students with significant cognitive disabilities. Of the state's 486 public schools, 419 made adequate yearly progress, 43 did not make adequate yearly progress, and 24 had insufficient data for purposes of reporting adequate yearly progress. Among the state's 202 school districts, 168 made adequate yearly progress, 21 did not make adequate yearly progress, and 13 had insufficient data for purposes of reporting adequate yearly progress. The adequate yearly progress report for each school and school district may be found on the Department of Public Instruction's web site.

Challenges - Solutions

The committee examined a variety of challenges faced by schools, school districts, and the state as a whole.

P-16 Education Task Force

The committee received a report from the P-16 Education Task Force, which was a joint effort involving the State Board of Higher Education, the State Board of Public School Education, the Education Standards and Practices Board, and the State Board for Career and Technical Education. The report indicated that most North Dakota students will go on to some form of higher education. It also indicated that most North Dakota students are not ready for college-level work. The committee was told that only 25 percent of North Dakota high school graduates are in fact prepared for college and that 27 percent of all college freshmen are enrolled in remedial courses.

It was stressed to the committee that there is a need for uniform, consistent proficiency standards and student support systems. This combination, it was said, would enable each student to achieve proficiency.

Full-Day Kindergarten

The committee considered other options, including full-day kindergarten programs. The committee was told that kindergarten should not be considered as a transitional year, but rather as a base for learning that will occur in the first and future grades. While many on the committee applauded the improvements in student achievement that are associated with full-day kindergarten attendance, others were wary that children who are not ready to learn might be stigmatized by possible failure in kindergarten.

Educational Associations Governed by Joint Powers Agreements

The committee was told that in five years, there will be fewer than 90,000 public elementary and high school students. Today, eight school districts educate 52 percent of those students. The rest of the students are spread among the remaining 190 districts. Teacher and administrator retirements are continuing at a significant rate and personnel recruitment is a challenge from both a geographical and a curricular perspective.

Nevertheless, school districts are constitutionally, statutorily, and socially expected to offer their students a full range of services. Without a critical mass of students, and without local support for large-scale reorganizations, many school districts had to turn to cooperative ventures with contiguous districts in order to serve their students.

Known colloquially as JPAs, these ventures are educational associations governed by joint powers agreements. They are nine in number and it is expected

that they soon will serve 98 percent of the state's students. Their services include staff development, curriculum development, technology support, and grant writing services. Educational associations governed by joint powers agreements are frequently used to provide summer school courses, English language learner programs, and advanced placement and dual-credit courses. These associations were described to the committee as comprehensive service agencies that can equalize access to educational opportunities and ensure a more uniform system of education, particularly when districts themselves cannot provide services.

Bill Drafts - Considerations and Recommendations

The committee considered a bill draft that would have appropriated $1,706,192 to assist school districts with high fuel costs incurred during the 2005-06 school year. The percentage to which a school district would have been entitled was linked to its ending fund balance. The committee elected not to recommend this bill draft for a number of reasons, including falling fuel prices, sufficient ending fund balances, inequities between school districts that expended funds to become more energy efficient and those that did not, and inequities in existing transportation arrangements.

The committee recommends Senate Bill No. 2030 to authorize the Superintendent of Public Instruction to implement a uniform system of accounting for JPAs, just as is currently done with respect to school districts. The bill also provides that the functions of a school district business manager can be performed by an individual, as is now the case, or by an entity such as an accounting firm or a JPA. The bill maintains the requirement that members of a JPA's governing board be elected school board members and extends that requirement to designees as well. The bill also directs the Superintendent of Public Instruction to prepare a report regarding the operations of the state's JPAs at the conclusion of the 2007-08 and the 2008-09 school years and to present those reports to the Legislative Council. The reports are to address the impact that JPAs have had on course offerings, student achievement, professional development opportunities, and the sharing of administrative and instructional personnel. The reports are also to address other resulting benefits and efficiencies. The committee recommended the bill because the committee viewed the provisions as supporting the continued growth of JPAs and because the bill maintained accountability through elected board members and designees of those board members and through ongoing reports to legislators via the interim process.

MISCELLANEOUS REPORTS

Reports regarding the financial condition of schools, school district employee compensation, and student scores on statewide tests of reading and mathematics were presented to the committee as part of its overall study of elementary and secondary education and were addressed earlier in this report.

Statutory and Regulatory Waivers

The Superintendent of Public Instruction received, for the 2006-07 school year, one request by an elementary district to continue its four-day school week and one request by a high school district to continue a pre-existing arrangement regarding professional development opportunities. These requests were approved because they pertained to previously authorized activities.

The Superintendent of Public Instruction received, for the 2006-07 school year, five requests to release students early for professional development activities. The requests were denied because the 2005 Legislative Assembly provided school districts with two days for unrestricted professional development activities.

The Superintendent of Public Instruction received, for the 2006-07 school year, one request to waive the accreditation standard regarding principal time so that one individual could function as both a superintendent and a principal. The request was denied because the district's enrollment required more time per position than one person had available during a normal workday.

The Superintendent of Public Instruction also received, for the 2006-07 school year, a request by a high school district to reduce its school week to four days. The request was denied because issues of class schedules, instructional changes, extracurricular activities, transportation arrangements, financial benefits, community considerations, and contractual provisions were insufficiently addressed. There were additional considerations regarding national trends to increase the number of schooldays and uncertainties about the impact that would be felt by the JPA in which the school district participated.

Teacher Compensation Notices

Chapter 167 of the 2005 Session Laws directed the board of each school district to use an amount equal to at least 70 percent of all new money received for per student payments under North Dakota Century Code Section 15.1-27-04 and tuition apportionment payments under Section 15.1-28-03 for the purpose of increasing the compensation paid to teachers and for the purpose of providing compensation to teachers who began employment with the district after June 30, 2005. This directive did not apply if a board determined by a two-thirds vote that compliance would place the board in the position of having insufficient fiscal resources to meet its other obligations. In the case of such a determination, the board was to notify the Superintendent of Public Instruction.

The Superintendent of Public Instruction received no notices under this section.

English Communication Skills - Faculty Members and Teaching Assistants

Since 1993 the State Board of Higher Education has had in place a policy governing the English communication skills of faculty members and teaching assistants. The policy was revised in 1999 and again following the 2005 legislative session. The policy requires that students be notified of the statutory

provision requiring English proficiency and that the students be told who they can contact if they believe that the requirement is not being met. During the 2005-06 academic year, four complaints were received. Two came from four-year institutions and two arose at two-year institutions. Institutional responses ranged from assigning a diction coach and providing monitoring and guidance to recognizing that there were other significant difficulties and nonrenewing the individual.

State Board of Higher Education - Long-Term Finance Plan

In 2001 the State Board of Higher Education adopted a long-term finance plan. A review of the plan was to be conducted at least once every six years. In 2005 the Legislative Assembly also mandated a review of the long-term finance plan. MGT of America, Inc., served as the contracting agent and recommended that state funding for higher education be increased to equal at least 21 percent of the state general fund budget. The report also concluded that the Higher Education Roundtable was effective in improving higher education and in integrating higher education into the economy, that accountability measures were consistent and appropriate, and that the unified system of higher education is the most effective and efficient means of delivering higher education services in the state.

ELECTRIC INDUSTRY COMPETITION COMMITTEE

The Electric Industry Competition Committee is created by North Dakota Century Code (NDCC) Sections 54-35-18 through 54-35-18.3 with the duty to study the impact of competition on the generation, transmission, and distribution of electric energy within this state. In addition, the Legislative Council delegated to the Electric Industry Competition Committee the duty of receiving three reports. Under Section 57-40.6-11, the Division of State Radio is required to report annually to the Legislative Council on the operation of and any recommended changes in the emergency 911 telephone system standards and guidelines. Under Section 57-40.6-12, the Public Safety Answering Points Coordinating Committee is required to provide by November 1 of each even-numbered year to the Legislative Council a report on city and county fees on telephone exchange access service and wireless service. Under Section 49-24-13, the North Dakota Transmission Authority is required to provide a written report to the Legislative Council on its activities each biennium.

North Dakota Century Code Section 54-35-18.2 outlines the study areas that the committee is to address in carrying out its statutory responsibilities. This section provides that the committee is to study the state's electric industry competition and electric suppliers and financial issues, legal issues, social issues, and issues related to system planning, operation, and reliability and is to identify and review potential market structures.

Senate Bill No. 2015 (2003) extended the expiration date of the Electric Industry Competition Committee from August 1, 2003, to August 1, 2007. The bill also expanded membership of the committee to six members of the House of Representatives, four of whom must be from the majority political party and two of whom must be from the minority political party, and six members of the Senate, four of whom must be from the majority political party and two of whom must be from the minority political party.

Committee members were Representatives Merle Boucher (Chairman), Wesley R. Belter, Tracy Boe, Michael D. Brandenburg, David Drovdal, and George J. Keiser and Senators Robert S. Eberle, Tim Mathern, Duane Mutch, Larry J. Robinson, John O. Syverson, and Ben Tollefson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

ELECTRIC INDUSTRY RESTRUCTURING

Background

North Dakota Century Code Section 54-35-18 states that the Legislative Assembly finds that the economy of North Dakota depends on the availability of reliable, low-cost electric energy and that there is a national trend toward competition in the generation, transmission, and distribution of electric energy, and the Legislative Assembly acknowledges this competition has both potential benefits and adverse impacts on the state's electric suppliers as well as on their shareholders and customers and citizens of this state. The legislation establishing the committee reflected the Legislative Assembly's concern that the electric industry is changing rapidly and if competition is to be introduced into North Dakota, it should be done in a fair and equitable manner. In 1997 builders of new technology generating plants, the natural gas industry, and states with high electric rates or excess generating capacity were promoting electric industry restructuring. Arguments put forward for restructuring or implementing competition in the electric industry include greater customer choice and the possibility that open competition may lower costs and encourage generating efficiency. However, risks and challenges of retail competition include maintaining reliability of supply, pricing outcomes in which some customers may benefit at the expense of others, and allocating stranded costs. The impetus for electric industry restructuring also has come from large industrial and commercial energy users that are opposed to subsidizing residential electricity users.

Under the current industry structure, electricity is provided to retail customers by utilities that have geographic monopolies on the provision of electric service within their service territories. Traditionally, an electricity customer must purchase electric services from the utility serving that customer's service territory, including the three primary services--generation, transmission, and distribution. Generation refers to the actual creation of electricity, which may be generated using a number of methods and fuel, including nuclear, coal, oil, natural gas, hydro, or wind. Transmission refers to the delivery of electricity over distances at high voltage from a generation facility through a transmission network usually to one or more distribution substations where the electricity is stepped down for distribution to residential, commercial, and industrial customers. For the retail customer, the costs for these functions are bundled into retail rates, along with the cost of distribution. Distribution involves the retail sale of electricity directly to consumers.

Other functions traditionally provided by vertically integrated utilities include customer service, billing, meter reading, demand-side management, research and development, and aggregation and ancillary services. Aggregation is the development and management of a power portfolio, combining power from a variety of sources to match the demand for power with an adequate power supply, and a portfolio of customers with combined demands to economically serve those customers. Ancillary services are those services necessary to effect a transfer of electricity between a seller and a buyer and to coordinate generation, transmission, and distribution functions to maintain power quality and system stability.

Under the current industry structure, the utility serving a service territory provides all these services and functions and sells them as a single bundle. Nationwide,

the restructuring debate centers on whether or how the generation function should be separated from the bundle allowing retail customers to choose an electricity supplier. If generation is unbundled from transmission and distribution, these services may remain regulated functions.

Generally, three major types of electric utilities exist--investor-owned utilities, municipal and other government-owned utilities, and rural electric cooperatives. Generally, states regulate investor-owned utilities regarding their profits, operating practices, and pricing to end-use retail customers, while the Federal Energy Regulatory Commission (FERC) governs the pricing of wholesale bulk power sales and transmission services.

State Regulation

Subject to the limitations provided in NDCC Section 49-02-01.1, which provides that the Public Service Commission may not regulate government-owned and not-for-profit electric utilities, in North Dakota the Public Service Commission regulates electric utilities engaged in the generation and distribution of light, heat, or power. North Dakota Century Code Section 49-02-03 grants to the Public Service Commission the power to supervise and establish rates. This section provides:

> The commission shall supervise the rates of all public utilities. It shall have the power, after notice and hearing, to originate, establish, modify, adjust, promulgate, and enforce tariffs, rates, joint rates, and charges of all public utilities. Whenever the commission, after hearing, shall find any existing rates, tariffs, joint rates, or schedules unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this title, the commission by order shall fix reasonable rates, joint rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.

Concerning the Territorial Integrity Act, NDCC Section 49-03-01 provides that an electric public utility must obtain a certificate of public convenience and necessity from the Public Service Commission before constructing, operating, or extending a plant or system. Sections 49-03-01.1 through 49-03-01.5 require an electric public utility to obtain a certificate of public convenience and necessity before constructing, operating, or extending a public utility plant or system beyond or outside the corporate limits of any municipality. However, Section 49-03-01.3 exempts electric public utilities from the requirement to obtain a certificate of public convenience and necessity for an extension of electric distribution lines within the corporate limits of a municipality in which the public utility has lawfully commenced operations, provided the extension does not interfere with existing services provided by rural electric cooperatives or another electric public utility within the municipality and that any duplication of services is not deemed unreasonable by the Public Service Commission.

Federal Actions

In 1978 Congress enacted the Public Utility Regulatory Policy Act. The goals of this Act were to make the United States self-sufficient in energy, increase energy efficiency, and encourage the use of renewable alternative fuels. The Act required that utilities buy power from companies that were not utilities. The Act created a new industry of nonutility power generators.

In 1992 Congress enacted the Energy Policy Act to encourage the development of a competitive, national, wholesale electricity market with open access to transmission facilities owned by utilities to new wholesale buyers and new generators of power. The Act gave competitive generators access to the transmission grid at competitive rates and terms. In addition, the Act reduced the regulatory requirements for new nonutility generators and independent power producers. The Federal Energy Regulatory Commission initiated rulemaking to encourage competition for generation at the wholesale level by assuring that bulk power could be transmitted on existing lines at cost-based prices. Under this legislation and rulemaking, generators of electricity, whether utilities or private producers, could market power from underutilized facilities across state lines to other utilities.

The Federal Energy Regulatory Commission has taken a number of steps to encourage competition in the wholesale market. These actions include authorizing market-based rates, issuing Section 211 wheeling orders, ordering open-access transmission tariffs, and issuing the open-access transmission rule (FERC Order No. 888). Market-based rates are those set by willing buyers and sellers of power. This method may be used instead of the more traditional method of ratesetting by regulators pursuant to administrative hearings, with rates based on the cost of producing power. On April 24, 1996, FERC issued Order Nos. 888 and 889, which require all utilities that own, control, or operate transmission lines to file nondiscriminatory open-access transmission tariffs that offer competitors transmission service comparable to the service that the utility provides. In addition, FERC Order No. 888 recognizes the right of utilities to recover legitimate, prudent, and verifiable costs stranded by opening the wholesale electricity market, i.e., stranded costs. Finally, FERC Order No. 888 requires public utilities to unbundle their power and services for wholesale power transactions by requiring the internal separation of transmission from generation marketing services.

Other States

According to the *Status of State Electric Industry Restructuring Activity as of February 2003* prepared by the United States Department of Energy Information Administration, 24 states and the District of Columbia either have enacted enabling legislation or issued a regulatory order to implement retail access. Each local distribution company continues to provide transmission

and distribution (delivery of energy) services. Retail access allows customers to choose their own supplier of generation energy services, but each state's retail access schedule varies according to the legislative mandate or regulatory orders.

Arizona, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, and Virginia either have enacted enabling legislation or issued a regulatory order to implement retail access. Retail access is either currently available to all or some customers or will soon be available. In Oregon no customers are participating in the state's retail-access program, but that state's laws allow nonresidential customers access. Alabama, Alaska, Colorado, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming are not actively pursuing restructuring. In West Virginia the legislature and Governor have not approved the Public Service Commission's restructuring plan authorized by state law. The legislature has not passed a resolution resolving the tax issues of the Public Service Commission plan, and no activity has occurred since early in 2001. Arkansas, Montana, Nevada, New Mexico, and Oklahoma have delayed their restructuring process or implementation of retail access. California has suspended direct retail access.

ENERGY ACT OF 2005

On August 8, 2005, the President signed into law the Domenici-Barton Energy Policy Act of 2005. The bill is 1,725 pages long, consists of 18 titles, and authorizes $85 billion in spending and tax incentives. The following are some of the provisions of the Act which relate to the generation, transmission, and distribution of electric energy which may have relevance in this state.

1. The Act authorizes funding and loan guarantees for "clean coal" technologies, such as coal gasification and advanced combustion technologies. Over the next 10 years, $5.23 billion is authorized in spending for clean coal technology. The Act creates a clean coal power initiative campaign that includes grants to universities to establish centers of excellence for energy systems of the future. The Act contemplates merit-based grants to institutions of higher education to be awarded to institutions with the greatest potential for advancing new clean coal technologies projects.
2. The Act establishes an independent organization to improve the reliability of the transmission grid to mandatory and enforceable standards. The Act replaces the North American Electric Reliability Council and 10 regional councils that are voluntary and operate independently without any FERC oversight with an Electric Reliability Organization with authority to enforce reliability standards and impose penalties.
3. The Act provides for new procedures for siting electric transmission lines, including federal preemption in some circumstances. The Act directs the Department of Energy Secretary to identify national interest electric transmission corridors. If a state commission does not approve a project or approve it with conditions that make construction economically or physically infeasible, FERC may issue construction permits for these new lines and condemn land by federal eminent domain. There is an exception for siting jurisdiction for states if there are three contiguous states that form a regional transmission siting agency. In this case, FERC may only act if those three states disagree with the regional transmission siting agency.
4. The Act provides FERC limited authority over nonregulated entities to ensure nondiscriminatory access to electric transmission lines.
5. The Act repeals the federal Public Utility Holding Company Act of 1935, which provided for Securities and Exchange Commission jurisdiction over public utility mergers and acquisitions. The Public Utility Holding Company Act prohibited acquisition of any wholesale or retail electric business through a holding company unless that business forms part of an integrated public utility system when combined with the utility's other electric business. The Public Utility Holding Company Act also restricted ownership of an electric business by a nonutility corporation.
6. The Act expands the Public Utility Regulatory Policies Act of 1978 to require state regulators to conduct an investigation and issue a decision on smart metering and demand responsive devices, net metering of bond-site generation, utility fuel source diversification, fossil fuel generation efficiency, and interconnection for distributed generation. In addition, the Act repeals on a prospective basis the obligation of an electric utility to buy electric energy from and sell electric energy to a qualifying facility under certain circumstances.
7. The Act authorizes FERC to require the posting of electricity and natural gas pricing information to provide price discovery and market transparency. In addition, manipulative or deceptive practices with the intent to manipulate market prices are prohibited.
8. The Act requires FERC to make rules implementing incentive pricing and allow recovery of prudently recovered costs necessary to comply with mandatory reliability standards and transmission infrastructure development.

PREVIOUS STUDIES

1967-68 Study

In 1967 the Legislative Assembly approved House Concurrent Resolution No. B-2 which requested a two-year study be made of the laws relating to certificates of

public convenience and necessity for extensions of service by electric suppliers and the extensions of electric transmission and distribution lines of electric utilities. The resolution directed that a committee composed of three members of the House of Representatives and two members of the Senate meet during the succeeding biennium with two persons representing electric public utilities and two persons representing rural electric cooperatives to study what method, if any, should be provided to resolve territorial disputes between electrical suppliers, whether more lucrative market areas were essential to the efficiency of rural electric cooperatives, and if rural electric cooperatives should be regulated in the same manner as rural telephone cooperatives.

This committee received testimony from the Public Service Commission, rural electric cooperatives, and public utility companies. The public service commissioners were basically of the opinion that the Territorial Integrity Act was beneficial, and they pointed out some areas in which improvements could be made. The position of the rural electric cooperatives was that the Territorial Integrity Act was working and that fair and adequate guidelines were being developed by the Public Service Commission in following the interpretation placed on the law by the North Dakota Supreme Court in *Montana-Dakota Utilities Company v. Johanneson* 153 N.W.2d 414 (N.D. 1967). The cooperatives maintained any change in the law would result in considerable expense to cooperatives and public utility companies alike, as interpretive measures would have to begin anew. The position of the public utility companies was that the Territorial Integrity Act stifled growth and created confusion and uncertainty because the utilities are not allowed to expand with the population move from city and rural areas into the fringe locations around cities. The public utilities maintained that in order to serve their customers economically and to provide a return to their stockholders, they must also continue to grow, and the only area in which growth was possible was in the metropolitan fringe areas. The committee made no recommendation as a result of this study.

1997-98 Study

During the 1997-98 interim, the Electric Utilities Committee reviewed the history and operation of the Territorial Integrity Act. The committee received testimony from representatives of the state's investor-owned utilities and the state's rural electric cooperatives.

Representatives of Montana-Dakota Utilities Company testified that the Territorial Integrity Act is unfair in fostering effective electric competition in North Dakota. They argued that the Act is a barrier to giving customers throughout the state the ability to make economic energy choices and as such should be repealed and fairplay rules substituted in its place for all competitors. They testified if rural electric cooperatives wish to pursue loads in urban areas, in competition with public utilities, then rural electric cooperatives engaging in such activity should be subject to the same regulatory overview as public utilities, should not qualify for favorable financing arrangements with the federal government, should not be exempt from state and federal income taxes, should not have preferential access to low-priced federal power, and should not receive potential for debt forgiveness by the Rural Utilities Service. The committee received testimony from a representative of Otter Tail Power Company that the Territorial Integrity Act is not accomplishing what its stated objectives are--to efficiently allocate scarce resources and to minimize disputes between electric suppliers--because the Act leads to a wasteful duplication of electrical facilities and increases, rather than minimizes, the likelihood of disputes between electric suppliers.

Representatives of the state's rural electric cooperatives responded that the Territorial Integrity Act is working well and is serving the purposes for which it was enacted. They argued that the state's investor-owned utilities have exclusive territories within the state's municipalities the rural electric cooperatives cannot penetrate and that the Act avoids the costly duplication of utility infrastructure. They noted there is substantial undeveloped land within the service territories of the investor-owned utilities while there is an outmigration of population from the rural areas and a corresponding decline in electrical usage. If it were not for some larger industrial and commercial loads, and some growth around cities in areas that were previously rural, rural electric cooperatives would have experienced a substantial decline in their sales, and investor-owned utility territory should not be expanded at the expense of the rural electric cooperatives that have invested in rural North Dakota. Representatives of the rural electric cooperatives pointed out that since enactment of the Territorial Integrity Act, investor-owned utilities have continued to grow in customers and revenue and have not lost market share to rural electric cooperatives.

The committee made no recommendation as a result of this study.

1999-2000 Study

During the 1999-2000 interim, the Electric Industry Competition Committee studied statutes relating to the extension of electric lines and facilities and the provision of electric service by public utilities and rural electric cooperatives within and outside the corporate limits of a municipality and addressed the criteria used by the Public Service Commission under NDCC Chapter 49-03 in determining whether to grant a public utility a certificate of public convenience and necessity to extend its electric lines and facilities to serve customers outside the corporate limits of a municipality and the circumstances under which a rural electric cooperative may provide electric facilities and service to new customers and existing customers within municipalities being served by a public utility.

The Public Service Commission considers 10 issues or factors, either developed by the commission or taken from North Dakota Supreme Court decisions concerning the Territorial Integrity Act, in Territorial Integrity Act disputes:

1. From whom does the customer prefer electric service?

2. What electric suppliers are operating in the general area?
3. What electric supply lines exist within a two-mile radius of the location to be served, and when were they constructed?
4. What customers are served by electric suppliers within at least a two-mile radius of the location to be served?
5. What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?
6. Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?
7. Which suppliers extended electric service would best serve orderly and economic development of electric service in the general area?
8. Would approval of the application result in wasteful duplication of investment or service?
9. Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?
10. Will service by either of the electric suppliers in the area unreasonably interfere with the service or system of the other?

The committee made no recommendation as a result of this study.

2001-02 Study

During the 2001-02 interim, the Electric Industry Competition Committee again reviewed the history and operation of the Territorial Integrity Act.

Representatives of the North Dakota Association of Rural Electric Cooperatives advocated that the rural electric cooperative enabling law, NDCC Chapter 10-13, be amended to allow electric cooperatives an unlimited right to serve in urban areas and to make urban customers cooperative members, provided that the cooperative purchases or otherwise acquires electric facilities from another utility on a willing buyer-willing seller basis. Proponents argued that providing more options for local electric service, rather than fewer, support the idea that territorial integrity issues should be resolved through negotiation rather than legislation.

Representatives of the state's investor-owned utilities opposed the willing buyer-willing seller proposal submitted by the North Dakota Association of Rural Electric Cooperatives. They argued the proposal would allow electric cooperatives to purchase much larger investor-owned or municipally owned utility electric systems than allowed under current law, would encourage electric cooperatives to entice municipalities to acquire existing electric utilities from investor-owned utilities and resell the electric utilities to an electric cooperative, and would provide a substantial advantage to an electric cooperative in competing with investor-owned utilities for the purchase of other investor-owned or municipal-owned electric utilities because investor-owned utility rates are set based upon the net book value of the investment rate base and the Public Service Commission generally will not allow an acquisition premium in an investor-owned utility's rate base.

The committee made no recommendation as a result of this study.

2003-04 Study

During the 2003-04 interim, the Electric Industry Competition Committee again reviewed the Territorial Integrity Act. In addition, the Legislative Council assigned to the committee the study directed by House Concurrent Resolution No. 3061--the feasibility and desirability of enacting legislation to tax electric utility providers with a fair and uniform tax system. The Legislative Council also assigned to the committee a study directed by Section 1 of Senate Bill No. 2310--issues related to wind energy development in this state.

Taxation

Electric industry taxation depends upon how an electric utility conducts business. Separate forms of taxation apply to severance of coal from the earth, generation of electricity or production of other products from coal, generation of electricity from wind, transmission of electricity through large capacity transmission lines, and distribution of electricity to consumers. The committee reviewed coal severance taxes, coal conversion taxes, property taxes, gross receipts taxes, transmission line taxes, city privilege taxes, and municipal utility revenues.

The committee considered, but did not recommend, a bill draft relating to the taxation of generation, transmission, and distribution of electric power. The bill draft is compared to present law in the following table:

Property	Present Law	Allocation	2003-04 Bill Draft
Coal severance	37.5 cents/ton	30% coal fund 70% coal-producing counties • 30% to cities • 30% to school districts • 40% to counties	No change
	2 cents/ton	Lignite research fund	
Coal conversion in lieu of property tax on facility	For electricity generating with 10,000 kilowatt capacity .65 mill x 60% installed capacity x hours taxable period + .25 mill/kilowatt-hour of electricity produced	15% to producing county 85% state general fund	Expand to noncoal plants of 5 megawatts or more
	For coal gasification - Higher of 4.1% of gross receipts or 13.5 cents/1,000 ft^3 of gas produced	Through 2009, first $41,666.67 from .25 mill/kilowatt-hour from sale in state general fund	

Property	Present Law	Allocation	2003-04 Bill Draft
Property tax	Investor-owned All operative property is centrally assessed unless transmission line after September 30, 2002 Rural electric cooperatives exempt except for land	To counties based on property in county	Removed
Gross receipts	• Rural electric cooperatives • 2% on transmission and distribution cooperatives • 2% on generation cooperatives unless subject to coal conversion taxes then exempt	To counties based on mile of line First 2 years to county with generating facility Third and subsequent years • First $50,000 to county • Second $50,000 to county and state general fund remaining 25% to county and 75% to state general fund	Removed
Transmission line voltage of 41.6 kilovolts or more	Rural electric cooperatives $225/mile for lines 230 kilovolts or larger $300/mile for rural electric cooperatives and investor-owned utilities for line in service after September 30, 2002	To counties based on miles of line	Removed for rural electric cooperatives
City privilege			Removed for rural electric cooperatives
Transmission facilities			• Less than 50 kilovolts - $75/mile • 50 to 99 kilovolts - $150/mile • 100 to 199 kilovolts - $300/mile • 200 to 299 kilovolts - $450/mile • 300 to 399 kilovolts - $600/mile • 400 kilovolts or more - $900/mile
Distribution tax		To county of retail sale then proportionally to levies to taxing districts	52 cents/megawatt-hour
Retail sales		To counties based on miles of line then proportionally to levies to taxing districts	.88% of revenue on retail sales

Proponents of the proposal presented several reasons to support the proposed bill draft. First, the in lieu taxes would have been uniform for all investor-owned utilities and rural electric cooperatives so it was argued the proposal met the test of fairness. Second, proponents said the proposal would have minimized tax shifting between rural electric cooperatives and investor-owned utilities. Although individual utilities might have paid more or less in taxes, overall the tax shift between investor-owned utilities and rural electric cooperatives would have been only 1.5 percent. Third, it was argued the tax formulas would have been easy to calculate and administer. Fourth, proponents said the in lieu taxes would have been predictable, which led to the final benefit which would have been that the proposal guaranteed that overall the plan would raise approximately the same amount of revenue for local taxing districts as the current taxation system of ad valorem and gross receipts taxes that would be replaced. In addition, if the electric industry grows, political subdivisions would have seen increased tax revenues in future years.

Opponents of the proposal presented several reasons to oppose the proposed bill draft. First, they said property taxes should be taxes on the value of property, not an "in lieu of" system that is confusing and contains opportunity for mischief by shifting taxes from one property owner to another. Second, opponents said the proposal violated the concept of simplicity and easy understandability and that a tax on transmission lines, but not including substations, appeared to be an effort to achieve a predetermined effect, i.e., a minimalization of tax increases for the large voltage transmission lines. Third, it was argued the proposal would have imposed an administrative burden on investor-owned combination utility companies, such as Montana-Dakota Utilities Company, because it would have subjected their property to two different tax systems--one for electric operations and one for natural gas operations.

The committee considered, but did not recommend, a bill draft that would have eliminated gross receipts taxes for rural electric cooperatives and would have subjected their property to centrally assessed ad valorem property taxes. Proponents of this proposal presented a primary reason to support the proposed bill draft, that rural electric cooperative property would be taxed in exactly the same manner in which investor-owned property is taxed. Because the central assessment method is a well-developed system for determining value for investor-owned property, it was argued an appropriate methodology could be developed to extend this method to rural electric cooperative property, even if some of the cooperatives' original records were lost or unavailable.

The committee requested that the state supervisor of assessments prepare an analysis of converting Verendrye Electric Cooperative to a centrally assessed

property taxation system. The committee learned that it was not possible for Verendrye Electric Cooperative to provide a schedule showing an original cost of its property in each taxing district because cooperatives were not required to collect this information. Because it was not possible to make these calculations, the state supervisor of assessments testified that it was not possible to estimate the tax shift among taxing districts which would occur if Verendrye Electric Cooperative paid centrally assessed property taxes instead of the gross receipts tax and locally assessed property taxes on its land. Neither could Verendrye Electric Cooperative's total property tax, if it were centrally assessed, be estimated accurately because the Tax Department did not have the required information to multiply individual taxing district mill rates by the taxable value located in each taxing district.

Representatives of the Association of Rural Electric Cooperatives testified that in light of the study conducted by the state supervisor of assessments, the ad valorem system would not be easy to administer nor could one predict whether it would be revenue-neutral to political subdivisions. In addition, it would take each cooperative several years of work to assign investment costs properly to political subdivisions.

Wind

The study of wind energy development in this state included a study of wind energy development contract provisions, the potential economic benefits of wind energy development, the potential adverse impacts of wind energy development, consideration of transmission of electrical energy, and the impact on the electric industry of wind energy development.

The committee was informed that North Dakota has the greatest wind resource of any of the lower 48 states. The single biggest obstacle identified in developing this state's wind resource is constraints on the state's existing transmission grid. North Dakota exports nearly 60 percent of the power generated within this state, and it is likely that most wind-generated electricity also will be exported. Thus, additions to the current transmission grid will be necessary for a significant generation expansion in the state, regardless of fuel source. Other issues related to the development of wind energy include identification of the market for wind energy and possible environmental issues related to raptors and nesting waterfowl.

The committee considered, but did not recommend, a bill draft relating to a renewable electricity credit trading and tracking system by the Public Service Commission. The bill draft would have allowed the Public Service Commission to establish a program for tradable credits for electricity generated from renewable sources, would have allowed the commission to facilitate the trading of renewable electricity credits between states, and would have applied to all public utilities, including electric cooperatives and municipal electric utilities.

The committee made no recommendation concerning its study of wind energy development.

RECENT LEGISLATION

Since the creation of the committee in 1997, the committee has not made any recommendations concerning its studies. However, legislation has been adopted relating to the areas of study of the committee.

1999 Legislation

House Bill No. 1445 established the differentiation between electricity transmission lines and electricity distribution lines. The bill provided that except for purposes of transmission facility siting under NDCC Chapter 49-22 and regulatory accounting, including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution, for the purposes of Title 49 and Chapters 57-33 and 57-33.1, lines designated to operate at a voltage of 41.6 kilovolts or more are transmission lines and lines designed to operate at less than 41.6 kilovolts are distribution lines.

2001 Legislation

House Bill No. 1223 allowed installations on property leased by a taxpayer to qualify for a long-form income tax credit for installation of a geothermal, solar, or wind energy device installed before January 1, 2011. For a device installed before January 1, 2001, the credit is equal to 5 percent per year for three years, or for a device installed after December 31, 2000, the credit is equal to 3 percent per year for five years, of the actual cost of acquisition and installation of the device.

House Bill No. 1221 provided a sales and use tax exemption for production equipment and tangible personal property used in construction of a wind-powered electrical generating facility before January 1, 2011, if a facility has an electrical energy generation unit with a nameplate capacity of 100 kilowatts or more.

House Bill No. 1222 reduced the taxable valuation of centrally assessed wind turbine electric generators from 10 percent of assessed value to 3 percent of assessed value if the generation unit has a nameplate generation capacity of 100 kilowatts or more and construction is completed before January 1, 2011.

Senate Bill No. 2299 reduced the coal severance tax rate from 75 cents to 37.5 cents per ton and retained the two cent per ton research and development tax. The bill increased by .40 mill per kilowatt-hour the coal conversion tax for electrical generating plants based on nameplate capacity of a facility. The bill adjusted the coal severance and coal conversion tax allocation formulas to retain approximately equal allocations among state and political subdivision recipients as compared to allocations under previous law. The bill reduced the generation capacity of an electrical generating plant to be classified as a coal conversion facility from 120,000 to 10,000 kilowatts. The bill provided that each county may receive not less than it received in the previous calendar year under the coal conversion tax and for a county in which a facility is located that was not a coal conversion facility before the effective date of this bill, that county must receive an additional amount that is at least as much as was received in property taxes for that facility for taxable

year 2001. In addition, the bill required the Public Service Commission to allow a public utility to recover all costs resulting from a coal severance tax pursuant to NDCC Chapter 57-61 and all costs resulting from a coal conversion tax pursuant to Chapter 50-60 in determining the value of property for ratemaking purposes.

2003 Legislation

House Bill No. 1348 provided that a transmission line placed in service by an investor-owned utility after September 30, 2002, is exempt from property taxes for the first taxable year the line is placed in service and is entitled to a property tax reduction of 75 percent for the second taxable year, 50 percent for the third year, and 25 percent for the fourth taxable year. After the fourth taxable year of operation, the transmission line and associated substations are exempt from property taxes and subject to a tax of $300 per mile. For transmission of electric cooperatives, the tax on a transmission line of 230 kilovolts or larger initially placed in service after September 30, 2002, is increased from $225 per mile to $300 per mile. The bill provided an exemption from this tax for the first taxable year a transmission line is placed in service and provided for a reduction of the tax by 75 percent for the second taxable year, 50 percent for the third taxable year, and 25 percent for the fourth taxable year.

Senate Bill No. 2286 provided that for taxation of rural electric cooperatives, the cooperative report of gross receipts must include a statement of the cost and amount of all electric energy purchased for resale and the cost and amount of all wind energy purchased for resale. The bill provided that all electric energy purchased for resale must be deducted from the cooperative's gross receipts before determining the cooperative's gross receipts tax liability.

House Bill No. 1363 reduced the time period during which the Public Service Commission may suspend a rate increase or decrease filing, classification, contract, practice, or rule from seven to six months beyond the time when it otherwise would go into effect. The bill also provided that notwithstanding that the Public Service Commission may suspend a filing and order a hearing, a public utility may file for interim rate relief as part of its general rate increase application and filing. If interim rates are requested, the commission can order, without a public hearing, that the interim rate schedule take effect no later than 60 days after the initial filing date. In addition, the bill established a procedure to calculate the interim rate schedule.

Senate Bill No. 2115 provided that information received by the Public Service Commission which was developed or obtained by the market monitor of the Midwest Independent System Operator, Inc., or its successor, is confidential.

2005 Legislation

Senate Bill No. 2239 provided a definition of and termination terms of a wind option agreement, which is a contract in which a property owner gives another the right to produce energy from wind on that owner's property. The bill voids a wind option agreement, wind easement, or wind energy lease if the development to produce energy from wind power has not occurred within five years.

Senate Bill No. 2018 reduced from 3 to 1.5 percent the portion of assessed value used to determine taxable valuation of wind turbine electric generation units with a generation capacity of 100 kilowatts or more. To qualify for the reduced taxable valuation, a generation unit must have a purchased power agreement executed after April 30, 2005, and before January 1, 2006, and construction must have begun after April 30, 2005, and before July 1, 2006. The reduced taxable valuation applies to that property for the duration of the initial purchased power agreement for that generation unit.

Senate Bill No. 2412 authorized electric providers to enter agreements with other electric providers having adjacent or intermingled electric supply facilities for the purpose of establishing service areas and designating the service locations to be served by each electric provider. The bill provided that electric providers may enter written agreements for the sale, transfer, exchange, or lease of equipment or facilities used to serve the areas that are the subject of a service area agreement. For purposes of electric service area agreements, electric providers include electric public utilities and rural electric cooperatives and a service area means a defined geographic area containing existing or future service locations established by an agreement among the electric providers and approved by the Public Service Commission.

House Bill No. 1324 allowed a public utility proposing to construct, lease, or make improvements to an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract from another entity or person for the purpose of ensuring reliable electric service to its customers to file an application with the Public Service Commission for an advance determination of prudence regarding the proposal. The bill provided that the commission may issue an order approving the prudence of an electric resource addition if the public utility files with its application a projection of costs to the date of the anticipated commercial operation of the electric resource addition and the commission determines that the resource addition is reasonable and prudent.

House Bill No. 1314 authorized the Public Service Commission to establish or participate in a program to track, record, and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within the state and with similar entities in other states. The bill provided that the income tax credit for installation of geothermal, solar, or wind energy devices can be carried forward for five taxable years. The bill also allowed a group of corporations filing a North Dakota consolidated tax return under the combined reporting method to claim the credit against aggregate North Dakota tax liability on the consolidated return.

Senate Bill No. 2278, which was vetoed by the Governor, would have provided that a public utility planning the construction of an energy conversion

facility, major capital addition to an existing energy conversion facility in which the public utility has an ownership interest, new transmission facility, new renewable energy facility, or new power purchase that was expected to have a material impact on rates could have applied to the Public Service Commission for a rate stability plan providing for the phasein of rate increases before the commercial operation of the electric resource addition.

Senate Bill No. 2133 established a siting process expense recovery fund. The bill provides that fees received from applicants for a certificate of site compatibility, certificate of corridor compatibility, or waiver and any additional fees imposed for the completion of an energy conversion facility site, transmission facility corridor, or transmission facility route evaluation and designation process by the Public Service Commission must be deposited in the fund. All money deposited in the fund is appropriated on a continuing basis to the commission to pay expenses incurred in the siting process.

House Bill No. 1283 increased the threshold for an energy conversion facility that is subject to the Energy Conversion and Transmission Conversion Siting Act from a facility that generates 50,000 kilowatts or more of electricity to a facility that generates 100,000 kilowatts or more of electricity.

House Bill No. 1169 established the North Dakota Transmission Authority. The bill provided that the North Dakota Transmission Authority is created with the purpose of diversifying and expanding this state's economy by facilitating development of transmission facilities. In support of that purpose, the Transmission Authority was given the power to borrow money and issue up to $800 million in evidences of indebtedness and do any and all things necessary or expedient for the purposes of the Transmission Authority.

The Transmission Authority may construct transmission facilities after publication of its plans in certain newspapers and if no one delivers to the Transmission Authority notice indicating willingness to construct transmission facilities contemplated by the Transmission Authority and a bond as required by the Transmission Authority. If the Transmission Authority receives this notice, the Transmission Authority must find that exercising its authority would be in the public interest before constructing transmission facilities. The public interest includes the economic impact to the state, economic feasibility, technical performance, reliability, past performance, and the likelihood of successful completion and ongoing operation. The transmission facilities are not under the jurisdiction of the Public Service Commission and are exempt from property taxes for a period not to exceed the first five taxable years of operation. The Transmission Authority is to deliver a written report on its activities to the Legislative Council each biennium.

TESTIMONY AND DISCUSSION ON TRANSMISSION ISSUES

North Dakota Transmission Authority Report

The Legislative Council delegated to the committee the responsibility of receiving the report required of the North Dakota Transmission Authority on its activities.

The committee received multiple written reports from the Transmission Authority. The committee was informed that the Transmission Authority has been creating procedures and working with other states, the Federal Energy Regulatory Commission, and Congress to promote positions that will encourage transmission in this state. In addition, the Transmission Authority has been working with Lignite Vision 21 project applicants on developing transmission plans for their projects.

The committee received testimony that the notice of need in the proposed process before building a transmission facility by the Transmission Authority would be an assessment done within the Industrial Commission. The determination of need does not require a hearing.

The committee received testimony on the bonds the Transmission Authority may issue. The committee was informed that the attractiveness of a bond would depend on the project and that state involvement would make a Transmission Authority bond more attractive. For a Transmission Authority bond to be exempt from taxation under the present tax code, the bond must be for a project with no private use. The committee was informed the Internal Revenue Service would most likely look at the primary use and not divide a project on a percentage basis to offer a tax exemption.

Wyoming Infrastructure Authority

The committee received testimony on the Wyoming Infrastructure Authority. The Wyoming Infrastructure Authority was created in 2004 and was patterned after the Wyoming Pipeline Authority, which promotes the expansion of natural gas and oil. The authority is governed by a five-member board appointed by the Governor. The purpose of the authority is to diversify and expand the economy through the development of transmission facilities to the point that the authority may own and operate an interstate transmission line. However, the authority does not own any transmission lines and there is no anticipation that the authority will own transmission lines because before owning a transmission line the authority must offer the opportunity to the private sector. The business model of the authority is to act as a catalyst by providing front-end capital.

The Wyoming Infrastructure Authority is funded with a $6.6 million loan. The funding is divided $1.6 million for operating expenses and $5 million for feasibility study work. There is consideration being given to double the funding for feasibility study work. The intent of the authority is to make money and repay the loans.

The committee received testimony on three projects of the Wyoming Infrastructure Authority. First, the authority financed the Hughes transmission line for Basin Electric with $34.5 million in revenue bonds. The repayment schedule is over a period of 20 years and the

project was financed through a private placement with the state treasury. Second, the authority is working with two independent transmission companies to determine the feasibility for a line from the Powder River Basin to Denver and for a line to reach Boise and Salt Lake City. Third, the authority is working with three other states in the prefeasibility phase in developing the Frontier Line.

After Wyoming created an authority, South Dakota, Kansas, Idaho, and North Dakota created transmission authorities and New Mexico is in the process of creating a similar transmission authority. The creation of authorities provides an opportunity for collaboration among the states, especially in dealing with the federal government. The committee was informed that collaboration among the states would be especially valuable in lobbying for making the bonds issued by an authority tax-exempt.

The committee received testimony comparing the Wyoming Infrastructure Authority and the North Dakota Transmission Authority. The entities are similar in structure; however, the levels of funding and staffing are much higher in Wyoming. The committee was informed that the North Dakota Transmission Authority does not have a competitive disadvantage with the Wyoming Infrastructure Authority because the Transmission Authority in this state does not compete with the Wyoming Infrastructure Authority. Wyoming and North Dakota are in different sides of the market divide. Wyoming markets energy to the South and West and North Dakota markets energy to the East. The committee was informed that there is no advantage between the two states as to the issuance of bonds. A difference between the two authorities is that North Dakota is part of an ISO and Wyoming is not. The committee was informed that there may be regulatory or cost recovery opportunities by being part of an ISO. The committee was informed that it is not foreseeable that the North Dakota Transmission Authority will become more like the Wyoming Infrastructure Authority.

The committee was informed that there are a number of projects being proposed for transmission lines in Wyoming; however, they are usually backed by companies without strong credit. The committee was informed that the big players are not involved because of regulatory barriers, which impair the creation of new transmission lines.

Cost Allocation and Recovery

The committee received testimony on the Northwest Exploratory Study and the Midwest ISO. The purpose of the Northwest Exploratory Study was to identify the benefits of the best single-line and two-line transmission expansion given a projected 2,000 megawatt wind and coal generation expansion in North Dakota and South Dakota, which would be marketed to Minneapolis and St. Paul.

The committee was informed that the Midwest ISO is a FERC-approved regional transmission organization that oversees the wholesale electric power grid in 15 states to facilitate nondiscriminatory and open access to the grid. Basin Electric Power Cooperative, MinnKota Power Cooperative, Inc., and the Western Area Power Administration are not in a regional transmission organization. However, Basin Electric Power Cooperative and the Western Area Power Administration are nontransmission owning members.

The Midwest ISO provides the following services:

- Scheduling and selling wholesale transmission services.
- Operating a day ahead and real-time energy markets.
- Centralized dispatch of generation.
- Management of grid congestion.
- Regional transmission planning.
- Market monitoring.

The committee received testimony on cost recovery for the builders of transmission facilities. The committee received information on the Midwest ISO proposal before FERC on transmission cost allocation. The committee was informed that a cost allocation formula and the administration of cost recovery need to be confirmed before there will be major construction of transmission lines by generators of electricity.

The Midwest ISO proposal before FERC on transmission cost allocation would provide a generator building a line greater or equal to 345 kilovolts a reimbursement of 50 percent with 20 percent of that coming from a postage stamp rate throughout the Midwest ISO footprint and 80 percent from nearby rate zones. For example, if generator XYZ Company builds a line costing $100 million, under the Midwest ISO proposal the XYZ Company would be eligible for partial repayment of $50 million. Ten million dollars would come from all utilities in the Midwest ISO footprint. Forty million dollars would come from utilities impacted by the addition. The 50 percent reimbursement for a line less than 345 kilovolts would come completely from nearby rate zones. Once FERC determines the reimbursement rates, the rates will become part of tariff language and will apply to all projects built under the tariff. Present projects are reimbursed through a license plate scheme and that cannot be changed until 2008. Committee discussion included that the postage stamp portion of generator reimbursement should be higher.

Support for the Midwest ISO proposal is widespread but not universal. The committee was informed that 11 of 15 states in the Midwest ISO footprint agree with the proposal. The Industrial Commission (and thus the North Dakota Transmission Authority) supports the compromise contained in the Midwest ISO proposal. It was argued that the Midwest ISO proposal is good for North Dakota because a final determination provides certainty for the generators in developing new transmission. The Federal Energy Regulatory Commission order adopted the Midwest ISO proposal. The committee was informed, however, that the reimbursement has not been determined as to whether it is a lump sum, payments over time, or credits on transmission bills.

The committee considered, but does not recommend, a bill draft that would have allowed a public utility to have an automatic rate adjustment for recovery of capital and operating costs incurred to comply with environmental laws or costs incurred to repair damages caused by an

act of terrorism, sabotage, or a natural disaster. Presently, these costs are recovered through rates after the next general rate case. The bill draft was requested after a committee member spoke with legislators in other states about disasters in the other states. It was argued that utilities need to have immediate action when there is a disaster so utilities may move quickly to make repairs with certainty of cost recovery.

Proponents argued that under the bill draft a public utility would make a filing and would begin to recover costs immediately without a hearing and the Public Service Commission could review the filing and make an adjustment if necessary. However, the committee was informed that under the bill draft a fact scenario in which the Public Service Commission would negate the filing could not be realistically envisioned. The committee was informed that the conditions precedent for filing the expedited tariff under the bill draft are very certain events.

Proponents also argued that the procedure in the bill draft was comparable to the administration of the fuel cost adjustment. The fuel cost adjustment has nothing to do with the general rate and goes up and down on a monthly basis. It also was argued that delayed recovery is adverse to the shareholders' interests.

The committee received testimony on transmission cost recovery in Minnesota and South Dakota. Both states allow the timely recovery of new transmission investments at a rate of return based on the most recent rate case. The committee was informed that the market does not tolerate regulatory lag well. If investors have to wait until the completion of a large project to receive any return, it is difficult to obtain investors.

The committee considered, but does not recommend, a bill draft that would have allowed a public utility to automatically adjust rates for the recovery of capital and operating costs incurred for a new or modified electric transmission facility with the capacity of 41.6 kilovolts or more and five miles or more in length. The committee was informed that the language in the bill draft is borrowed from a recently enacted South Dakota bill.

Proponents of the bill draft argued that the bill draft would spur transmission growth in this state. Presently, interest costs incurred for the completion of a transmission facility are recovered when the public utility files a general rate case. At present, shareholders are paying for the cost of facilities constructed between rate cases. It was argued that as long as returns are good enough, shareholders absorb the cost. However, future plans are for major transmission projects that will require more substantial investment than in the past and there will be a need for timely recovery. If public utilities are allowed to timely recover costs, the repayment costs should be reduced, which will result in lower rates for consumers in the long term. The committee was informed that the intent of the bill draft is to have the expedited tariff available for major investments and maintenance be included under the general tariff.

The committee considered a bill draft to allow a public utility to file a tariff that provides an expedited adjustment of rates to recover jurisdiction capital and operating costs incurred for a new or modified electric transmission facility. The bill draft had two parts. First, the Public Service Commission may approve a tariff that describes a process for the adjustment of rates. Second, the bill draft describes what that tariff must include. The rate adjustments are under the tariff and are rather automatic; however, the Public Service Commission approves and reviews the rate adjustments. The bill draft required the Public Service Commission to approve the rate adjustment unless the adjustment does not comply with the tariff or the incurred costs are not reasonable or prudent.

At present, the recovery of transmission facility costs is done through a general rate case and a fuel cost adjustment is allowed above the base rate provided for in the general tariff. This adjustment prevents having a general rate case every time there is a fuel cost increase. The bill draft allowed public utilities to recover transmission facility costs as soon as they are incurred, as with the fuel cost adjustment. Whether the expedited adjustment for the recovery of transmission facility costs will be a separate line on a customer's bill, as is the case with the fuel cost adjustment, was not part of the bill draft. The committee was informed that certain utilities have a preference to provide for a separate line on customers' bills for a rate adjustment for transmission facility costs.

The committee was informed that the charges allowed in the bill draft would accrue to North Dakota customers in the amount North Dakota customers are benefited. The bill draft referred to "jurisdictional capital and operating costs" and the word "jurisdictional" applies only to the costs attributable to ratepayers in this state. The methodology for determining what is attributable would come from FERC. Under this methodology, a portion of the cost would be allocated to the entire Midwest ISO footprint and the majority of the cost would be paid by the customers of the utility that built and benefit from the line.

The committee received testimony in support of the bill draft and did not receive any testimony in opposition to the bill draft. The committee was informed that the procedure for the tariff to be changed would take approximately six months. However, a rate adjustment may not happen for years because there needs to be a qualifying project.

Siting

The committee received testimony on transmission and the barriers to building transmission facilities. The committee reviewed this state’s laws and model legislation enabling cooperation and coordination among the states when siting electric transmission lines that cross state borders. The committee received testimony on the National Conference of State Legislatures electric transmission planning and siting sample legislation. The committee was informed that the Public Service Commission's authority under existing statutes is sufficient to enable cooperation with other states and the federal government. North Dakota Century Code Sections 49-22-14.1 and 49-02-02 are sources of cooperative authority for the commission. Although the commission's jurisdiction ends at the border of this state,

that does not preclude the commission from working with other states, as the commission does through the Midwest ISO. The committee was informed that "international" may need to be added to Section 49-22-14.1 to allow for international cooperation; however, the commission has cooperated with Canada on siting issues without this addition.

The Public Service Commission would use this information on the interstate benefits of a proposed project in determining whether to give a preference for the siting of an energy conversion or transmission facility. The committee was informed that the commission will not have to give a preference because generally there is no competition between projects.

The Energy Policy Act of 2005 gave authority to FERC and the Department of Energy to address issues of reliability and the designation of interstate bottlenecks. The backstop authority under the Energy Policy Act of 2005 could allow FERC to allow siting when an important transmission line is not allowed by a state. The committee was informed that the closest transmission bottleneck is from Minneapolis going east. As such, FERC probably will not exercise its backstop jurisdiction in this state because this state has low-cost generation and low load. In addition, the committee was informed that the public utility commissions in this area are working together and therefore there is no need for the use of the backstop authority.

CapX 2020

The committee received testimony on where transmission facilities need to be expanded. The committee was informed that the transmission facilities in this state are generally adequate; however, there are bottlenecks in other states. The committee received testimony on CapX 2020, a group of eight utility partners. The group created a 15-year plan for the construction of new facilities. The plan is intended to address the 8,500 megawatts in new generation and the transmission that will be needed to meet the 2020 forecast of 6,300 megawatt-load for the North Central United States, 2,400 megawatts of which are from renewables.

As discussed under **Cost Allocation and Recovery Siting**, the committee addressed the two legislative recommendations of the plan--automatic cost recovery and siting across state boundaries.

Wind Energy

The committee received testimony on wind projects in the state and on state and federal incentives for wind development. The committee was informed that there are a number of wind monitoring program grants available. The usual grant is a matching grant up to $10,000, which is provided over a three-year period.

Minnesota requires Otter Tail Power Company to use 10 percent renewable energy. The committee was informed that a 10 percent renewable energy requirement may be met without significantly increasing costs. The Minnesota Public Utilities Commission has determined that green energy does not count toward the 10 percent renewable energy requirement. The committee was informed that the green community did not want green energy included within the renewable energy requirement so there would be more renewable energy used. This determination, combined with increased costs, made a wind farm project in North Dakota unfeasible.

The committee was informed that the raw cost of wind power is relatively inexpensive; however, there are other considerations with an intermittent source. At a 10 percent renewable energy requirement, Otter Tail Power Company can manage the incremented shortfalls of wind without building other plants. If that percentage were increased, Otter Tail Power Company would have to build more gas backup plants. This would subject Otter Tail Power Company to purchasing gas on the spot market, which can be relatively expensive.

The committee received testimony on the Western Area Power Administration's *Dakotas Wind Transmission Study*. The committee was informed that some transmission problems may be solved through new technologies. The study shows limits to the nonfirm available capacity must be solved with systems additions, such as series compensation.

Although customers require continuous electricity supply, there does not need to be a total backup for wind if a system is designed to have the capacity serve the demand. The committee was informed that there does not need to be an instantaneous backup for wind if there is good wind forecasting. Forecasting wind is important because an unexpected stop in wind is a major problem.

Committee discussion included that wind energy has its positives but wind is not consistent and the economics of wind energy do not promote the building of transmission capacity for wind.

The committee received testimony on wind energy from a wind developer. There are some benefits in placing a wind farm next to the demand, but economics require wind farms be placed where there is lots of wind. However, taking transmission into account, the ideal customer would be a high-volume user who wants to use green energy and locate in this state.

The committee was informed that it costs four to seven cents per kilowatt for the production of wind energy, including federal subsidies. Without the federal subsidies, the cost would increase approximately 40 percent.

Financing

The committee received testimony on financing for transmission projects. The committee reviewed leaseback transactions. The original purpose of a leaseback transaction was to allow a tax-exempt entity like a city to transfer an asset to a private entity and lease the asset back. The transaction would be structured so the tax-exempt entity would receive a cash benefit at execution of the agreement and retain operating control and the private entity would deduct the cost of the transaction and depreciate the asset that was involved in the transaction. Federal tax law has been changed to remove any economic benefit for lease contracts between tax-exempt and private entities. The committee was informed that the problem with leaseback

transactions was that the cities did not give up any control when transferring water systems to third parties.

The committee received testimony on the financing of transmission projects through the state of North Dakota guaranteeing to purchase transmission supply. The tax advantages may make the arrangement able to compete with tax-exempt bonds. Under the concept, a private entity would be established for the purpose of providing power transmission capacity through construction of the intrastate transmission asset. The state would enter a long-term, take-or-pay transmission supply contract with the private entity. The state would enter long-term transmission supply contracts with transmission users. The private entity would obtain construction financing and select a contractor and operator through a competitive procurement process. Upon completion of construction, the private entity would enter a leveraged sale leaseback for the permanent financing of the plant. The private entity supplies transmission, collects supply payments from the state, and services the lease and operation and maintenance agreement obligations. The ongoing operation and maintenance would be conducted by a third-party operator under contract with the private entity.

Because the useful life of a transmission facility is usually 25 years, generally the state would purchase capacity for 25 years and would receive revenue from the users to pay for the capacity. The state creates the demand that drives the concept. The state of North Dakota would be a major risk-taker because the state would buy all the transmission capacity; however, before entering this financing arrangement, if prudent, the state would have buyers for the capacity.

The committee received testimony on clean renewable energy bonds (CREBs). These bonds are allowed in certain circumstances under the Energy Policy Act of 2005. The Act allows state and local governments, cooperative utilities, certain lenders, and Indian tribes to issue CREBs to finance certain renewable energy and clean coal facilities. A CREB is a tax credit bond in which the interest on the bond is paid in the form of tax credits by the federal government. In essence, a CREB only requires that the principal be paid back.

Recommendation

The committee recommends Senate Bill No. 2031 to provide for an expedited rate adjustment to recover transmission facility costs. The bill allows for a change in the tariff to allow the rate adjustment. The rate adjustment must be approved by the Public Service Commission unless the rate adjustment does not comply with the tariff or the incurred costs are not reasonable and prudent.

TESTIMONY AND DISCUSSION ON COMPETITION

The committee received testimony from Imation, Wahpeton, on the need for competition in electric rates. The objective of Imation is to grow the manufacturing plant in Wahpeton and electrical rates enter these equations. The committee was informed that Imation pays more for electricity from Otter Tail Power Company in North Dakota than if Imation received electricity in Minnesota or South Dakota from Otter Tail Power Company.

The main competition for Imation comes from China and India. The committee was informed that energy is more reliable in the United States than in foreign countries. However, foreign countries have a significant advantage in the cost of labor. It was argued that to compete, Imation cannot do much about what foreign countries do, but should be able to work with key suppliers in this country.

The committee was informed that the increase in rates to Imation were attributed to the fuel cost adjustment, which relates to power purchased on the wholesale market. The fuel cost adjustment allows Otter Tail Power Company to pass through dollar per dollar to the customer the increased cost and has been high because of planned outages at the Coyote Plant and Big Stone and rail issues that have had Big Stone operating at half capacity.

The committee was informed that Otter Tail Power Company may not easily change general rates; however, general rates are divided by different groups of users. Imation is the sixth largest customer of Otter Tail Power Company in North Dakota. There are discounts for volume users and Imation is using the available discounts. However, the committee was informed that a business one-fortieth the size of Imation receives the same rates from Otter Tail Power Company. The committee was informed that rate structures favoring residential customers over business customers are policy-driven and are not set by economic pressure. The committee was informed that Otter Tail Power Company would investigate at the next general rate case a rate structure that provides better rates for business users. There has not been a rate case for Otter Tail Power Company since 1983 because the company has not underearned. The committee was informed that rate cases are time-consuming and expensive. The committee was informed that Imation needs a short-term solution so that jobs can remain in Wahpeton.

The committee was informed that Otter Tail Power Company could negotiate a special rate with Public Service Commission approval. Under NDCC Section 49-04-07, the Public Service Commission has the authority to approve electric service rate agreements negotiated with individual customers. Since 1988, 18 of these contracts have been approved, mostly for economic development or load-retention purposes. In short, Otter Tail Power Company can change its rate structure without a full rate case.

The committee received testimony from Dakota Valley Cooperative on rates charged customers outside Wahpeton. Dakota Valley may not serve Imation because Imation is within Wahpeton city limits. The committee was informed that cooperatives may set a rate at any level and that Dakota Valley rates are cost-based rates, i.e., rates are set with regard to usage. The committee was informed that industrial customers are on standard rates; however, occasionally new customers have a lower rate because of investments in the

transmission system. The committee was informed that the 4.5 cents per kilowatt-hour for Min-Dak Farmers Cooperative is the standard Dakota Valley rate. The rate for Cargill is less because of investments in the transmission system. Both these rates are lower than rates paid by Imation to Otter Tail Power Company.

The committee was informed that the Public Service Commission met with Imation and Otter Tail Power Company on August 31, 2006. Imation gave Otter Tail a proposal for a time-of-day rate. Otter Tail was to review the proposal and provide a counteroffer or accept the offer.

TESTIMONY AND DISCUSSION ON COMMITTEE EXTENSION

The Electric Industry Competition Committee is scheduled to sunset in 2007. Committee discussion included that the contentious issues brought before the committee make a strong case for the continuation of the committee.

The committee considered, but does not recommend, a bill draft relating to the continuation of the Electric Industry Competition Committee until August 1, 2009. Committee discussion included that the committee should continue but the scope of the committee should be broadened to include all energy development and transmission.

The committee considered a bill draft to create the Energy Development and Transmission Committee as a successor to the Electric Industry Competition Committee. Committee discussion included support for additional language to include that the committee is to study each facet of the energy industry from the obtaining of the raw natural resource to the processing, distribution, and consumption in addition to sale of the final product. However, an amendment to this effect failed.

Committee discussion included support for the name of the committee and the sentence designating the committee's area of study being inclusive of all processes of energy development without extra words.

Committee discussion included whether the study of oil is or is not included within the committee's study jurisdiction. However, committee discussion pointed out the intent of the bill draft is that petroleum transmission may be studied during the interim and the intent of the bill draft is to include the study of oil.

Committee discussion included the desire that the Transmission Authority bill last session should have been addressed during the interim when there was time to thoughtfully consider the provisions of the bill. Committee discussion included that the state needs to address transmission because transmission is the most important issue in energy.

The committee was informed that the Legislative Council could give the Energy Development and Transmission Committee more studies in addition to the statutory duties. The Energy Development and Transmission Committee would be required to study "each facet of the energy industry." By creating a statutory committee, the Legislative Council would be required to study the subject matter in the bill draft; however, the Legislative Council could manage the workload among committees so there is no duplication.

The committee discussion included support for the membership being equal from the majority and minority parties in the House and the Senate. However, an amendment to this effect failed.

Recommendation

The committee recommends House Bill No. 1028 to create the Energy Development and Transmission Committee of the Legislative Council.

TESTIMONY AND DISCUSSION ON TAXATION

The committee received testimony on the taxation of the electric industry. In particular, the committee reviewed two bill drafts proposed during the 2003-04 interim as described under **PREVIOUS STUDIES**, **2003-04 Study**. The committee was informed there have been no discussions in the industry since the 2003-04 interim on the taxation issue.

The committee received testimony on the in lieu of property tax bill draft. Proponents argued that in lieu of taxes are more transparent and uniform than property taxes based on formulas. The goal of the proposal was to be revenue-neutral to political subdivisions. However, the committee was informed that the in lieu of property tax bill draft will not hold political subdivisions harmless but the impact would not produce great shifts in revenue. As to the taxes paid by utilities, the committee was informed that it is impossible to adopt a new tax plan that is revenue-neutral and that does not increase any utility's tax payments.

The committee was informed every cooperative, Xcel Energy, Inc., and Otter Tail Power Company supported or did not oppose the bill draft during the 2003-04 interim. The committee was informed that although Otter Tail Power Company testified during the 2003-04 interim that the in lieu of property tax bill draft would have provided simplicity to taxation and was supported by the company, the company did not endorse the bill draft due to concerns with tax distribution inequities raised in other testimony. In addition, the neutrality of Xcel Energy, Inc., toward the proposal was changed due to opposition to the administrative complexity created by the bill draft. The committee was informed that the bill draft would create an administrative burden for MDU Resources Group, Inc., because the electric and gas functions would have to be separated for taxation purposes.

The committee received testimony on the property tax bill draft that provided for rural electric cooperatives' property to be centrally assessed and subject to property tax. The committee was informed that in 1997 there was reason to investigate changes in the taxation system because the electric industry was facing competition with deregulation. It was argued that because there has not been deregulation, there is no need to change taxation. However, in the alternative, it was argued that if a change were to be made, taxation of rural electric cooperatives should be changed to a system based on the value of the property.

The committee was informed that applying centrally assessed property taxes to rural electric cooperatives is administratively burdensome because electric cooperatives have not maintained records on original investments in quarter-quarter sections as is needed for this type of taxation. To the contrary, the committee was informed that although original costs may be an issue in changing to a new system of centrally assessed property, fair assumptions may be made and costs determined. It was argued that another administratively burdensome factor would be that the state would have to add 22 rural electric cooperatives to the central assessment.

The committee received testimony on a study done by Covenant Consulting Group. The committee was informed that the reason for the study was to provide information on property taxes of electric utility entities. The focus of the study was on the differences in property taxation between cooperatives and investor-owned utilities and the resulting impact those tax differences have on the local taxing districts. The study focused on Bismarck and Dickinson.

The study concluded that the cities of and school districts in Bismarck and Dickinson would receive significantly more property tax dollars if the areas within those taxing districts currently served by cooperatives were served by investor-owned utilities or if the cooperatives were taxed the same as investor-owned utilities. Because taxes are based on budgets, as long as the budgets stayed the same there would not be an increase in total tax collections but a decrease in taxes to others. Increased taxes upon electric utilities may be passed on to the consumer; however, the reduction in other taxes should make the net effect the same. The committee was informed that the argument that taxes should not be increased on electric utilities because they will be passed on to consumers is the same argument that could be used for removing all taxes on electric utilities.

The committee was informed that the results of the study did not apply to small cities. For the study to be done in a small city, the study would need information on how much tax each meter generates for the gross receipts tax. The study only looked at two cities, not the whole state. The report on the study was provided without a recommendation. The committee was informed that if the committee is concerned with the conclusion of the report, the committee may wish to have an independent study; however, an independent study would be expensive.

The committee received testimony in opposition to the findings of the study. The committee was informed that although a different study may have come to the same result no matter who commissioned the study, the questions would have been different if commissioned by the rural electric cooperatives. The committee was informed that the application of property taxes to rural electric cooperatives would result in a shift in taxes to rural areas around cities.

Committee discussion included that line mile tax revenue allocated to counties for new developments in the outskirts of cities should be examined. It was argued that the cities should have the revenue. To the contrary, it was argued creating a third tier of taxation creates a complexity that is unnecessary and every area should be treated the same. Committee discussion included that the issue is complex because people from rural areas go to the cities and pay local sales taxes for projects the people from rural areas do not use.

REPORT ON EMERGENCY 911 TELEPHONE SYSTEMS STANDARDS AND GUIDELINES

The Legislative Council delegated to the committee the responsibility to receive a report from the Division of State Radio on the operation of and any recommended changes in the emergency 911 telephone system standards and guidelines. The report provided for under NDCC Section 57-40.6-11 requires the Division of State Radio to report annually to the Legislative Council on the operation of and any recommended changes in the emergency 911 telephone system standards and guidelines. Under Section 57-40.6-10, the governing body with jurisdiction over an emergency 911 telephone system is to designate a governing committee. The governing committee is to hire a 911 coordinator and provide for the operation of a 911 system subject to particular requirements of this section, i.e., the standards and guidelines.

The committee was informed that State Radio recommended no change.

REPORT ON CITY AND COUNTY FEES ON TELEPHONE SERVICE

The Legislative Council delegated to the committee the responsibility to receive a report from the Public Safety Answering Points Coordinating Committee on city and county fees on telephone exchange access service and wireless service. The report provided for under NDCC Section 57-40.6-12 requires the Public Safety Answering Points Coordinating Committee to provide by November 1 of each even-numbered year to the Legislative Council a report on income, expenditures, and status of the emergency services communication system. The information for the report is provided for by the cities and counties that have a telephone exchange access service and wireless service fee. Under Chapter 57-40.6, a governing body of a city or county may provide for a resolution, subject to the vote of the electors, for the imposition of a fee of up to $1 per month per telephone access line and wireless access line for providing an emergency services communication system, and in the case of wireless, enhanced 911 service. The Public Safety Answering Points Coordinating Committee is composed of one member appointed by the North Dakota 911 Association, one member appointed by the North Dakota Association of Counties, and one member appointed by the Adjutant General to represent the Division of State Radio.

For the first time the revenue received by local jurisdictions from wireless communications companies exceeded that received from landline companies. As of May 2005, all carriers and public safety answering points

are compliant with Phase 2 of the wireless enhanced 911 plan.

The committee reviewed a performance audit report on the collection and use of 911 fees. The performance audit report had been presented to and accepted by the Legislative Audit and Fiscal Review Committee. The committee was informed that the legislation recommended in the performance audit is being addressed by a committee organized by the Adjutant General.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. Under North Dakota Century Code (NDCC) Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs and health and retiree health plans of public employees. Section 54-35-02.4 also requires the committee to take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval and to include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. The committee is allowed to solicit draft measures from interested persons during the interim and is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review. A copy of the committee's report must accompany any measure or amendment affecting a public employee's retirement program, health plan, or retiree health plan which is introduced during a legislative session. The statute provides that any legislation enacted in contravention of these requirements is invalid and benefits provided under that legislation must be reduced to the level in effect before enactment. In addition, Section 54-52.1-08.2 requires the committee to approve terminology adopted by the Public Employees Retirement System (PERS) Board to comply with federal requirements and Section 18-11-15 requires the committee to receive notice from a firefighters relief association concerning service benefits paid under a special schedule.

Pursuant to NDCC Section 54-06-31, the Legislative Council assigned the committee the responsibility to receive periodic reports from the Human Resource Management Services Division of the Office of Management and Budget on the implementation, progress, and bonuses provided under state agency recruitment and retention bonus programs. The Legislative Council also assigned to the committee a study directed by Section 28 of House Bill No. 1015 (2005) of issues relating to state employee compensation.

Committee members were Representatives Matthew M. Klein (Chairman), Al Carlson, Joe Kroeber, Ken Svedjan, and Francis J. Wald and Senators Ray Holmberg, Ralph L. Kilzer, Karen K. Krebsbach, and Carolyn Nelson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN PROPOSALS

The committee established April 1, 2006, as the deadline for submission of retirement, health insurance, and retiree health proposals and July 1, 2006, as the deadline for submission of health insurance mandate proposals. The deadlines provide the committee and the consulting actuary of each affected retirement, health, or retiree health program sufficient time to discuss and evaluate the proposals. The committee allowed only legislators and those agencies entitled to the bill introduction privilege to submit proposals for consideration.

The committee reviewed each submitted proposal and solicited testimony from proponents, retirement and health program administrators, interest groups, and other interested persons.

Under NDCC Section 54-35-02.4, each retirement, insurance, or retiree insurance program is required to pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program.

The committee referred the proposals submitted to it to the affected retirement or insurance program and requested the program authorize the preparation of actuarial reports. The Public Employees Retirement System used the actuarial services of The Segal Company in evaluating proposals that affected retirement programs and the actuarial services of Gallagher Benefit Services, Inc., in evaluating proposals that affected the public employees health insurance program. The Teachers' Fund for Retirement (TFFR) Board of Trustees used the actuarial services of Gabriel, Roeder, Smith and Company in evaluating proposals that affected the Teachers' Fund for Retirement.

The committee obtained written actuarial information on each proposal. In evaluating each proposal, the committee considered the proposal's actuarial cost impact; testimony by retirement and health insurance program administrators, interest groups, and affected individuals; the impact on the state general fund or special funds and on the affected retirement program; and other consequences of the proposal or alternatives to it. Based on these factors, each proposal received a favorable recommendation, unfavorable recommendation, or no recommendation.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to the proposal and delivered to its sponsor. Each sponsor is responsible for introducing the proposal to the 60th Legislative Assembly.

TEACHERS' FUND FOR RETIREMENT

History

Former NDCC Chapter 15-39 established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by Section 15-39.1-03, provides a fixed annuity for full-time teachers whose

rights vested in the fund before July 1, 1971. The plan was repealed in 1971 when the Teachers' Fund for Retirement was established with the enactment of Chapter 15-39.1. The plan is managed by the TFFR Board of Trustees.

The Teachers' Fund for Retirement became effective July 1, 1971, and is administered by a board of trustees. A separate state investment board is responsible for the investment of the trust assets, although the TFFR Board of Trustees establishes the asset allocation policy. The Retirement and Investment Office is the administrative agency for the Teachers' Fund for Retirement. The Teachers' Fund for Retirement is a qualified governmental defined benefit retirement plan. For Governmental Accounting Standards Board purposes, it is a cost-sharing, multiple-employer public employee retirement system.

Contribution Rates and Benefits

Every certified teacher of a public school in the state participates in the Teachers' Fund for Retirement. This includes teachers, supervisors, principals, and administrators. Noncertified employees such as teacher's aides, janitors, secretaries, and drivers are not allowed to participate in the Teachers' Fund for Retirement. Eligible employees become members at the date of employment.

An active member contributes 7.75 percent of salary per year. The employer may "pick up" the member's assessments under Internal Revenue Code Section 414(h). The member's total earnings are used for salary purposes, including overtime, and including nontaxable wages under a Section 125 plan, but excluding certain extraordinary compensation, such as fringe benefits or unused sick or vacation leave.

The district or other employer that employs a member contributes 7.75 percent of the member's salary. Employees receive credit for service while members. A member may also purchase credit for certain periods, such as time spent teaching at a public school in another state, by paying the actuarially determined cost of the additional service. Special rules and limits govern the purchase of additional service.

A member is eligible for a normal service retirement benefit at age 65 with credit for three years of service or when the sum of the member's age and years of service is at least 85--the Rule of 85. The monthly retirement benefit is 2.00 percent of final average compensation, defined as the average of the member's highest three-plan year salaries with monthly benefits based on one-twelfth of this amount, times years of service. Benefits are paid as a monthly life annuity, with a guarantee that if the payments made do not exceed the member's assessments plus interest, determined as of the date of retirement, the balance will be paid in a lump sum to the member's beneficiary.

A member may retire early after reaching age 55 with credit for three years of service. In this event, the monthly benefit is 2.00 percent of final average compensation times years of service, multiplied by a factor that reduces the benefit 6 percent for each year from the earlier of age 65 or the age at which current service plus age equals 85.

A member is eligible for disability retirement benefits provided the member has credit for at least one year of service. The monthly disability retirement benefit is the greater of the amount of retirement benefits without consideration of age or the amount of retirement benefits without consideration of age assuming the member had 20 years of service. The disability benefit commences immediately upon the member's retirement. Benefits cease upon recovery or reemployment. Disability benefits are payable as a monthly life annuity with a guarantee that, at the member's death, the sum of the member's assessments plus interest as of the date of retirement that is in excess of the sum of payments already received will be paid in a lump sum to the member's beneficiary. All alternative forms of payment are also permitted in the case of disability retirement. Disability benefits are converted to normal retirement benefits when the member reaches normal retirement age or age 65, whichever is earlier.

A member with at least three years of service who does not withdraw contributions from the fund is eligible for a deferred termination benefit. The deferred termination benefit is a monthly benefit of 2.00 percent of final average compensation times years of service. Final average compensation and service are determined at the time the member leaves active employment. Benefits may commence unreduced at age 65 or when the Rule of 85 is met. Reduced benefits may commence at or after age 55 if the member is not eligible for an unreduced benefit. The form of payment is the same as for normal retirement.

A member leaving covered employment with less than three years of service is eligible to withdraw or receive a refund benefit. Optionally, a vested member (with three or more years of service) may withdraw assessments plus interest in lieu of the deferred benefits otherwise due. A member who withdraws receives a lump sum payment of employee assessments, plus the interest credited at 6 percent on these contributions.

To receive a death benefit, death must have occurred while the person was an active or inactive, nonretired member. Upon the death of a nonvested member, a refund of the member's assessments and interest is paid. Upon the death of a vested member, the beneficiary may elect the refund benefit; payment for 60 months of the normal retirement benefit, based on final average compensation and service determined at the date of death; or a life annuity of the normal retirement benefit, based on final average compensation and service as of the date of death, but without applying any reduction for the member's age at death.

There are optional forms of payment available on an actuarial equivalent basis. These include a life annuity payable while either the participant or the participant's beneficiary is alive, "popping-up" to the original life annuity if the beneficiary predeceases the member; a life annuity payable to the member while both the member and beneficiary are alive, reducing to 50 percent of this amount if the member predeceases the beneficiary, and "popping-up" to the original life annuity if the beneficiary

predeceases the member; a life annuity payable to the member, with a guarantee that, should the member die prior to receiving 60 payments, the payments will be continued to a beneficiary for the balance of the five-year period; a life annuity payable to the member, with a guarantee that, should the member die prior to receiving 240 payments, the payments will be continued to a beneficiary for the balance of the 20-year period; a life annuity payable to the member, with a guarantee that, should the member die prior to receiving 120 payments, the payments will be continued to a beneficiary for the balance of the 10-year period; or a nonlevel annuity payable to the member, designed to provide a level total income when combined with the member's Social Security benefit. The option to receive a life annuity payable to the member with a guarantee that, should the member die prior to receiving 60 payments, the benefits will be continued to a beneficiary for the balance of the five-year period is not available to employees who retire on or after August 1, 2003. Retirees who elected this option before August 1, 2003, are not affected. In addition, members may elect a partial lump sum option at retirement. Under this option, a member receives an immediate lump sum equal to 12 times the monthly life annuity benefit and a reduced annuity. The reduction is determined actuarially. The member can then elect to receive the annuity benefit in one of the other optional forms, except that members who receive a partial lump sum option may not elect the level income option. The partial lump sum option is not available to disabled retirees or retirees who are not eligible for an unreduced retirement benefit. Actuarial equivalencies are based on tables adopted by the board of trustees.

The following chart provides a recent history of TFFR retirement plan changes:

July 1	Plan Improvements	Benefit Formula Increase	Retired Member Increase	Amount Average Increase	Average Increase Percentage	Average Monthly Benefits
1991	Provisions for military service credit under Veterans' Reemployment Rights Act (VRRA) added	Multiplier increased to 1.39% (final average salary (FAS) x 1.39% x years of service)	10% of current benefit or leveling benefit increase based on retirement date and years of service (maximum of $75/month)	$63.24	14.66%	1990 - $415 1991 - $513
1993	Disability retirement formula changed to coin-cide with retirement formula	Multiplier increased to 1.55% (FAS x 1.55% x years of service)	10% of current benefit or leveling benefit increase based on retirement data and years of service (maximum of $100/month)	$75.00	13.80%	1992 - $549 1993 - $547
1995	Allow members to roll over refunds from TFFR to IRA or qualified plan	No change	No increase	$0	0%	1994 - $663 1995 - $690
1997	Employer and employee contributions increased to 7.75% Allow rollovers to purchase service credit Expand TFFR Board to 7 members	Multiplier increased to 1.75% (FAS x 1.75% x years of service)	$30 per month increase	$30.00	4.1%	1996 - $719 1997 - $729
1999	Vesting and eligibility for benefits reduced from 5 to 3 years Early retirement reduction changed from age 65 to earlier of age 65 or Rule of 85 Purchase of service credit modified; air time and leave of absence added Member's spouse required to be beneficiary and spousal consent to choice of benefit option	Multiplier increased to 1.88% (FAS x 1.88% x years of service)	Increase equal to $2 per month x member's years of service credit + $1 per month x number of years since member's retirement	$70.00	8.5%	1998 - $810 1999 - $833
2001	Modified retiree employ-ment provisions by adding exceptions for critical shortage areas and educational foundation donations, and improved	Multiplier increased to 2.00% (FAS x 2.00% x years of service)	Increase equal to $2 per month x member's years of service credit + $1 per month x number of years since member's retirement + 0.75% annual adjustment for 7/1/01 and 7/1/02	$78.00	7.8%	2000 - $970 2001 - $995

July 1	Plan Improvements	Benefit Formula Increase	Retired Member Increase	Amount Average Increase	Average Increase Percentage	Average Monthly Benefits
	recalculation of retiree benefits after returning to teach					
2003	Clarified definition of salary Updated dual-membership guidelines Added 20-year term certain and partial lump sum distribution (PLSO) options Expended refund and rollover options to purchase service credit Allow employers to purchase service credit on behalf of members	No change	No increase	$0	0%	2002 - $1,152 2003 - $1,203
2005	None	No change	No increase	$0	0%	2004 - $1,255 2005 - $1,309

Retired Teachers Returning to Work

The committee received information on retired teachers returning to work. North Dakota law has, for many years, allowed retired teachers to return to work on a half-time basis or less. Although a few teachers have chosen this option in the past, in recent years, the committee learned more retired teachers are returning to work.

North Dakota Century Code Section 15-39.1-19.1 allows retirees of the Teachers' Fund for Retirement to return to teach and continue receiving their TFFR retirement benefits under one of the following options:

1. General rule - After a 30-day waiting period, a retiree may return to TFFR-covered employment for the following maximum number of hours in a fiscal year:

Nine-month contract	700 hours
Ten-month contract	800 hours
Eleven-month contract	900 hours
Twelve-month contract	1,000 hours

   Substitute teaching, extracurricular duties, and continuing professional development do not apply to the annual hour limit. No employer or employee retirement contributions are made to TFFR on behalf of the teacher under this option.
2. Exception A - Critical shortage area - A retiree may return to teaching in an approved critical shortage area and exceed the annual hour limitation without losing retirement benefits. If the retiree retired on or before January 1, 2001, no waiting period is required; however, if a retiree retired after January 1, 2001, a one-year waiting period is required. Critical shortage areas are determined each year by the Education Standards and Practices Board. The committee learned the board primarily determines critical shortage areas based upon the ratio of regularly licensed teachers in the state who are qualified for the position to the number of schools with open positions requesting alternative access licensure. In cases where near shortages exist, the board gives additional consideration to whether the hiring school has made a diligent effort to attract and hire regularly licensed teachers. For the 2005-06 school year, the board designated all teaching areas, except elementary education and physical education, as critical shortage areas in the state. No employer or employee retirement contributions are made to TFFR on behalf of the teacher under this option.
3. Exception B - Benefit suspension and recalculation - After a 30-day waiting period, a retiree may return to TFFR-covered employment and exceed the annual hour limitation; however, retirement benefits will be suspended the first of the month following the month the retiree reaches the annual hour limit. At that time, the employer and employee contributions must be paid on any salary earned after the annual hour limit based on the employer's TFFR payment model. Once the retiree again retires, monthly benefits are recalculated.

The following schedule shows the number of retirees who have returned to work for the 1999-2000 school year compared to the 2005-06 school year.

	1999-2000	2005-06
Number of retirees returning to teaching	26	160
Superintendents/administrators	9	48
Teachers	17	112
General rule	24	151
Critical shortage area	0	6
Suspend and recalculate	2	3
Average age	62	60
Average salary	$13,000	$22,000

The committee learned North Dakota school districts employed 181 first-year teachers for the 2003-04 school year, 200 for the 2004-05 school year, and 190 for the 2005-06 school year.

The committee heard testimony from other interested persons and learned that it is important for school districts to have the ability to hire part-time teachers as the number of students declines, especially in rural areas of the state where it is difficult to recruit part-time teachers.

Actuarial Report

The latest available report of the consulting actuary was dated July 1, 2006. The primary purposes of the valuation report are to determine the adequacy of the current employer contribution rate, to describe the current financial condition of the Teachers' Fund for Retirement, and to analyze changes in the fund's condition. In addition, the report provides information required by the Teachers' Fund for Retirement in connection with Governmental Accounting Standards Board (GASB) Statement No. 25 and provides various summaries of the data. Valuations are prepared annually, as of July 1 of each year, the first day of the Teachers' Fund for Retirement's fiscal year.

The 2006 Teachers' Fund for Retirement actuarial report indicates:

- The number of active members in TFFR in 2006 was 9,585, a reduction of 216 or 2.2 percent from the number of active members in 2005 of 9,801. The reduction is partially due to new procedures used in the new TFFR computer data system which counts members who retire on July 1 of each year as a retiree rather than as an active member.
- Over the last 10 years, active membership in the fund has decreased by an average of .2 percent per year.
- There are 1.6 active members in TFFR for each retiree compared to 2.2 active members for each retiree 10 years ago.
- The number of retirees in 2006 increased by 307 or 5.5 percent, from 5,586 in 2005 to 5,893 in 2006. The average annual retiree benefit is $16,595.
- Payroll for 2006 for active members increased by .9 percent, from $386.6 million to $390.1 million, compared to an average increase of 3.3 percent per year over the last 10 years.
- Average active member pay increased by 3.2 percent, from $39,447 per year to $40,703 per year.
- The fair market value of the fund's assets increased from $1.53 billion in fiscal year 2005 to $1.72 billion in fiscal year 2006.
- Total contributions were $65.6 million for fiscal year 2006 compared to $64.1 million for fiscal year 2005.
- Total distributions in fiscal year 2006 were $96 million, compared to $89.3 million in fiscal year 2005.

The Government Accounting Standards Board Statement No. 25 provides a guide for determining required contribution rates for retirement funds. The actual employer contribution to the fund is 7.75 percent. When calculating the annual required employer contribution based on the GASB statement, the contribution for fiscal year 2006 should have been 12.12 percent. The difference of 4.37 percent is referred to as "negative margin." The committee learned that the TFFR Board of Trustees, in 2005, changed the factors used in calculating the GASB annual required contribution from amortizing the unfunded liability of the plan using a level payroll over 20 years to assuming 2 percent annual payroll increases with an amortization period of 30 years.

Actual investment returns for recent years have been:

- Fiscal year 2002 - (8.6 percent),
- Fiscal year 2003 - 2.1 percent,
- Fiscal year 2004 - 18.9 percent,
- Fiscal year 2005 - 13.3 percent, and
- Fiscal year 2006 - 14.6 percent.

The average return over the last 10 years has been 8.3 percent, which is .3 percent more than the assumed investment return rate of 8 percent. Investment returns are averaged over a five-year period when determining "actuarial" asset value.

The unfunded actuarial accrued liability of the fund increased from $495.5 million in 2005 to $509.9 million in 2006. Over the same time period the funded ratio based on actuarial value increased from 74.8 to 75.4 percent. Using the market value of the fund's assets, the funded ratio would be 83 percent.

Assuming the fund earns 8 percent in future years, the committee learned the unfunded liability of the Teachers' Fund for Retirement is estimated to increase from its current level of $509.9 million to $947.3 million in 30 years.

The major reasons the fund's financial condition has decreased from a 102 percent funding ratio in 2000 to a 75 percent funding ratio for 2006 are the result of:

- Lower investment returns during 2001 through 2003.
- Changes in actuarial assumptions reflecting larger salary increases, longer life expectancies fewer members leaving the fund before retirement, and members retiring earlier.
- Benefit improvements authorized in 2001, when the formula multiplier increased from 1.8 to 2 percent of final average salary.

Regarding the long-term stability of the fund, actuarial projections indicate that the fund will be able to pay all of its promised benefits for the next 30 years. Even in 2036, assuming 8 percent future earnings, assets are still projected to be more than 10 times annual distributions.

Proposals Affecting Teachers' Fund for Retirement

The following is a summary of proposals affecting TFFR which the committee took jurisdiction of and committee action on each:

Bill No. 73

Sponsor: State Board for Career and Technical Education

Proposal: Allows employees of the State Board for Career and Technical Education the option to transfer from TFFR to PERS. For those employees who make the transfer, TFFR would move the employees service, account balance, and pay and contribution history to PERS and PERS would be responsible for any benefits due based on each employee's service. The bill also allows future employees hired by the State Board for Career and Technical Education to elect to join PERS rather than TFFR.

Actuarial Analysis: 16 employees of the State Board for Career and Technical Education who are members of TFFR would be eligible to make the transfer. As of June 30, 2006, the average age for the group was 53, the average years of service was 20, and the average salary of the employees was $49,337 per year.

The actuarial analysis determined the asset transfer amount would be $2,897,301 from TFFR to PERS for these employees if they all make the transfer.

The actuarial analysis indicates that if the bill is approved, and all eligible employees transfer to PERS, TFFR will be "worse off" by $235,766, the unfunded actuarial liability will increase by $38,906, and the annual required contribution based on GASB Statement No. 25 for fiscal year 2007 would increase from 12.29 to 12.31 percent.

Committee Report: No recommendation.

Bill No. 68

Sponsor: TFFR Board of Trustees

Proposal: Major provisions of the bill draft:

1. Incorporate federal tax law changes to comply with Internal Revenue Service requirements.
2. Increase employer retirement contribution rates by 1 percent, from 7.75 to 8.75 percent of active members' salaries. The employee contribution remains at 7.75 percent.
3. Require employer contributions of 16.5 percent of a reemployed retiree's salary.
4. Provide that if a member elects a refund, the member waives any right to participate in the fund under the same membership provisions that existed when the refund was taken.
5. Create a new tier (Tier II) of reduced member benefits for TFFR members employed on or after July 1, 2007, by:
   a. Modifying normal retirement benefit eligibility for new members (Tier II) to age 65 and five years of service or the Rule of 90 rather than the eligibility for current members (Tier I) of age 65 and three years of service or the Rule of 85.
   b. Modifying the final average salary calculation for new members (Tier II) to provide for a five-year final average salary calculation rather than the three-year final average salary calculation for current members (Tier I).
   c. Modifying the vesting schedule for new members (Tier II) to five years of service rather than the vesting schedule of three years of service for current members (Tier I).
   d. Modifying the early retirement eligibility for new members (Tier II) to age 55 and five years of service rather than age 55 and three years of service for current members (Tier I).
   e. Modifying the employer service purchase conditions for new members (Tier II) to age 55 and five years of service and a Rule of 82 rather than age 55 and three years of service with a Rule of 77 for current members (Tier I).

The committee amended the bill at the request of the TFFR Board of Trustees to provide a $5,000 special funds appropriation from the Teachers' Fund for Retirement to pay administrative costs to implement provisions of the bill.

Actuarial Analysis: The following chart compares TFFR without provisions of Bill No. 68 and with provisions of Bill No. 68, as amended, over 10 and 30 years. The projections are based on current actuarial assumptions, including an 8 percent net investment return and active membership declining by .5 percent per year.

Item	July 1, 2006, Current Valuation	July 1, 2016, No Changes	July 1, 2016, With Bill No. 68
Funded ratio	75.4%	84.0%	86.0%
Unfunded actuarial accrued liability	$509.9 million	$482.5 million	$420.5 million
Annual required contribution	12.29%	10.17%	8.28%
Margin[1]	-4.54%	-2.42%	0.47%
Funding period[2]	Infinite	Infinite	24.8 years
Item	**July 1, 2006, Current Valuation**	**July 1, 2036, No Changes**	**July 1, 2036, With Bill No. 68**
Funded ratio	75.4%	82.4%	100.4%
Unfunded actuarial accrued liability	$509.9 million	$947.3 million	-$20.1 million
Annual required contribution	12.29%	10.35%	2.37%
Margin[1]	-4.54%	-2.60%	6.38%
Funding period[2]	Infinite	Infinite	0.0 years

[1]The margin is the difference between the statutory contribution rate and GASB's annual required contribution. It is the result of subtracting the annual required contribution from 7.75% (or 8.75% under Bill No. 68). A negative margin represents a shortfall and a positive margin indicates the statutory contribution is sufficient.

[2]The funding period is the theoretical number of years required to amortize the unfunded accrued actuarial liability using the statutory contribution rate.

Committee Report: Favorable recommendation.

Bill No. 67

Sponsor: Representative Matthew M. Klein

Proposal: Reduces the number of hours a retired member of TFFR may work each year and continue to receive retirement benefits and limits the areas in which a retired member of TFFR may return to teach under the "critical shortage area" to only mathematics and science.

Actuarial Analysis: Provisions of the bill are estimated to potentially reduce the GASB annual required contribution by .38 percent, from 12.29 to 11.91 percent in 2007. The unfunded actuarial accrued liability would decrease by about $15 million and the funded ratio would improve from 75.4 to 76 percent.

Committee Report: No recommendation because the bill was withdrawn by the sponsor.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Programs

The Public Employees Retirement System is governed by NDCC Chapter 54-52 and includes the Public Employees Retirement System main system, judges' retirement system, National Guard retirement system, law enforcement with prior main service, law enforcement without prior main service, and an optional defined contribution retirement plan; Highway Patrolmen's retirement system; Job Service North Dakota retirement plan; and retiree health benefits fund. The Public Employees Retirement System is supervised by the Retirement Board and covers most employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1971, can choose to be members. Officials appointed to office after that date are required to be members. Most Supreme Court and district court judges are members of the plan but receive benefits that are different from benefits received by other members. A county, city, or school district may choose to participate on completion of an employee referendum and on execution of an agreement with the Retirement Board. Political subdivision employees are not eligible to participate in the defined contribution retirement plan. The Retirement Board also administers the uniform group insurance, life insurance, flexible benefits, deferred compensation, and Chapter 27-17 judges' retirement programs. The Chapter 27-17 judges' retirement program is being phased out of existence except to the extent its continuance is necessary to make payments to retired judges and their surviving spouses and future payments to judges serving on July 1, 1973, and their surviving spouses as required by law.

Contribution Rates and Benefits

Main System

The contribution rate for members of the main system is 4 percent and the employer contribution is 4.12 percent. A part-time employee in the main system contributes 8.12 percent with no employer contribution. The contribution rates are set in statute.

A member of the main system is eligible for normal service retirement benefits at age 65 or when age plus years of service is equal to at least 85--the Rule of 85. The retirement benefit is 2 percent of the final average salary multiplied by years of service. Final average salary is the average of the highest salary received by the member for any 36 consecutive months employed during the last 120 months of employment.

A member of the main system is eligible for an early service retirement at age 55 with three years of service. The retirement benefit for a member who elects early service retirement is the normal service retirement; however, a benefit that begins before age 65, or Rule of 85, if earlier, is reduced by one-half of 1 percent for each month before the earlier of age 65 or the age at which the Rule of 85 is met.

A member of the main system with six months of service who is unable to engage in any substantial and gainful activity is eligible for a disability benefit of 25 percent of the member's final average salary at disability with a minimum of $100 per month.

A member of the main system is eligible for deferred vested retirement at three years of service. The deferred vested retirement is the normal service retirement benefits payable at age 65 or the Rule of 85 if earlier. Reduced early retirement benefits may be elected upon attainment of age 55.

The surviving spouse of a deceased member of the main system who accumulated at least three years of service before normal retirement is entitled to elect one of four forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contribution with interest; the member's accrued benefit payable for 60 months to the surviving spouse; 50 percent of the member's accrued benefit, not reduced on account of age, payable for the surviving spouse's lifetime; or continuation portion of a 100 percent joint and survivor annuity, only available if the participant was eligible for normal retirement.

Defined Contribution Plan

Under the main retirement system, certain employees are eligible to participate in a defined contribution plan. Pursuant to Chapter 54-52.6, a permanent state employee, except an employee of the Judicial Branch or an employee of the State Board of Higher Education and state institutions under the jurisdiction of the board, who is in a position not classified by Human Resource Management Services of the Office of Management and Budget may elect to participate in the defined contribution retirement plan.

The defined contribution plan allows a participating employee to control the investment of funds in the employee's own retirement account into which the employee and state contributions are deposited. Retirement benefits are dependent upon the employee's account value at retirement.

National Guard Retirement System

The contribution rate for a member of the National Guard retirement system is 4 percent, and the employer contribution is 8.33 percent. The employee contribution

rate is set in statute; however, the employer contribution rate is not.

A member of the National Guard retirement system is eligible for a normal service retirement at age 55 and three consecutive years of service. The retirement benefit of the National Guard retirement system is 2 percent of the final average salary multiplied by years of service. Final average salary is the average of the highest salary received by the member for 36 consecutive months employed during the last 120 months of employment.

A member of the National Guard retirement system is eligible for early service retirement at age 50 with three years of service. The early service retirement benefit for a member of the National Guard retirement system is the normal service retirement benefit; however, a benefit that begins before age 55 is reduced by one-half of 1 percent for each month before age 55.

A member of the National Guard retirement system with six months of service who is unable to engage in any substantial gainful activity is eligible for a disability benefit of 25 percent of the member's final average salary with a minimum of $100 per month.

A member of the National Guard retirement system is eligible for deferred vested retirement at three years of service. The deferred vested retirement benefit for the National Guard retirement system is the normal service retirement benefit payable at age 55. Reduced early retirement may be elected upon attainment of age 50.

The surviving spouse of a deceased member of the National Guard who had accumulated at least three years of service before normal retirement is entitled to elect one of four forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contribution with interest; the member's accrued benefit payable for 60 months to the surviving spouse; 50 percent of the member's accrued benefit, not reduced on account of age, payable for the surviving spouse's lifetime; or continuation portion of a 100 percent joint and survivor annuity, only available if the participant was eligible for normal retirement.

Law Enforcement Retirement Systems

The law enforcement retirement system is available to correctional or peace officers of political subdivisions that choose to participate in the PERS retirement system. State agency employees are not eligible to participate in the law enforcement retirement system.

The contribution rate for a member of the law enforcement retirement system with prior main service is 4 percent, and the employer contribution is 8.31 percent. The contribution rate for a member of the law enforcement retirement system without prior main service is 4 percent, and the employer contribution is 6.43 percent. The employee contribution rate is set in statute; however, the employer contribution is not.

A member of the law enforcement retirement system is eligible for a normal service retirement at age 55 and three consecutive years of service or when age plus service is equal to 85--Rule of 85. The retirement benefit for members of the law enforcement retirement system is 2 percent of final average salary multiplied by years of service. Final average salary is the average of the highest salary received by the member for any 36 consecutive months employed during the last 120 months of employment.

A member of the law enforcement retirement system is eligible for early service retirement at age 50 with three years of service. The early service retirement benefit for a member of the law enforcement retirement system is the normal service retirement benefit; however, a benefit that begins before age 55, or Rule of 85, if earlier, is reduced by one-half of 1 percent for each month before age 55.

A member of the law enforcement retirement system with six months of service who is unable to engage in any substantial gainful activity is eligible for a disability benefit of 25 percent of the member's final average salary at disability with a minimum of $100 per month.

A member of the law enforcement retirement system is eligible for deferred vested retirement at three years of service. The deferred vested retirement benefit for a member of the law enforcement retirement system is the normal service retirement benefit payable at age 50 or Rule of 85 if earlier. Reduced early retirement benefits may be elected upon attainment of age 50.

The surviving spouse of a deceased member of the law enforcement retirement system who had accumulated at least three years of service before normal retirement is entitled to elect one of four forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contribution with interest; the member's accrued benefit payable for 60 months to the surviving spouse; 50 percent of the member's accrued benefit, not reduced on account of age, payable for the surviving spouse's lifetime; or continuation portion of a 100 percent joint and survivor annuity only available if the participant was eligible for normal retirement.

The employee contribution rate for the law enforcement retirement system is specified by statute; however, the employer contribution rate is not.

Judges' Retirement System

The employee contribution rate for the judges' retirement system is 5 percent, and the employer contribution is 14.52 percent. These rates are set in statute.

The retirement benefit for a member of the judges' retirement system is 3.5 percent of final average salary for the first 10 years of service, 2.8 percent for each of the next 10 years of the service, and 1.25 percent for service in excess of 20 years. Final average salary is the average of the highest salary received by the member for any 36 consecutive months employed during the last 120 months of employment.

A member of the judges' retirement system is eligible for early service retirement at age 55 with five years of service. The early service retirement benefit for a member of the judges' retirement system is the normal service retirement; however, a benefit that begins before age 65, or Rule of 85, if earlier, is reduced by one-half of 1 percent for each month before age 65.

A member of the judges' retirement system with six months of service who is unable to engage in any substantial gainful activity is eligible for a disability benefit of 70 percent of the member's final average salary at disability minus Social Security and workers' compensation benefits paid.

A member of the judges' retirement system is eligible for deferred vested retirement at five years of service. The deferred vested retirement benefit is the normal service retirement benefit payable at age 65 or the Rule of 85, if earlier. Reduced early retirement benefits may be elected upon attainment of age 55.

The surviving spouse of a deceased member of the judges' retirement system who would have accumulated at least five years of service is entitled to elect one of two forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contribution or 100 percent of the member's accrued benefit not reduced on account of age, payable for the spouse's lifetime.

Highway Patrolmen's Retirement System

The contribution rate for a member the Highway Patrolmen's retirement system is 10.3 percent, and the employer contribution is 16.7 percent. These rates are set in statute.

A member of the Highway Patrolmen's retirement system is eligible for a normal service retirement at age 55 with at least 10 years of eligible employment or with age plus service equal to at least 80--the Rule of 80. The normal service retirement benefit is 3.6 percent of final average salary for the first 25 years of service and 1.75 percent for service in excess of 25 years. Final average salary is the highest salary received by the member for any 36 consecutive months employed during the last 120 months of employment.

A member is eligible for early service retirement at age 50 with 10 years of eligible retirement. The early service retirement benefit is a normal service retirement benefit; however, a benefit that begins before age 55, or Rule of 80, if earlier, is reduced by one-half of 1 percent for each month before age 55.

A member is eligible for a disability benefit at six months of service and an inability to engage in substantial gainful activity. The disability benefit is 70 percent of the member's final covered salary at disability less workers' compensation, with a minimum of $100 per month.

A member is eligible for deferred retirement benefit upon 10 years of eligible employment. The deferred retirement benefit is a normal service retirement benefit payable at age 55 with a Rule of 80 if earlier. Vested benefits are indexed at a rate set by the retirement board based upon the increase of the final average salary from the date of termination to the benefit commencement date. Reduced early retirement benefits may be elected upon attainment of age 50.

Preretirement death benefits are available to a surviving spouse of a deceased member of the Highway Patrolmen's retirement system who had accumulated at least 10 years of service in one of the three forms--a lump sum payment of accumulated contributions with interest; monthly payment of the member's accrued benefit for 60 months; or 50 percent of the member's accrued benefit, not reduced on account of age, for the surviving spouse's lifetime. If the deceased member had accumulated less than 10 years of service, or if there is no surviving spouse, then a death benefit equal to the member's accumulated contributions with interest calculated at 7.5 percent is paid in a lump sum.

The normal form of benefit for the Highway Patrolmen's retirement system is a monthly benefit for life with 50 percent of the benefit continuing for the life of the surviving spouse, if any. Optional forms of payment are a 100 percent joint and surviving annuity, 5-year certain and life annuity, and 10-year certain and life annuity.

Job Service North Dakota Retirement Plan

The PERS Board assumed administration of the Job Service North Dakota retirement plan from Job Service North Dakota pursuant to the legislation enacted in 2003. It is a closed retirement plan for employees of Job Service North Dakota.

Employer "Pickup" Provision

During the 1983-85 biennium, the state implemented the employer "pickup" provision of the Internal Revenue Service Code allowing a portion or all of the required employee contributions to be made by the employer. The state chose, in lieu of a salary increase during this biennium, to pay employee contributions of 4 percent.

Portability Enhancement Provision

Effective January 1, 2000, a PERS member's account balance includes vested employer contributions equal to the member's contribution to the deferred compensation program under NDCC Chapter 54-52.2. The vested employer contribution may not exceed $25 or 1 percent of the member's salary, whichever is greater, for months 1 through 12 of service credit; $25 or 2 percent of the member's monthly salary, whichever is greater, for months 13 through 24 of service credit; $25 or 3 percent of the member's monthly salary, whichever is greater, for months 25 through 36 of service credit; and $25 or 4 percent of the member's monthly salary, whichever is greater, for service exceeding 36 months. The vested employer contributions may not exceed 4 percent of the member's monthly salary and are credited monthly to the member's account balance. The fund can accept rollovers from other qualified plans under rules adopted by the Retirement Board for purchase of additional service credit.

Members Terminating Employment

In lieu of a monthly retirement benefit, terminating nonvested members and terminating vested members of the main system, National Guard retirement system, law enforcement retirement system, and judges' retirement system may elect to receive accumulated member contributions with interest. Member contributions through June 30, 1981, accumulate with interest of 5 percent, member contributions from July 1, 1981,

through June 30, 1986, accumulate with interest of 6 percent, and member contributions after June 30, 1986, accumulate with interest of .5 percent less than the actuarial interest rate assumption. The standard form of payment is a monthly benefit for life with a refund to the beneficiary at death of the remaining balance, if any, of accumulated member contributions. Optional forms of payment are a 50 percent joint and surviving annuity; 100 percent joint and survivor annuity with "popup" feature; 5-year certain and life annuity; 10-year certain and life annuity; or a level Social Security income annuity. The standard form of payment for members of the judges' retirement system is a monthly benefit for life, with 50 percent payable to an eligible survivor. In addition to the optional forms of payment available to members of the main system, National Guard, and law enforcement retirement systems, a member of the judges' retirement system may elect to receive a life annuity.

Multiplier and Retiree Adjustments

The following schedule shows the multiplier percentages and benefit adjustments since 1977:

Date	Multiplier	Benefit Adjustment
7/77	1.04%	1.04%
7/83	1.20%	15.38%
7/85	1.30%	8.33%
7/87	1.50%	15.38%
7/89	1.65%	15.76%
7/91	1.69%	2.42%
8/93	1.725%	2.00%
1/94	1.74%	1.00%
8/97	1.77%	5.00%
8/99	1.89%	8.00%
8/01	2.00%	6.00%
In 2006 there will be a 13th check equal to half the monthly payment.		

Retiree Health Credit

In 1989 the Legislative Assembly established a retiree health insurance credit fund account with the Bank of North Dakota with the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired members of the Public Employees Retirement System and the Highway Patrolmen's retirement system receiving retirement benefits or surviving spouses of those retired members who have accumulated at least 10 years of service. The employer contribution under the Public Employees Retirement System was reduced from 5.12 to 4.12 percent, under the judges' retirement system from 15.52 to 14.52 percent, and under the Highway Patrolmen's retirement system from 17.07 to 16.07 percent or 1 percent of the monthly salaries and wages of participating members, including participating Supreme Court and district court judges, and the money was redirected to the retiree health insurance credit fund. Upon retirement, an employee will receive a credit of $4.50 per month for each year of service of the employee which will reduce the monthly health insurance premium.

Retiree Health Insurance

The committee reviewed information regarding prescription drug coverage for retirees of the Public Employees Retirement System after implementation of the Medicare Part D prescription drug benefit. The committee learned the PERS board, effective January 1, 2006, began providing prescription drug coverage for its retirees through a prescription drug plan offered by Blue Cross Blue Shield of North Dakota. This plan will maximize federal support for prescription drug coverage for these retirees. The formulary offered by Blue Cross Blue Shield will be slightly more restrictive than the current formulary. The out-of-pocket maximum for prescription drugs increased from $1,000 to $3,000 per year; however, the monthly health insurance premium decreased by 10 to 20 percent effective January 1, 2006.

Retirements

The committee reviewed information included in the following chart regarding the number of state employee retirements and projected retirements:

Fiscal Year	Actual	Fiscal Year	Projected
2001	319	2007	468
2002	305	2008	507
2003	399	2009	560
2004	339	2010	604
2005	374		
2006	429		

Legal Issues of Retirement Benefit Changes

The committee received information from the Attorney General's office on legal issues relating to retirement benefit changes for current employees and retirees. The committee learned both the federal and state constitutions include a contract clause providing that a state cannot pass a law impairing a contractual obligation. Public pension obligations in North Dakota are contractual obligations. In addition, North Dakota Century Code Section 54-52-14.3 provides that any provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system.

The Attorney General's office believes the North Dakota Supreme Court would follow the "California Rule" which provides that a governing body may make plan changes, but any changes that disadvantage an employee must be accompanied by comparable advantageous changes.

There are four membership designations in public pension plans--retirees, inactives, actives, and future actives. Based on the Attorney General's legal research for retirees, no plan changes may be made affecting current retirees' pension benefits. For inactive members, the benefits that the inactives have already accrued cannot be detrimentally changed; however, since the employment contract has been terminated, there is no restriction on the state's ability to make modifications to the benefit structure available to vested inactives upon their future reemployment. Once they have been reemployed, the employment contract in

effect on that date would control how future benefits accrue. For an active employee, under the "California Rule," the member's commencement of employment creates a contract that the state cannot unilaterally change to the member's detriment without a corresponding benefit; therefore, the state cannot detrimentally modify any provision of an active member's benefit structure without a corresponding benefit, including the Rule of 85, the vesting schedule, interest accrued to the member's account, the multiplier, and the amount of employee contribution. For future active employees, because there is no employment contract in place, the state can modify the plan to whatever extent it would like.

Alaska Pension Plan

The committee received information on the Alaska Public Employees Pension Plan. The Alaska pension plan provides retirement benefits based on an employee's average monthly salary for the highest 36 months of salary multiplied by 2 percent for the first 10 years of service, by 2.25 percent for the next 10 years of service, and by 2.5 percent for additional years of service. In addition, retirees receive full health insurance coverage as part of their retirement benefits.

The 2005 Alaska Legislature learned that the plan had an actuarial valuation of 75.2 percent and an unfunded liability of $5.7 billion. The Alaska Legislature learned that in order to address the unfunded liability, the employer contribution would need to increase from 11 percent to over 30 percent. As a result, the 2005 Alaska Legislature changed the retirement plan for employees hired on or after July 1, 2006, to a defined contribution plan and increased the employer contribution for current employees to 16 percent of salary.

Actuarial Report

The latest available report of the consulting actuary is dated July 1, 2006. The primary purpose of the valuation report is to determine the adequacy of the current employee contribution rate and to describe the current financial condition of the funds.

The following schedule presents the number of active members in each of the retirement plans:

Retirement Program	2005	2006
Main system	17,745	17,887
Highway Patrolmen's	125	127
Judges'	46	47
National Guard	14	41
Job Service North Dakota	52	44
Law enforcement with prior service	113	113
Law enforcement without prior service	13	14
Retiree health insurance credit fund	18,302	18,465

The main system and the Highway Patrolmen's retirement system had a 12.04 percent return on investment compared to the 2005 rate of return of 14.17 percent. The 10-year average rate of return on an actuarial valuation basis has been 8.53 percent. The goal for return on investment is 8 percent.

The following schedule presents the actuarial valuation of each of the retirement systems as of July 1, 2006:

Retirement Program	Actuarial Value of Assets	Actuarial Value of Liabilities	Surplus (Unfunded) Actuarial Accrued Liability
Main system	$1,286,478,642	$1,450,113,412	($163,634,770)
Highway Patrolmen's	$42,758,360	$49,127,046	($6,368,686)
Judges'	$23,283,465	$21,657,761	$1,625,704
National Guard	$1,583,896	$1,561,329	$22,567
Job Service North Dakota	$70,628,705	$69,967,001	$661,704
Law enforcement with prior service	$3,123,735	$7,001,165	($3,877,430)
Law enforcement without prior service	$73,167	$123,034	($49,867)
Retiree health insurance fund	$34,020,413	$82,632,628	($48,612,215)

The following schedule shows the actuarial funding ratio for each of the retirement programs for recent years:

Retirement Program	2002	2003	2004	2005	2006
Main system	104%	98%	94%	91%	89%
Highway Patrolmen's	97%	93%	90%	88%	87%
Judges'	122%	115%	113%	109%	108%
National Guard	139%	126%	120%	108%	101%
Job Service North Dakota	113%	109%	109%	109%	101%
Law enforcement with prior service			87%	41%	45%
Law enforcement without prior service			109%	48%	59%
Retiree health insurance credit fund	38%	38%	38%	39%	41%

The following schedule shows the annual required contribution (ARC) rates for 2005 and 2006 based on GASB guidelines, the statutory contribution rate, and the margin for 2006:

Retirement Program	2005 ARC Rate	2006 ARC Rate	2006 Statutory Rate	2006 Margin
Main system	6.03%	6.90%	4.12%	(2.78%)
Highway Patrolmen's	17.61%	19.03%	16.70%	(2.33%)
Judges'	11.62%	12.36%	14.52%	2.16%
National Guard	1.58%	4.02%	6.50%	2.48%
Job Service North Dakota	N/A	N/A	N/A	N/A
Law enforcement with prior service	12.03%	12.07%	8.31%	(3.76%)
Law enforcement without prior service	7.61%	7.43%	6.43%	(1.00%)
Retiree health insurance credit fund	1.00%	1.00%	1.00%	0%

Proposals Affecting Public Employees Retirement System

The following is a summary of the proposals affecting PERS which the committee took jurisdiction of and the committee's action on each proposal:

Bill No. 75

Sponsor: PERS Board

Proposal: Provides a retiree of the PERS defined benefit retirement plan or the Highway Patrolmen's retirement system is to receive an additional **one-time payment** equal to 75 percent of the retiree's monthly retirement benefit in either January 2008 or January 2009 if the total return on the fund is 9.16 percent or more in the preceding actuarial report. A retiree of the judges' retirement system is to receive a payment adjustment of 2 percent of their retirement benefit in January 2008 and January 2009. These increases will be paid only if PERS determines there is sufficient actuarial margin to pay for the increases.

The committee amended the bill at the request of the PERS Board to reduce the return on investment from 9.16 to 9.06 percent in accordance with the actuarial analysis.

Actuarial Analysis: The consulting actuary reported the return on investment target to provide for the one-time payment could be adjusted from 9.16 to 9.06 percent.

Under the judges' retirement system, the actuarial analysis indicates the 2 percent benefit increase for each year of the biennium would cost .46 percent of payroll. Since the judges' retirement system has a margin of 2.16 percent, the actuarial analysis indicated the increase would be affordable.

Committee Report: No recommendation.

Bill No. 76

Sponsor: PERS Board

Proposal: Includes technical corrections to the calculation of final average salary, allows an alternate payment method for those who delay taking retirement benefits after the normal retirement date, updates federal compliance provisions, and makes technical changes to sick leave conversion provisions.

The committee amended the bill at the request of the PERS Board to limit purchase of service options to active contributing members and to provide that members participating in the defined contribution plan who have less than four years of service will fully vest at age 65.

Actuarial Analysis: The actuarial analysis indicates the proposal has no actuarial impact.

Committee Report: Favorable recommendation.

Bill No. 80

Sponsor: PERS Board

Proposal: Provides for a 2 percent increase in retirement benefits to retirees of the Public Employees Retirement System and the Highway Patrolmen's retirement system in August 2009 and fully pays for the increase over two years by increasing the employer contribution under the Highway Patrolmen's retirement system by 5 percent, from 16.7 to 21.7 percent, and the Public Employees Retirement System by 1 percent, from 4.12 to 5.12 percent. The bill draft becomes effective August 1, 2009.

The committee amended the bill at the request of the PERS Board to reduce the employer contribution increase effective August 2009 from 1 to .64 percent for the main retirement system and from 4.37 to 3.95 percent for the Highway Patrolmen's retirement system.

Actuarial Analysis: Based on a two-year amortization schedule, the actuarial cost of the bill, as amended, would be .64 percent of payroll for the main retirement system, .36 percent of payroll for the National Guard retirement system, and 3.95 percent of payroll for the Highway Patrolmen's retirement system. The employer contribution increases are estimated to cost state agencies and higher education institutions $4.6 million per biennium, of which $1.9 million is from the general fund.

Committee Report: No recommendation.

Bill No. 77

Sponsor: PERS Board

Proposal: Provides for an automatic enrollment process for new employees in the deferred compensation program at $25 per month unless the employee elects not to participate.

Actuarial Analysis: The actuarial analysis indicates the proposal has no actuarial impact.

Committee Report: Favorable recommendation.

Bill No. 79

Sponsor: PERS Board

Proposal: Provides for an increase in the monthly retiree health credit from $4.50 per year of credited service to $5 per year of credited service and pays for the increase by increasing the retiree health credit employer contribution by .15 percent, from 1 to 1.15 percent of payroll.

Actuarial Analysis: The actuarial impact on the retiree health benefit fund is .15 percent of payroll. The estimated cost of increasing employer contributions by .15 percent for a biennium for state agencies and higher education institutions is $980,000, of which $354,000 is from the general fund.

Committee Report: No recommendation.

Bill No. 71

Sponsor: Senator Karen K. Krebsbach

Proposal: Authorizes employees of the North Dakota Association of Counties to participate in the Public Employees Retirement System, the retiree health benefits fund, the uniform group insurance program, and the deferred compensation program.

The committee amended the bill at the request of the North Dakota Association of Counties to clarify that the Association of Counties is an instrumentality of government.

Actuarial Analysis: The actuarial analysis indicates the bill, as amended, has no actuarial impact on the retirement system.

Committee Report: Favorable recommendation.

Bill No. 78

Sponsor: PERS Board

Proposal: Creates a tax-exempt trust into which an employee's unused annual leave and 10 percent of the employee's unused sick leave would be deposited into and used for qualified health care expenses during the employee's retirement; increases the term life insurance policy provided for employees from a minimum of $1,000 to a minimum of $5,000; allows a separate prescription drug plan to be provided for retirees due to the establishment of the federal Medicaid Part D prescription drug program; allows the retiree health credit for employees and spouses, who are also state employees, to be combined; requires temporary employees to work a minimum of 20 hours per week and at least 20 weeks per year to be eligible to participate in the uniform group insurance program; and allows a temporary employee's employer to determine whether the temporary employee or the employer will pay the monthly premium for the health insurance coverage.

The committee amended the bill at the request of the PERS Board to remove provisions relating to the creation of a trust into which an employee's unused annual leave and 10 percent of the employee's unused sick leave would be deposited into and used for qualified health care expenses during the employee's retirement. These sections were removed because federal law does not allow employees to choose to withdraw mandatory payments from the trust in cash.

Actuarial Analysis: The actuarial analysis indicates most of the provisions in the bill, as amended, are cost-neutral. Increasing the term life insurance policies from $1,000 to $5,000 is estimated to cost state agencies and higher education institutions approximately $280,000 per biennium, of which $61,000 is from the general fund.

Committee Report: Favorable recommendation.

Bill No. 62

Sponsor: Representative Clara Sue Price

Proposal: Authorizes public health districts and the Garrison Diversion Conservancy District to participate in the uniform group insurance program under the same terms and conditions as state agencies. The proposal will allow the public health districts to continue to pay the blended premium rate similar to state agencies rather than the separate single rate and family rate paid by other political subdivisions.

The committee amended the bill at the request of the PERS Board to require these districts to participate under the same terms and conditions as a state agency rather than making it optional.

Actuarial Analysis: The actuarial analysis indicates that, at current premium rates, if all public health units were required to pay the separate political subdivision single/family rates, PERS will collect an estimated additional $218,000 per year in premiums.

Committee Report: Favorable recommendation.

Bill No. 30

Sponsor: Senator Tim Mathern

Proposal: Expands the uniform group insurance program to allow participation by members of the North Dakota National Guard.

Actuarial Analysis: The actuarial analysis indicates that expanding eligibility could result in adverse selection that may increase plan costs. However, Section 7 of the bill mitigates this concern by providing the PERS Board authority to not implement the bill unless it can be done in a manner that will not impact the plan.

Committee Report: Unfavorable recommendation.

Bill No. 31

Sponsor: Senator Tim Mathern

Proposal: Expands the uniform group insurance program to allow participation by permanent employees of nonprofit organizations exempt from federal taxes under Section 501(c)(3) of the Internal Revenue Code.

Actuarial Analysis: The actuarial analysis indicates that expanding eligibility could result in adverse selection that may increase plan costs. Another concern identified is that the plan could lose its governmental status if nongovernmental employers are allowed. However, Section 7 of the bill mitigates these concerns by providing the PERS Board authority to not implement the bill unless it can be done in a manner that will not impact the plan.

Committee Report: Unfavorable recommendation.

Bill No. 32

Sponsor: Senator Tim Mathern

Proposal: Expands the uniform group insurance program to allow participation by permanent employees of private sector employers in the state employing 50 or fewer employees.

Actuarial Analysis: The actuarial analysis indicates that expanding eligibility could result in adverse selection that may increase plan costs. Another concern identified is that the plan could lose its governmental status if nongovernmental employers are allowed. However, Section 7 of the bill mitigates these concerns by providing the PERS Board authority to not implement the bill unless it can be done in a manner that will not impact the plan.

Committee Report: Unfavorable recommendation.

Bill No. 100

Sponsor: Senator Tim Mathern

Proposal: Expands the uniform group insurance program to allow participation by permanent employees of private sector employers in the state, by temporary employees of private sector employers, and to other residents of the state who do not have health insurance coverage through a private insurer or through a public benefits plan provided by a governmental entity.

Actuarial Analysis: The actuarial analysis indicates that expanding eligibility could result in adverse selection that may increase plan costs. Another concern identified is that the plan could lose its governmental status if nongovernmental employers are allowed. However, Section 7 of the bill mitigates these concerns by providing the PERS Board authority to not implement the

bill unless it can be done in a manner that will not impact the plan.

Committee Report: Unfavorable recommendation.

Proposal Affecting the State Investment Board

The following is a summary of the proposal affecting the State Investment Board over which the committee took jurisdiction and the committee's action on the proposal:

Bill No. 82

Sponsor: State Investment Board

Proposal: Clarifies the investment powers of the State Investment Board.

The committee amended the bill at the request of the State Investment Board to provide specific statutory authority for the investment director of the State Investment Board to sign and execute all contracts and agreements relating to funds under the management of the board.

Actuarial Analysis: The State Investment Board reported that provisions of the bill, as amended, will have no actuarial impact to any of the funds invested by the State Investment Board nor will the Retirement and Investment Office incur any costs to implement provisions of the bill draft.

Committee Report: Favorable recommendation.

ADDITIONAL COMMITTEE RESPONSIBILITIES

The committee was not requested by the Public Employees Retirement System Board under NDCC Section 54-52.1-08.2 to approve terminology changes adopted by the Retirement Board to comply with federal requirements. The committee was not notified by any firefighters relief association pursuant to Section 18-11-15(5) that requires the Employee Benefits Programs Committee to be notified by a firefighters relief association if it implements an alternate schedule of monthly service pension benefits for members of the association.

Pursuant to NDCC Section 54-06-31, the committee received periodic reports from the director of Human Resource Management Services on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. The following schedule is a summary of the information presented:

	July 1, 2003, to June 30, 2005		July 1, 2005, to September 30, 2006	
Agency	Recruitment (148 total)	Retention (31 total)	Recruitment (186 total)	Retention (0 total)
Bank of North Dakota	$2,404.00	$41,400.34		
Department of Commerce			$2,000.00	
Department of Corrections and Rehabilitation	4,225.00		500.00	
Highway Patrol	2,250.00		3,500.00	
Department of Human Services	22,365.50	10,800.00	46,109.28	
Information Technology Department	15,550.00		14,900.00	
Job Service North Dakota	2,000.00			
Industrial Commission		20,000.00	300.00	
Department of Transportation	222,777.58		100,042.79	
Veterans Home	4,000.00			
Total	$275,572.08	$72,200.34	$167,352.07	$0

STATE EMPLOYEE COMPENSATION STUDY

The committee was assigned, pursuant to Section 28 of 2005 House Bill No. 1015, a study of issues relating to state employee compensation. The committee reviewed information relating to state employee compensation, including employee's compensation, salary increases, equity adjustments, retirement and health insurance benefits, and leave policies.

Background

Employees

The committee learned North Dakota state agencies were authorized to employ 10,631.95 full-time equivalent positions for the 2005-07 biennium. Of this total, 2,194.42 relate to higher education positions paid for with funding from the general fund, 743.65 to employees of the Agricultural Experiment Station, NDSU Extension Service, Upper Great Plains Transportation Institute, and Northern Crops Institute, and 7,693.88 relate to positions in all other agencies.

There are two types of state employees--classified and unclassified. Classified state employees are under the jurisdiction of the classification system administered by Human Resource Management Services, a division of the Office of Management and Budget (OMB). The classification system includes 20 pay grades. Each job title is assigned to a pay grade and each pay grade identifies the salary range that employees within that pay grade may be paid. There are approximately 6,400 classified state employees. All other employees are considered unclassified. Unclassified employees include elected and appointed officials and their deputies; employees of the legislative and judicial branches; employees of higher education; the Mill and Elevator, Workforce Safety and Insurance, and Department of Commerce; and physicians and teachers. The University System has its own system of categorizing employee positions called the "broadband" system.

Compensation

The committee learned state employee compensation consists of two components--salaries and fringe benefits. Except for elected officials, whose

salaries are set in state statute, all other state employee salary levels are set by the governing body or supervisory personnel of each agency. For classified state employees, salary levels are determined by supervisory personnel within each agency based on the salary range for an employee's assigned pay grade as established by Human Resource Management Services, and total salaries for the biennium must be within the agency's salaries and wages line item appropriation approved by the Legislative Assembly. Unclassified employees' salary levels are determined by the governing body or supervisory personnel of the agency and total salaries for the biennium must be within the agency's salaries and wages line item appropriation approved by the Legislative Assembly.

Fringe benefits for state employees include:

1. Social Security/Medicare benefits - 7.65 percent of salary provided by the employee and 7.65 percent of salary provided by the state.
2. Retirement benefits - Percentage varies by type of employee.
3. Single or family health insurance policy paid for by the state.
4. Term life insurance policy with a value of $1,300 at a cost of 28 cents per month per employee.
5. Employee assistance program paid for by the state at a cost of $1.42 per month per employee. This program provides guidance and counseling or a determination of the appropriate diagnosis or course of treatment for employees and their eligible dependents in cases of alcoholism, drug abuse, or other personal problems.
6. Annual leave, sick leave, family leave, funeral leave, and holiday leave.
7. Workers' compensation.
8. Unemployment insurance.

Salary Increase History

The committee reviewed the following summary of state employee salary increases and the cost of providing salary increases for the 1997-99 through 2005-07 bienniums:

STATE EMPLOYEE SALARY INCREASES				
Biennium	**Percentage Increase**	**General Fund**	**Special Funds**	**Total**
1997-99	3% on July 1, 1997 (includes 1.5% for merit) and 3% on July 1, 1998 (includes 1.5% for merit)	$24,304,117	$12,520,861	$36,824,978
1999-2001	2% with a $35 per month minimum on July 1, 1999, and 2% with a $35 per month minimum on July 1, 2000	$17,681,836	$9,633,401	$27,315,237
2001-03	3% with a $35 per month minimum on July 1, 2001, and 2% with a $35 per month minimum on July 1, 2002	$27,043,178	$12,493,632	$39,536,810
2003-05	Up to 1% on January 1, 2004, and up to 2% on January 1, 2005 (based on the elimination of positions and savings from vacant positions)			$0
2005-07	4% on July 1, 2005, and 4% on July 1, 2006	$19,778,486	$21,746,666	$41,525,152

For the 2005-07 biennium, a 1 percent state employee salary increase, excluding higher education institutions, costs an estimated $3.6 million per year, of which $1.7 million is from the general fund and $1.9 million is from federal or special funds.

Equity Adjustments

The committee learned in recent bienniums the Legislative Assembly has provided funding, in addition to general across-the-board salary increases, for pay or market equity adjustments for state employees. The funding has been appropriated either to OMB to distribute to classified state employees in various agencies or directly to selected agencies. The schedule below presents the funding appropriated by the Legislative Assembly for these equity increases since the 1999-2001 biennium:

	General Fund	Special Funds	Total
1999-2001 Biennium			
Equity adjustments - Classified employees	$2,700,000	$2,700,000	$5,400,000
University System salary pool	2,685,227		2,685,227
Merit increases - Department of Transportation engineers		800,000	800,000
Equity adjustments - Elected and appointed officials	77,000	22,000	99,000
Equity increases for Information Technology Department programmers and analysts		317,644	317,644
Equity increases for State Auditor's office	38,000		38,000
Public Employees Retirement System		33,574	33,574
Department of Public Instruction information technology staff	72,444		72,444
Agricultural Experiment Station/Extension Service, Transportation Institute, Northern Crops Institute	422,400		422,400
Total 1999-2001	$5,995,071	$3,873,218	$9,868,289
2001-03 Biennium			
Equity adjustments - Classified employees	$2,700,000	$2,300,000	$5,000,000
Pay grade minimum adjustments - Classified employees	360,797	131,505	492,302
Equity adjustments - Elected and appointed officials	142,697	35,536	178,233
Equity adjustments - Supreme Court and district court judges	724,451		724,451
Equity adjustments - Department of Corrections and Rehabilitation	422,528		422,528
Equity adjustments - Department of Transportation		1,200,000	1,200,000
Total 2001-03	$4,350,473	$3,667,041	$8,017,514

	General Fund	Special Funds	Total
2003-05 Biennium			
Equity adjustment - Legislative Council	$150,000		$150,000
Equity adjustment - Public Employees Retirement System		$80,362	80,362
Equity adjustment - Attorney General's office for assistant attorneys general		241,024	241,024
Equity adjustment - Department of Human Services Program and Policy Division		131,784	131,784
Equity adjustment - Department of Financial Institutions		167,000	167,000
Equity adjustment - Department of Corrections and Rehabilitation Juvenile Services Division	99,856		99,856
Total 2003-05	$249,856	$620,170	$870,026
2005-07 Biennium			
Equity adjustment - Department of Corrections and Rehabilitation	$1,500,000		$1,500,000
Equity adjustment - Highway Patrol	166,258	$28,209	194,467
Total 2005-07	$1,666,258	$28,209	$1,694,467

Retirement

The committee learned North Dakota Century Code Chapter 54-52 provides that employees who are 18 years of age or older, whose services are not limited in duration and who are filling an approved and regularly funded position in an eligible governmental unit, and are employed at least 20 hours per week at least 20 weeks each year, are eligible to participate in the state retirement system. The system consists of two plans--the defined benefits plan administered by PERS and the defined contribution plan. Only certain employees are eligible to participate in the defined contribution plan. Pursuant to Chapter 54-52.6, a permanent state employee, except an employee of the judicial branch or an employee of the State Board of Higher Education and state institutions under the jurisdiction of the board, who is in a position not classified by Human Resource Management Services, may elect to participate in the defined contribution retirement plan.

The defined contribution plan allows the participating employee to control the investment of funds in the employee's own retirement account into which the employee and state contributions are deposited. Retirement benefits are dependent upon the employee's account value at retirement.

Under the defined benefits plan, funds contributed are maintained by the employer and the investment of the funds is controlled by the employer. Retirement benefits are specified for participants in the plan. Separate retirement plans are maintained for state employees dependent on the type of position being filled, including the main retirement system, the Highway Patrolmen's retirement system, judges' retirement system, the National Guard law enforcement retirement system, Job Service retirement system, the Teachers' Fund for Retirement, and higher education retirement (TIAA-CREF) systems.

Under the main retirement program, employees are entitled to unreduced monthly pension benefits beginning when the sum of age and years of credited service equal or exceed 85, or at normal retirement age (65), equal to 2 percent of their final average salary for each year of service. The plan permits early retirement at ages 55 to 64, with three or more years of service.

Benefit and contribution provisions to the plans are administered in accordance with NDCC Chapter 54-52. This statute requires that 4 percent of a participant's regular compensation be contributed to the plan by the employee. During the 1983-85 biennium, the state implemented the employer pickup provision of the Internal Revenue Service Code whereby a portion or all of the required employee contributions are made by the employer. The state chose, in lieu of a salary increase during this biennium, to pay the full employee contribution. Employer contributions of 4.12 percent of covered compensation are set by statute. In addition to the 4.12 percent employer contribution, the state contributes 1 percent of each participating employee's gross wage to a prefunded retiree health insurance program.

As of December 2004 there were 9,868 state employees enrolled in the defined benefits retirement plan and 243 employees in the defined contribution retirement plan.

Health Insurance

The committee learned North Dakota Century Code Chapter 54-52.1 provides that group medical insurance and group life insurance are available to any employee who meets the eligibility requirements of being a permanent employee of the state. A permanent employee is one whose services are not limited in duration, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least 17.5 hours per week at least five months each year or for a person first employed after August 1, 2003, who is employed at least 20 hours per week and at least 20 weeks each year.

The 1963 Legislative Assembly enacted NDCC Chapter 52-12 which authorized state agencies, either individually or jointly with other agencies, to enter a group hospitalization and medical care plan and group life insurance plan for each agency's employees. The agencies were required to pay $5 per month for each participating employee's insurance premium. An employee could elect to participate in either a single or family plan. The 1971 Legislative Assembly repealed Chapter 52-12 and enacted Chapter 54-52.1 establishing the uniform group insurance program. The program was placed under the authority of the Retirement Board. The board was required to solicit bids and contract for the provision of insurance benefits coverage with an insurance carrier determined by the board.

From 1971 to 1983, Blue Cross Blue Shield of North Dakota provided and administered the health insurance benefits plan for public employees. In 1983 the Retirement Board was authorized by NDCC Section 54-52.1-04.2 to establish a plan of self-insurance for providing health benefits coverage under an administrative services-only contract or a third-party administrator contract if the board determined during any biennium that a self-insured plan is less costly than the lowest bid submitted by an insurance carrier. The board exercised the option to implement a self-insurance health benefits plan and administered the program in that manner from July 1, 1983, through June 30, 1989.

Rising health care costs in the state were the primary reason for the cashflow difficulties experienced in the health benefits plan. In the 1985-87 biennium, the Legislative Assembly appropriated funds for a 20 percent premium increase, and claims costs increased 42 percent.

Although the board began its administration of the self-insured health benefits plan on July 1, 1983, with reserves of $2,143,880, claim expenditures and other expenses of the program exceeded premium income and other revenue in 1984 and by June 1987 the fund balance, as indicated in audited financial statements of the plan, was a negative $4,759,963 with estimated outstanding claims payable of $4,600,000.

In 1987 the board incorporated various cost-containment components into the health benefits plan which included:

1. Implementation of a program of concurrent review of inpatient hospitalizations designed to eliminate unnecessary treatment or prolonged hospital stays and to allow consideration of less expensive appropriate treatment for long-term medical care.
2. Implementation of a program of mandatory second surgical opinions for certain elective surgeries. (This program did not generate anticipated results and after a one-year trial period was discontinued.)
3. Expansion of contract deductibles to include all inpatient, outpatient, and physician services.
4. Increase in the coinsurance base from the first $2,000 in charges to the first $4,000 in charges.
5. Implementation of a preferred pharmacy program.
6. Establishment of a separate premium rate for retirees, based on retiree claims experience.
7. Introduction of a $25 copayment for each hospital emergency room visit.
8. Adjustment of the Medicare coordination of benefits formula applied to retiree members of the plan.

Due to the introduction of these cost-containment initiatives and the availability to public employees of a number of attractive health maintenance organization plans, approximately 3,350 membership contracts constituting 23 percent of the total contracts of the health benefits plan were lost during the 1987 open enrollment period, resulting in a decrease of approximately $563,000 per month in premium income.

The decision by the Medcenter One HMO, a health maintenance organization that had the largest PERS-eligible enrollment, to discontinue its participation agreement with PERS as of July 1, 1988, and substantial increases in premiums charged by other HMOs, resulted in a substantial number of public employees choosing the PERS health benefits plan during the 1988 open enrollment period.

In January 1989 the Retirement Board voted to end the state-funded health insurance program and buy the coverage from Blue Cross Blue Shield of North Dakota. Officials of PERS predicted the state would end the 1987-89 biennium with a $3.5 million deficit and would need to increase premium rates by 65 percent in 1989-91. The Blue Cross Blue Shield of North Dakota bid of about $35 million to fund state employees' health insurance for the 1989-91 biennium included provisions that the company would absorb about $5 million in unpaid claims when it took over in July 1989.

Senate Bill No. 2026 (1989) appropriated $1.2 million from the fund for unemployment compensation claims to PERS for the state group health program for the period beginning January 1, 1989, and ending June 30, 1991.

Until 1993 the health insurance program charged premiums based on each employee's election of a single or family plan. Beginning in the 1993-95 biennium, the board began to charge a combination rate that is a blended rate per employee whether a single or family plan is chosen. The blended rate enables agencies to budget the same premium rate for all employees, therefore an agency's budget is not adversely affected if an employee electing to receive single health insurance coverage quits and is replaced by an employee electing to receive family coverage. The schedule below shows the premiums charged since the program began in 1963:

Biennium	Single Plan	Percentage Change	Family Plan	Percentage Change	Combination Rate	Percentage Change
1963-65	$5.00		$21.00			
1965-67	$8.55	71.0%	$21.50	7.1%		
1967-69	$10.75	25.7%	$25.00	16.3%		
1969-71	$14.45	34.4%	$34.90	39.6%		
1971-73	$15.95	10.4%	$41.90	20.1%		
1973-75	$14.46	(9.3%)	$41.90	0.0%		
1975-77	$19.50	34.9%	$59.95	43.1%		
1977-79	$25.50	30.8%	$67.42	12.5%		
1979-81	$34.84	36.6%	$87.40	29.6%		
1981-83	$42.68	22.5%	$107.07	22.5%		
1983-85	$50.28	17.8%	$140.28	31.0%		
1985-87	$60.00	19.3%	$168.00	19.8%		

Biennium	Single Plan	Percentage Change	Family Plan	Percentage Change	Combination Rate	Percentage Change
1987-89	$68.28	13.8%	$191.28	13.9%		
1989-91	$99.82	46.2%	$280.39	46.6%		
1991-93	$108.00	8.2%	$304.00	8.4%		
1993-95					$254.00	
1995-97					$265.00	4.3%
1997-99					$301.00	13.6%
1999-2001					$349.72	16.2%
2001-03					$409.09	17.0%
2003-05					$488.70	19.5%
2005-07					$553.95	13.4%

From 1963 through 1969, the state contributed $5 per month toward the cost of health insurance for state employees. State employees paid any additional amount for single or family coverage. During the 1969-71 biennium, the state contributed $7.50 per month. For the period 1973 through 1979, the state paid the cost of a single health insurance plan. Employees choosing a family plan paid any additional cost. Since 1979 the state has paid the full cost of either a single or family plan for eligible state employees.

The schedule below provides information on health insurance premiums and the cost of health insurance increases since the 1997-99 biennium.

STATE EMPLOYEE HEALTH INSURANCE INCREASES

Biennium	Monthly Premium	Increase From Previous Biennium	Percentage Increase	General Fund	Special Funds	Total
1997-99	$301	$36	13.6%	$7,026,674	$3,619,802	$10,646,476
1999-2001	$350	$49	16.2%	$6,989,537	$3,858,174	$10,847,711
2001-03	$409	$59	17.0%	$11,182,551	$6,001,252	$17,183,803
2003-05	$489	$80	19.5%	$8,027,122	$8,258,216	$16,285,338
2005-07	$554	$65	13.4%	$5,335,798	$7,903,870	$13,239,668

Holiday Leave

The committee reviewed the following list of statutory holidays cited in NDCC Sections 1-03-01 through 1-03-02.1 on which North Dakota state offices are closed:

- Every Sunday.
- January 1 - New Year's Day.
- The third Monday of January - Martin Luther King Day.
- The third Monday of February - Recognition of the birthday of George Washington.
- The Friday preceding Easter Sunday - Good Friday.
- The last Monday of May - Memorial Day.
- July 4 - Independence Day.
- The first Monday of September - Labor Day.
- November 11 - Veterans Day.
- The fourth Thursday of November - Thanksgiving Day.
- December 25 - Christmas Day.
- Every day appointed by the President of the United States or by the Governor of this state for a public holiday.

If a holiday falls on Saturday or Sunday, the preceding Friday or following Monday, respectively, is considered the holiday. Also, state offices close at noon on December 24, but this is an office closure, not a holiday. The noon closure applies only on December 24 and is not moved to the preceding Friday or following Monday.

Annual Leave and Sick Leave

The committee learned that, according to NDCC Section 54-06-14, annual leave and sick leave must be provided for all permanent employees of the state who are not employed under a written contract of hire setting forth the terms and conditions of employment.

According to North Dakota Administrative Code Chapter 4-07-12, all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by Human Resource Management Services are recommended to use the following annual leave schedule:

Years of Service	Hours Per Month	Hours Per Year
0-3	8	96
4-7	10	120
8-12	12	144
13-18	14	168
Over 18	16	192

According to North Dakota Administrative Code Chapter 4-07-13, all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by Human Resource Management Services are recommended to use the sick leave accumulation rate of eight hours per month.

Employees who are eligible for annual and sick leave begin to accrue leave from the day of hire. The accrual of annual leave is limited in that no more than 240 hours of annual leave may be carried forward from one year to the next, according to the cutoff date established by the agency. Any hours in excess of 240 will be lost. All accrued, unused sick leave may be carried over from one year to the next, and NDCC Section 54-06-14 provides for a lump sum payment equal to one-tenth of the pay attributed to an employee's unused sick leave

accrued to an employee with at least 10 continuous years of state employment.

Under NDCC Sections 54-06-14.1 and 54-06-14.2, a state employee may, under certain instances, donate either annual leave or sick leave to another state employee who is suffering or has a relative or household member suffering from an illness, injury, impairment, or similar condition.

Family Leave - Family Sick Leave

The committee learned North Dakota Century Code Chapter 54-52.4 provides for family leave that is an unpaid leave of absence available to an employee for the birth, adoption, or foster placement of a child; or for the serious health condition of a parent, child, spouse, or employee to all state employees who have been employed by the employer for at least 12 months and who has worked at least 1,250 hours for the employer over the previous 12 months.

North Dakota Century Code Chapter 54-52.4 also provides that an employer who offers compensated leave to its employees for illnesses or other medical or health reasons should allow an employee to use that leave as family sick leave when there is an illness or medical need in the employee's family. Employees are limited to using 40 hours of sick leave for this purpose in any 12-month period.

Findings

Employee Class Evaluation System

The committee reviewed information on the Human Resource Management Services class evaluation system and learned it provides a structured and consistent method of evaluating jobs. Human Resource Management Services, as part of its system, quantifies the factors used for valuing a job in the classification system. The factors evaluated include the knowledge and skills required for the job, the complexity, the accountability of the position, and the working condition hazards. The division then conducts market surveys to determine the appropriate pay for a particular job. These surveys are periodically updated. Prior to the 2003-05 biennium, North Dakota updated its midpoint salaries biennially to 95 percent of the previous year's market level. No changes were made in the 2003-05 biennium, and in the 2005-07 biennium, the midpoints were adjusted by 4 percent each year. In 2006, the majority of salary midpoints range from 83 to 89 percent of market. Market comparisons are made to Job Service North Dakota labor market information for grades 1 through 10 and to a 10-state market sample including the states of Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Dakota, and Wyoming for grades 11 through 20. Pay ranges are based on the salary range midpoints with the salary range minimum being 25 percent less than the midpoint and the salary range maximum being 25 percent more than the midpoint. Based on 2006 market comparisons, the committee learned North Dakota classified employees' salaries in grades 4 through 15 are lagging the market by 11 to 17 percent, compared to a 12 to 25 percent lag in 2005.

The committee received information on state employees as of August 2006. As of August 2006, state agencies employed 6,384 classified employees with an average employee age of 46.2, average years of service of 13.4, and an average annual salary of $35,640.

Agency Pay Increase Systems

The committee learned some agencies have developed systems for providing salary increases separate from general legislatively authorized increases. Agencies with formalized systems of providing salary increases include the judicial branch, Board for Career and Technical Education, Workforce Safety and Insurance, Highway Patrol, and Adjutant General.

The judicial branch has developed its own salary system consisting of 52 job classifications and 23 salary grades. In addition to the general salary increases authorized by the Legislative Assembly, the judicial branch uses a step system to move employees through their assigned salary ranges. The step increases are provided to employees initially upon the completion of their probationary periods and then every other year thereafter. An employee is eligible to receive a step increase only if the employee's performance is acceptable. Assuming acceptable performance, an employee staying in the same pay grade would move from the pay grade minimum to the maximum after 19 years of employment.

The Department of Career and Technical Education has been using its performance-based salary increase policy since 2003. In addition to the general salary increases provided by the Legislative Assembly, each year, during an employee's employment anniversary month, the employee's performance is evaluated. As a result of the employee's performance evaluation, employees receive "shares" which convert into an additional salary increase. In recent years, each share's value has been $18 per month; therefore, an employee receiving the maximum of three shares would receive an additional salary increase of $54 per month. The performance-based salary increases cost approximately .9 percent of the total salaries appropriation of the department.

Workforce Safety and Insurance was authorized by the 1995 Legislative Assembly to establish its own personnel system. As a result, the agency has developed a pay for performance system that ties the employees' goals to the organization's goals and objectives and establishes clear expectations for employees. The system includes four components:

1. Planning performance - Performance plans are developed for each employee at the beginning of the performance management cycle. Each employee is assigned three to five individual goals that are linked to departmental objectives.
2. Coaching performance - Employees receive advice and assistance to meet or exceed their established performance expectations. The coaching occurs throughout the year and a midyear review is useful for discussing the results to date to identify performance results

that are not adequate and develop plans for improving performance before the final review.

3. Reviewing performance - An employee's actual performance is compared to the established performance expectations through a formal review process. Through the review, managers and employees outline major strengths, areas for development, and action plans to assist in improving performance in certain areas.
4. Rewarding performance - The pay for performance system must be administered consistently throughout the agency. The system rewards employees commensurate with their performance. Employees who perform better receive higher levels of reward and recognition. Recent performance increases provided to employees in addition to the general increases authorized by the Legislative Assembly are 2003 - 3.74 percent, 2004 - 3.06 percent, and 2005 - 3.24 percent.

The Highway Patrol has administered a step system for providing salary increases to its troopers for 30 years. These step increases are in addition to the general increases authorized by the Legislative Assembly and are based on each employee's performance. The system provides step increases through the first 10 years of service. A trooper serving in the trooper's 10th year receives a salary at 45.5 percent of the pay grade. Two additional steps are available. At the beginning of a trooper's 13th year of service, the salary will increase to 50.4 percent of the pay grade and at the start of the 16th year, the trooper's salary will be 55.5 percent of the pay grade. The maximum base pay for a trooper under the current pay structure is attained in the trooper's 16th year. The Highway Patrol believes its salary increase system is very important in its ability to recruit and retain employees.

The Adjutant General has administered a step program for providing salary increases in addition to the legislatively authorized increases since the 1999-2001 biennium. The step increases are based on longevity and satisfactory performance by an employee. The additional cost for providing these increases for the 2005-07 biennium is estimated to total $110,000, of which $45,000 is from the general fund. The additional general fund money needed for these increases is provided from savings resulting from employee turnover.

Health Insurance

The current Public Employees Retirement System health plan with Blue Cross Blue Shield of North Dakota is a modified fully insured plan because PERS determines the plan design; losses are limited to the amount of premiums paid; PERS receives interest on plan holdings; and if expenses are less than premiums, PERS receives 50 percent of the first $3 million of gains and 100 percent of any excess. Any gains realized when claims are lower than premiums are used to reduce health insurance premiums for the subsequent biennium. For the 2005-07 biennium, realized gains reduced premiums by approximately $25 per month per contract.

The committee received information on loss ratios of the PERS health insurance plan compared to other health insurance groups. The committee learned a higher loss ratio is beneficial because it indicates that more of the plan's premium dollars are being spent on claims rather than administrative costs. For the 2003-05 biennium, the PERS health insurance plan experienced a 94.3 percent incurred claim loss ratio. The North Dakota Insurance Department reported the following loss ratios for the calendar year ending December 2004 for Blue Cross Blue Shield of North Dakota:

1. Large group - 91.1 percent.
2. Small group - 84.1 percent.
3. Individual - 88.2 percent.

The committee reviewed high-deductible health plans and health savings accounts and learned the following states have implemented high-deductible health plans or health savings accounts--Arkansas, South Carolina, South Dakota, Colorado, Wyoming, and Florida.

The committee received information on other employer practices regarding health insurance benefits. The committee learned that of the 50 states, six states, including North Dakota, pay 100 percent of employees' health insurance premiums. Compared to the monthly employer contribution for a family health insurance premium which ranges from $704 to $758 among the central states of Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Dakota, and Wyoming, North Dakota's monthly cost is $554 per single/family contract. The Public Employees Retirement System estimates North Dakota's monthly cost of a family plan to be $643. Based on information provided by Job Service North Dakota, the committee learned that 73.8 percent of employers in North Dakota provide a health plan for full-time salaried employees. The committee learned Basin Electric Power Cooperative conducted a survey in 2004 of 20 major North Dakota employers and found that family health insurance premiums ranged from $450 to $1,043 per month. Of the 20 employers, 7 paid 100 percent of the single premium and 5 paid 100 percent of the family premium.

The committee received information on projected health insurance premium rates under the uniform group insurance program for the 2007-09 biennium. The committee learned the Blue Cross Blue Shield of North Dakota bid for the uniform group insurance program for the 2007-09 biennium for a blended single/family rate is $681 per month, a $127.06 increase or 22.9 percent compared to the current monthly premium rate of $553.94. The rate increase is estimated to cost state agencies an additional $24.4 million for the 2007-09 biennium, of which $11.2 million is from the general fund.

Fringe Benefits Comparison

The committee received the following schedule prepared by Human Resource Management Services comparing the value of fringe benefits of North Dakota state employees to the average employees in the 10 states of Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Dakota,

and Wyoming. The information is based on a state employee with five years of service and an annual salary of $40,035.

Benefit	North Dakota Per Hour Benefit Value	10-State Average Per Hour Benefit Value
Vacation leave	$1.11	$1.14
Sick leave	$.89	$.98
Holiday leave	$.78	$.79
Employer cost share of full family health insurance	$3.75	$4.34
Dental insurance	$0	$.12
Life insurance	Less than 1 cent	$.04
Retirement	$1.76	$1.58
Social Security	$1.19	$1.19
Total benefit value	$9.48	$10.02
Percentage of salary	49.23%	52.04%

Employee Turnover Rates

The committee reviewed information on employee turnover rates of state agencies. The committee learned the total turnover rate for 2005 for all agencies was 9.2 percent, which was the highest turnover rate since 1997; however, North Dakota's rate was less than the 10-state average of 11.3 percent.

The committee received information on significant classified state employee turnover by job type and by agency during the first year of employment. In 2005, of the 123 employees who left state employment during their first year of employment, 57, or 46 percent, were in social services-related jobs; 16, or 13 percent, in medical or health-related jobs; 15, or 12 percent, in miscellaneous administrative positions; and the remaining 35, or 28 percent, in other jobs. The agencies in which most of the employees who left during the first year were located include the Department of Human Services with 60 percent, the Veterans Home with 9 percent, and Job Service North Dakota with 7 percent. The majority of social services-related employees leaving during the first year are lower-paid, direct-care staff at the State Hospital and the Developmental Center.

The following schedule presents turnover rates for major state agencies for recent years:

	Fiscal Year 2004		Fiscal Year 2005		Fiscal Year 2006	
	Total Turnover Rate	Turnover Rate Due to Retirements	Total Turnover Rate	Turnover Rate Due to Retirements	Total Turnover Rate	Turnover Rate Due to Retirements
Bank of North Dakota	7%	2%	6%	2%	9%	1%
Department of Corrections and Rehabilitation	13%	1%	11%	1%	11%	2%
State Department of Health	9.9%	2.5%	12.8%	2.2%	8%	1.3%
Department of Human Services[1]	12.5%	1.9%	13.4%	2.2%	8%	1.8%
Information Technology Department	6.2%	.9%	6.6%	.9%	10.3%	.4%
Job Service North Dakota	9%	3.5%	13%	4.8%	18%	5.4%
Department of Public Instruction	12%	3%	7%	3%	9%	1%
Department of Transportation	5.5%	2.3%	6.5%	2.9%	6.6%	2.4%

[1]Information is provided for calendar years 2004 and 2005 and for the first six months of calendar year 2006.

The committee received information on state agency efforts to recruit and retain employees using nontraditional or nonmonetary benefits. The most common nontraditional or nonmonetary benefits used to recruit and retain employees reported by state agencies include compensatory time, flexible work schedules, tuition assistance, casual days, allowing infants to be brought to work by employees, and recruiting and retention bonuses.

Compensation System Considerations

The committee received information from Human Resource Management Services indicating there are generally two basic pay philosophies--the entitlement philosophy and the performance-oriented philosophy. Under the entitlement philosophy, automatic increases are given to employees each year and the majority of employees receive the same or nearly the same percentage increase. This philosophy is based on the premise that individuals who have worked another year are entitled to a raise in base pay and that incentives and benefits programs should continue and be increased, regardless of changing industry or economic conditions. Under the performance-oriented philosophy, no one is guaranteed a compensation increase each year. Instead, pay and incentives are based on performance differences among employees. Employees who perform well get larger increases and those who do not perform satisfactorily receive little or no increase in compensation.

The committee received information on options for the development of a pay for performance compensation system for state employees. Two models were reviewed. Under the first model, performance increases are provided as a percentage of salary followed by a flat equity dollar increase. Under the second model, a percentage equity increase is provided followed by a flat dollar amount for a performance increase.

The committee received information on the projected cost of increasing salary range midpoints to 90 percent of market, 95 percent of market, and 100 percent of market. The committee learned increasing salary range midpoints to 90 percent of market would require 124 employees to receive salary adjustments to maintain their salaries within the salary range, requiring an estimated $246,000 per year of additional funding. To increase the midpoints of the salary range to 95 percent of market would require 516 employees to receive salary adjustments to maintain their salary levels within the salary range minimum, requiring an estimated $720,000 per year of additional funding. To increase the salary range midpoints to 100 percent of market would require 1,122 employees to receive salary adjustments to maintain their salary levels within the salary range minimum at an estimated cost of $1.9 million per year.

The committee reviewed a bill draft requiring a state employee to contribute $75 per month toward the cost of health insurance premiums but allowing the employee to be reimbursed up to $75 per month for living a healthy lifestyle; providing that the state, for employees hired after June 30, 2007, pay for only the cost of a single health insurance premium less any employee contributions; providing the state contribution toward health insurance premiums for part-time employees be proportional to their full-time equivalent percentage; providing employees eligible to receive health insurance but declining coverage to receive up to $100 per month of additional compensation; and precluding agencies from requesting funding for health insurance premiums as part of their budget requests for employees not enrolled in the health insurance program. The bill was withdrawn from further consideration by the sponsor.

2007-09 Compensation Adjustment Suggestions

The committee received a report of the State Board of Higher Education Committee on Employee Compensation. The committee learned the higher education compensation committee recommended:

1. A total combined salary increase of at least 7.4 percent for faculty and 5.4 percent for staff at higher education institutions for each year of the 2007-09 biennium.
2. The state continue to fund 100 percent of the employee health insurance premiums with no changes to deductibles or copayments.
3. The state increase the retirement plan contribution from 10 to 12.5 percent and the employee contribution from 2 to 2.5 percent for employees with over 15 years of service.

The committee learned the State Board of Higher Education, in considering these recommendations, is recommending a salary increase of 5 percent for each year of the 2007-09 biennium.

The committee received a report from the State Employee Compensation Commission regarding its recommendations for state employee compensation for the 2007-09 biennium. The committee learned the commission is recommending the 2007 Legislative Assembly provide a state employee salary increase of 5 percent on July 1, 2007, and 4 percent on July 1, 2008; funding for an $8 million salary equity pool for classified state employees, $4 million of which is from the general fund and $4 million of special funds; and continuing the full state payment of the single or family health insurance premium with no plan changes. The estimated cost of the State Employee Compensation Commission's recommended increases is $40.2 million from the general fund, $25 million of which relates to the 5 percent and 4 percent salary increases, $4 million for the salary equity increases, and $11.2 million for health insurance premium increases.

Other Reports and Testimony

The committee heard other reports, including a report on agencies with human resource directors, state employee salary increases provided during April through September 2005, other states' age and service requirements for retirement benefits, and information on the North Dakota labor market.

The committee heard comments from state agency representatives and other interested persons regarding state employee compensation issues. Major comments and suggestions made include:

1. Salary increases provided in recent years have only provided for cost-of-living increases.
2. State agencies are experiencing fewer applicants for job openings.
3. It is costly to recruit and train a new employee.
4. State employees have continued to provide a valuable service to the state when state revenues were not keeping pace with state funding needs and salary increase funding was not provided. It is important for the Legislative Assembly, during the 2007 legislative session, when state revenues are adequate and large fund balances exist, to adequately reward state employees.
5. Continue to provide the fully paid health insurance premium for employees with no plan changes.
6. Provide salary increases necessary to be competitive with the market.
7. Once salary levels are competitive with the market, establish a performance component to the compensation system.
8. Address pay equity issues among employees in different agencies.
9. Provide a consistent salary administration strategy from year to year.
10. Adjust salary range midpoints to 95 percent of market.
11. Provide funding necessary to allow employees to advance through their salary range through a merit, step, or other system.
12. Allow agencies flexibility with salary funding and fringe benefits to recruit and retain employees.

RECOMMENDATIONS

The committee made no recommendations regarding its study of state employee compensation.

FINANCE AND TAXATION COMMITTEE

The Finance and Taxation Committee was assigned two studies. Section 1 of Senate Bill No. 2404 (2005) directed a study of enhanced funding for elementary and secondary education and methods, including sales tax, income tax, and tax exemptions, by which the state's reliance on property taxes to fund elementary and secondary education could be reduced. Senate Concurrent Resolution No. 4010 (2005) directed the Legislative Council to study alternatives to the current method of expressing property tax levies in mills per dollar of taxable valuation.

Committee members were Senators Herb Urlacher (Chairman), John M. Andrist, Dwight Cook, Michael A. Every, Harvey Tallackson, Ben Tollefson, and Rich Wardner and Representatives Larry Bellew, Wesley R. Belter, Kari Conrad, David Drovdal, Pam Gulleson, C. B. Haas, Lyle Hanson, Craig Headland, Gil Herbel, Ronald A. Iverson, Philip Mueller, Kenton Onstad, Mark S. Owens, Arlo E. Schmidt, Dave Weiler, Clark Williams, and Dwight Wrangham.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

EDUCATION FUNDING AND PROPERTY TAX STUDY

Background

It appears that the study directed by Senate Bill No. 2404 was enacted to continue deliberations initiated by House Bill No. 1512 (2005), which would have caused a substantial restructuring of education funding. House Bill No. 1512 was passed in the House of Representatives but failed to pass in the Senate. As approved by the House of Representatives, the bill would have substantially increased individual and corporate income taxes and sales, use, and motor vehicle excise taxes to generate approximately $570 million in new revenue for a biennium. The new revenue would have been allocated to school districts to replace most general fund property tax levies and would have reduced school boards' property tax levy authority to a maximum of 80 mills for general fund purposes. The bill would have eliminated the existing foundation aid formula and pooled all state funding sources for school districts into a single formula. Proponents of House Bill No. 1512 argued that property taxes have risen too fast in recent years and the adequacy and equity of education funding could be improved by restructuring the way education is financed. Many of those who did not support passage of the bill expressed concern that restructuring of this magnitude requires more careful study and that the bill proposed too large a state tax increase.

North Dakota Century Code (NDCC) Section 57-51.1-08 contains a statement of intent of the electors and the Legislative Assembly to fund public elementary and secondary education at the level of 70 percent of the educational cost per student. This language originated with enactment of initiated measure No. 6 at the November 1980 general election. Despite the existence of this statement of intent, state allocations have never reached a funding level of 70 percent of the cost of elementary and secondary education.

Concept Paper

Early in its deliberations, the committee approved a motion to develop a concept paper for committee consideration to identify and focus committee consideration on core issues for analysis. The committee adopted a concept paper with the following primary considerations:

1. Determine the result if the funding formula were to provide for 70 percent state and 30 percent local shares of elementary and secondary education funding, excluding consideration of federal funding.
2. Determine property tax savings that will result and how to equitably allocate savings among taxpayers.
3. Determine whether school spending growth can and should be limited.
4. Provide a two-year hold harmless funding floor for school districts.
5. Determine appropriate means of meeting the added funding responsibility of the state.
6. Determine a method to monitor future conformity of elementary and secondary education funding to the 70-30 funding model and obtain estimates of future costs.

70-30 Elementary and Secondary Education Funding

In 2005 the Legislative Assembly provided appropriations for per student payments, tuition apportionment, special education funding, and teacher compensation reimbursement totaling $696,865,879. The total appropriation exceeds the 1995-97 appropriation by $179,267,046, which is an increase of 34.6 percent in 10 years. For comparison purposes, during the 10 years from 1994 to 2004, total school district property taxes levied increased by 60.1 percent.

Although legislative appropriations for elementary and secondary education funding have increased substantially over the years, the cost of education has increased faster, forcing school district property tax levies to increase faster than state funding levels. Superintendent of Public Instruction representatives estimate the current annual rate of growth in elementary and secondary education costs at approximately 3 percent. The state's share of funding for elementary and secondary education has declined from 58.5 percent in 1981-82 to 41.5 percent in 2003-04. Local source contributions to school district revenues have increased from 23.3 percent in 1981-82 to 42.6 percent in 2003-04, mostly because of substantial increases in school district property taxes. School district property tax levy increases affect all property taxpayers in the state

because all property is in a school district and property taxes levied by school districts were 55.5 percent of all property taxes levied in the state in 2004.

The committee reviewed detailed data and testimony on all aspects of school funding. The committee received a review from five school districts, including large, medium, small, and recently consolidated districts, on how they establish and adjust their budgets. The committee reviewed data on each school district's expenditures broken down by expenditures for teachers, support staff, administration, and other expenditure categories.

For the 2004-05 school year, the statewide school district average expenditures were allocated 51.76 percent for salaries and benefits for teachers, 4.84 percent for salaries and benefits for support staff, 7.23 percent for other instructional costs, 4.69 percent for school administration, 6.42 percent for general administration, 8.72 percent for operation and plant maintenance, 4.14 percent for student transportation, 1.19 percent for capital projects, 2.40 percent for extracurricular activities, and 8.61 percent for all other expenditures. For the 2004-05 school year, the statewide average cost per student was $6,726.

The committee requested and received information to compare "rich" versus "poor" school districts. It appears the most appropriate means of comparing rich versus poor school districts is to compare the taxable valuation per student as a measure of the taxable property wealth available for support of each student in each school district. The statewide average taxable valuation per student for the 2005-06 school year is $18,735. However, most school districts in the state are either substantially above or substantially below this statewide average taxable valuation per student. This means there is a broad range of property tax capacity for educational support among school districts.

School districts levied 50.9 percent of statewide property taxes in 1985 and 55.52 percent in 2004. Counties levied 25.59 percent of property taxes statewide in 1985 and 23.79 percent in 2004. Cities levied 14.83 percent of property taxes statewide in 1985 and 12.46 percent in 2004. From 1985 to 2004, total taxes levied by school districts statewide increased 152.8 percent while county levies increased 115.44 percent and city levies increased by 94.68 percent.

In a nationwide comparison of state funding of the cost of elementary and secondary education, it is reported that state revenues in North Dakota account for approximately 37 percent of total elementary and secondary education funding. The data in the study differs slightly from data determined at the state level because the study includes consideration of state funding for school construction and other costs not included in North Dakota comparisons. The study concludes that the average state share of elementary and secondary education funding is 49 percent. In this region only South Dakota, at 34 percent, provides a lower proportion of funding from state sources for elementary and secondary education. The study reports the state's share of elementary and secondary education funding is 74 percent in Minnesota, 46 percent in Montana, and 51 percent in Wyoming.

The committee reviewed a 2003 report prepared for the Superintendent of Public Instruction by Augenblick, Palaich and Associates, Inc., commonly referred as the Augenblick study. Educational funding analysis generally focuses on equity and adequacy considerations. The equity approach to school funding is focused on allocation of equal dollars for each student. The adequacy approach to school funding relies on determining funding allocations to provide educational adequacy for each student. The Augenblick study was commissioned to determine the cost of providing educational adequacy funding in North Dakota. The report was based on data from the 2001-02 school year and use of six hypothetical school districts. The report concluded that 2001-02 funding was approximately $205.8 million below the amount the study estimated was necessary to meet adequacy of funding considerations.

The committee reviewed a June 2005 decision of the Supreme Court of Kansas ordering the Kansas Legislature to increase its appropriation for state support of elementary and secondary education. Before the court decision, the Kansas Legislature had provided an appropriation increasing state support for elementary and secondary education by $142 million above the amount appropriated the previous year. The court ordered an additional increase of $143 million and the legislature complied with the Kansas Supreme Court order by approving an increase in state school funding by an additional $148.4 million. The developments in Kansas are relevant to North Dakota because the Kansas Supreme Court based its decision in large measure upon a study of adequacy of educational funding in Kansas completed by Augenblick & Myers and, when the Finance and Taxation Committee began its study, a lawsuit against the state of North Dakota was pending which had been filed by plaintiff school districts challenging the equity and adequacy of school funding in North Dakota, citing the findings of the Augenblick study done for North Dakota.

In early 2006 an agreement to stay litigation was entered by the Governor with the plaintiff school districts in the school funding lawsuit filed against the state of North Dakota. In the agreement, the Governor made a commitment to issue an executive order creating a North Dakota Commission on Education Improvement and a commitment that the executive budget for the 2007 legislative session would include at least $60 million of additional state funds for elementary and secondary education above the amount appropriated in 2005. The Governor issued the promised executive order on January 10, 2006, establishing the Commission on Education Improvement to examine the system of delivering and financing public elementary and secondary education, propose a resolution for the Legislative Assembly to adopt the commission as a vehicle for proposing improvements to the system, and submit to the Governor and the Legislative Assembly recommendations to improve the system, including addressing adequacy of education, equitable distribution

of state education funds, and allocation of funding sources between the state and school districts.

After the early deliberations of the Commission on Education Improvement, the committee received a report from the Lieutenant Governor, who served as chairman of the Commission on Education Improvement, regarding the direction the commission would proceed with its study and recommendations. At the time of the report by the Lieutenant Governor, the Commission on Education Improvement had not made any final decisions. The Lieutenant Governor said the commission was established to carry through on the commitment of the state in the agreement to stay litigation to provide $60 million of new state funds for education and to improve the equity of funding allocation among school districts. The Lieutenant Governor said it is important to understand that the efforts of the Commission on Education Improvement and the state will be part of a multibiennium process and that it is clear to all participants and stakeholders that the necessary changes cannot be accomplished in a single biennium. The Lieutenant Governor said the commission hopes to bring all school funding from the state into a comprehensive funding formula, with the exception of transportation costs. The Lieutenant Governor said the discussions of the commission have focused on equity of funding among school districts and it will probably be during the 2007-09 biennium that the commission will seek to define and address adequacy of educational funding.

The committee reviewed the projected state and local share of elementary and secondary education funding for the 2007-09 biennium. Total educational expenditures for the biennium are estimated at $1.3 billion. If the current state share of 47 percent of those costs is increased to 70 percent of those costs, the state would have to provide an additional $296 million funding for the biennium. The committee recognized it would not be feasible to recommend this amount of additional state funding in a single biennium and began to focus its discussions on consideration of providing graduated increases in the state's share of education costs over a period of three or four bienniums.

Property Tax Savings and Allocation

At its meeting in May 2005, the State Board of Equalization received a substantial amount of testimony and requests to stop or reverse rapidly increasing assessments and property taxes for residential property. Members of the State Board of Equalization expressed their hopes that the Finance and Taxation Committee study could address those issues.

Combined school district levies in 2005 for the general fund, high school tuition, and high school transportation ranged from zero to 307.97 mills. The average school district general fund mill rate is 199.24 mills, but only 20 of the 204 school districts levied more than that average. Approximately 83 percent of school districts levied within the range from 130 to 200 mills. The following table shows the number of school districts levying within designated ranges of mills in 2005:

Over 240 mills	10
220-240	4
200-220	6
185-200	59
165-185	51
150-165	36
130-150	23
100-130	4
50-100	5
20-50	2
0	4
Total	204

The committee reviewed information on property taxes, including property tax levies and limitations, the formula for valuation of agricultural property for property tax purposes, the farm residence property tax exemption, and the relative growth of property taxes paid by residential, commercial, agricultural, and centrally assessed properties.

An issue raised during consideration of House Bill No. 1512 was the amount of property tax relief that would be provided to nonresident owners of property in North Dakota. Because information on the topic was unavailable, it was impossible to resolve arguments about the level of nonresident property tax relief that might be provided. The committee requested and received from the North Dakota Association of Counties a survey of each county showing the out-of-state property ownership and property taxes paid for agricultural, residential, and commercial property. The survey was based on the mailing address for the property tax statement for each parcel of taxable property, so the survey results are subject to a margin of error because the mailing address is not conclusive of residency status. The survey found that on a statewide basis 16 percent of agricultural property taxes are paid by nonresidents, 3 percent of residential property taxes are paid by nonresidents, and 25 percent of commercial property taxes are paid by nonresidents. For comparison purposes, the committee obtained an estimate from the Tax Commissisoner that 7.8 percent of state sales and use taxes are paid by nonresidents and 6.5 percent of individual income taxes are paid by nonresidents.

School Spending Growth Limits

School districts may levy property taxes for special or general fund purposes. School district general fund levies are subject to alternative kinds of levy limitations. School district general fund levies may be subject to a limitation expressed in mills applied to taxable valuation of property in a school district or a limitation based on the number of dollars levied in property taxes by a school district in a preceding year. In addition, expanded or unlimited mill levy authority may be approved by the voters for a school district. Under NDCC Section 57-15-14, a school district may impose a general fund levy of up to 185 mills against the taxable valuation of the school district. A school district may increase its property tax levy in dollars from the previous school year by up to 18 percent until the 185-mill limit is reached. This section also provides school district

authority for increased or unlimited mill levies upon approval by qualified electors of a school district. Under Section 57-15-01.1, a school district may levy up to the highest amount levied in dollars in the three preceding taxable years, subject to adjustments to reflect changes in the amount of property exempt by local discretion or charitable status, to reflect expired temporary mill levy increases, or to reflect new or increased levy authority authorized by the Legislative Assembly or the voters of the school district. Section 57-15-01.1 originated in 1981 legislation that restructured property tax assessment. After assessment changes in 1981, several school districts were above the general fund mill levy limitation cap and this section also allowed percentage increases in dollars levied for several years. As a result of these factors, this section allows many school districts to maintain a general fund levy in excess of 185 mills.

Hold Harmless Funding for School Districts

Because school districts have authority to levy based on the number of dollars levied in a previous year, it is possible to reduce the maximum number of mills a school district may levy without reducing the number of dollars a school district may levy. If property tax relief allocations are subtracted from the number of dollars the district may levy, the school district would still have access to the same net dollars for education. In addition, a school district levying fewer than 185 mills has statutory authority for an increase in property taxes.

Methods of Generating Revenue to Provide Property Tax Relief

The committee reviewed historic data on sales, use, and motor vehicle excise tax revenues, individual and corporate income tax revenues, and estimated rates of growth of those revenues. The committee reviewed potential revenues from elimination of sales and use tax exemptions and the potential revenue effect of subjecting services to sales taxes in the same manner services are taxable in South Dakota. The committee examined information on how all states tax or exempt services under sales tax laws. The committee obtained estimates of potential revenue available from rate increases for sales, use, and motor vehicle excise taxes and individual and corporate income taxes.

During the interim, it became apparent the state would end the biennium with a substantial revenue surplus. The most recent budget projections are for an ending general fund balance exceeding $500 million. With this revenue surplus, the apparent consensus of the committee is that this is not an appropriate time to recommend an increase in state taxes to fund property tax relief. The committee chose to focus its attention on providing an appropriation of budget surplus funds from the state general fund to return property tax relief to taxpayers through allocations to school districts.

Future Monitoring of the State's Share of Education Funding

Because the committee focused on phasing in enhanced state funding for education over three or four bienniums, the committee concluded it would be appropriate to require the Legislative Council to assign a study in each legislative interim through 2012 by the interim committee for taxation issues to consider compliance with, and future funding for, the shift in education funding and taxation policy necessary to reach a 70 percent level of state funding support for elementary and secondary education.

City Sales Tax Transfer to School Districts

Cities under home rule authority may levy sales taxes on retail sales within those cities. School districts do not have this authority. An Attorney General's opinion in October 2005 concluded that a home rule city may enter a joint powers agreement with a school district to utilize city sales tax revenue for school funding as long as the city home rule charter and implementing ordinances authorize the use of sales tax revenue for that purpose. The issue was raised when a group of Fargo citizens concerned with the trend of sharp increases in property taxes explored options to reduce property taxes in Fargo. The group initiated a measure to provide a property tax reduction by transferring Fargo city sales tax revenues to the Fargo School District. The measure was not approved by Fargo voters in the June 2006 primary election.

Committee members expressed a number of concerns with transferring city sales tax revenue to reduce school district general fund property taxes. A major retail area, such as Fargo, could shift millions of dollars of school district property taxes to nonresidents who shop in the city. Smaller cities that do not have a comparable level of retail trade would not have the same option. Residents of rural areas expressed opposition to paying city sales taxes to be used for the sole purpose of reducing property taxes of city residents. Committee members expressed concern that city sales tax transfers to school districts would create a new level of education funding inequity based on location of retail sales. Committee members said the Legislative Assembly already faces an extremely complicated task in providing education funding adequacy and equity and city sales tax transfers to school districts would greatly increase the problems of equitable allocation of education funding.

Committee Consideration

The committee received testimony supporting property tax relief and moving the state's share of the cost of education toward the 70 percent level. Concerns were expressed in testimony and by committee members that undertaking an effort to increase the state's share of education funding over several bienniums could amount to a commitment of the state for a future state-level tax increase. Other committee members said an appropriation for property tax relief does not amount to a promise of a future state-level tax increase and the Legislative Assembly will have to assess the state's ability to provide education funding in every legislative session, as it has always done.

After development of a bill draft approach and consideration of calculations showing the effect of the bill

draft for each school district in the state, committee members expressed concern about the fairness of the allocation because approximately 38 percent of all of the property tax relief allocation would have gone to the Fargo and Bismarck School Districts. Those two school districts have only about 22 percent of the students in the state. It was argued that the high cost of education per student in Bismarck and Fargo is the product of voters allowing unlimited levy authority in those school districts and that is a local decision that should not require all taxpayers in the state to contribute to providing property tax relief. It was suggested that it would be fairer to limit allocations to school districts receiving 5 percent or more of the total statewide allocation, so that the percentage of the total amount available for allocation for such a school district could not exceed that school district's percentage of statewide student enrollment. The committee reviewed a computation showing the effect of this suggested change for all the school districts in the state.

Recommendations

The committee recommends Senate Bill No. 2032 to provide a general fund appropriation for property tax relief and provide for allocation of the appropriated amount among school districts. The bill provides an appropriation of $74,054,859 to the Tax Commissioner. This amount is to be allocated $35,897,132 in the first year and $38,157,727 in the second year of the 2007-09 biennium. The bill provides adjustments to reduce school district property tax levy authority by the amount of property tax relief received by each school district, for most school districts.

Senate Bill No. 2032 does not provide enhanced funding to school districts. The bill reduces the authority of school districts to increase property tax levies. However, to the extent a school district has authority to increase its levy because it currently levies fewer than 185 mills or has unlimited levy authority, a school district could derive enhanced funding by receiving property tax relief and raising its property tax levy. The bill addresses equity funding issues by providing a greater measure of property tax relief to school districts levying at higher mill rates and to school districts having below average taxable valuation per student.

Senate Bill No. 2032 would require the Tax Commissioner to allocate appropriated funds among school districts following a seven-step allocation process. The seven steps of the process are:

1. Determine the adjusted combined education mill rate for each school district. The "combined education mill rate" for a school district is the total number of mills levied for the general fund and high school tuition and transportation. The school district's combined education mill rate from the previous year must be reduced by 60 percent of the maximum number of mills that may be levied by a school district under NDCC Section 57-15-14. The maximum number of mills under Section 57-15-14 is 185 mills for 2006. That amount would be reduced to 165 mills for 2007 under Section 5 of the bill. The object of this adjustment is to eliminate property tax relief allocations for school districts making substantially below average property tax levies.

   For example, using a 60 percent reduction rate would result in subtraction of 111 mills in the first year (185 mills x 60 percent) and 99 mills in the second year (165 mills x 60 percent). A school district levying 111 mills or less in the first year would have an adjusted combined education mill rate of zero mills and would not receive a property tax relief allocation. Subtracting 111 mills from the mill rate for each school district means that only the amount levied by a school district in excess of 111 mills will be included in computing a property tax relief allocation.
2. Determine an adjusted combined education levy in dollars for each school district. The adjusted combined education mill rate for each school district is multiplied times the taxable valuation of property in the school district to determine the number of dollars in property taxes levied by the school district that will be eligible for consideration in allocation of property tax relief.
3. Determine the percentage of appropriated funds for each school district. The adjusted combined education levies in dollars for all school districts are totaled and divided into the adjusted combined education levy for each school district. The resulting percentage is the school district's tentative share of the total amount to be allocated for the year.
4. Determine property tax relief in dollars for each school district. The percentage determined in Step 3 for each school district is multiplied times the amount of statewide property tax relief available for the year to determine the tentative annual amount of property tax relief for each school district in dollars.
5. Adjust property tax relief amounts to reflect taxable valuation per student. The property tax relief allocation for each school district is adjusted by multiplying the allocation amount times a factor determined by dividing statewide average taxable valuation per student by the taxable valuation per student for the school district. This adjustment will increase property tax relief payments to districts with below average taxable valuation per student and reduce payments to school districts with above average taxable valuation per student. The adjustment factor is limited to no more than 1.25 and no less than .75. Because the adjustment factors will make total payments either more or less than 100 percent of the amount available, the Tax Commissioner must prorate payments to allocate the full amount among eligible districts.
6. Adjust property tax relief amounts for school districts entitled to more than 5 percent of the amount available for statewide allocation. The

property tax relief allocation for each school district otherwise entitled to an allocation greater than 5 percent of the total amount available for statewide allocation must be adjusted so that the allocation is not a greater percentage of the total amount available for statewide allocation than the school district's percentage of the total statewide enrollment in public elementary and secondary schools. Any amount exceeding this limitation is again prorated among other school districts.

7. Certify to school districts the property tax relief they will receive for the next budget cycle. By August 1 the Tax Commissioner must certify to each school district the amount of property tax relief for the next budget year. Under the bill, the first certification would be due not later than August 1, 2007. The information is also required to be provided for each county auditor. The Tax Commissioner is required to transfer property tax relief allocations to school districts no later than April 15 of the budget year, which would mean that the first allocation to school districts under the bill would be received on or before April 15, 2008.

North Dakota Century Code Section 57-15-01.1 allows taxing districts the option of basing property tax levy limitations on property taxes levied in dollars in the base year for the taxing district. For most school districts levying more than 185 mills, this section provides the authority for the levy in an amount over 185 mills. School districts are removed from this section.

North Dakota Century Code Section 57-15-01.2 is created by Senate Bill No. 2032 to create a provision identical to Section 57-15-01.1, except that it applies only to school districts and it requires a reduction of levy authority in dollars in the amount of property tax relief allocated to a school district for the budget year to the extent that amount exceeds the property tax relief allocation of the school district in the base year.

North Dakota Century Code Section 57-15-14 currently allows a school district to levy up to 185 mills and to increase its levy in dollars by 18 percent per year until the 185-mill limit is reached. Beginning in taxable year 2007, the bill would reduce the maximum levy to 165 mills and would reduce the maximum annual increase for school districts levying less than 165 mills to two percentage points more than the consumer price index increase for the Midwest region.

North Dakota Century Code Section 57-15-14 also currently allows voter approval of unlimited levy authority for school districts. The bill would eliminate the option of unlimited levy authority and allow voter approval of an increase of up to 5 percent more than the maximum levy otherwise allowed by law. The bill would not terminate unlimited levy authority for a school district in which voters have previously approved an unlimited levy. During the 2004-05 school year, Bismarck, Grand Forks, and Williston School Districts had unlimited levy authority.

North Dakota Century Code Section 57-15-31 is amended by the bill to require subtraction of the property tax relief allocation for a school district from the school district budget in determining the property tax levy for the district. This is intended to assure that property tax relief is actually received by property taxpayers.

The committee recommends House Bill No. 1029 to limit authority to transfer county or city home rule sales tax revenues to school districts. The bill will allow city or county home rule sales tax revenue transfers to school districts only for payment of bonded indebtedness incurred before the effective date of the Act or capital construction and associated costs approved by the electors before the effective date of the Act.

PROPERTY TAX LEVIES IN MILLS STUDY

The text of the resolution directing this study states that converting mills per dollar of taxable valuation into actual property taxes is difficult and confusing for taxpayers and converting property tax levies into an understandable measure would allow citizens to understand property tax levies and judge how property taxes will impact them.

Property tax liability is determined by multiplying the mill rate for the taxable year of each taxing district in which property is located times the taxable valuation of the property. The mill rate for a taxing district is established through the budget process. The amount budgeted by a taxing district is divided by the taxable valuation of all property in the taxing district to determine the mill rate that applies to property for property tax purposes. However, taxing authority of political subdivisions is limited by mill levy limitations established by statute. Statutory limits of a specific number of mills per dollar of taxable valuation exists for most property tax levies by political subdivisions. Property tax levies and limitations have been expressed in mills since Dakota became a territory in 1861.

References to taxes expressed in mills appear in hundreds of statutory provisions and in the Constitution of North Dakota. In addition, references to true and full value, assessed value, and taxable value occur in more than 100 statutory sections. To adjust all of these statutory references relating to use of mills to determine property taxes would require an extremely long bill draft. In addition, amendments to the Constitution of North Dakota would probably be required.

Taxpayers' primary exposure to levies in mills and taxable valuation of property comes from trying to understand the property tax statements received from county treasurers. The committee concluded that a better alternative to statutory revision of references to mills would be to require more taxpayer-friendly information on property tax statements or in accompanying documents.

Under NDCC Section 57-20-07.1, county treasurers are required to send real estate tax statements to property owners which must include dollar valuations of the true and full value of the property and the total mill levies applicable. In practice, most property tax statements provided by counties provide more information than required by the statutory provision.

However, information provided on property tax statements is not uniform among counties and generally does not indicate the amount of taxes levied by each taxing district levying against the property and does not provide explanatory material to indicate to the taxpayers how the number of mills levied is applied against the taxable value of the property to determine the property tax liability for the year.

The North Dakota Association of Counties surveyed the methods of property tax statement preparation among counties. Each of the 53 counties has computerized the property tax statement preparation process. There are five commercial software applications currently in use among counties plus four counties that have developed their own software applications for property tax statement preparation.

Committee Consideration

The committee considered a bill draft to expand the information that must be included in annual property tax statements or provided in additional printed material accompanying property tax statements. The bill draft would have required a statement of the true and full value of the property for the immediately preceding taxable year and the taxable year to which the tax statement applies. The bill draft would have also required the tax statement or accompanying materials to show, for each taxing district levying taxes against the property and the consolidated levy for all tax districts levying against the property, the taxes levied in dollars for the preceding year, the taxes levied in dollars for the taxable year for which the tax statement applies, the taxes expressed in dollars of taxes per $1,000 true and full value of the property for the preceding taxable year, and the taxes expressed in dollars of taxes per $1,000 of true and full valuation of the property for the taxable year for which the tax statement applies. County officials raised questions relating to the entity responsible for paying the cost of computer software programming changes, whether all 15 taxing entities must be shown on tax statements, how to handle statements for property that has been subdivided since the previous taxable year, and how to maintain the savings counties have achieved by consolidating parcels for the same taxpayer on tax statements. After reviewing the bill draft with county officials and county software vendors, the North Dakota Association of Counties reported that it appears the bill draft would not create major programming problems or costs if adequate lead time is allowed for developing updated software. It appears software vendors believe the new information required by the bill draft could be incorporated during annual software updates without additional programming costs.

Recommendation

The committee recommends Senate Bill No. 2033 to require property tax statements to include, or be accompanied by, information showing for the taxable year for which each tax statement applies for each taxing district levying taxes against the property taxes levied in dollars and taxes expressed in dollars per $1,000 of true and full valuation of the property.

HIGHER EDUCATION COMMITTEE

The Higher Education Committee was assigned, pursuant to Section 23 of Senate Bill No. 2003 (2005), a study of higher education funding and accountability, including a review of the progress made in implementing the Higher Education Roundtable recommendations relating to the North Dakota University System meeting the state's expectations and needs, the funding methodology needed to meet those expectations and needs, and the appropriate accountability and reporting system for the University System. The study was to include an evaluation by an independent consultant selected by the Legislative Council of the roundtable recommendations and goals and objectives of the University System, the long-term financing plan for the University System, the University System's prioritization of higher education funding, including the resource allocation mechanism addressing equity funding issues, and the accountability mechanisms.

In addition, the committee was assigned the responsibility to receive reports from the State Board of Higher Education on the status of the board's review of the long-term financing plan pursuant to Section 17 of Senate Bill No. 2003 (2005) and the responsibility to receive a report from the State Board of Higher Education before July 1, 2006, regarding implementation of a policy requiring all institutions to assess faculty and teaching assistant English communication skills pursuant to North Dakota Century Code (NDCC) Section 15-10-42.

Committee members were Senators Ray Holmberg (Chairman), Tim Flakoll, Tony Grindberg, Nicholas P. Hacker, Ed Kringstad, Elroy N. Lindaas, Dave Nething, and David O'Connell and Representatives Ole Aarsvold, Larry Bellew, Tom Brusegaard, Lois Delmore, Mary Ekstrom, Kathy Hawken, Nancy Johnson, Andrew G. Maragos, Bob Martinson, Darrell D. Nottestad, Mark S. Owens, Earl Rennerfeldt, and Steven L. Zaiser.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

BACKGROUND

The University System consists of 11 institutions under the control of the State Board of Higher Education. The system served approximately 52,129 students (headcount enrollment) during the 2003-04 academic year. Total appropriations by the 2005 Legislative Assembly for the 2005-07 biennium for higher education institutions and the University System office totaled $565,710,001, of which $387,157,893 was from the general fund. This included:

- Block grant appropriations to each of the higher education institutions for operations and capital assets and $178,552,108 from special funds, including $175 million for capital improvement projects.
- Funding of $2 million from the general fund for an equity pool. Section 9 of Senate Bill No. 2003 (2005) provided that the funding must be used to address equity at higher education institutions and other campus needs as determined by the State Board of Higher Education. The board could not select a formula for distributing the equity funding until January 1, 2006.

The legislative appropriations for the 11 institutions, the University System office, and the Forest Service include funding for 2,194.42 full-time equivalent (FTE) general fund positions for the 2005-07 biennium. Tuition and fees are not specifically appropriated by the Legislative Assembly as statutory authority is provided for the continuing appropriation of these funds.

Previous Legislative Higher Education Studies and Related Legislation

1999-2000 Study

The Higher Education Committee during the 1999-2000 interim studied higher education funding, including the expectations of the University System in meeting the state's needs in the 21st century, the funding methodology needed to meet those expectations and needs, and the appropriate accountability and reporting system for the University System. The committee, through the use of a Higher Education Roundtable consisting of 21 members of the Higher Education Committee and 40 representatives from the State Board of Higher Education, business and industry, higher education institutions, including tribal and private colleges, and the executive branch, discussed shifts, trends, and realities that impact the state of North Dakota and the University System and developed expectations for the University System, recommendations concerning higher education in North Dakota, and accountability measures and success indicators that correspond with the expectations for the University System.

The committee recommended six bills for consideration by the 2001 Legislative Assembly:

1. Senate Bill No. 2037 (2001), which was amended into Senate Bill No. 2003 (2001), provided a continuing appropriation for all higher education institutions' special revenue funds, including tuition income and local funds, and allowed institutions to carry over at the end of the biennium unspent general fund appropriations. The legislation was effective through June 30, 2003.
2. Senate Bill No. 2038 (2001), which was amended into Senate Bill No. 2003 (2001), required the budget request for the University System to include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component and the requirement that the appropriation for the University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for

asset funding. The legislation was effective through June 30, 2003.

3. Senate Bill No. 2039 (2001), as passed, allowed the State Board of Higher Education to authorize campus improvements and building maintenance projects that are financed by donations, gifts, grants, and bequests if the cost of the improvement or maintenance is not more than $385,000.
4. Senate Bill No. 2040 (2001), which failed to pass, would have allowed the University System to provide bonuses, cash incentive awards, and temporary salary adjustments without reporting the activity to the Office of Management and Budget as a fiscal irregularity.
5. Senate Bill No. 2041 (2001), as passed, included the committee's recommendation to recognize the institutions under the control of the State Board of Higher Education as the North Dakota University System and to require the University System to develop a strategic plan which defines University System goals and objectives and to provide an annual performance and accountability report regarding performance and progress toward the goals and objectives.
6. Senate Bill No. 2042 (2001), as passed, included the committee's recommendation to amend and repeal statutes relating to the powers of the State Board of Higher Education and the duties and responsibilities of institutions under the control of the State Board of Higher Education which were no longer appropriate.

The committee also recommended financial and nonfinancial accountability measurements to be reported annually at the University System level.

2001-02 Study

The Higher Education Committee during the 2001-02 interim studied the State Board of Higher Education implementation of the performance and accountability measures recommendations. The committee, through the use of a Higher Education Roundtable consisting of the 22 members of the Higher Education Committee and 44 representatives from the State Board of Higher Education, business and industry, higher education institutions, including tribal and private colleges, and the executive branch, reviewed plans for and accomplishments relating to the recommendations of the 1999-2000 Higher Education Roundtable, reviewed the state's New Economy Initiative and its linkage to the Higher Education Roundtable cornerstones and recommendations, and developed high-priority action items concerning higher education in North Dakota. The committee also reviewed the University System long-term financing plan and resource allocation model approved by the State Board of Higher Education and the University System first annual performance and accountability report.

The committee recommended four bills for consideration by the 2003 Legislative Assembly:

1. House Bill No. 1039 (2003), which was amended into House Bill No. 1003 (2003), provided for the extension of the continuing appropriation authority for higher education institutions' special revenue funds, including tuition. The legislation was extended through June 30, 2005.
2. House Bill No. 1040 (2003), which was amended into House Bill No. 1003 (2003), provided for the extension of the University System's authority to carry over at the end of the biennium unspent general fund appropriations. The legislation was extended through June 30, 2005.
3. House Bill No. 1041 (2003), which was amended into House Bill No. 1003 (2003), continued the requirement that the budget request for the University System include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component and the requirement that the appropriation for the University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding. The legislation was extended through June 30, 2005.
4. House Bill No. 1042 (2003), which failed to pass, would have amended NDCC Section 15-10-14.2 to require the University System performance and accountability report to include an executive summary and specific information regarding education excellence, economic development, student access, student affordability, and financial operations. The 2003 Legislative Assembly amended House Bill No. 1003 to provide legislative intent that the University System performance and accountability report include an executive summary and specific information regarding education excellence, economic development, student access, student affordability, and financial operations.

2003-04 Study

The Higher Education Committee during the 2003-04 interim studied higher education to further refine the expectations of the University System in meeting the state's needs in the 21st century, the funding methodology needed to meet those expectations and needs, and the accountability system and reporting methodology for the University System. The committee, through the use of a Higher Education Roundtable consisting of the 16 members of the Higher Education Committee and 45 representatives from the State Board of Higher Education, business and industry, higher education institutions, including tribal and private colleges, and the executive branch, reviewed the status of higher education in North Dakota, developed meaningful recommendations for enhancing the economy and other appropriate issues concerning higher education in North Dakota, reviewed the progress made, current status, and further actions needed to

enhance the economic and social vitality of the state and make the state more attractive for new business and business expansion; reviewed the impact of the Higher Education Roundtable on higher education in the state; and developed recommendations for action by the Legislative Assembly, the University System, the executive branch, and the private sector. The committee also reviewed the University System long-term financing plan and resource allocation model approved by the State Board of Higher Education and the University System third annual performance and accountability report.

The committee recommended four bills for consideration by the 2005 Legislative Assembly:

1. Senate Bill No. 2034 (2005), as passed, provided for the continuation of the continuing appropriation authority for higher education institutions' special revenue funds, including tuition, through June 30, 2007.
2. Senate Bill No. 2035 (2005), as passed, provided for the continuation of the requirement that the budget request for the University System include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component and the requirement that the appropriation for the University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding through June 30, 2007.
3. Senate Bill No. 2036 (2005), as passed, provided for the continuation of the University System's authority to carry over at the end of the biennium unspent general fund appropriations through June 30, 2007.
4. Senate Concurrent Resolution No. 4002 (2005), which failed to pass, directed the Legislative Council to study during the 2005-06 interim the State Board of Higher Education performance and accountability measures included in the report required by NDCC Section 15-10-14.2.

Long-Term Financing Plan and Resource Allocation Model

The 1999-2000 Higher Education Roundtable recommended the State Board of Higher Education and the chancellor develop a long-term financing plan and resource allocation model. As a result, the State Board of Higher Education contracted with the National Center for Higher Education Management Systems for assistance with the development of such a plan and model. The board reviewed the recommendations of the National Center for Higher Education Management Systems and adopted a long-term financing plan consisting of base operating funding, incentive funding, and capital asset funding components. The following is a description of the long-term financing plan and resource allocation model prior to suggested changes as a result of the consultant's recommendations:

Base Operating Funding Component

The base operating funding component of the long-term financing plan provides funding to each higher education institution to support core campus functions, such as instruction, research, and public service. The funding for each institution is based on the institution's current state general fund appropriation with general fund appropriation increases to address parity and equity. Objectives of the base operating funding component are to:

1. Establish peer institutions for each higher education institution based on agreed-upon selection criteria, including institution type, city size, Carnegie classification code, land-grant institution or medical school, total FTE students, total headcount enrollment, a percentage of part-time headcount, degrees awarded, degree program mix, and research expenditures.
2. Review national Integrated Postsecondary Education Data Systems (IPEDS) data on unrestricted state and local appropriations and net tuition revenues (total tuition revenue less scholarships, waivers, and discounts) on a per FTE student basis for each of the peer institutions.
3. Establish a base operating funding benchmark for each higher education institution based on the review of the state and local appropriations and net tuition revenues per student information. The benchmarks are to be reestablished every six years and, in the intervening years, are to be inflated by a percentage amount equivalent to the consumer price index.
4. Establish shared funding percentages to reflect that higher education funding is to be a shared responsibility between the state and students.
5. Determine the recommended base operating funding levels for each institution by taking into consideration the base operating funding benchmark, enrollment, and the recommended shared funding percentages.
6. Develop budget requests to move institutions currently funded at less than 85 percent of peer institution funding to 85 percent by the 2007-09 biennium and all institutions to 95 percent of peer institution funding by the 2013-15 biennium.
7. Allocate no more than 80 percent of all new state funding to parity and inflation and no less than 20 percent of the new funds to equity. The equity funding is to be distributed on a weighted average of each institution's gap differential to its peer comparator institutions.
8. Assure that state general fund appropriations are not reduced for any institution from the previous biennium until such time that the institution exceeds 105 percent of its peer benchmark or enrollment declines are sufficient to cause a reevaluation of its benchmark.

Incentive Funding Component

The incentive funding component of the long-term financing plan includes funding for the State Board of Higher Education to support state and system priorities consistent with the goals of the Higher Education Roundtable. The State Board of Higher Education goal for incentive funding is to have funding equivalent to 2 percent of the total University System state general fund appropriation by the 2007-09 biennium.

Capital Asset Funding Component

The capital asset funding component of the long-term financing plan provides funding to each of the higher education institutions for maintenance and replacement of facilities and infrastructure. The State Board of Higher Education goal for capital asset funding is for each of the institutions to phase in full funding of the Office of Management and Budget buildings and infrastructure formula over a 10-year period (by the 2011-13 biennium) and to address the current deferred maintenance backlog over approximately a 14-year period (by the 2015-17 biennium). The funding provided to each of the institutions would be left to the discretion of the institution with appropriate approvals by the State Board of Higher Education for projects greater than $100,000. Institutions would be given the authority to allocate funds for repair and replacement priorities for both deferred maintenance and regular repair and replacement projects as determined by the institution. Institutions would be allowed to carry unspent capital asset funding from one biennium to the next in order to complete projects started in one biennium but not completed until the next and to accumulate funds to complete large projects that require multiyear funding. The capital asset funding component will be applied to new state buildings built on campuses; however, no new operating funds will be added to the base operating budget for operating costs if the operating base is already at the benchmark target.

Performance and Accountability Report

North Dakota Century Code Section 15-10-14.2 requires the University System to provide an annual performance and accountability report regarding performance and progress toward the goals outlined in the University System strategic plan and related accountability measures. Section 20 of Senate Bill No. 2003 (2005) provides that the performance and accountability report as required by Section 15-10-14.2 is to include an executive summary and identify progress on specific performance and accountability measures in the areas of education excellence, economic development, student access, student affordability, and financial operations. The following is a summary of the performance and accountability measures identified in Section 20 of Senate Bill No. 2003 (2005):

1. Education excellence, including:
    a. Student performance on nationally recognized exams in their major fields compared to the national averages.
    b. First-time licensure pass rates compared to other states.
    c. Alumni-reported and student-reported satisfaction with preparation in selected major, acquisition of specific skills, and technology knowledge and abilities.
    d. Employer-reported satisfaction with preparation of recently hired graduates.
    e. Biennial report on employee satisfaction relating to the University System and local institutions.
    f. Student graduation and retention rates.
2. Economic development, including:
    a. Enrollment in entrepreneurship courses and the number of graduates of entrepreneurship programs.
    b. Percentage of University System graduates obtaining employment appropriate to their education in the state.
    c. Number of businesses and employees in the region receiving training.
3. Student access, including number and proportion of enrollments in courses offered by nontraditional methods.
4. Student affordability, including:
    a. Tuition and fees on a per student basis compared to the regional average.
    b. Tuition and fees as a percentage of median North Dakota household income.
    c. Cost per student in terms of general fund appropriations and total University System funding.
    d. Per capita general fund appropriations for higher education.
    e. State general fund appropriation levels for University System institutions compared to peer institutions general fund appropriation levels.
5. Financial operations, including:
    a. Cost per student and percentage distribution by major function.
    b. Ratio measuring the funding derived from operating and contributed income compared to total University System funding.
    c. Ratio measuring the amount of expendable net assets as compared to the amount of long-term debt.
    d. Research expenditures in proportion to the amount of revenue generated by research activity and funding received for research activity.
    e. Ratio measuring the amount of expendable fund balances divided by total expenditures and mandatory transfers.
    f. Ratio measuring net total revenues divided by total current revenues.

The State Board of Higher Education has adopted 9 performance and accountability measures, in addition to the 21 measures required by the 2005 Legislative Assembly, to provide guidance in establishing effective policy for the 11 system institutions. The following is a summary of the performance and accountability

measures adopted by the State Board of Higher Education:

1. Workforce training information, including levels of satisfaction with training events as reflected in information systematically gathered from employers and employees receiving training.
2. Noncompleters satisfaction - Levels of satisfaction and reasons for noncompletion as reflected in a survey of individuals who have not completed their program or degree.
3. Student goals - Levels and trends in the number of students achieving goals and the institution meeting the defined needs and goals as expressed by students.
4. Levels of satisfaction with responsiveness as reflected through responses to evaluations of companies receiving training.
5. Student participation - Levels and trends in rates of participation of:
   a. Recent high school graduates and nontraditional students.
   b. Individuals pursuing graduate degrees.
6. Student enrollment information, including:
   a. Total number and trends in full-time, part-time, degree-seeking, and non-degree-seeking students being served.
   b. The number and trends of individuals, organizations, and agencies served through noncredit activities.
7. Higher education funding - A status report on higher education financing as compared to the long-term financing plan.
8. Ratio of incentive funding to total University System state general fund appropriations.
9. Ratio of University System state general fund appropriations to total state general fund appropriations.

The first performance and accountability report was published in December 2001 and the report has been published each subsequent year. The most recent report was published in December 2005 and may be viewed on the Internet at www.ndus.nodak.edu/reports/details.asp?id=465.

HIGHER EDUCATION FUNDING AND ACCOUNTABILITY STUDY

Consultant Services and Methodology

The committee developed a request for proposal for conducting a higher education funding and accountability study and authorized the request for proposal be sent to 26 potential consultants. The request for proposal provided that the study include a comprehensive review of the following items, identify findings, and make recommendations to be implemented by the University System and to assist the Legislative Assembly and the executive branch in monitoring of and budgeting for the University System:

1. Evaluate the long-term financing plan for the University System and determine:
   a. If the current method of funding for the University System and the method of determining and evaluating equity among the institutions is appropriate and, if so, the appropriateness of the peer institutions selected and the need to update peer institution funding comparisons.
   b. If the long-term financing plan is realistic based on historic funding increases and forecasted economic growth in North Dakota.
   c. If the current State Board of Higher Education method of setting priorities is appropriate.
   d. If the long-term financing plan adequately addresses the use of various sources of revenues and allocations and the need for funding initiatives at the state's institutions.
   e. If the current method of funding for the University System is not appropriate, develop an alternative method of funding using existing resources for the University System, including the allocation of funding to institutions and a comparison of the proposed allocation of funding to institutions to the funding provided for the 2005-07 biennium.
2. Describe the state of higher education in the United States and how North Dakota compares in finance and performance, national higher education trends, other states' per capita higher education funding, and trends in funding higher education from nonstate revenue sources.
3. Evaluate previous Higher Education Roundtable recommendations, including:
   a. Status of implementation of the recommendations.
   b. Strengths and weaknesses of the recommendations as implemented.
   c. Appropriateness of the recommendations to meet the expectations and needs of students, citizens, higher education entities, and the Legislative Assembly.
4. Evaluate the accountability measures and benchmarks in terms of appropriateness and adequacy.
5. Provide findings, identify alternatives and options, and make recommendations for the state of North Dakota to proceed with appropriate implementation of roundtable recommendations, the long-term financing plan, and the accountability measures.

The Legislative Council received proposals from five entities interested in conducting the higher education funding and accountability study. The Council received presentations of the proposals from representatives of the entities and selected and contracted with MGT of America, Inc., a consulting company based in Tallahassee, Florida. MGT of America, Inc., began its work in September 2005 and concluded the study with the presentation of a final report to the Higher Education Committee in March 2006.

MGT of America, Inc., completed interviews with public and private stakeholders, including the State Board of Higher Education, higher education officials,

students, executive branch officials, legislators, and the private sector; reviewed documentation; and gathered external benchmarking information.

Study Findings and Recommendations

The MGT of America, Inc., final report for the higher education funding and accountability study included information regarding the state of higher education, Higher Education Roundtable, accountability measures, peer institutions, and the University System long-term financing plan. The report may be viewed on the Internet at www.legis.nd.gov/council/documents/hereport.html.

State of Higher Education

MGT of America, Inc., identified the following conditions relating to the state of higher education in the United States and how North Dakota compares in finance and performance, national higher education trends, per capita higher education funding, and trends in funding higher education from nonstate revenue sources:

- The mix of population by age level for North Dakota is close to the averages for Minnesota, Montana, South Dakota, and the national averages.
- The percentage of North Dakota high school graduates going directly to college is 73.7 percent compared to the national average of 56.6 percent.
- North Dakota has a 47.5 percent bachelor's degree graduation rate compared to the national average of 54.3 percent and a 36.2 percent associate degree graduation rate compared to the national average of 30.6 percent.
- North Dakota's personal income per capita for 2004 was $29,247 compared to $36,173 for Minnesota, $27,666 for Montana, $30,617 for South Dakota, and the national average of $33,041.
- North Dakota's state tax collections per capita for 2000 was $2,675 compared to $3,694 for Minnesota, $2,363 for Montana, $2,300 for South Dakota, and the national average of $3,100.
- North Dakota allocated 17.3 percent of its general fund budget to higher education for fiscal year 2003-04 compared to 7.3 percent for Minnesota, 10.2 percent for Montana, 12.6 percent for South Dakota, and the national average of 10.8 percent.
- North Dakota's general fund higher education spending per capita was $258 for fiscal year 2003-04 compared to $213.02 for Minnesota, $155.34 for Montana, $167.18 for South Dakota, and the national average of $198.69.
- North Dakota's state net dollars (state appropriations and tuition and fees less student aid) per FTE student for fiscal year 2003-04 was $5,528 compared to the national average of $6,013.
- Total higher education revenues per FTE student, including higher education appropriations and net tuition revenues are:

	Higher Education Appropriations Per FTE Student	Net Tuition Revenue Per FTE Student	Total Higher Education Revenues Per FTE Student
North Dakota	$4,345	$2,945	$7,290
Minnesota	$5,584	$3,963	$9,547
Montana	$3,915	$3,873	$7,788
South Dakota	$4,408	$4,560	$8,968
National average	$5,737	$3,187	$8,924

- Net tuition revenues as a percentage of total higher education revenues for fiscal year 2003-04 was 40.4 percent for North Dakota compared to 41.7 percent for Minnesota, 49.7 percent for Montana, 50.8 percent for South Dakota, and the national average of 35.7 percent.
- The percentage increase in higher education appropriations per FTE student from 1990-91 to 2003-04 was 49 percent for North Dakota compared to 32.3 percent for Minnesota, 35.6 percent for Montana, 88.1 percent for South Dakota, and the national average of 62.1 percent.
- Higher education appropriations per FTE student from 1991-2004, using constant 2004 dollars adjusted by a higher education cost adjustment, declined by 21.4 percent for North Dakota compared to the national average decline of 11.9 percent.
- North Dakota state appropriations for higher education increased from $183.5 million for fiscal year 2000 to $201.5 million for fiscal year 2003, then dropped to $200.4 million for fiscal years 2004 and 2005 before increasing to $215.3 million in fiscal year 2006.
- For the 10-year period 1995-2005, North Dakota higher education appropriations increased 1.7 percent per year compared to the national average of 2.1 percent.

Higher Education Roundtable

MGT of America, Inc., evaluated the Higher Education Roundtable and its recommendations and determined that there is a general consensus that the Higher Education Roundtable has met the needs and expectations of the various constituencies and the roundtable is perceived to be extremely successful at improving the quality of higher education, integrating higher education into the economy, and bringing business and industry to the table as partners. MGT of America, Inc., determined that of the Higher Education Roundtable's 147 recommendations--50 are fully implemented, 94 are partially implemented, and 3 are not implemented. Lack of adequate funding for faculty and staff salaries, lack of progress toward perceived equity in the distribution of resources among campuses, and lack of a commitment to appropriating 21 percent of the state's budget to higher education are thought of as weaknesses in the recommendations as implemented.

Accountability Measures

MGT of America, Inc., evaluated the University System accountability measures and benchmarks in terms of appropriateness and adequacy. MGT of America, Inc., determined that the University System has 30 accountability measures--21 mandated by the Legislative Assembly and 9 mandated by the State Board of Higher Education. The accountability measures are linked to the Higher Education Roundtable and are similar to accountability measures used by other states and higher education systems. The University System publishes an annual performance and accountability report summarizing the status of the accountability measures for the system as a whole.

Recommendations - MGT of America, Inc., made the following recommendations regarding the University System accountability measures and benchmarks:

- Establish benchmarks and goals for each measure.
- Include data for each higher education institution in summary fashion in the University System annual performance and accountability report.
- Reduce the number of accountability measures.
- When the number of accountability measures is reduced, retain those measures for five or six years.
- Include a measure of faculty productivity that is appropriate for each institution.

Peer Institutions

MGT of America, Inc., evaluated the appropriateness of the peer institutions used in the University System long-term financing plan. MGT of America, Inc., defined a "peer institution" as a college or university that is most like another college or university based on similarities on a group of variables. MGT of America, Inc., used a statistical approach to determine appropriate peer institutions for the University System. Under the approach, institutions were compared using over 150 variables relating to size, location, type of institution, staffing, program mix, degrees awarded by program, and student body composition, and those institutions with similar scores were considered to be potential peer institutions.

Recommendations - MGT of America, Inc., made the following recommendations regarding the University System peer institutions:

- Establish peer lists of no fewer than 15 institutions.
- Use peer institutions as recommended by MGT of America, Inc., for the purposes of determining adequate funding levels for North Dakota higher education institutions.

Long-Term Financing Plan

MGT of America, Inc., evaluated the long-term financing plan of the University System and determined the long-term financing plan was developed at the direction of the Higher Education Roundtable with input from all 11 University System higher education institutions and assistance from an outside consultant. The plan, which was approved by the State Board of Higher Education in 2001, is to serve the dual mission of providing access to high-quality higher education for citizens of North Dakota and to enhance the role of higher education in the economy of the state. MGT of America, Inc., noted the long-term financing plan has three components:

- Base operating funds - These funds are designed to support core campus functions, such as instruction, research, and public service. Base operating funds are allocated to institutions in two pools--parity and equity. Parity funds are funds needed to continue current programs and services and include funds for salary increases, benefit changes, and inflationary increases for items such as utilities and fuel costs. Equity funds are funds needed to move a campus closer to the peer benchmark level of funding.
- Capital asset funds - These funds are used for the repair and replacement of facilities, based on age of each facility, replacement value, and the deferred maintenance backlog at each campus.
- Incentive funds - These funds are intended to provide the State Board of Higher Education with some flexibility to fund special initiatives that support state and system priorities and are consistent with the goals of the Higher Education Roundtable.

Findings - MGT of America, Inc., identified the following key findings regarding the long-term financing plan:

- The current funding for the University System institutions is not equitable and the disparity has increased since the 1999-2001 biennium. There are several reasons why disparity in funding has increased, including that the Legislative Assembly has appropriated only limited additional revenues with which to address inequities and that the manner in which funds are allocated between parity and equity increases the disparity.
- The long-term financing plan does not adequately address the need for funding initiatives at the higher education institutions, such as new program startup funding, funding for state-of-the-art equipment and technology, or other items that are consistent with the roundtable recommendations.
- Although the long-term financing plan adequately addresses the use of various sources of revenues, the state has not provided its share of resources in the base operating funding, capital asset funding, and incentive funding components. As a result, students have shouldered a significantly greater share, deferred maintenance has increased, and there has been little funding available for incentive funding to address system and state priorities consistent with the Higher Education Roundtable goals.

MGT of America, Inc., recognized there are some built-in inefficiencies in a system with 11 institutions to serve a state with fewer than 700,000 residents, and there are some unique characteristics of the North Dakota higher education institutions which make a

funding formula appropriate for the system. MGT of America, Inc., noted Lake Region State College, Mayville State University, Minot State University - Bottineau, Valley City State University, and Williston State College cannot take advantage of economies of scale and could benefit from a fixed base allocation with a variable amount per student above the base. MGT of America, Inc., concluded because of the difficulties implementing the ConnectND system, the University System does not at this time have the capability of collecting, retrieving, and using data on student enrollments by course, discipline, and level needed to support a funding formula; therefore, the current method of funding using peer comparisons is the most appropriate base funding methodology at the present time.

Recommendations - MGT of America, Inc., made the following recommendations regarding the long-term financing plan for the University System:

- Determine the count of students for the base funding component of the plan by using an average of the two most current years' fall enrollment--25 percent based on student headcount and 75 percent based on FTE students.
- Use the peer institutions recommended by MGT of America, Inc., to update the peer funding comparisons. Keep the same set of peer institutions for at least two bienniums unless there are major changes that suggest a peer group may need revision.
- Update the data for the peer institutions by using the most current IPEDS data available at the time the biennial budget request is prepared. Collect information on appropriations and net tuition revenues for agriculture programs from peer institutions.
- Revise the method of allocating parity and equity so that a minimum of 80 percent of the new funding is allocated to equity and 20 percent to parity. (Currently, no more than 80 percent of all new state funding is allocated to parity and no less than 20 percent of the new funds to equity.) Further, allocate the 20 percent of parity dollars in inverse proportion to the percentage of peer funding so that institutions that are the furthest from peer funding would get the greatest relative parity and equity increase.
- Increase state funding to the University System to reach a goal of 21 percent of the state general fund budget.
- Establish more realistic targets for the percentage of peer funding.

Clarification of Recommendations

The committee submitted six requests to MGT of America, Inc., for clarification of recommendations and explanation of supporting information relating to the final report for the higher education funding and accountability study. The requests for clarification and the MGT of America, Inc., responses are summarized as follows:

Requests for Clarification of Recommendations and Explanation of Supporting Information	MGT of America, Inc., Responses
Should the funding model include components related to tuition collections or should the model focus strictly on state support?	The model should include components related to net tuition collections. Every state has its own policies on tuition and state support for higher education institutions. Some states have low state support and high tuition rates, and other states have high state support and low tuition rates. The University System long-term finance plan determines the total per student support for a higher education institution from the combination of state appropriations and tuition and fees. The long-term finance plan also includes a specified percentage that is expected to be contributed by students through net tuition and fees.
Could a funding model be developed that would distribute state funds based on the student headcount enrollment or FTE enrollment?	MGT of America, Inc., recommended a funding model that distributes the equity component of funding on a combination of headcount enrollment and FTE enrollment. A model could be developed that would distribute state funds based solely on student headcount enrollment or FTE enrollment. However, such a model would not be desirable because the model would not consider the unique characteristics of each higher education institution.
Please expand on the MGT of America, Inc., reasoning for excluding agricultural research experiment and extension from North Dakota State University?	MGT of America, Inc., **did not recommend excluding agricultural research experiment and extension** from North Dakota State University. The MGT of America, Inc., final report for the higher education funding and accountability study provides that adjustments are not made for agricultural research experiment and extension because similar adjustments could not be made for the peer institutions without a special survey of the peer institutions which could not be completed within the timeframe of the study. To use the model in determining and comparing funding levels, it is recommended the University System survey the peer institutions for North Dakota State University to be able to remove agricultural

Requests for Clarification of Recommendations and Explanation of Supporting Information	MGT of America, Inc., Responses
	research experiment and extension expenditures. MGT of America, Inc., understands the North Dakota Century Code prevents the commingling of funds appropriated, especially for the agricultural programs at North Dakota State University; however, MGT of America, Inc., also recognizes certain expenditures are made by North Dakota State University that benefit the agricultural programs and are not charged to these programs.
How did MGT of America, Inc., arrive at the conclusion that because of the difficulties implementing the ConnectND system, the University System does not have the capability of collecting, retrieving, and using all the data needed to support a funding formula?	Based upon conversations with staff at each of the higher education institutions and the University System office, MGT of America, Inc., determined the ConnectND system had serious deficiencies and problems with storing and retrieving data. A funding formula envisioned by MGT of America, Inc., requires data, such as student credit-hours by level and discipline, program costs, building condition, staffing levels, outside funded research, and library holdings. Although the ConnectND system has the capability to handle the necessary data elements, data on program costs was not available at the time of the study.
Some representatives of the University System have testified that the system does have the capability of collecting, retrieving, and using data needed to support a funding formula methodology. If this is correct, would MGT of America, Inc., recommend the University System use a funding formula methodology instead of a peer funding comparison methodology?	A system having the capability of collecting, retrieving, and using data does not mean the system is operational or the data is available. At the time of the study, MGT of America, Inc., determined the ConnectND system did not have the capability of generating the necessary data and reports for the 2007 Legislative Assembly. When data can be stored, retrieved, and used at the level of detail and analysis required for a funding formula, MGT of America, Inc., would support a funding formula for the University System.
At one time, representatives of MGT of America, Inc., stated that it does not seem appropriate for a large campus, such as the University of North Dakota, to have the same voting power as a small campus, such as Minot State University - Bottineau. What are the MGT of America, Inc., recommendations in this area?	MGT of America, Inc., understands each higher education institution has one vote on matters before councils and committees of the University System. This is a decision made by the University System, and MGT of America, Inc., makes no recommendations in this area.

Equity Funding Issues

As a followup to committee concerns regarding equity funding issues, the committee received information from representatives of the University System regarding the allocation of the 2005-07 biennium $2 million equity pool and representatives of North Dakota State University and the University of North Dakota regarding issues relating to equity funding for those institutions.

2005-07 Equity Pool

The 2005-07 Legislative Assembly provided funding of $2 million from the general fund for an equity pool to address equity at higher education institutions and other campus needs as determined by the State Board of Higher Education. Section 9 of Senate Bill No. 2003 provided the State Board of Higher Education could not select a formula for distributing the equity funding until January 1, 2006.

The committee learned on January 19, 2006, the State Board of Higher Education distributed the equity pool as follows:

Bismarck State College	$400,000
Lake Region State College	400,000
University of North Dakota	300,000
North Dakota State University	900,000
Total	$2,000,000

North Dakota State University

The committee learned the Agricultural Experiment Station and the Extension Service have statewide missions and responsibilities. The entities are part of the North Dakota State University system but are separate agencies from the academic functions of the North Dakota State University campus. North Dakota Century Code Section 4-05.1-02 provides that funds appropriated to the Agricultural Experiment Station may not be commingled with funds appropriated to North Dakota State University, and appropriation requests to defray expenses of the Agricultural Experiment Station must be separate from appropriation requests to defray expenses of North Dakota State University. Section 4-08-10 provides that funds appropriated to the Extension Service may not be commingled with funds appropriated to North Dakota State University, and appropriation requests to defray expenses of the Extension Service must be separate from appropriation requests to defray expenses of North Dakota State University. The funds for the Agricultural Experiment Station and the Extension Service are managed separately from the academic teaching programs of North Dakota State University.

The committee learned North Dakota State University contacted its peer institutions and received information regarding funding associated with agricultural experiment and extension activities. The information research was forwarded to MGT of America, Inc., and the State Board of Higher Education. The State Board

of Higher Education voted to exclude funding for the Agricultural Experiment Station and the Extension Service from North Dakota State University in the long-term financing plan.

University of North Dakota

The committee learned the University of North Dakota is a doctoral institution with a law school as well as a School of Medicine and Health Sciences. The doctoral institution status and the presence of a medical school were both determining factors in the identification of peer institutions for the university. The UND School of Medicine and Health Sciences receives a biennial general fund appropriation that is used to fund the programs of the medical school. The biennial appropriation does not include funds for physical plant support, such as utilities, custodial services, and maintenance; institutional support for centrally provided services, such as accounting and payroll services; and student and academic support for centrally provided services, such as registrar, financial aid, campus computing, and student health. Although the appropriation for the medical school is separately budgeted and tracked within the University of North Dakota, both financial statement and IPEDS reporting reflect data for the legal entity as a whole. There is no way to accurately separate the university and medical school costs since there are students paying university tuition who take courses taught at the medical school and there are also students paying tuition for programs in the medical school taking other university courses.

The committee learned the State Board of Higher Education voted to include funding for the UND School of Medicine and Health Sciences with the University of North Dakota in the long-term financing plan.

State Board of Higher Education - Review of Long-Term Financing Plan and Response to the MGT of America, Inc., Recommendations

The committee was assigned, pursuant to Section 17 of Senate Bill No. 2003 (2005), the responsibility to receive reports from the State Board of Higher Education on the status of the board's review of the long-term financing plan. The committee learned the State Board of Higher Education established a Long-Term Financing Plan Review Committee comprised of volunteer representatives from Bismarck State College, Lake Region State College, University of North Dakota, North Dakota State University, State College of Science, Minot State University, and Valley City State University. The committee refined the long-term financing plan guiding principles, reviewed the recommendations of MGT of America, Inc., and forwarded recommendations to the State Board of Higher Education.

The committee learned the State Board of Higher Education supported several of the recommendations included in the MGT of America, Inc., final report for the higher education funding and accountability study. The following is a summary of the State Board of Higher Education implementation of the recommendations included in the MGT of America, Inc., final report:

MGT of America, Inc., Recommendations	North Dakota University System Status
Accountability measures and benchmarks	
Establish benchmarks and goals for each measure	Benchmarks for each accountability measure will be established and included in the annual performance and accountability report issued in January 2008. Sufficient data is available to determine trends and evaluate progress; therefore, the State Board of Higher Education will set targets for some or all of the accountability measures in future performance and accountability reports.
Include data for each higher education institution in summary fashion in the University System annual performance and accountability report	Accountability information for each higher education institution is currently compiled and provided to the State Board of Higher Education. A summary of the information will be included in the annual performance and accountability report or provided as a supplement to the report.
Reduce the number of accountability measures	A matrix of the 30 existing accountability measures has been developed and will be used to identify accountability measures that higher education stakeholders believe need to be retained and those measures considered to be less valuable. A survey of the stakeholders, including representatives of the Legislative Assembly, executive branch, higher education institutions, private sector, State Board of Higher Education, and the University System office, will be conducted for the purpose of recommending changes to the measures prior to the 2007 Legislative Assembly.
When the number of accountability measures is reduced, retain those same measures for five or six years.	The recommendation will be adopted by the State Board of Higher Education when the other revisions to the measures have been completed and are considered by the board.
Include a measure of faculty productivity that is appropriate for each institution	The Academic Affairs Council is in the process of reviewing possible measures of faculty productivity appropriate for the various types of institutions within the University System.

MGT of America, Inc., Recommendations	North Dakota University System Status
Peer institutions	
Establish peer lists of no fewer than 15 institutions	The University System has adopted a new set of 15 peers per higher education institution as part of the University System 2007-09 budget request.
Use peer institutions as recommended by MGT of America, Inc., for the purposes of determining adequate funding levels for North Dakota higher education institutions	The University System has adopted the peer institutions as recommended by MGT of America, Inc., as part of the University System 2007-09 budget request with the following exceptions: • Dickinson State University - Substituted University of Science and Arts of Oklahoma for University of Pittsburgh-Bradford. • Valley City State University - Substituted Virginia Military Institute for University of Pittsburgh-Bradford. • Williston State College - Substituted Nicollet Area Technical College for University of Pittsburgh-Titusville. Comparable financial information was not available for the Pittsburgh campuses. The three replacement campuses were selected based on the original criteria established by MGT of America, Inc.
Long-term financing plan	
Determine the count of students for the base funding component of the plan by using an average of the two most current years' fall enrollment--25 percent based on student headcount and 75 percent based on FTE students	The University System has adopted and implemented the recommendation as part of the University System 2007-09 budget request.
Use the peer institutions recommended by MGT of America, Inc., to update the peer funding comparisons. Keep the same set of peer institutions for at least two bienniums unless there are major changes that suggest a peer group may need revision.	The University System has adopted and implemented the recommendation as part of the University System 2007-09 budget request.
Update the data for the peer institutions by using the most current IPEDS data available at the time the biennial budget request is prepared. Collect information on appropriations and net tuition revenues for agriculture programs from peer institutions.	The University System has adopted and implemented the recommendation as part of the University System 2007-09 budget request. The peer institutions for North Dakota State University were surveyed to gather financial information needed to remove agricultural research experiment and extension activities from the benchmark calculation.
Revise the method of allocating parity and equity so that a minimum of 80 percent of the new funding is allocated to equity and 20 percent to parity. Further allocate the 20 percent of the parity dollars in inverse proportion to the percentage of peer funding so that institutions that are the furthest from peer funding would get the greatest relative parity and equity increase.	The University System has adopted and implemented as part of the University System 2007-09 budget request the following parity and equity allocation methodology: 1. Parity - Funding for new and continuing salary and health insurance costs. 2. Equity - No less than 15 percent of the total new funding available. 3. Parity - Funding for operating inflation, including utility cost increases. 4. Equity - Any remaining funding. The University System has adopted a new equity allocation methodology based on the average of: Variable weighting of percentage distance from peers with more weighting given to those institutions furthest from their peer benchmark. Simple weighting of dollar distance from peers.
Increase state funding to the University System to reach a goal of 21 percent of the state general fund budget	The University System has adopted a 2007-09 budget request equivalent to 21 percent of the projected total 2007-09 state general fund budget.
Establish more realistic targets for the percentage of peer funding	The University System is in the process of developing targets based on future state economic forecasts.

The committee learned the State Board of Higher Education also adopted the following additional recommendations relating to the University System long-term financing plan which were not included in the MGT of America, Inc., final report for the higher education funding and accountability study:

- Maintain the current state and student funding shares.
- Continue to provide parity funding to higher education institutions should the institutions exceed their peer benchmark.
- Continue to calculate utility cost increases as part of the overall operating inflationary adjustments.
- Retain the same parity funding components.

- Calculate benchmark averages consistently by dividing the sum of the peer revenues by the sum of the peer enrollments.
- Recognize IPEDS reporting changed with the implementation of Governmental Accounting Standards Board Statement Nos. 34 and 35 making historical comparisons impossible.
- Remove direct appropriations for agricultural research experiment and extension from North Dakota State University and its peers but include direct appropriations for the UND School of Medicine and Health Sciences in the University of North Dakota and its peers.

HIGHER EDUCATION ROUNDTABLE

A Higher Education Roundtable consisting of the 21 members of the Higher Education Committee and 44 representatives from the State Board of Higher Education, business and industry, higher education institutions, including tribal and private colleges, and the executive branch was reconvened during the 2005-06 interim to reflect on what has been accomplished, ask questions, and decide on potential action by the Legislative Assembly, executive branch, higher education, and private sector.

The Higher Education Roundtable met on February 15, 2006, to:

1. Receive a preliminary report from a representative of MGT of America, Inc., on the higher education funding and accountability study.
2. Receive information on Operation: Intern, "soft skills" areas of education and training, and centers of excellence.
3. Develop recommendations for action by the Legislative Assembly, University System, executive branch, and private sector.

Operation: Intern

The Higher Education Roundtable received information from the Governor's office regarding Operation: Intern. The roundtable learned Operation: Intern is an effort by the Governor's office to link students to job and career opportunities in North Dakota by creating awareness and promoting development of internships. Under Operation: Intern, an internship toolkit was distributed to businesses across the state and a job and internship posting system--*ndinterns.com*--has been created to provide information needed to start an internship program and link businesses and students. Results include:

- An increase in the postings and the usage of *ndinterns.com*.
- A number of individual communities developing projects to continue promotion and development of local efforts to fund and coordinate internships.
- An increase in the number of higher education cooperative education programs.

"Soft Skills" Areas of Education and Training

The Higher Education Roundtable received information from the University System regarding the "soft skills" areas of education and training. The roundtable learned definitions of "soft skills" vary widely but are generally understood to include ability to communicate effectively, analytical thinking, problem-solving skills, team-building skills, listening skills, and self-awareness. The University System is formally involved in several initiatives that promote the development of "soft skills" in the academic environment, and the workforce training system provided 45,874 hours of "soft skills" training in fiscal year 2005.

Centers of Excellence

The Higher Education Roundtable received information from the Centers of Excellence Commission regarding the centers of excellence initiative. The roundtable learned a center of excellence is defined as a hub of research and development around which related businesses expand and dynamic new businesses cluster. To be designated a center of excellence, an application must be approved by the Centers of Excellence Commission, State Board of Higher Education, North Dakota Economic Development Foundation, and Budget Section. The centers of excellence applications approved are:

Round 1		
Bismarck State College	Energy Center of Excellence	$3,000,000
Lake Region State College	Dakota Center of Optimized Agriculture	450,000
University of North Dakota	National Center for Hydrogen Technology	2,500,000
North Dakota State University	Center for Advanced Electronics Design and Manufacturing	3,000,000
Total - Round 1		$8,950,000
Round 2		
Williston State College	Petroleum Safety Technology Center	$400,000
University of North Dakota	Center for Unmanned Aerial Vehicle and Simulation Applications	1,000,000
	Center for Life Sciences and Advanced Technology	3,500,000
North Dakota State University	Center for Agbiotechnology: Oilseed Development	2,000,000
	Center for Surface Protection	2,000,000
Valley City State University	Enterprises Application Model	1,000,000
Total - Round 2		$9,900,000
Round 3		
Dickinson State University	Center for Entrepreneurship and Rural Revitalization	$1,150,000
Grand total		$20,000,000

Discussion Groups

The Higher Education Roundtable convened four discussion groups. Each of the groups was to consider three of the following points:

- How the accountability measures or the assessment system should be refined.
- Strategies that can be used to attract and retain the best and brightest graduates.
- The connection between the performance of the University System and the rewards and incentives provided to the University System.
- How access to higher education should be increased.
- How the state should not only sustain the momentum of the Higher Education Roundtable but take it to an even higher level of performance.
- How the centers of excellence initiative should be improved.

The discussion groups developed by consensus the following recommendations:

Discussion Group A

How access to higher education should be increased	Improve college affordability
	Invest in technology to increase access
	Enhance kindergarten through grade 12 and higher education partnerships
Strategies that can be used to attract and retain the best and brightest graduates	Define what is meant by best and brightest
	Enhance internships by creating financial incentives for business participation, reducing administrative burdens, and increasing mentoring opportunities
	Enhance information sharing on job openings in the state
	Enhance North Dakota business name recognition among students
How the state should not only sustain the momentum of the Higher Education Roundtable but take it to an even higher level of performance	Enhance the role of the private sector
	Encourage Higher Education Roundtable members to educate those not participating in the roundtable

Discussion Group B

How the accountability measures or the assessment system should be refined	Streamline the accountability measures and develop goals associated with the measures. In streamlining the measures, consider the final report for the higher education funding and accountability study and operational definitions of roundtable cornerstones.
The connection between the performance of the University System and the rewards and incentives provided to the University System	Encourage rewards and incentives for collaboration between higher education institutions and for meeting the needs of the state
How the centers of excellence initiative should be improved	Consider the hiring of a technical review of the centers of excellence applications and the providing of funding to match benchmarks associated with the projects

Discussion Group C

Strategies that can be used to attract and retain the best and brightest graduates	Create programs in high demand that only accept the best and the brightest students
	Enhance scholarship opportunities
How access to higher education should be increased	Encourage collaboration and increase distance education offerings
How the state should not only sustain the momentum of the Higher Education Roundtable but take it to an even higher level of performance	Operate the roundtable in a private sector environment instead of a public sector environment
	Provide a more specific agenda that addresses areas of conflict

Discussion Group D

Strategies that can be used to attract and retain the best and brightest graduates	Attract the best and the brightest faculty by improving faculty salaries
	Consider a student loan forgiveness program for students staying in the state
	Consider more entrepreneurial ways to attract and retain students
The connection between the performance of the University System and the rewards and incentives provided to the University System	Incentives and rewards should be continued
	Develop and maintain funding benchmarks
	Continue the centers of excellence initiative
How the centers of excellence initiative should be improved	Determine ways to help small campuses better compete
	Consider expanding the timeframe for expenditures

Additional Comments

The committee learned the private sector members of the Higher Education Roundtable held a separate meeting to further discuss those things they believed the University System was doing well and those things that still required improvement. The private sector identified two specific areas of performance that were exceptional:

- The successful increase of research money generated by the various higher education institutions.
- The role of the private sector in guiding the Higher Education Roundtable and allowing its voice to be heard.

The committee learned the private sector was adamant and unanimous that the Higher Education Roundtable and the state have not lived up to the original agreement with campus leadership to provide additional funding to those institutions if the campus leadership would agree to embrace and respond to the changes recommended by the Higher Education Roundtable.

FACULTY AND TEACHING ASSISTANT ENGLISH COMMUNICATION SKILLS

The committee was assigned, pursuant to NDCC Section 15-10-42, the responsibility to receive a report from the State Board of Higher Education before July 1, 2006, regarding implementation of a policy requiring all institutions to assess faculty and teaching assistant English communication skills. The Education Committee was also assigned this responsibility and received a report on this issue.

Statutory Provisions

North Dakota Century Code Section 15-10-13.1 provides that any professor, instructor, teacher, assistant, or graduate assistant at a state institution of higher education must exhibit written and verbal proficiency in the English language. Any deficiency must be remedied by special training or coursework provided by the institution.

North Dakota Century Code Section 15-10-42 requires the State Board of Higher Education to create a policy for all institutions under its control relating to the assessment of faculty and teaching assistant communication skills, including the ability to speak English clearly and with good pronunciation, the notification to students of opportunities to file complaints, the process for responding to student complaints, and the resolution of reported communication problems.

State Board of Higher Education and Higher Education Institutions' Policies

The committee learned State Board of Higher Education Policy 609, which was revised by the board in June 2005, provides that each institution is required to establish a process for verifying communication skills, including written English language proficiency and ability to speak English clearly and with good pronunciation, of all personnel whose appointments include classroom instruction. Each institution is to:

- Develop the process and standards for validating and assessing proficiency through an inclusive process that recognizes the needs of departments, programs, students, and faculty.
- Determine proficiency prior to employment.
- Provide a means of continuously improving communication proficiency of all instructors to meet or exceed defined standards.
- Establish a process for students and personnel affected by this policy to register concerns or file complaints and a process for notifying students of the policy and complaint process.
- Periodically review the effectiveness of the policy and provide reports to the board upon request.
- Establish procedures to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act as well as federal and state constitutions and laws. The procedures are to include a mechanism to identify otherwise qualified personnel who may be unable to demonstrate requisite proficiency due to a disability or because of race, religion, or other protected characteristic.

The committee received copies of individual higher education institutions' policies on communication proficiency and learned higher education institutions' communication proficiency policies are included in student handbooks.

English Proficiency Complaints

The committee learned the University System requests higher education institutions to forward any English proficiency complaints to the University System office following every fall and spring semester. As of July 2006 there were four reported English proficiency complaints--one at Bismarck State College, one at the State College of Science, and two at North Dakota State University. Two of the complaints were filed by students and the other two were filed by parents. The complaints were resolved and a followup with the complainant was completed by the higher education institutions.

OTHER REPORTS

Professional Student Exchange Program Study

The committee received information from the University System regarding a professional student exchange program study conducted by the State Board of Higher Education. The committee learned the State Board of Higher Education directed the chancellor to conduct a study regarding access options and other solutions to help meet the needs of the state in dentistry, optometry, and veterinary medicine; the admissions selection process; and long-term funding for the professional student exchange program and the program at Kansas State University. The State Board of Higher Education has adopted the following recommendations and will introduce legislation in the 2007 legislative session to facilitate the recommendations:

- Meeting North Dakota's workforce needs be the primary factor in making annual allocations and biennium funding decisions between the three

professional programs. Student demand and interest in each of the three professional programs should be the secondary factor.

- Maintain the current allocation of slots between the three professional programs. Allocate new slots based on the factors outlined above.
- Maintain all current professional program options available through the Western Interstate Commission on Higher Education, Minnesota, Kansas, and Iowa. Review all program options every three to five years to explore other ways to improve the partnership and communication to provide expanded opportunities for North Dakota and North Dakota students.
- Pursue conversations and negotiations with Kansas and Iowa in an attempt to establish fixed price contracts and other additional benefits for North Dakota students, such as internship and externship opportunities.
- Create a new state-funded community matching loan forgiveness program, primarily targeted at rural or underserved communities, to provide an incentive to encourage graduates to return to North Dakota to practice. If a community loan forgiveness program is not implemented and funded, a repayment program provision should be implemented in each of the three professional programs as a means of encouraging students to return to North Dakota to practice following graduation.
- Any funds collected as a result of a repayment provision be used to fund additional slots according to the guidelines previously outlined.
- Recommend the consolidation of the appropriation for the Kansas State University program with the appropriation for the professional student exchange program in the 2007-09 biennial budget request.
- Evaluate the effectiveness of North Dakota's involvement in the selection process at Kansas State University prior to the 2009 Legislative Assembly. If judged at that time to not be adding sufficient value, recommend the Legislative Assembly eliminate the requirement.

North Dakota University System 2007-09 Budget Request

The committee received information from the University System regarding the University System budget request for the 2007-09 biennium. The committee learned the State Board of Higher Education has adopted a budget request for the 2007-09 biennium that includes at least $63 million of additional state funding. The additional funding included in the University System budget request for the 2007-09 biennium is summarized as follows:

Required general fund increases		
Increase in capital bond payments	$2,100,000	
Common information services pool - Parity costs	2,096,200	
University System office - Parity costs	450,200	
Forest Service - Parity costs and 5 percent increase over parity	410,600	
Student financial aid increase	2,850,000	
Capital assets increase	4,000,000	
Total - Required general fund increases		$11,907,000
Other ConnectND needs		
Permanent funding - Replace funding from board initiatives pool	$1,500,000	
Permanent funding - Replace technology bond revenue	920,000	
Funding for critical business function solutions	1,700,000	
Total - Other ConnectND needs		4,120,000
Campus parity and equity		
Campus parity	$33,852,000	
Campus equity	10,000,000	
Total - Campus parity and equity		43,852,000
Additional needs		
Board initiative funding enhancement	$500,000	
Wide area network growth	250,000	
Standards-based interface to ConnectND system	161,000	
Competitive research - Experimental Program to Stimulate Competitive Research (EPSCoR)	310,000	
External student recruiting initiative	700,000	
Northern Tier Network annual maintenance	900,000	
On-line Dakota Information Network web programmer position	150,000	
New academic startup for programs for economic growth	150,000	
Total - Additional needs		3,121,000
Grand total		$63,000,000

NOTE: The following is a summary of the higher education institutions' current equity positions and equity positions reflecting the $63 million of additional state funding being requested for the 2007-09 biennium:

Institution	Current Equity Position	Equity Position Reflecting $63 Million of Additional State Funding
Bismarck State College	51%	58%
Lake Region State College	46%	52%
Williston State College	62%	69%
University of North Dakota	50%	57%
North Dakota State University	41%	47%
State College of Science	87%	95%
Dickinson State University	47%	55%
Mayville State University	71%	78%
Minot State University	66%	73%
Valley City State University	81%	89%
Minot State University - Bottineau	71%	78%

The committee learned the State Board of Higher Education has identified the following additional requests for one-time funding for the University System for the 2007-09 biennium:

Deferred maintenance	$10,000,000
Collaboration project - Phase 1	1,000,000
Campuses network refurbishment	2,000,000
Northern Tier Network	2,000,000
Total	$15,000,000

Minnesota Proposed Free Tuition Program

The committee received a report from the University System regarding the potential impact of the Minnesota free tuition program on the University System. The committee learned Governor Tim Pawlenty has proposed a free college tuition program--Academic Competitiveness Highlighting Individual Excellence and Valuing Education (ACHIEVE)--for top students in the state of Minnesota. Under the program, Minnesota high school students who graduate in the top 25 percent of their class or post a comparable ACT score and have a family annual adjusted gross income of $150,000 or less could attend their first two years of public college for free. Students' third and fourth years of college would also be free if they major in a mathematics or science field. The proposed program will be introduced to the Minnesota Legislature in January 2007. If passed, the earliest implementation of the program for Minnesota students would be the fall of 2007. The proposed program is estimated to cost approximately $112 million for the 2007-09 biennium.

The committee learned if the proposed free tuition program is implemented in Minnesota, the University System estimates approximately 400 to 600 Minnesota students enrolled in North Dakota colleges and universities could decide to remain in Minnesota to access the free tuition program. This would result in the direct loss of approximately $5.5 million in tuition and fees, room, and board revenues for the University System. The estimated total state impact of the proposed program for one year is approximately $27.5 million.

The committee learned the University System estimates the cost of implementing a similar free tuition program in North Dakota to be $10 million to $12 million for the 2007-09 biennium. The estimate includes costs associated with freshman and sophomore students and does not include costs for junior and senior students who are majoring in a mathematics or science field as those costs would not be incurred until the third and fourth years of implementation (2009-11 biennium).

BUDGET TOURS

During the interim, the Higher Education Committee functioned as a budget tour group of the Budget Section and visited Bismarck State College, Dickinson State University, Lake Region State College, Mayville State University, Minot State University, Minot State University - Bottineau, North Dakota State University, State College of Science, University of North Dakota, Valley City State University, Williston State College, Forest Service, Main Research Center, Dickinson Research Center, North Central Research Center, and Williston Research Center. The committee received information regarding campus initiatives and programs, enrollment, responses to the main themes that emerged from the June 2004 Higher Education Roundtable meeting, funding challenges and opportunities for state investment, and the status of any capital improvements for the 2005-07 biennium and anticipated 2007-09 capital improvement needs. The tour group minutes are available in the Legislative Council office and will be presented to the Appropriations Committees during the 2007 Legislative Assembly.

The committee learned over the past four years Mayville State University has accumulated debt of approximately $1 million. A plan for a balanced budget and debt retirement has been developed and endorsed by the State Board of Higher Education. The debt retirement plan provides for the elimination of the accumulated debt by the end of the 2009-10 fiscal year by eliminating the vice president of enrollment management position, eliminating the men's and women's soccer programs, reducing tuition waivers, eliminating four staff positions, and delaying the hiring of open faculty and staff positions.

COMMITTEE RECOMMENDATIONS

The committee recommends:

- House Bill No. 1030 to provide for the continuation of the continuing appropriation authority for higher

education institutions' special revenue funds, including tuition, through June 30, 2009.

- House Bill No. 1031 to continue the requirement that the budget request for the University System include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component and the requirement that the appropriation for the University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for an asset funding through June 30, 2009.
- House Bill No. 1032 to provide for the continuation of the University System's authority to carry over at the end of the biennium unspent general fund appropriations through June 30, 2009.

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

The Industry, Business, and Labor Committee was assigned seven studies. Section 12 of House Bill No. 1010 directed a study of the appropriate minimum standard of loss ratio for accident and health insurers and whether that loss ratio is more appropriately set by statute or by rule. Section 3 of House Bill No. 1332 directed a study of the pharmacy benefits management industry, including the extent of competition in the marketplace for health insurance and prescription drugs; whether protecting the confidentiality of trade secret or proprietary information has a positive or negative impact on prescription drug prices; the ownership interest or affiliation between insurance companies and pharmacy benefits management companies and whether such relationships are good for the consumer; the impact of disclosure of information regarding relationships between pharmacy benefits management companies and their customers; the use of various cost-containment methods by pharmacy benefits managers, including the extent to which pharmacy benefits managers promote the use of generic drugs; the actual impact of the use of pharmacy benefits management techniques on community pharmacies; the impact of mail service pharmacies on consumers and community pharmacies; the impact of generic and brand name drugs in formulary development, drug switches and mail order operations, as well as spread pricing, data sales, and manufacturers' rebates and discounts; the price consumers actually pay for prescription drugs in North Dakota; and consideration of the legality of imposing statutory restrictions on pharmacy benefits managers. Section 9 of Senate Bill No. 2018 directed a study of the implementation by Job Service North Dakota of a shared work demonstration project. Section 1 of House Bill No. 1198 directed a study of reemployment processes and costs and an appropriate method for providing a limitation on the total average number of job-attached unemployment insurance claimants. House Concurrent Resolution No. 3040 directed a study of the unemployment insurance tax rate structure; the structure's impact on the unemployment insurance trust fund, with special focus on the impact of the current unemployment insurance tax structure on new businesses; the historical cyclical risks faced by the industries in which new businesses are beginning to operate; and whether the unemployment insurance tax impact is reasonably favorable to the desired economic development of the state. Section 7 of House Bill No. 1195 directed a study of the feasibility and desirability of requiring professional employer organizations operating in North Dakota to register with the state, including consideration of how other states address the issue of registration of professional employer organizations. Section 1 of House Bill No. 1260 directed a study of public improvement contracts and issues relating to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems.

The Legislative Council also assigned the committee the responsibility to receive a report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures as provided under North Dakota Century Code (NDCC) Section 4-05.1-19; a report from Workforce Safety and Insurance on recommendations based on the safety audit of Roughrider Industries work programs and the performance audit of the modified workers' compensation coverage program as provided under NDCC Section 65-06.2-09; and a report from the Insurance Commissioner on the outcome of the commissioner's compilation of existing data regarding the state's liability insurance marketplace as provided under Section 21 of Senate Bill No. 2032.

Committee members were Senators Karen K. Krebsbach (Chairman), Duaine C. Espegard, Tony Grindberg, Joel C. Heitkamp, Duane Mutch, and Dave Nething and Representatives Bill Amerman, Tracy Boe, Donald L. Clark, Donald D. Dietrich, Mark A. Dosch, Glen Froseth, Pat Galvin, Nancy Johnson, Jim Kasper, George J. Keiser, Scot Kelsh, Dan J. Ruby, and Don Vigesaa.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

STANDARD OF LOSS RATIO STUDY

Background

Loss ratio is defined generally as a measure of the relationship between claims and premiums. More specifically, it is the dollar amount an insurer pays in claims compared to the amount the insurer collects in premiums. Loss ratios are an important tool in measuring whether an insurer is allocating a reasonable amount of premiums to the payment of benefits. Regulators of insurers use loss ratios as a means of monitoring and preventing excessive profits and high administrative expenses and in identifying solvency concerns. A low loss ratio generally indicates high profits for the insurer or high administrative expenses.

Loss ratio may be determined by a variety of methods and the ratio will vary according to the insurance product. For short-term products such as medical insurance, an experience loss ratio can be calculated after most of the claims have been paid. Administrative costs and the volume of business are significant factors in determining loss ratio. An insurer with a larger number of policies will be able to decrease the impact of fixed costs that are used in determining loss ratio. In addition, a larger number of policies will generally reduce the degree of fluctuation in loss ratios.

In 1993 the Legislative Assembly enacted House Bill No. 1504, which provided for basic health insurance plans for small employer groups. The bill also contained a provision relating to loss ratios which is codified as NDCC Section 26.1-36-37.2. That section provides that all policies providing hospital, surgical, medical, or major

medical benefits must return benefits to group policyholders in the aggregate of not less than 75 percent of premium received and to individual policyholders in the aggregate of not less than 65 percent of premium received. That section also requires the Insurance Commissioner to adopt rules to establish the minimum standards on the basis of incurred claims experienced and earned premiums for the entire period for which rates are computed to provide coverage in accordance with accepted actuarial principles and practices.

In 1995 the Legislative Assembly amended NDCC Section 26.1-36-37.2 to exclude from the application of that section any contract or plan of insurance that provides exclusively for accident, disability income insurance, specified disease, hospital confinement indemnity, or other limited benefit health insurance.

The Insurance Commissioner has adopted administrative rules pursuant to the directive in NDCC Section 26.1-36-37.2. North Dakota Administrative Code Section 45-06-08-02 provides that the following factors must be considered in determining the experience loss ratio:

1. Statistical credibility of incurred claims experience and earned premiums;
2. The period for which rates are computed to provide coverage;
3. Experienced and projected trends;
4. Concentration of experience within early policy duration;
5. Expected claim fluctuation;
6. Experience refunds, adjustments, or dividends;
7. Renewability features;
8. Interest; and
9. Policy reserves.

During the 2005 legislative session, an amendment to House Bill No. 1010 was proposed which would have removed the provisions in NDCC Section 26.1-36-37.2 which relate to the 75 percent and 65 percent aggregate loss ratio caps. The amendment would have provided that the Insurance Commissioner determine the appropriate loss ratio. The amendment was defeated during the standing committee deliberations on the bill.

Testimony and Committee Considerations

The committee received testimony from representatives of the Insurance Commissioner who contended that granting the commissioner the authority to establish the minimum loss ratios by rule would provide the commissioner the flexibility needed to react to changes in the insurance marketplace in a timely manner. It was argued that a fixed minimum loss ratio does not provide sufficient margin for a smaller premium health insurance product to cover expenses and provide profits unless the insurer has a large number of policies over which to spread the risk. Thus, new companies or smaller niche insurers are reluctant to enter the North Dakota market. The testimony also indicated that minimum loss ratios in other states may be slightly lower than in this state. Twenty-eight states have implemented a minimum loss ratio requirement based on a model developed by the National Association of Insurance Commissioners. Under that model, the minimum loss ratio may be reduced on either a flat or a formula basis for lower premium plans. Of those 28 states, 22 allow the insurance department to establish the minimum loss ratio by rule. The committee was presented with three options to consider:

1. Lower the statutory minimum loss ratios;
2. Continue the statutory minimum loss ratios while providing for a reduction in loss ratio for small premium plans; or
3. Adopt the model law and allow the Insurance Commissioner the flexibility to adjust minimum loss ratios by rule.

The committee received testimony contending that there is no need to change the current minimum loss ratio standard. A representative of the dominant health insurance provider in the state indicated that the company returned benefits at a rate of 92 percent, which is significantly above the statutory minimum. Although lowering the minimum loss ratio could result in additional competition in the market, it was argued that the added competition may not result in improving cost-containment and increasing value to consumers. Opponents of allowing the Insurance Commissioner to set the minimum loss ratios by rule contended that although the commissioner would have to go through the administrative rulemaking process to adopt a rule and review the rule with the Administrative Rules Committee, the rules might not be reviewed by legislators who have specific knowledge of the insurance industry.

Conclusion

The committee makes no recommendation with respect to its study of the appropriate minimum standard of loss ratio for accident and health insurers and whether that loss ratio is more appropriately set by statute or by rule.

PHARMACY BENEFITS MANAGEMENT STUDY

Background

Health care spending has increased dramatically in this country in recent years, and one of the major factors in that growth has been the cost of prescription drugs. The Kaiser Family Foundation has estimated that the cost of prescription drugs will increase by an average of nearly 11 percent per year over the next eight years. One method through which health insurers, businesses, and governments are attempting to reduce prescription drug costs is through the use of pharmacy benefit managers.

A pharmacy benefit manager (PBM) is an entity that manages prescription drug coverage for another entity, such as an insurance carrier, self-insured employer, or managed care organization. A PBM may operate as an independent stand-alone business or as a subsidiary of an insurance company or a pharmacy chain store. Although PBMs initially were established to administer prescription drug insurance benefits, the scope of service of PBMs has expanded to include clinical services and mail order pharmacies. A PBM may be responsible for the entire management of the health

insurance plan pharmacy benefit or may provide any of the following services:

- Processing of claims through which the PBM electronically provides a pharmacy with information regarding member eligibility, benefit coverage, and prescription reimbursement and maintains a data base to provide information for the PBM and the payer with respect to cost, utilization, and benefits management.
- Establishing pharmacy networks for payers through negotiated agreements with retail pharmacies.
- Managing drug formularies for use by members of a health insurance plan or by Medicare recipients.
- Providing reports to the payer to assist in evaluating the cost and utilization of drugs.
- Developing programs to influence members to choose generic drugs.
- Negotiating rebates from pharmaceutical manufacturers for delivering a particular volume of products or for achieving a specified market share for a product.
- Evaluating the necessity, appropriateness, and efficiency of the use of prescription drugs.

North Dakota Law

In 2005 the Legislative Assembly enacted House Bill No. 1332, which created NDCC Chapter 26.1-27.1 and established regulatory measures for the pharmacy benefits management industry. Section 26.1-27.1-01 defines "pharmacy benefits management" as the procurement of prescription drugs at a negotiated rate for dispensation within this state to covered individuals; the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals; or the providing of any of the following services with regard to the administration of the following pharmacy benefits:

1. Claims processing, retail network management, and payment of claims to a pharmacy for prescription drugs dispensed to a covered individual.
2. Clinical formulary development and management services.
3. Rebate contracting and administration.

Under NDCC Section 26.1-27.1-02, a person is prohibited from acting as a PBM in this state unless the person holds a certificate of registration as an administrator of life or health insurance or annuities under Chapter 26.1-27.

North Dakota Century Code Section 26.1-27.1-03 sets forth disclosure requirements for PBMs. That section requires a PBM to disclose to the Insurance Commissioner any ownership interest of any kind with an insurance company responsible for providing benefits directly or through reinsurance to any plan for which the PBM provides services or any organization that is related to the provision of pharmacy services, the provision of other prescription drug or devices services, or a pharmaceutical manufacturer.

Under NDCC Section 26.1-27.1-04, a PBM is required to comply with other statutory provisions relating to the dispensing and substitution by pharmacists of brand name, generic, and therapeutically equivalent prescription drugs. That section also prohibits a PBM from requiring a pharmacist or pharmacy to participate in one contract in order to participate in another contract. A PBM is also prohibited from excluding an otherwise qualified pharmacist or pharmacy from participation in a particular network if the pharmacist or pharmacy accepts the terms, conditions, and reimbursement rates of the PBM's contract.

North Dakota Century Code Section 26.1-27.1-05 establishes required contents of a pharmacy benefits management agreement. That section requires a PBM to offer to a covered entity options for the covered entity to contract for services that must include a transaction fee without a sharing of a payment received by the PBM, a combination of a transaction fee and a sharing of a payment received by the PBM, or a transaction fee based on the covered entity receiving all the benefits of a payment received by the PBM. In addition, that section requires that the agreement between the PBM and the covered entity must include a provision allowing the covered entity to have audited the PBM's books, accounts, and records, including deidentified utilization information, as necessary to confirm that the benefit of a payment received by the PBM is being shared as required by the contract. Under Chapter 26.1-27.1, a payment received by a PBM is defined as the aggregate amount of a rebate collected by the PBM which is allocated to a covered entity, an administrative fee collected from the manufacturer in consideration of an administrative service provided by the PBM to the manufacturer, a pharmacy network fee, and any other fee or amount collected by the PBM from a manufacturer or labeler for a drug switch program, formulary management program, mail service pharmacy, educational support, data sales related to a covered individual, or any other administrative function.

North Dakota Century Code Section 26.1-27.1-06 requires the Insurance Commissioner during an examination of a health insurer or provider of health coverage to examine any contract between the insurer or provider and a PBM to determine if a payment received by the PBM and which the insurer or provider received from the PBM has been applied toward reducing the insurer's or provider's rates or has been distributed to members or policyholders. To facilitate the examination, the insurer or provider is required to disclose annually to the Insurance Commissioner the benefits of the payment received by the PBM received under any contract with a PBM and describe the manner in which the payment received by the PBM is applied toward reducing rates or is distributed to members or policyholders. The information provided to the Insurance Commissioner is considered a trade secret under the Uniform Trade Secrets Act.

Testimony and Committee Considerations

The committee received extensive testimony regarding the operation of PBMs. In addition to the 2005 legislation in this state, Maine, South Dakota, Kansas, and the District of Columbia have enacted legislation

relating to PBMs. The scope of the enacted legislation varies significantly.

In 2003 the Maine Legislature adopted legislation that required full disclosure of contracted activities between a PBM and a pharmaceutical manufacturer and required price discounts and rebates to be passed on to the customers. Although the constitutionality of the law was challenged in federal court, the law has been upheld. The District of Columbia legislation is very similar to that enacted in Maine.

In 2004 the South Dakota Legislature adopted legislation requiring the licensing of PBMs and requiring a PBM to exercise good faith and fair dealing toward customers. The South Dakota law also allows customers to request rebate and revenue information regarding PBMs and to obtain copies of PBM audits.

The Kansas legislation, which was enacted in 2006, requires a PBM operating in that state to register with the Insurance Commissioner.

Representatives of pharmacist groups testified that while PBMs may provide valuable services, the PBM industry has been largely unregulated and the business practices of PBMs have often been less than consumer-friendly and may even result in increased prescription drug costs. It was reported that three large companies dominate the PBM market. It was contended that the lack of transparency in the PBM business allows PBMs to use hidden cashflows, such as the use of spread pricing and mail order pharmacies and generic drugs with excess markups, to compensate for artificially low administration fees. Because plan sponsors generally do not understand the business practices of the industry and are not fully aware of the use of rebates, average wholesale price manipulation, spread pricing, and the selling of drug utilization data, it may be difficult for a plan sponsor to negotiate a fair contract with a PBM. The committee received testimony suggesting that contract compliance audits reveal that PBMs are almost always violating terms of contracts with plan sponsors. Thus, it was argued that disclosure requirements and transparency laws are necessary.

The committee received testimony from representatives of PBMs that indicated that the use of PBMs saves consumers substantial amounts of money on the purchase of prescription drugs. It was reported that in 2005 prescription drug spending by PBMs in North Dakota was estimated to be around $330 million and that the use of PBMs saved North Dakota consumers and employers $112 million on the cost of prescription drugs. It was also suggested that the cost-savings to North Dakotans as a result of the use of PBMs from 2005 to 2014 will result in an estimated $2.7 billion in savings in prescription drug costs. Representatives of the PBM industry argued that additional transparency legislation is not necessary and that the vigorous competition in the PBM marketplace forces PBMs to hold down costs. Although gross revenues for one of the largest PBMs have increased from approximately $10 billion to about $36 billion per year in the last decade, it was pointed out that the net margin for the company is only 1.6 percent.

A representative of the Insurance Commissioner testified that the results of the first year of reports regarding payments received by PBMs pursuant to NDCC Section 26.1-27.1-06 indicated that insurers were complying with the law. Although the information contained in the reports is confidential, the reports suggested that the transparency provisions were effective, and employers and insurers are becoming aware of the use of rebates by drug manufacturers and PBMs. It was also suggested that the use of rebates has resulted in a reduction in expenses for insurers and would likely affect the cost of premiums in the long term.

Conclusion

Because of the difficulty in judging the impact of the 2005 PBM legislation with only one reporting period having been completed, the committee makes no recommendation regarding its study of the pharmacy benefits management industry.

SHARED WORK DEMONSTRATION PROJECT STUDY

Background

Section 8 of Senate Bill No. 2018 (2005) required Job Service North Dakota to develop, implement, and operate a shared work demonstration project to demonstrate the feasibility of providing for a statewide shared work unemployment compensation program. The legislation required Job Service North Dakota to seek the advice of the Unemployment Insurance Advisory Council in developing, implementing, and operating the demonstration project and provided that the demonstration project must:

1. Operate for one selected employer, which must have at least 75 employees and must be an experienced-rated employer.
2. Operate in accordance with a specific written agreement between Job Service North Dakota, the selected employer, and the labor representative of the collective bargaining agreement if a collective bargaining agreement exists.
3. Allow shared work compensation to be paid to employees who, being otherwise eligible for unemployment insurance benefits, have their working hours reduced by the selected employer by at least 10 percent but no more than 60 percent.
4. Operate in such a manner that the selected employer's unemployment insurance experience ratings are not compromised.
5. Operate in such a manner that the unemployment trust fund is not so negatively impacted as to result in a greater tax burden to the remainder of the employers contributing to the trust fund.
6. Operate from January 1, 2006, through June 30, 2007, after which the demonstration project must cease.
7. Provide that employees receiving benefits calculated solely under the shared work demonstration project are not subject to the

60 percent weekly earnings disregard provided for under NDCC Section 52-06-06.

In general, shared work unemployment compensation offers an alternative to employers facing a reduction in force. Instead of laying off employees, the employer reduces the hours of work among a specific group of employees. Wages lost to the worker as a result of reduced hours are supplemented by a partial unemployment benefit amount that will match the percentage of reduction in the employer's plan. Such a program allows an employer to maintain production and quality levels and more quickly recover to full capacity through retention of an experienced workforce. In addition, a shared work unemployment compensation program will reduce the cost of hiring and training new employees after an economic recovery and allow employees to retain skills and advancement opportunities.

In 2001 the Legislative Assembly adopted Senate Bill No. 2337, which established a shared work unemployment compensation program that was effective until June 30, 2003. Although the program was effective for two years, a representative of Job Service North Dakota indicated that the cost of implementation of the program was higher than anticipated and no employers were interested in participating in the program.

Testimony and Committee Considerations

The committee received several reports from representatives of Job Service North Dakota regarding progress in implementing a shared work demonstration project. Although representatives of Job Service attempted to negotiate a contract with a large employer to implement a shared work project, Job Service was unable to reach an agreement with the employer. Initially, Job Service experienced difficulty in designing the project to comply with the requirements that the project operate in such a manner that the selected employer's unemployment insurance experience ratings would not be compromised and operate in such a manner that the unemployment trust fund would not be so negatively impacted as to result in a greater tax burden to the remainder of the employers contributing to the trust fund. After revision of the proposed program, the employer with which Job Service was negotiating did not sign the agreement because economic circumstances did not dictate a need for the company to reduce its workforce. Job Service was unable to identify another interested business with which to negotiate.

Conclusion

The committee makes no recommendation with respect to the study of the shared work demonstration project.

REEMPLOYMENT PROCESSES STUDY

Background

House Bill No. 1198 (2005), which directed the study, provided that the Legislative Council, with the participation of Job Service North Dakota, must study:

1. The costs and effectiveness of the current reemployment processes utilized by Job Service North Dakota and the appropriate methods for providing those services to a substantially greater number of claimants;
2. An appropriate method for limiting the number of job-attached claimants to those employees who are critical to the business processes of the employers that temporarily laid off those employees; and
3. An appropriate means of funding any additional costs that might be incurred as a result of implementation of the study's recommendations.

The bill also required Job Service to report to the Legislative Council on the progress of and results from the reemployment demonstration project to be carried out by Job Service during the interim.

As introduced, House Bill No. 1198 would have required Job Service to adopt administrative rules setting out a procedure or procedures for identifying a limited number of estimated annual future claimants who may be considered job-attached. The bill would have limited the number of job-attached claimants in any calendar year to an amount not exceeding 30 percent of the estimated number of initial claims to be filed in that calendar year. The bill would have allowed a covered employer to submit a list of no more than 30 percent of the employer's maximum quarterly workforce that the employer desired to have Job Service consider job-attached to assist Job Service in identifying those claimants. The bill would have required any person filing an unemployment insurance claim who had not been identified by Job Service as job-attached to actively seek work during each week that the person certifies continuing eligibility for unemployment insurance, unless excused pursuant to other provisions of law. The bill would have required Job Service to treat those persons identified as job-attached who filed an unemployment insurance claim during the calendar year for which they were so identified as exempt from the requirement to be actively seeking work for a period of not to exceed 20 weeks.

The bill, as introduced, defined "job-attached" as an identified claimant who is temporarily laid off from employment, who is likely to be reemployed upon the completion of the necessary layoff period, and who will not be required to actively seek work for a period not to exceed 20 weeks during each of which the claimant is certifying continuing eligibility for unemployment insurance benefits.

North Dakota Law

North Dakota Century Code Chapter 52-06 sets forth the statutory provisions relating to eligibility for and payment of unemployment compensation benefits. Section 52-06-01 establishes the conditions required to be eligible for benefits. That section provides that an individual is eligible for benefits for any week if Job Service finds:

1. The individual has made a claim for benefits with respect to such week in accordance with such regulations as the bureau may prescribe;
2. The individual has registered for work at, and thereafter continued to report at, an

employment office in accordance with such regulations as the bureau may prescribe, except that the bureau, by regulation, may waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of the North Dakota Unemployment Compensation Law; provided, that no such regulation shall conflict with section 52-06-03;

3. The individual is able to work and is available for suitable work and actively seeking work; provided:
   a. That notwithstanding any other provisions in this section, no otherwise eligible individual may be denied benefits for any week because the individual is in training with the approval of the bureau by reason of the application of provisions of this subsection relating to availability for work and to active search for work, or the provisions of subsection 3 of section 52-06-02 relating to disqualification for benefits for failure to apply for, or a refusal to accept, suitable work; and
   b. That no claimant may be considered ineligible in any week of unemployment for failure to comply with this subsection, if the failure is due to an illness or disability not covered by workforce safety and insurance and which occurred after the claimant has registered for work and no work has been offered the claimant which is suitable;
4. The individual has been unemployed for a waiting period of one week. No week may be counted as a week of unemployment for the purposes of this subsection:
   a. Unless it occurs within the benefit year which includes the week with respect to which the individual claims payment of benefits;
   b. If benefits have been paid with respect thereto; and
   c. Unless the individual was eligible for benefits, with respect thereto as provided in this section and section 52-06-02; and
5. The individual participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the bureau, unless the bureau determines that:
   a. The individual has completed these services; or
   b. There is justifiable cause for the claimant's failure to participate in these services.

North Dakota Century Code Section 52-06-02 sets forth circumstances under which an individual may be disqualified from receiving benefits. Among the causes for disqualification are:

1. Voluntary separation from work without good cause attributable to the employer.
2. Discharge for misconduct.
3. Failure without good cause to accept suitable employment, to apply for suitable employment, or to return to the individual's customary self-employment.
4. Unemployment due to strike, sympathy strike, or other work stoppage dispute.
5. Receipt of unemployment compensation benefits from another state.
6. Registration as a full-time student.
7. Unemployment due to a disciplinary suspension of not more than 30 days.
8. Submission of a false statement for the purpose of obtaining benefits.
9. Educational breaks or vacations.
10. Receipt of pensions.

Work First Demonstration Project

The Legislative Assembly included in the 2005-07 appropriation for Job Service North Dakota $254,925 of federal Reed Act distributions for the purpose of paying expenses associated with the Work First Demonstration Project during the 2005-07 biennium. The general purpose of the Work First Demonstration Project is for Job Service to implement and measure selected reemployment practices and serve as a catalyst to connect skilled workers with business needs. The project would provide to selected claimants orientation to the reemployment program, personal assessments, development of employment plans, skills development, and periodic reemployment reviews. Under the project, Job Service expects to be able to more effectively provide businesses with a well-trained and qualified workforce and market and promote claimants as an excellent source of available and qualified workers.

Job Service anticipates that the project will generate an increase in wages earned because workers will return to work sooner. Thus, it is expected that the project will result in a savings to the unemployment insurance trust fund.

Testimony and Committee Considerations

In conducting this study, the committee received frequent reports from representatives of Job Service North Dakota. At the first meeting of the committee, a representative of Job Service suggested an outline for conducting the study. That proposal included Job Service seeking input from employers regarding the use of the job-attached status. After completing the survey

process, Job Service representatives made the following findings:

- Employers generally do not support establishing a fixed percentage of job-attached employees.
- Negative balance employers generally do not object to paying for the privilege of having job-attached employees.
- Job-attached status should be driven by the employer, not the employee.
- There is a lack of understanding by some employers in completing forms relating to claims and job-attached status.
- Changes suggested by the study outcomes do not suggest initiatives that would likely produce large quantities of potentially available workers.
- Incremental initiatives to improve system integrity which may provide for some additional workers and small adjustments in equity between positive and negative balance employers may be feasible.

The research conducted by Job Service indicated that about 57 percent of job-attached employees are from fields other than construction. Over the five-year period examined by Job Service, an average of about 70 percent of the total claimants were job-attached and the amount of benefits paid to that group totals about $25 million, while the amount of benefits paid to the remaining 30 percent of claimants is about $10 million.

Job Service made several conclusions and recommendations in response to its findings, including:

- Job Service should implement a change to the notice of claim filing to improve response and identification of job-attached status.
- Job Service should implement extensive use of the Worker Profiling Reemployment System as an additional technique to ensure that intensive reemployment services are directed to claimants identified as most likely to exhaust unemployment benefits and most in need of staff-intensive reemployment services.
- The Legislative Assembly should consider appropriating general fund money or identifying other funding sources for funding-intensive reemployment services.
- The Legislative Assembly should consider adopting the assessment of a fee for using the job-attached status as an employee retention tool.

Representatives of Job Service reported that the Work First Demonstration Project provided a decrease in average duration of claims by 1.01 weeks. Although statistics show that Job Service reemployment program performance levels are among the best in the nation, representatives of Job Service concluded that claim exhaustion and duration rates could be improved with more intensive services. However, due to budget constraints and forecasted future budget cuts, Job Service representatives expressed concern with respect to the agency's ability to increase services without new sources of funding.

Representatives of Job Service testified that policy changes were made within the agency to address some of the recommendations in its study, including changing the form sent to employers after an employee files a claim. Representatives of Job Service also stated that the agency will likely include within its general appropriation bill a request for funding for enhanced reemployment services under the Work First Project.

The committee considered a bill draft that would have imposed a fee of $100 on an employer for each employee designated as job-attached. The return-to-employer fee would have been deposited in a special fund to be used for administration of the unemployment insurance program.

Opponents of the proposal expressed concern with the use of the fee for administration of the program and with the fact that the fee would result in double taxation of positive balance employers.

The committee considered a second version of the bill draft imposing a return-to-employer fee for job-attached employees. That version limited the imposition of the fee, which is determined by a formula, to negative balance employers and provided that 50 percent of any fee collected must be considered as an unemployment contribution and the remaining 50 percent must be deposited in the federal advance interest repayment fund, to be split evenly between use for reemployment services and for administration.

Proponents of the second version of the bill draft contended that the imposition of the return-to-employer fee for job-attached employees of negative balance employers is a fairer policy. Opponents of the bill draft expressed concern regarding the imposition of the fee and the need for certain employers to retain critical employees and not be forced to search for qualified employees and train new employees.

Recommendation

The committee recommends Senate Bill No. 2034 to establish a return-to-employer fee for job-attached employees of negative balance employers and to provide that 50 percent of any fee collected must be considered as an unemployment contribution and the remaining 50 percent must be deposited in the federal advance interest repayment fund, to be split evenly between use for reemployment services and for administration.

UNEMPLOYMENT INSURANCE TAX RATE STRUCTURE STUDY

Background

The federal Social Security Act of 1935 included provisions for the creation of a program for the payment of benefits to unemployed individuals. Under the federal law, payments are made to states with approved unemployment compensation laws under which the state administers an unemployment compensation program through public employment offices. The state program administration must conform with rules established by the federal government. The state of North Dakota has provided unemployment insurance to its residents since 1937 through the state and federal partnership. North Dakota Century Code Section 52-02-01 provides that Job Service North Dakota is responsible for administering the unemployment program in this state.

North Dakota Century Code Section 52-03-01 provides for the establishment of an unemployment compensation fund to be administered by Job Service North Dakota. That section provides that the fund consists of:

1. All contributions collected under the North Dakota Unemployment Compensation Law.
2. All fines collected pursuant to the provisions of the North Dakota Unemployment Compensation Law.
3. Interest earned upon any money in the fund.
4. Any property or securities acquired through the use of money belonging to the fund.
5. All earnings of the property or securities.
6. All money recovered on losses sustained by the fund.
7. All money received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act.
8. All money credited to this state's account in the unemployment trust fund, pursuant to Section 903 of the Social Security Act.
9. All money received from the federal government as reimbursements, pursuant to Section 204 of the Federal-State Extended Compensation Act of 1970.
10. All money received for the fund from any other source.

North Dakota Century Code Section 52-03-03 requires Job Service North Dakota to maintain a clearing account, the unemployment trust fund account, and a benefit account within the unemployment compensation fund. After clearance of all funds, the funds must be deposited in the United States Treasury to the credit of the state in the unemployment trust fund. The benefit account consists of all money requisitioned from the state's account in the unemployment trust fund to be used for the payment of benefits. Section 52-03-07 provides that money credited to the account of the state in the unemployment trust fund may be used for administration of the unemployment compensation program.

North Dakota Century Code Chapter 52-04 addresses contributions required of employers under the North Dakota Unemployment Compensation Law and the determination of contribution rates. Section 52-04-01 provides that contributions accrue and become payable by each employer with respect to wages paid for employment.

Statutory provisions for the determination of rates were amended significantly by the Legislative Assembly in 1999 in an attempt to raise the unemployment trust fund balance. House Bill No. 1135 (1999) provided a seven-year timeframe to achieve targeted unemployment compensation fund reserve goals based in part on a national economic model that estimates the funds needed to pay unemployment claims for a one-year recessionary period based on current wages and historical claims.

The Legislative Assembly in 2005 revised the formula for determining unemployment compensation tax rates. House Bill No. 1027 (2005) adjusted the formula to shift a proportionately greater responsibility to negative balance employers for that portion of the unemployment insurance tax burden which represents the amount of revenue necessary to make due progress toward the unemployment insurance compensation fund solvency target that was established by 1999 House Bill No. 1135. House Bill No. 1027 also provided that after the solvency target is reached, the calculation of the solvency target must be continued and, if the trust fund reserve as of December 31 of any year is less or greater than the solvency target, the rates must be adjusted so that one-fifth of the difference between the solvency target and the current trust fund reserve is estimated to be collected in the following rate year.

North Dakota Century Code Section 52-04-05 establishes the formula for determining the trust fund solvency target. That section provides, in part:

> Progress toward achieving the solvency target is measured by reducing any difference between one and the average high-cost multiple of the state by an amount that is at least equal to the ratio of the number of years left to reach the solvency target to the difference between the trust fund reserve and the targeted amount. In setting tax rates, the amount of the trust fund reserve may not be allowed to fall below three hundred percent from a standard margin of error for the targeted amount of the trust fund reserve.

That section authorizes the executive director of Job Service North Dakota to make reasonable adjustments to the tax rates set for a calendar year to prevent significant rate variations between calendar years.

North Dakota Century Code Sections 52-04-05 and 52-04-06 set forth the variables used in determining rates. Under subsection 5 of Section 52-04-05, rates must be determined as follows:

a. The income needed to pay benefits for the calendar year must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one one-hundredth of one percent is the average required rate needed to pay benefits.
b. If the positive employer maximum rate necessary to generate the amount of income needed to pay benefits is at least one percent, the positive employer minimum rate necessary to generate the amount of income necessary to pay benefits is the foregoing positive employer maximum rate, minus nine-tenths of one percent. If the positive employer maximum rate necessary to generate the amount of income needed to pay benefits is less than one percent, the range for the positive employer minimum rate necessary to generate the amount of income needed to pay benefits must be at least one-tenth of one percent and must be less than two-tenths of one percent, with the positive

employer maximum rate necessary to generate the amount of income needed to pay benefits equal to the positive employer maximum rate, as used in this subsection, minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to fall within the range described above. Within the table of rate schedules to be utilized for each calendar year to establish the tax rates necessary to generate the amount of income needed to pay benefits, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The negative employer minimum rate needed to generate the amount of income needed to pay benefits is the positive employer maximum rate as described in this subsection plus five and one-tenth percent.

c. The positive employer maximum rate necessary to generate the amount of income needed to pay benefits must be set so that all the rates combined generate the average required rate for income needed to pay benefits, multiplied by the ratio, calculated under subdivision d, needed to reach the solvency balance. The negative employer maximum rate necessary to generate the amount of income needed to pay benefits is the negative employer minimum rate necessary to generate the amount of income needed to pay benefits plus three and six-tenths percent. However, the maximum rate must be at least five and four-tenths percent.

d. The tax rate necessary to generate the amount of income needed to reach a solvency balance must be calculated by dividing the solvency balance by the amount of income estimated as needed to pay benefits and multiplying the resulting ratio times each rate, within the positive and negative rate arrays, as determined under this section to meet the average required rate needed to pay benefits as defined by subdivision a. The ratio calculated under this subdivision must also be multiplied by any rate calculated as required by subsection 6 to arrive at a final rate for a new business. All results calculated under this subdivision must be rounded to the nearest one-hundredth of one percent.

North Dakota Century Code Section 52-04-05 further provides that unless otherwise provided, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the 36-consecutive-calendar-month period ending on September 30 of the preceding calendar year. In addition, if an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the 24-consecutive-calendar-month period ending September 30 of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the 12-consecutive-calendar-month period ending September 30 of the preceding calendar year.

With respect to a new employer, NDCC Section 52-04-05 provides that for each calendar year, the new employer must be assigned a rate that is 150 percent of the positive employer maximum rate or a rate of 1 percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October 31 with respect to wages paid by that employer before October 1 of that year. A new employer in construction services must be assigned the negative employer maximum rate.

Under NDCC Section 52-04-05, the executive director of Job Service North Dakota is authorized to provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a 30 percent reduction to that employer's rate for any year if that employer has in place a plan approved by Job Service which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.

North Dakota Century Code Section 52-04-06 addresses the determination of rate groups. That section provides that an employer's reserve ratio is the difference between the six-year contributions paid by that employer on or before October 31 of any year, with respect to wages paid by that employer before October 1 of that same year, and the six-year benefits charged to that employer's account before October 1 of that year, divided by the average annual payroll. Job Service North Dakota is required to assign an employer whose cumulative contributions exceed cumulative benefits within the positive employer rate groups. An employer whose cumulative contributions are equal to or less than cumulative benefits must be assigned within the negative employer rate groups.

Under NDCC Section 52-04-06, Job Service North Dakota is required to establish, for each calendar year, a schedule of positive employer rate groups within the positive employer minimum rate and the positive employer maximum rate determined under Section 52-04-05. Each successive rate group for positive employer rate groups must be assigned a rate equal to the previous group's rate plus one-tenth of 1 percent. The number of rate groups in the positive employer

schedule must be the number required to provide for a rate group at each one-tenth of 1 percent interval between the positive employer minimum rate and the positive employer maximum rate determined under Section 52-04-05. In addition, for each calendar year, Job Service is required to establish a schedule of negative employer rate groups with the negative employer minimum rate and the negative employer maximum rate determined under Section 52-04-05. Each successive rate group for negative employer rate groups must be assigned a rate equal to the previous group's rate plus four-tenths of 1 percent. The number of rate groups in the negative employer schedule must be the number required to provide for a rate group at each four-tenths of 1 percent interval between the negative employer minimum rate and the negative employer maximum rate determined under Section 52-04-05.

North Dakota Century Code Section 52-04-06 further requires Job Service North Dakota to assign positive employers to the rate in the positive employer rate schedule in the rank order of their reserve ratios with the highest reserve ratio positive employers assigned to the first positive employer rate. Job Service is required to assign each successively ranked positive employer to a rate within the positive employer rate schedule so that each rate within the rate schedule is assigned the same proportion of the positive employer's prior year's taxable wages. That section includes similar assignment requirements for negative employers.

North Dakota Century Code Section 52-04-09 requires Job Service to determine an employer's rate for a calendar year on the basis of the employer's experience with contribution payments and benefit charges as of October 1 of the preceding year. Under Section 52-04-10, Job Service is required to promptly make a determination and notify each employer of the employer's rate of contributions as determined for each ensuing year by the end of the first full week of December, but not later than December 10, of the preceding year.

Testimony and Committee Considerations

The resolution directing this study was introduced as a result of the defeat of 2005 House Bill No. 1425, which would have amended the Unemployment Compensation Law relating to the assignment of rates for new employers classified as homebuilders. Thus, a significant focus of the committee was to review the assignment of rates for homebuilders that are new employers.

The committee received testimony indicating that in the early 1990s construction employers expressed concern that new employers may have an advantage over experience-rated employers in the construction industry because the rates that were assigned to new employers could be lower than the rates of experience-rated employers. In an attempt to address that issue, rate assignments for new employers were revised to provide that new nonconstruction employers be assigned a rate at the top of the positive rate schedule and new construction employers be assigned the maximum negative employer rate.

Representatives of Job Service established a study team to collect data regarding the assignment of rates for new construction employers, with a focus on new homebuilders. The team included employees of Job Service and a representative of the North Dakota Association of Builders. After collecting and analyzing data relating to the building industry, the Job Service study team presented a report indicating:

- Compared to other employers, the construction industry has a history of higher payout of benefits in comparison to taxable wages.
- Building permit data demonstrates growth in the housing industry from 1999 to 2005.
- Construction industry reserve ratios are regularly lower than overall levels, which reflects a higher level of risk to the unemployment insurance trust fund due to a substantial increase in payroll or a recent history of high benefit payouts.
- Once construction industry employers have become rated based on an employer's reserve ratio, over 70 percent of employers classified as being in the construction of buildings and specialty contractor industries were positively rated for the year 2006 and 45 percent of employers classified as heavy and civil engineering construction employers were positively rated. However, it was revealed that the positive ratings were due in part to the employers making voluntary contributions to move from the negative to the positive rate schedule and improved ratios imposed by trust fund building and because of the higher rate paid by the employers, an employer with few claims is able to move quickly toward the positive rate schedule.
- Compared to other employers, the three construction industry subgroups had higher seasonal fluctuations by wage.
- The cost of modification to the Job Service management information systems was estimated to be $20,000, and one additional staff position would be necessary.
- Based upon current rates, the impact to the unemployment insurance trust fund of moving the new construction employer rate from the maximum negative rate to the average negative rate would be over $450,000, and the cost of moving the new construction employer rate to the minimum negative rate would be $900,000.
- When the issue relating to the study was presented to builders at a meeting of the North Dakota Association of Builders, there was not significant interest expressed in changing the law.

As a result of the findings of the study group, the group and Job Service administration concluded that the current rating system is sound and that changing the law would negatively impact the unemployment insurance trust fund balance. The study group and Job Service administration also concluded that changing the rating system is unnecessary and could be a detriment to

North Dakota builders competing with out-of-state builders beginning to do business in this state.

The committee received reports regarding the status of the growth of the reserve in the unemployment insurance trust fund. As of July 2006, the balance was reported to be approximately $97 million. Representatives of Job Service indicated that the progress toward solvency of the fund exceeded the expectations of the 1999 legislation.

The committee considered a bill draft that would have modified the unemployment insurance tax rate calculation by changing from a multiplicative formula to a subtraction method. The bill draft would have established a method of providing for a greater rate reduction for positive rate employers than for negative rate employers when overall rates are decreased. Committee members expressed concern with the bill draft because the proposal would have provided rate relief to negative balance employers that did not help contribute to a surplus in the trust fund.

The committee considered a bill draft that provided that negative balance employers may not benefit from a general reduction in unemployment insurance tax rates when there is a surplus in the unemployment insurance trust fund. Committee members were in general agreement that the bill draft may help achieve the goal of moving employers from the negative rate groups to the positive rate groups and of providing tax rate relief to those employers responsible for building a surplus in the unemployment insurance trust fund.

Recommendation

The committee recommends Senate Bill No. 2035 to modify the unemployment insurance tax rate formula to provide that negative balance employers do not benefit from a reduction in unemployment insurance tax rates when there is a surplus in the unemployment insurance trust fund.

PROFESSIONAL EMPLOYER ORGANIZATION STUDY

Background

A professional employer organization is generally described as a business that provides integrated services to manage critical human resource responsibilities and employer risks for clients by establishing and maintaining an employer relationship with the employees at the client's worksite and by contractually assuming certain employer rights, responsibilities, and risk. The professional employer organization provides services, such as management of human resources, employee benefits, payroll, and employment taxes. In general, the Internal Revenue Service recognizes a professional employer organization as the employer of record for federal income tax purposes.

Although professional employer organizations operate in all 50 states, only 27 states require professional employer organizations to be registered or licensed. Included among those states are Minnesota and Montana. The regulatory agencies in the states that register or license professional employer organizations vary, with the most common regulatory agency being insurance departments. Other regulatory entities and officials in other states include labor departments, regulatory and licensing departments, workers' compensation agencies, commerce departments, and secretaries of state.

Testimony and Committee Considerations

The committee received testimony from representatives of the professional employer organization industry regarding model legislation regulating the professional employer organization industry. The testimony indicated that the professional employer organization industry is growing nationwide and is expected to experience significant growth in North Dakota. Although fewer than five professional employer organizations are domiciled in North Dakota, a number of others may have some type of limited business activity in the state. Representatives of the industry contended adoption of the model law would establish a structure so that the state could regulate the industry and ensure that businesses in the state could rely upon the legitimacy of the organizations operating in the state. Furthermore, a state law regulating the industry would assist in establishing credibility for the professional employer organization businesses that become registered.

Although members of the committee generally agreed that regulation of professional employer organizations may be beneficial, committee members also questioned whether regulation of an industry that has a minimal number of businesses in the state is necessary and whether adoption of a regulatory structure would only serve to limit entry into the business of providing professional employer organization services.

The committee considered a bill draft that would have required professional employer organizations operating in the state to register with Workforce Safety and Insurance. The bill draft also would have defined the rights and obligations of the parties to a coemployment relationship, established financial capability requirements for professional employer organizations, and allowed Workforce Safety and Insurance to take disciplinary actions against a professional employer organization for violations of law.

A representative of Workforce Safety and Insurance testified that the agency is not the appropriate agency to regulate the professional employer organization industry because the agency is responsible for insuring the industry. The committee received testimony indicating that the Labor Commissioner or the Secretary of State may be appropriate regulatory officials for the professional employer organization industry.

The Secretary of State testified that the functions of the Secretary of State's office are not consistent with being a regulatory office. Because the Secretary of State's office does not have the staff necessary to review the financial soundness of professional employer organizations, the Secretary of State would likely need to add professional staff to review applications. The Secretary of State testified that if the Secretary of State were designated the responsibility to register professional employer organizations, the bill draft should be revised to provide that the Secretary of State would

license applicants that submitted the proper application and license fee and to allow the Secretary of State to refer complaints against professional employer organizations to the Attorney General.

The committee considered several revisions to the bill draft providing for registration and regulation of professional employer organizations. Committee members generally agreed that the Secretary of State may be the most appropriate regulatory official. Committee members also generally agreed that many of the provisions adopted from the model law enacted in several other states were not necessary.

Recommendation

The committee recommends Senate Bill No. 2036 to provide for the licensing of professional employer organizations by the Secretary of State and to allow the Secretary of State to refer a complaint against a professional employer organization to the Attorney General for investigation and disposition. The bill also sets forth the requirements for a professional employer organization agreement and the rights and obligations of the parties entering a coemployment relationship.

PUBLIC IMPROVEMENT CONTRACT STUDY

Background

Public Improvement Contracts

North Dakota Century Code Chapter 48-01.1 addresses public improvement contracts. The chapter generally applies to the construction, repair, or alteration of a public improvement undertaken by the state or a political subdivision. Section 48-01.1-01 defines a "public improvement" as "any improvement the cost of which is payable from taxes or other funds under the control of a governing body including improvements for which special assessments are levied." Road construction and maintenance and certain Public Service Commission projects are exempted from the definition of a "public improvement" and are thus excluded from the requirements of Chapter 48-01.1.

North Dakota Century Code Section 48-01.1-02 requires the governing body of a state entity or a political subdivision to award a contract for the construction of a public improvement to the lowest responsible bidder. That section also authorizes a governing body to enter a contract without seeking bids when the governing body determines that an emergency exists.

North Dakota Century Code Section 48-01.1-03 requires a governing body to advertise for bids by publishing an advertisement for three consecutive weeks if the public improvement is estimated to cost more than $100,000. The publication must be in the official newspaper of the political subdivision and in a trade publication of general circulation among contractors, building manufacturers, and dealers in the state.

North Dakota Century Code Section 48-01.1-04 requires a governing body, if the project is estimated to cost more than $100,000, to procure plans, drawings, and specifications for the work from a licensed architect or registered professional engineer. Similar provisions are included in the statutory provisions regulating professional engineers. Section 43-19.1-28 provides that unless otherwise provided by law, the state or a political subdivision may not engage in the construction of public works involving the practice of professional engineering when the contemplated expenditure for the project exceeds the sum of $100,000, unless the engineering drawings and specifications and estimates have been prepared by, and the construction administration and construction observation services are executed under the supervision of, a registered professional engineer.

North Dakota Century Code Section 48-01.1-06 provides that multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract or any combination of individual contracts is in excess of $100,000. That section also authorizes a governing body to allow the submission of single prime bids or bids for other portions of the project but prohibits the governing body from accepting the single prime bid unless that bid is lower than the combined total of the lowest and best multiple bids for the project.

North Dakota Century Code Section 48-01.1-07 requires a governing body to open all bids at the time stated in the notice and award the contract to the lowest and best bidder or reject all bids. That section also directs the governing body to require the contractor to whom the contract is awarded to post a bond. Section 48-02-06.2 provides that a governing body must take a bond from the contractor before permitting any work to be done on the project. The bond must be for an amount equal at least to the price stated in the contract and must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor and materials used in the performance of the contract. Section 48-02-06.2 provides that the bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor or subcontractors may sue on the bond.

North Dakota Century Code Section 48-01.1-08 authorizes a governing body, after competitive bids for the general, electrical, and mechanical work are received as part of the multiple prime bids, to assign the electrical and mechanical contract and any other contracts to the general contractor for the project to facilitate the coordination and management of the work.

North Dakota Century Code Section 48-01.1-09 provides that if the governing body uses a construction manager on a public improvement, the construction manager must be a licensed contractor. That section also requires a construction manager awarded a contract for construction of a public improvement to bond the entire cost of the project through a single bond, or through bonds provided by all bid packages and the construction manager's bond for the full amount of the construction manager's services. The construction manager is required to bond the difference between the total of the bonds and the total project bid if the total of the bonds is less than the total project bid. Section

48-01.1-09 also requires an architect awarded a design contract and a construction manager awarded a construction management contract for a public improvement to carry out their contractual duties as agents to the public improvement entity and prohibits the architect and construction manager from constructing any portion of the public improvement or contracting with any contractor or subcontractor to construct any portion of the work.

North Dakota Century Code Section 48-02-07 requires that at least once in each calendar month during the continuance of work upon any public project, the governing board or a committee authorized by the board is required to receive and consider estimates furnished by the supervising architect or the superintendent of construction of the project and allow estimates in an amount of the estimated value of the labor and material furnished upon the contract, and of the material then upon the ground for use in the construction of the project, subject to certain retentions. The remaining amount retained must be paid to the contractor in such amounts and at such times as are approved by the supervising architect or superintendent of construction, with final payment of all money due to the contractor to be made immediately following completion and acceptance of the project. If a supervising architect and/or superintendent of construction is not employed under the contract, the contractor, at the end of each calendar month during the continuance of work under the contract, may furnish to the governing board the estimates. The board, immediately after considering and allowing any estimate, is required to certify and forward the estimate to the official having the power to draw warrants, who is required to make the payment promptly to the contractor.

Construction Management

Construction management is generally defined as a professional service that applies management techniques to the planning, design, and construction of a project from inception to completion for the purpose of controlling time, cost, and quality. North Dakota Century Code Section 48-01.1-01 defines "construction management" as "the management and supervision of the construction of a public improvement, including the management and supervision of multiple prime contracts." The definition states that the term does not include construction administration performed by a design professional under the terms of a professional services agreement with the governing body. "Construction administration" is defined as "administrative services provided on behalf of the governing body, either by the governing body or a registered design professional, and includes providing clarifications, submittal review, recommendations for payment, preparation of change orders, and other administrative services included in the agreement with the registered design professional." The definition of that term excludes supervision of the construction activities for the construction contracts.

In general, a construction manager will serve as an extension of staff to the owner of a project and manage the entire project with preplanning, design, construction, engineering, and management services. Supporters of this concept argue that the construction manager will provide better onsite coordination of the project because most project owners are unable to maintain the staff resources necessary to pay close, continuing attention to every detail of the project.

Design-Build

The design-build delivery process is generally described as a project delivery method that combines architectural and engineering design services with construction performance under one contract agreement. Under the design-build process, the project owner typically will choose a single entity to design and construct the project in which the selection of the vendor often is based on time schedule and cost. Proponents of this process contend that the process enhances accountability by focusing responsibility on a single entity, reduces costs, and saves time.

Professional Liability and Indemnification

Although there are no statutory requirements regarding professional liability insurance for contractors, NDCC Section 43-07-04 requires an applicant for a contractor's license to provide proof of liability insurance. That section does not require a specific amount of liability insurance.

North Dakota Century Code Section 43-03-23 addresses the liability of an architect. That section provides that an architect is not liable for the safety of persons or property on or about a construction project site or for the construction techniques, procedures, sequences, and schedules or for the conduct, action, errors, or omissions of any construction contractor, subcontractor, or material supplier, their agents or their employees, unless the architect assumes responsibility by contract or by the architect's actual conduct. However, that section further provides that an architect is not relieved from liability from the architect's negligence in the architect's design work or otherwise.

North Dakota Century Code Section 43-19.1-24.1 addresses the liability of an engineer. That section provides that an engineer is not liable for the safety of persons or property on or about a construction project site or for the construction techniques, procedures, sequences, and schedules or for the conduct, action, errors, or omissions of any construction contractor, subcontractor, or material supplier, their agents or employees, unless the engineer assumes responsibility by contract or by the engineer's actual conduct. That section further provides that an engineer is not relieved from liability from the engineer's negligence in the engineer's design work or otherwise.

Testimony and Committee Considerations

The committee received testimony from representatives of a construction industry working group that was formed to address the issues presented in this study. Because representatives of the various construction-related industries have frequently brought proposals before the Legislative Assembly to revise public

improvement contract and construction laws during the last several legislative sessions and have been unable to agree upon appropriate changes in the law, representatives of the industry working group suggested that progress on this study would be made only if members of the various industries could develop a consensus on the issues. Representatives of the American Council of Engineering Companies of North Dakota, the North Dakota Chapter of the American Institute of Architects, the North Dakota Association of Builders, the North Dakota Society of Professional Engineers, the Associated General Contractors of North Dakota, the National Electrical Contractors Association, and the North Dakota Plumbing, Heating, and Mechanical Contractors Association, as well as representatives of various state and local government agencies, participated in discussions throughout the interim to develop a proposal to present to the committee.

The committee considered a bill draft that would have revised numerous statutory provisions with respect to bidding and public improvement contracts. The bill draft would have repealed various statutory provisions relating to bidding and public improvement contracts and reorganized those provisions under a new chapter in the North Dakota Century Code.

The committee also considered a bill draft that incorporated the revised statutory provisions relating to bidding and public improvement contracts and included provisions allowing state and local government governing bodies to use the construction management delivery method for the construction of public improvements. Proponents of the bill draft testified that the bill draft addressed many of the issues that have been areas of contention among the various construction industry groups for years. Although the members of the industry working group were not able to come to a consensus on the design-build delivery method, representatives of the working group stated that great progress had been made during the interim and that the representatives of the various industry groups will attempt to continue to work together to address common concerns.

Recommendation

The committee recommends House Bill No. 1033 to revise statutory provisions relating to bidding and public improvement contracts and to allow state and local governments to use the construction management delivery method.

STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION REPORT

Pursuant to NDCC Section 4-05.1-19, the State Board of Agricultural Research and Education submitted a report to the committee on its annual evaluation of research activities and expenditures. The report summarized how the board is responding to each of the board's statutory responsibilities and reviewed the various programs and activities of the board.

WORKFORCE SAFETY AND INSURANCE REPORT

Pursuant to NDCC Section 65-06.2-09, the committee received a report from Workforce Safety and Insurance regarding the status of the modified workers' compensation program performance audit and the Roughrider Industries safety audit. The modified workers' compensation program was established in 1997 to provide workers' compensation coverage for inmates in prison work programs and to allow Roughrider Industries to continue receiving federal funding through the prison industry enhancement certification program. The safety audit conducted in May 2005 indicated Roughrider Industries was found to be in compliance with all components of the Workforce Safety and Insurance risk management program. The September 2006 audit of the modified workers' compensation coverage program concluded that the desired results and effectiveness of the program are being achieved.

TRAVEL AND TOURISM LIABILITY INSURANCE REPORT

Pursuant to Section 21 of Senate Bill No. 2032 (2005), the committee received a report from the Insurance Commissioner regarding the commissioner's compilation of existing data with respect to the state's liability insurance marketplace, with specific focus on the travel and tourism industry. The report listed the following potential legislative alternatives:

1. Provide immunity for a registered travel and tourism business through an assumption of risk law.
2. Provide immunity for minimal fee activities through an assumption of risk law.
3. Provide immunity conditioned on carrying a minimum amount of liability insurance.
4. Establish a state-sponsored residual market program for travel and tourism liability insurance using either a joint underwriting association or a government-sponsored pool.
5. Provide tax credits against income tax for the cost of liability insurance, subject to a maximum credit.
6. Provide money to fund a travel and tourism coordinator to assist operators in addressing insurance issues, particularly with respect to developing good risk management practices.
7. Relax regulatory oversight of commercial liability rate and form filings.
8. Facilitate the establishment of either a risk retention group or a risk purchasing group for travel and tourism activities.

The committee received testimony summarizing a Kansas law that provides an income tax credit of 20 percent of a tourism industry business's liability insurance premium up to $2,000 per year for up to five years. The committee also received testimony indicating that although efforts have been made to limit liability in certain tourism-related businesses, those efforts have generally been ineffective because liability insurance premiums are usually rated on a national basis and are not based on state law.

INFORMATION TECHNOLOGY COMMITTEE

North Dakota Century Code (NDCC) Section 54-35-15.1 requires the Legislative Council, during each biennium, to appoint an Information Technology Committee in the same manner as the Council appoints other interim committees. The committee is to consist of six members of the House of Representatives and five members of the Senate. The Chief Information Officer of the state serves as an ex officio member of the committee.

North Dakota Century Code Section 54-35-15.2 requires the committee to:

1. Meet at least once each calendar quarter.
2. Receive a report from the Chief Information Officer of the state at each meeting.
3. Review the business plan of the Information Technology Department.
4. Address macro-level questions relating to the Information Technology Department.
5. Review the activities of the Information Technology Department.
6. Review statewide information technology standards.
7. Review the statewide information technology plan.
8. Conduct studies of information technology efficiency and security.
9. Make recommendations regarding established or proposed information technology programs and information technology acquisitions by the executive and judicial branches.
10. Review the cost-benefit analysis of any major information technology project of an executive or judicial branch agency. A major project is a project with a cost of $250,000 or more in one biennium or a total cost of $500,000 or more.
11. Review the cost-benefit analysis of any major information technology project of the State Board of Higher Education or any institution under the control of the State Board of Higher Education if the project significantly impacts the statewide wide area network, impacts the statewide library system, or is an administrative project.
12. Perform periodic reviews to ensure that a major information technology project is on its projected schedule and within its cost projections.

North Dakota Century Code Section 54-35-15.3 provides that:

- The Information Technology Committee may review any information technology project or information technology plan.
- If the committee determines that a project or plan is at risk of failing to achieve its intended results, the committee may recommend to the Office of Management and Budget the suspension of the expenditure of money appropriated for a project or plan.
- The Office of Management and Budget may suspend the expenditure authority if the office agrees with the recommendation of the committee.

North Dakota Century Code Section 54-35-15.4 authorizes the committee to request the State Auditor to conduct an information technology compliance review. The review may consist of an audit of an agency's information technology management, information technology planning, compliance with information technology plans, and compliance with information technology standards and policies or an audit of statewide compliance with specific information technology standards and policies.

The committee was also assigned the responsibility for receiving:

- A report from the Chief Information Officer regarding the recommendations of the Information Technology Department's advisory committee regarding major software projects for consideration, pursuant to NDCC Section 54-59-02.1.
- A report from the Chief Information Officer regarding the coordination of services with political subdivisions and a report from the Chief Information Officer and the commissioner of the State Board of Higher Education regarding coordination of information technology between the Information Technology Department and higher education, pursuant to NDCC Section 54-59-12.
- A report from the Information Technology Department regarding any executive branch agency or institution that does not agree to conform to its information technology plan or comply with statewide policies and standards, pursuant to NDCC Section 54-59-13.
- An annual report from the Information Technology Department regarding information technology projects, services, plans, and benefits, pursuant to NDCC Section 54-59-19.

Committee members were Senators Larry J. Robinson (Chairman), Randel Christmann, Randy A. Schobinger, Tom Seymour, and Rich Wardner; Representatives Eliot Glassheim, Bette B. Grande, Keith Kempenich, David Monson, Bob Skarphol, and Robin Weisz; and Chief Information Officer Lisa Feldner. Mr. Curtis L. Wolfe, former Chief Information Officer, was also a member of the committee until his resignation on December 30, 2005.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

PRIORITIZATION OF PROPOSED MAJOR COMPUTER SOFTWARE PROJECTS

North Dakota Century Code Section 54-59-02.1 requires the Information Technology Department to appoint an advisory committee for the purpose of prioritizing major computer software projects. The Chief

Information Officer is to submit recommendations of the advisory committee regarding major computer software projects to the Information Technology Committee for consideration by the committee.

The committee received information from the Information Technology Department regarding the prioritization of proposed major computer software projects and learned the department assigned the prioritization responsibility to the State Information Technology Advisory Committee, a committee created by NDCC Section 54-59-07 consisting of the Chief Information Officer, chancellor of the North Dakota University System, Attorney General, Secretary of State, Tax Commissioner, Chief Justice of the Supreme Court, two members of the Legislative Assembly, eight members representing state agencies, and two members representing private industry. The State Information Technology Advisory Committee addressed the prioritizing of major projects through information technology portfolio management. Executive branch agencies identified and internally prioritized information technology projects, submitted their information technology budgets into the budget analysis and reporting system, and flagged projects to be ranked by the State Information Technology Advisory Committee. The Information Technology Department sorted the information technology projects into three categories--projects over $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs, projects over $250,000 requesting funds from non-general fund sources for the investment or the ongoing maintenance costs, and projects under $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs. State agencies self-scored projects over $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs based on return on investment, customer service benefits, internal efficiency benefits, operational necessity, and project risk. The Information Technology Department presented a preliminary ranking of these projects to the State Information Technology Advisory Committee for the committee's prioritization.

The State Information Technology Advisory Committee met on September 20, 2006, and prioritized major executive branch computer software projects for the 2007-09 biennium as follows:

			2007-09 Estimated Cost	
	Project	Agency	General Fund	All Funds
1	Medicaid management information system rewrite - Phase 2	Department of Human Services	$3,643,133	$52,529,371
2	Client information sharing system	Department of Human Services	423,800	1,000,000
3	Tax distribution system rewrite	State Treasurer	768,228	768,228
4	Computer-aided dispatch	Department of Emergency Services	980,000	980,000
5	Knowledge base - Phase 2	Secretary of State	824,153	824,153
6	Additional radio towers	Department of Emergency Services	4,500,000	4,500,000
7	Inmate medical system	Department of Corrections and Rehabilitation	1,000,000	1,000,000
8	EAS satellite notification	Department of Emergency Services	500,000	500,000
9	Child welfare information system	Department of Human Services	196,000	400,000
10	Foundation aid system rewrite	Department of Public Instruction	300,000	300,000
11	Business intelligence implementation and support	Information Technology Department	350,872	1,634,387
12	Education Standards and Practices Board coming off the mainframe	Department of Public Instruction	1,000,000	1,000,000
13	Grants management software	Department of Emergency Services	350,000	350,000
14	Integrate field service operations into offender management system (ITAG)	Department of Corrections and Rehabilitation	3,750,000	3,750,000
Total			$18,586,186	$69,536,139

The Information Technology Department will revise the prioritization to reflect those projects that are funded in the Governor's 2007-09 biennium budget recommendation and will present the prioritization to the Appropriations Committees of the 2007 Legislative Assembly. For projects over $250,000 requesting funds from non-general fund sources for the investment or the ongoing maintenance costs and projects under $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs, the department will prepare a listing by agency and priority within the agency and provide the list to the State Information Technology Advisory Committee, the Office of Management and Budget, and the Appropriations Committees of the 2007 Legislative Assembly.

INFORMATION TECHNOLOGY DEPARTMENT BUSINESS PLAN

North Dakota Century Code Section 54-59-06 requires the Information Technology Department to develop and maintain a business plan. Pursuant to that directive, the department prepared a strategic business plan for the 2005-07 biennium. The plan includes seven goals the department must accomplish to effectively achieve its mission to provide leadership and knowledge to assist customers in achieving their mission through the innovative use of information technology. The following is a summary of the goals and objectives included in the plan:

Goals	Objectives
Be the preferred provider of strategic information technology services for government and education	Define and pursue opportunities for creating, expanding, or eliminating services
	Make it easy for customers to conduct business with the department
	Meet or exceed customer expectations for service
Manage revenue sources to recover costs and to ensure competitive and stable rates	Charge competitive rates for comparable services while maintaining the appropriate operating reserve
	Develop budget rates for each biennium and not exceed those rates for the biennium
Cost-effectively invest in technology	Reduce information technology operating cost where desirable
	Deploy statewide contracts to maximize state purchasing power with assistance from enterprise architecture, the State Procurement Office, and others
	Provide enterprise solutions to reduce duplication of systems
Communicate the value of information technology and promote Information Technology Department services to stakeholders	Provide current information in a variety of formats
	Communicate rate components and related value
	Communicate the results of the department's strategic initiatives
Continually improve effectiveness and efficiency	Consistently deliver services to meet customers' business needs
	Refine and improve the department's administrative processes
	Refine and improve the department's leadership practices
Provide vision and direction for information technology investments in North Dakota government	Develop, maintain, and follow short- and long-term technology plans with assistance from enterprise architecture and other agencies
Employ individuals with the knowledge, skills, and abilities to meet the department's current and future business needs	Provide a work environment that results in a high level of employee satisfaction
	Continue to support employee growth and development to support the department's business needs
	Attract and hire quality people

INFORMATION TECHNOLOGY DEPARTMENT ANNUAL REPORT

North Dakota Century Code Section 54-59-19 requires the Information Technology Department to prepare an annual report on information technology projects, services, plans, and benefits. Pursuant to that directive, the department prepared a report that includes an executive summary, information on the department's performance, and rate comparisons.

The committee learned the department tracks and monitors the cost and revenue for each service to ensure that a service is not subsidizing another service. The federal government does not allow the department to charge rates that generate revenues in excess of costs; therefore, the department monitors its cash balances and adjusts rates accordingly. The department also monitors what other entities are charging for similar services in an effort to maintain quality services at a fair price. The following is a summary of rate comparisons for the services that generate a majority of the department's total revenue and an update on the department's performance measures:

Service	North Dakota Information Technology Department Rates	South Dakota Bureau of Information Technology Rates	Montana Information Technology Services Division Rates	Wisconsin Division of Enterprise Technology Rates
Central computer central processing unit (CPU rates)	**Batch CPU** - $.93 per second	**Batch CPU** - $.95 per second	**Batch CPU** - $1.90 per second	**Batch CPU** - $.93 per second
	CICS CPU - $.93 per second	**CICS CPU** - $.95 per second	**CICS CPU** - $.55 per second	**CICS CPU** - $1.23 per second
	ADABAS CPU - $.98 per second	**ADABAS CPU** - $.95 per second	**ADABAS CPU** - $1.08 per second	**ADABAS CPU** - $1.23 per second
	TSO CPU - $.93 per second	**TSO CPU** - $.95 per second	**TSO CPU** - $2.32 per second	**TSO CPU** - $1.23 per second

Service	North Dakota Information Technology Department Rates	South Dakota Bureau of Information Technology Rates	Montana Information Technology Services Division Rates	Wisconsin Division of Enterprise Technology Rates
Network fees	**Device fee** - $29 per device per month **DSL service** - Actual cost (ranges from $40 to $120) **ATM T-1 service** - $840 per month	**Device fee** - $39 per device per month **DSL service** - N/A **ATM T-1 service** - N/A **Access fee** - $62 per device per month	**Device fee** - $72.60 per device per month **DSL service** - $250 per month **ATM T-1 service** - $650 per month	**Device fee** - $55 per device per month **DSL service** - $665 per month **ATM T-1 service** - $1,067 per month

Telephone Fees	
North Dakota Information Technology Department rates	Telephone line - $21 per device per month Speaker function - $2 per month Display function - $3 per month Voice mail (unlimited) - $3 per month
South Dakota Bureau of Information Technology rates	Telephone line - $10 per device per month Speaker function - Actual cost Display function - Actual cost Voice mail (unlimited) - $6 per month
Montana Information Technology Services Division rates	Telephone line - $20 per mile/per drop Speaker function - $7-$11 per month Display function - $10-$18 per month Voice mail (three-minute limit) - $5 per month Voice mail (six-minute limit) - $8 per month Voice mail (eight-minute limit) - $10 per month
Wisconsin Division of Enterprise Technology rates	Telephone line - N/A Speaker function - Actual cost Display function - Actual cost Voice mail (unlimited) - $6 per month

Long Distance	
North Dakota Information Technology Department rates	In state - $.05 per minute Out of state - $.05 per minute 800 service - $.07 per minute
South Dakota Bureau of Information Technology rates	In state - $.10 per minute Out of state - $.11 per minute 800 service - $.11 per minute
Montana Information Technology Services Division rates	In state - $.105 per minute Out of state - $.105 per minute 800 service - $.10 per minute
Wisconsin Division of Enterprise Technology rates	In state - $.03 per minute Out of state - $.03 per minute 800 service - $.047 per minute
Minnesota Department of Administration rates	In state - $.059 per minute Out of state - $.047 per minute 800 service - $.047 per minute
Nebraska Division of Communications rates	In state - $.07 per minute Out of state - $.07 per minute 800 service - $.07 per minute
Oklahoma Office of State Finance rates	In state - $.09 per minute Out of state - $.09 per minute 800 service - $.11 per minute

Software Development		
	Location	**Billing Rate Per Hour of Service**
Information Technology Department	Bismarck, North Dakota	$54 - $58
Applied Engineering	Bismarck, North Dakota	$75 - $100
Eide Bailly	Bismarck, North Dakota	$65 - $140
Enterprise Solutions	Bismarck, North Dakota	$75 - $140
Internet Design & Consulting	Bismarck, North Dakota	$70 - $75
Nexus Innovations	Bismarck, North Dakota	$65 - $130
Vision Technology	Bismarck, North Dakota	$70 - $75
Stratacom	Fargo, North Dakota	$75 - $125
Strategic Business Engineering	Fargo, North Dakota	$75 - $95
BPro, Inc.	Pierre, South Dakota	$55 - $85
CIBER	Vancouver, Washington	$40 - $100
Compuware	Plymouth, Minnesota	$55 - $110
Maximus	Rancho Cordova, California	$145 - $185

Performance Measures	Baseline (Previous Years)	Current Status (June 2006)	Target
Acceptable level of total net assets	2004 - 1.4 2005 - 2.0	1.4	< or = 2.0
Percentage of Information Technology Department rates reported in annual report that are competitive	2005 - 100%	100%	100%
Total number of customer projects and service requests completed:	2005		
• Service requests	22,114	29,456	Monitor
• Incidents	30,694	41,423	Monitor
Customer satisfaction indexes (percentages satisfied or very satisfied) related to:	2004 - 2005		
• Value	88.1% - 91.4%	91.7%	92%
• Timeliness	91.6% - 90.9%	92.5%	97%
• Quality	92.3% - 95.3%	93.7%	97%
• Knowledge	97.3% - 93.7%	93.1%	98%
• Professionalism and courtesy	98.1% - 96.4%	96.5%	100%
Employee satisfaction index	2004 - 1.96 2005 - 1.96	2.13	2.0
Controllable employee turnover	2004 - 3.2% 2005 - 4.5%	7.0%	Below 6.0%
Percentage of service levels met	100%	100%	100%
Percentage of strategic business plan objectives completed or on schedule	2004 - 72% 2005 - 73%	85%	75%

POLICIES, STANDARDS, AND GUIDELINES

North Dakota Century Code Section 54-59-09 requires the Information Technology Department to develop statewide information technology policies, standards, and guidelines based upon information received from state agencies and institutions. Except with respect to academic and research uses of information technology at the institutions under the control of the State Board of Higher Education, each executive branch agency and institution is required to comply with the policies and standards developed by the department. Information technology policies, standards, and guidelines must be reviewed by the State Information Technology Advisory Committee.

The department has adopted policies, standards, and guidelines in a variety of areas and continues to update and adopt new policies, standards, and guidelines as necessary. Policies, standards, and guidelines adopted include standards for information technology procurement, information technology project management, web development, antivirus, and videoconferencing.

INFORMATION TECHNOLOGY PLANS

North Dakota Century Code Section 54-59-11 requires every executive branch agency to prepare an information technology plan, subject to approval by the Information Technology Department. The plan must be submitted to the department by July 15 of each even-numbered year. The plan must be prepared based on guidelines developed by the department; must emphasize the long-term strategic information technology goals, objectives, and activities for the current biennium and next two bienniums; and must include a list of information technology assets owned, leased, or employed by the entity. The department is required to review each entity's plan for compliance with statewide information technology policies and standards, and the department may require an entity to change its plan to comply with statewide policies and standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches are required to file their information technology plans with the department by July 15 of each even-numbered year. Based on the information technology plans, the department must prepare a statewide information technology plan.

The committee received information from the department regarding information technology plans and learned 69 of the 72 state agencies, including higher education institutions, submitted their information technology plans on or before July 15, and the remaining five were received by July 31. The department will present to the 2007 Legislative Assembly a statewide information technology plan that will communicate a shared vision between state government, higher education, and kindergarten through grade 12; outline strategic initiatives; and establish goals and strategies that will serve as a basis for more detailed planning efforts. The following is a summary of the goals and objectives to be included in the plan:

Goals	Objectives
Build and support automated services to meet increasing customer expectations	Improve navigation and usability of the state portal and agency web sites
	Continue to incorporate e-government services into agency standard business processes
	Use automation to improve the efficiency of state government
Maintain business applications to minimize disruptions to service and incorporate new functionality	Plan and manage major system replacement projects to ensure system viability
	Incorporate disaster recovery and business continuity assessment and mitigation processes as standard practices
	Perform required updates to accommodate changing business needs and legislative mandates
Collect and disseminate information to ensure informed decisionmaking while maintaining the privacy and confidentiality of personal information where appropriate	Establish and expand the use of "hub and spoke" architectures where appropriate for sharing data across organizational boundaries
	Build staff competencies and deploy business intelligence tools to provide timely access to accurate information
	Identify, plan, and implement measures necessary to ensure privacy, confidentiality, and security of information and other assets
Build an affordable shared infrastructure to deliver core services to North Dakota citizens	Manage network services to state government, education, and political subdivisions to ensure availability at a reasonable cost
	Identify opportunities and implement shared solutions to reduce the total cost of ownership for state agencies and political subdivisions
	Improve the management of technology by sharing knowledge and training opportunities
	Leverage the state's investment in PeopleSoft financial and human resource software by upgrading to new functionality and expanding its usage

MAJOR INFORMATION TECHNOLOGY PROJECTS

The committee is authorized to review any information technology project or information technology plan. If the committee determines that a project or plan is at risk of failing to achieve its intended results, the committee may recommend to the Office of Management and Budget the suspension of the expenditure of money appropriated for the project or plan. In addition, the committee is directed to review the cost-benefit analysis of any major information technology project, which is defined in statute to be an executive or judicial branch project with a cost of $250,000 or more in one biennium or a total cost of $500,000 or more or a higher education project that impacts the statewide wide area network, impacts the statewide library system, or is an administrative project.

Project Management Lifecycle Processes

The committee learned the project management lifecycle for major information technology projects consists of five processes--project origination, project initiation, project planning, project execution and control, and project closeout. The following is a summary of the project management lifecycle processes and executive and legislative branch activities relating to planning and executing major information technology projects:

Project Management Lifecycle Processes	Executive and Legislative Branch Activities
Project origination - Evaluate projects proposed for the next planning cycle and reach a consensus on the projects to be selected	1. Agencies identify projects to create a product or develop a service that can solve a problem or address a need within the agency. 2. Agencies develop a project proposal, including a business case and proposed solution, for each proposed project. The business case should include information on project description, project objectives, business need or problem, proposed solution, consistency and fit with the organization's mission, cost-benefit analysis, and project risks. 3. Agencies prioritize information technology projects and submit their information technology budgets into the budget analysis and reporting system (BARS). In most cases, the budget for a project is the initial cost estimate. The most accurate project budget is not available until the completion of the project planning process. 4. The State Information Technology Advisory Committee, a committee created by NDCC Section 54-59-07, reviews information regarding proposed major information technology projects for executive branch agencies, excluding institutions under the control of the State Board of Higher Education and the judicial and legislative branches, and ranks those projects that receive the committee's affirmative recommendation. The following is a summary of the steps involved in the prioritization: a. The Information Technology Department sorts proposed information technology projects into the following three categories: (1) Projects over $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs. (2) Projects over $250,000 requesting funds from non-general fund sources for the investment or the ongoing maintenance costs. (3) Projects under $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs. b. State agencies self-score projects over $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs based on return on investment, customer service benefits, internal efficiency benefits, operational necessity, and project risk. c. The Information Technology Department presents a preliminary report, including information regarding agencies' self-scoring, on projects over $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs to the State Information Technology Advisory Committee. The department also presents listings of projects over $250,000 requesting funds from non-general fund sources for the investment or the ongoing maintenance costs and projects under $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs to the committee. d. The State Information Technology Advisory Committee prioritizes projects over $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs. e. The Information Technology Department forwards the prioritization to the Information Technology Committee and to the Office of Management and Budget for consideration in the development of the Governor's budget recommendation. 5. The Governor selects projects to be funded in the executive budget recommendation. 6. The Information Technology Department revises the prioritization to reflect those projects that are funded in the Governor's budget recommendation and presents the prioritization to the Appropriations Committees of the Legislative Assembly. The department also presents the listings of projects over $250,000 requesting funds from non-general fund sources for the investment or the ongoing maintenance costs and projects under $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs to the Appropriations Committees of the Legislative Assembly. 7. The Legislative Assembly selects projects to be funded in the legislatively approved budget. 8. Agencies refine the business cases as appropriate for those projects funded in the legislatively approved budget. 9. Agencies submit a copy of the final business case for a project to the Information Technology Department. Upon acceptance of the business case by the Information Technology Department, the department submits a copy of the business case to the Legislative Council office.
Project initiation - Define the overall parameters of a project and establish the appropriate project management and quality environment required to complete the project	10. Agencies initiate the project by identifying the project sponsor, project manager, and project team; developing a project charter; and conducting a project kickoff meeting. A project charter is developed and executed to initiate a project and to secure commitment for the resources, including human, financial, and equipment, necessary for the project. A project charter should include information on project background, project scope, measurable project objectives, required resources, constraints, assumptions, and project authority. 11. Agencies submit a copy of the project charter to the Information Technology Department prior to any project expenditures or signing of vendor contracts.

Project Management Lifecycle Processes	Executive and Legislative Branch Activities
Project planning - Define the exact parameters of a project and ensure that all the prerequisites for the project execution and control are in place	12. Agencies complete planning for a project by completing and approving a project plan. A project plan should identify specific milestones throughout the project and their associated cost, schedule, and deliverables. At this time, agencies complete the budget for the project. This project budget is considered to be the baseline budget for all cost comparisons. 13. Agencies submit a copy of the project plan to the Information Technology Department after the plan has been approved by the project sponsor. 14. Agencies present a project startup report to the Information Technology Committee. A project startup report summarizes information from the business case, project charter, and project plan, including project description, project objectives, business need or problem, cost-benefit analysis, and project risks.
Project execution and control - Develop the project or service that the project was commissioned to deliver	15. Agencies launch the project. The assigned project manager is to manage every aspect of the project to ensure that all the work is being performed correctly and on time. 16. Agencies submit a project status report to the Information Technology Department on a quarterly basis or when a project milestone exceeds 20 percent of planned cost or schedule. The status report includes an executive summary and information on budget, schedule, issues, risks, project accomplishments, and upcoming activities. 17. Each calendar quarter, the Information Technology Department prepares a large project summary report that summarizes the performance of large information technology projects and submits the report to the Information Technology Committee. 18. Agencies formally acknowledge that all deliverables produced during project execution and control have been completed, tested, accepted, and approved by the project sponsor.
Project closeout - Assess the project and derive any lessons learned and best practices to be applied to future projects	19. Agencies complete a postimplementation review for the project in order to assess the success of the project and to capture historical information. The postimplementation review should include information on the measurement and attainment of project objectives, project budget and schedule variances, and lessons learned. 20. Agencies notify the State Information Technology Advisory Committee if the actual cost for the project exceeded the original budget by 20 percent or more or if the final project completion date extended beyond the original project scheduled completion date by 20 percent or more. 21. Agencies submit a copy of the postimplementation review to the Information Technology Department. Upon acceptance of the review by the Information Technology Department, the department submits a copy of the review to the Legislative Council office. 22. Agencies present a project closeout report to the Information Technology Committee. A project closeout report summarizes information from the postimplementation review, including the project objectives achieved, project budget and schedule variances, and lessons learned.

Information Technology Project Budgeting

The committee received information from the Information Technology Department regarding information technology project budgeting. The committee learned there are distinct differences between the appropriation process and the project reporting process that prevent information technology project budgets from being considered the same in the two processes. During the appropriation process, agencies request spending authority for costs associated with the implementation of a project, and the past practice has been to also report the requested appropriation as the entire project budget. However, a fully developed project budget may encompass much more.

The committee learned the Enterprise Project Management Advisory Group provided the following recommendations relating to information technology project budgeting:

1. Between October 15, 2006, and December 31, 2006, the Enterprise Project Management Advisory Group develop guidelines that will allow agencies to establish percentage-based estimates of reallocated direct costs associated with information technology projects. Agencies be prepared to testify on these estimates as a portion of the total cost of information technology projects during the legislative session.
2. For projects approved by the 2007 Legislative Assembly include reallocated direct costs in the planning phase and in the final budget submission for the projects. Specific direct costs to be included will be provided in guidance to be published by July 1, 2007.
3. During the 2007-08 interim, the Enterprise Project Management Advisory Group establish guidance, provide training, and implement potential toolsets to enable information technology projects requested for the 2009-11 biennium to include all costs associated with the projects from the budget request process through the project tracking and reporting process.

Review of Major Information Technology Projects

The committee received and reviewed quarterly reports of major information technology projects compiled by the Information Technology Department, project startup and project closeout reports relating to major information technology projects, and other information regarding specific information technology projects. The following is a summary of the project startup and project closeout reports received by the committee:

Project Startup Reports				
Agency	**Project Name**	**Project Description**	**Estimated Cost**	**Estimated Completion Date**
Job Service North Dakota	Project Herakles	Procurement planning phase of the agency's unemployment insurance system modernization project	$813,366	June 2007
Information Technology Department	Second data center	Establishment of a second data center in Mandan to be used as a "hotsite" computer center for disaster recovery	$1,100,303	February 2006
Information Technology Department	Network traffic analysis system project	Implementation of the Compuware suite of tools to allow the department to have the ability to provide a detailed view of who, what, when, and how much traffic is consuming a particular network resource and to allow the department to troubleshoot network issues in a proactive manner	$400,000	August 2005
Information Technology Department	Criminal justice information sharing hub project - Phase 2	Transfer of the criminal justice information sharing hub proof of concept to production	$500,000	April 2005
Department of Corrections and Rehabilitation	Offender management system upgrade	Replacement of obsolete system hardware and software and migration of existing production data to the updated system hardware and software	$411,650	March 2006
Information Technology Department	Criminal justice information sharing state's attorney records management system	Deployment of a statewide case management system to support and automate state's attorney operations	$500,000	August 2006
Secretary of State	Election administration system	Completion of the agency's election improvement program by tying together the uniform election system and the election management system under the umbrella of the PowerProfile EE	$1,523,574	August 2007
Department of Public Instruction	State automated reporting system	Conversion of the current online reporting system to implement new technology	$300,300	June 2007
Department of Transportation	Priority system rewrite project	Integration of the planning improvement program and the statewide transportation program processes into one system	$255,525	June 2007
Secretary of State	Knowledge base project	Acquisition and implementation of a new software application to replace existing technology systems for the agency's central indexing system functions	$532,844	October 2007
Department of Human Services	National provider identifier project	Modification of the Medicaid management information system and other systems to accept and process claims with national provider identifier numbers	$446,576	September 2007
Department of Human Services	Temporary assistance for needy families diversion project	Integration of the diversion assistance program into the existing temporary assistance for needy families program in the vision system	$246,988	October 2006
Public Employees Retirement System	Legacy application system replacement project	Replacement of the agency's legacy application system	$9,563,000	July 2010
Job Service North Dakota	Case management system project	Replacement of the agency's existing customized case management system with a commercial off-the-shelf case management system	$675,000	December 2006
Workforce Safety and Insurance	Learning management system project	Implementation of a comprehensive learning management system to deliver training to North Dakota employers and employees	$400,000	January 2007
Workforce Safety and Insurance	Information technology transformation program system replacement project - Phase 1	Planning phase for the replacement of the agency's existing core business applications with a commercial off-the-shelf, seamless, integrated software solution	$341,000	June 2007

Project Closeout Reports				
Agency	**Project Name**	**Project Description**	**Actual Cost**	**Actual Completion Date**
Information Technology Department	Network traffic analysis system project	Implementation of the Compuware suite of tools to allow the department to have the ability to provide a detailed view of who, what, when, and how much traffic is consuming a particular network resource and to allow the department to troubleshoot network issues in a proactive manner	Actual expenditures of $400,788, compared to the budget of $400,000	Completed in September 2005, approximately two weeks later than the scheduled completion date of August 2005
Information Technology Department	Criminal justice information sharing hub project - Phase 2	Transfer of the criminal justice information sharing hub proof of concept to production	Actual expenditures of $320,962, compared to the budget of $500,000	Completed within the scheduled completion date of April 2005
Office of Management and Budget	Continuity of operations planning system	Implementation of an integrated software application to enable state agencies to develop comprehensive continuity of operations plans	Actual expenditures of approximately $470,675, compared to the budget of $470,688	Completed in June 2005, approximately nine months later than the scheduled completion date of September 2004
Workforce Safety and Insurance	Enterprise application development and training project	Implementation of Compuware products for enterprise application development	Actual expenditures of $538,195, compared to the budget of $508,885	Completed within the scheduled completion date of July 2005
Job Service North Dakota	Unemployment insurance Internet applications	Development of self-service applications for unemployment insurance claimant and employer customers	Actual expenditures of $969,526, compared to the budget of $1,065,881	Completed in May 2005, approximately four months later than the scheduled completion date of January 2005
Department of Transportation	Construction automated records system - Phase 2	Creation of a solution for providing the department's construction users with hand-held technology for the maintenance of construction data	Actual expenditures of $66,430, compared to the budget of $72,000	Completed within the scheduled completion date of April 2005
Department of Transportation	Electronic document management system - Phase 2	Establishment of an electronic document management system that allows files to be electronically stored, indexed, and retrieved	Actual expenditures of $923,972, compared to the budget of $1,079,000	Completed within the scheduled completion date of June 2005
North Dakota University System	Facilities management system	Replacement of old ancillary system with an updated system with additional functionality	Actual expenditures of $1,466,521, compared to the budget of $1,274,531	Completed within the scheduled completion date of July 2005
North Dakota University System	Housing management system	Replacement of old ancillary system with an updated system with additional functionality	Actual expenditures of $558,560, compared to the budget of $696,296	Completed within the scheduled completion date of June 2005
North Dakota University System	Parking management system	Replacement of old ancillary system with an updated system with additional functionality	Actual expenditures of $322,094, compared to the budget of $420,886	Completed within the scheduled completion date of June 2005
Department of Corrections and Rehabilitation	Offender management system upgrade	Replacement of obsolete system hardware and software and migration of existing production data to the updated system hardware and software	Actual expenditures of $369,134, compared to the budget of $411,650	Completed in January 2006, approximately three months earlier than the scheduled completion date of March 2006

Agency	Project Name	Project Description	Actual Cost	Actual Completion Date
Retirement and Investment Office	Teachers' Fund for Retirement pension system replacement	Replacement of the mainframe-based pension system administration system	Actual expenditures of $1,932,362, compared to the budget of $2,000,000	Completed in January 2006, approximately four months later than the scheduled completion date of September 2005
Department of Transportation	Commercial vehicle information systems and networks	A number of systems and interfaces to allow motor carriers to electronically file information, such as international fuel tax and international registration plan renewals and quarterly reports	Actual expenditures of $1,249,834, compared to the budget of $1,367,249	Completed in February 2006, approximately three months later than the scheduled completion date of November 2005
Job Service North Dakota	Project Herakles	Procurement planning phase of the agency's unemployment insurance system modernization project	Actual expenditures of $347,311, compared to the budget of $813,366	Completed in June 2006, approximately one year earlier than the scheduled completion date of June 2007
Bank of North Dakota	Core banking	Conversion of the existing core banking and related systems to a new integrated solution	Actual expenditures of $3,173,751, compared to the budget of $3,500,000	Completed in November 2005, approximately two months later than anticipated

Enterprise Resource Planning System Initiative - ConnectND System

The committee received periodic reports from the Office of Management and Budget and the North Dakota University System regarding the status of the implementation of the enterprise resource planning system initiative, known as the ConnectND system. The committee learned the 2001 Legislative Assembly appropriated funding of $7.5 million from the general fund for the first phase of the implementation of the ConnectND system. The 2003 Legislative Assembly appropriated $20 million of bond proceeds for the remainder of the implementation costs for the ConnectND system. As a result, the Office of Management and Budget issued bonds totaling $20 million for the ConnectND system at an interest rate of 3.9 percent for a period of 10 years with annual debt services of approximately $2.7 million. The estimated debt service amounts are:

Biennium	State Portion	Higher Education Portion	Total
2005-07	$1,563,727	$3,828,436	$5,392,163
2007-09	$1,565,152	$3,831,923	$5,397,075
2009-11	$1,564,822	$3,831,116	$5,395,938
2011-13	$1,565,033	$3,831,633	$5,396,666
2013-15	$778,257	$1,905,387	$2,683,644

The committee learned the state portion of the debt service is recovered through monthly charges to state agencies based on full-time equivalent (FTE) positions and per $1 million appropriated. The higher education portion of the debt service is recovered through various funding sources, including student fees, internal reallocation, and reallocation of technology fees. The following is a summary of the student fee for the ConnectND system as approved by the State Board of Higher Education:

School Year	Student Fee
2002-03	$42
2003-04	$36
2004-05	$63
2005-06	$81
2006-07	$81

The committee learned the ConnectND system was considered to be implemented on June 30, 2005. The following is a summary of the budgeted and actual costs associated with the implementation of the system through June 2005:

	State Government	Higher Education	Total
Direct costs[1] - Budgeted	$14,575,010	$20,531,648	$35,106,658
Direct costs[1] - Actual	14,861,947	24,702,015	39,563,962
Direct costs[1] - Over (under) budget	$286,937	$4,170,367	$4,457,304
Reallocated costs[2] - Actual	$2,748,116	$6,908,378	$9,656,494
Total costs - Budgeted	$14,575,010	$20,531,648	$35,106,658
Total costs - Actual	17,610,063	31,610,393	49,220,456
Total costs - Over (under) budget	$3,035,053	$11,078,745	$14,113,798

[1]Direct costs are costs that are directly attributed to the project and paid from the project funds.

[2]Reallocated costs are expenses that are directly attributed to the project and paid from other sources. For state government, the reallocated costs were expenses associated with software developers from the Information Technology Department. For higher education, the reallocated costs were salaries and wages for staff members of the Higher Education Computer Network who were supporting both the legacy system and implementing the new system. Those staff members' salaries have been historically appropriated as part of the North Dakota University System common information services pool.

State government - The committee learned the difference between the budgeted and actual costs for implementing the ConnectND system for state government was:

PeopleSoft software	$2,364
Contract amendments	948,706
Equipment and hosting	(140,511)
Staffing and training - Direct costs	(523,622)
Staffing - Reallocated costs	2,748,116
Total	$3,035,053

The committee learned the increase in contract amendments of $948,706 was due primarily to the following three amendments to the contract with Maximus for the implementation of the system:

Description	Cost
Amendment 1 - Hosting services for the system while in the development phase and assistance in creating a hosting environment. The cost of the amendment was paid for from the $7.5 million general fund appropriation provided by the 2001 Legislative Assembly for the ConnectND system initiative.	$325,628
Amendment 3 - Customizations relating to a monthly payroll with no lag. The software had a semimonthly payroll with a timelag. The cost of the amendment was paid for by the Office of Management and Budget.	450,000
Amendment 8 - Extension of the go-live date by one month from September 2004 to October 2004. The cost of the amendment was paid for by the Office of Management and Budget.	90,000
Total	$865,628

Higher education - The committee learned the difference between the budgeted and actual costs for implementing the ConnectND system for higher education was:

PeopleSoft software	$1,299
Contract amendments	2,888,927
Equipment and hosting	166,004
Bond costs	(1,483)
Ancillary software systems	460,934
Staffing and training - Direct costs	654,686
Staffing - Reallocated costs	6,908,378
Total	$11,078,745

The committee learned the increase in the area of contract amendments of $2,888,927 was due primarily to the following five amendments to the contract with Maximus for the implementation of the system:

Description	Cost
Amendment 5 - Postproduction support for higher education institutions that were "live" with the financials and human resource components of the system	$382,800
Amendment 6 - Additional assistance with the student administration component of the system	644,800
Amendment 7 - Extension of assistance for all components of the system due to the delay of the go-live date at four higher education institutions	655,850
Amendment 12 - Postproduction functional services for various aspects of the system	767,520
Amendment 13 - Additional postproduction support	290,700
Total	$2,741,670

The committee learned the North Dakota University System hired Ms. Bonnie Neas as the interim deputy chief information officer and executive director for ConnectND and Mr. Randall Thursby as the interim chief information officer. The two of them are working to address several critical business function issues associated with the ConnectND system.

The committee learned the North Dakota University System is requesting $4,120,000 of additional funding from the general fund and 11.5 new FTE positions for support of the ConnectND system for the 2007-09 biennium. Of the 11.5 new FTE positions, 4 are functional business analyst FTE positions, 3.5 are technical support FTE positions for the student administration data center, and 4 are programmer/analyst FTE positions. The following is a summary of the additional funding requested:

Permanent base funding to sustain the one-time funds allocated by the State Board of Higher Education during the 2005-07 biennium from the State Board of Higher Education initiative fund	$1,500,000
Base funding to eliminate the need to transfer $920,000 per biennium from student technology fee revenues that were previously committed to repayment of networking bonds	920,000
Funding to stabilize critical business functions, assist with costs associated with future upgrades and enhancements, and provide a contingency for unforeseen needs	1,700,000
Total	$4,120,000

Information Technology Department - Mainframe Migration Project

The committee learned the 2005 Legislative Assembly provided the Information Technology Department a $6 million special funds appropriation for software acquisition costs and consulting services for the mainframe migration project. The department signed a contract with Software AG, Inc., to complete the migration of information technology systems from the mainframe environment to a Linux platform. The department borrowed $6 million from the Bank of America at the interest rate of 3.57 percent for the project. The estimated total cost of the project is approximately $8,270,000.

The committee learned all systems currently operating on the mainframe will be migrated, except for three systems--Department of Human Services Medicaid management information system, Bank of North Dakota student loan system, and Legislative Assembly LAWS system--for which migration is not feasible, and the migration will provide no changes to the functionality of the systems. The project originally was to be completed by June 30, 2007; however, because of staffing resources being overcommitted, the project completion date has been revised to July 2008. The loan from the Bank of America for the project originally was to be paid off in December 2010, but due to the delay in the project the loan will not be paid off until December 2011. The following is a summary of the revised project approach:

Phase 1 November 2005- September 2006	Attorney General Bank of North Dakota Insurance Department Office of Management and Budget State Department of Health Information Technology Department (part 1) Workforce Safety and Insurance
Phase 2 August 2006- June 2007	Game and Fish Department State Treasurer's office Public Employees Retirement System Job Service North Dakota Information Technology Department (part 2) Department of Human Services (stand-alone applications)
Phase 3 March 2007- January 2008	Department of Transportation Highway Patrol Department of Emergency Services - Division of State Radio North Dakota University System Department of Public Instruction
Phase 4 December 2007- May 2008	Department of Human Services Secretary of State

Department of Human Services - Medicaid Management Information System Rewrite Project

The committee learned the 2005 Legislative Assembly provided the Department of Human Services a $29.2 million appropriation to design, develop, and implement a new Medicaid management information system, pharmacy point-of-sale system, and decision support system. Of the $29.2 million, $3.7 million was state matching funds from the permanent oil tax trust fund. The department released a request for proposal for the project on June 1, 2005, and proposals were due September 1, 2005. The department received one proposal for the Medicaid management information system from Affiliated Computer Services, Inc., (ACS) Government Healthcare Solutions, three proposals for the pharmacy point-of-sale system, and two proposals for the decision support system.

The committee learned the department completed contract negotiations with ACS Government Healthcare Solutions for the Medicaid management information system and the pharmacy point-of-sale system and with Thomson Medstat for the decision support system and the total estimated cost for the project is $56.8 million, of which $5.7 million would be state matching funds. Affiliated Computer Services, Inc., and Thomson Medstat have agreed to hold their prices firm until the 2007 Legislative Assembly considers legislation that addresses the costs for the remainder of the project as long as the department moves forward with the initial design phase of the project. The department signed a contract with ACS identifying two phases. The first phase includes a detailed system design that is estimated to cost no more than $8 million and is reusable, and the second phase includes the balance of the design, development, and implementation.

The committee learned the department, pursuant to a request by the Budget Section, will provide information to the 2007 Legislative Assembly on the cost-benefit analysis of options for completing the project, including acceptance of the current ACS bid, rebidding of the project, joint development with another state, use of a fiscal agent, and outsourcing the billing and payment components.

Elementary and Secondary Education - Data Warehouse Project

The committee learned the Department of Public Instruction entered into a contract with TetraData Corporation in October 2002 to develop and implement a statewide data analysis clearinghouse for all public schools and school districts within the state. Thirteen data warehouses were established to accommodate the state's largest school districts and their unique data needs, a single warehouse was established for the larger number of smaller school districts and their more uniform needs, and a single warehouse was established for the state in the aggregate.

The committee learned the department spent approximately $2.4 million of federal Elementary and Secondary Education Act Title VI funding on the TetraData system and was in the process of negotiating a three-year contract extension with the TetraData Corporation at a cost of approximately $1.6 million. The overall usage of the TetraData system was low, and Minot, Bismarck, Grand Forks, and Fargo School Districts informed the committee they needed a product that meets their needs better than the TetraData system. Therefore, the committee recommended to the Office of Management and Budget the suspension of the expenditure of money for the Department of Public Instruction TetraData system in December 2005 unless the department provided the committee a plan for proceeding with the system with cooperation from school districts.

As a result of the committee's recommendation and the discussions of the Minot, Bismarck, Grand Forks, and Fargo School Districts, the Department of Public Instruction decided to discontinue any further implementation of the statewide data warehouse and to terminate its contract with TetraData Corporation effective December 31, 2005.

Pursuant to NDCC Section 54-35-15.4, the committee requested the State Auditor conduct an information technology compliance review of the Department of Public Instruction TetraData system, including review of the participation of students, school districts, and the department in selection of the vendor, utilization of the system, and allowable use of the remaining federal funds intended for the project.

To complete the review, the State Auditor met with the Department of Public Instruction, requested school districts complete a survey, and reviewed project documentation maintained by the Information Technology Department. The State Auditor determined the Department of Public Instruction did not perform the necessary project management for the TetraData system, and the State Auditor identified the following lessons learned relating to the project:

- The project manager should have formal project management training.
- Potential vendors should not help develop the request for proposal.

- The business case should be developed before the request for proposal is issued.
- End users should be involved in project planning.
- The Information Technology Department should be more proactive in bringing potential problems with projects to the attention of the Information Technology Committee.

In response to the State Auditor's information technology compliance review, the Department of Public Instruction indicated that the business case and the request for proposal for the TetraData system were developed with assistance from the Information Technology Department and met all the requirements of the procurement process that existed at that time. The request for proposal was released with the concurrence of the Attorney General's office and the Information Technology Department. The department followed the specifications for the evaluation process and documented the proceedings. The department was always in control of the project's management, and the Information Technology Department never approached the department with concerns about the department's active management of the project.

The committee learned the Fargo, Bismarck, Grand Forks, and Minot School Districts began a process in early September 2005 to identify data warehousing systems that would meet their needs. The four school districts asked the Educational Technology Council to take the lead on a request for proposal process to identify a single data warehousing system that could be purchased by all the state's school districts. The request for proposal was issued on February 3, 2006, and four finalists were selected. The four finalists provided product demonstrations in May 2006, and Sagebrush was selected as the top-rated product. A notice of intent to award was issued, and contract negotiations with Sagebrush were completed. The estimated costs for implementing the Sagebrush data warehousing system include:

- $75,000 of one-time startup costs to set up the North Dakota data model, purchase licenses for software, and fund project management and initial training.
- $5.50 per student year one costs to set up warehouse and support school implementation.
- $1 per student per year costs for hosting fees.

The committee learned the Educational Technology Council is seeking funding options for the first-year startup costs so the cost would not have to be borne solely by the schools that choose to implement the system that year. The status of the school districts involved in the initiative is:

Implementation in the summer of 2006 for the 2006-07 school year	Bismarck Grand Forks North Central Education Cooperative (pilot in three to four schools) Jamestown West Fargo Minot (tentative)
Implementation in 2006-07 for the 2007-08 school year	Fargo Devils Lake (tentative)
Other schools that have expressed interest	Williston Missouri River Education Cooperative

Tax Department - Integrated Tax System

The committee learned the 2005 Legislative Assembly authorized the Tax Commissioner to purchase, finance the purchase, or lease equipment, software, and services to establish an integrated tax processing system. The principal amount of any financing agreement entered into by the Tax Commissioner may not exceed $14 million. The repayment of any financing agreement entered into by the Tax Commissioner is to begin during the 2007-09 biennium and repayment amounts, including principal and interest, are to be incorporated in the Tax Commissioner's biennial budget requests to the Legislative Assembly.

The committee learned the Tax Department decided to implement a commercial off-the-shelf integrated tax system named GenTax developed by FAST Enterprises and arranged for financing for the project through Bank of America. The interest rate for the financing arrangement is 3.17 percent and total interest to be paid under the arrangement is $2,070,104. The implementation of the integrated tax system, which has been named Tax Revenue Excellence of North Dakota (TREND) was on schedule and was approximately $919,000 under budget as of July 31, 2006. The Tax Department completed the first phase of the project, including the processing of sales and use tax, city sales tax, gross receipts tax, city lodging tax, city restaurant and lodging tax, and North Dakota hotel and motel tax, in January 2006 and completed the second phase of the project, including the processing of estate taxes, motor fuel taxes, and withholding taxes, in June 2006. The remaining phases of the project include:

Phase 3 - January 8, 2007	Individual income tax Fiduciary income tax Partnerships Small business
Phase 4 - June 4, 2007	Corporate income tax Airlines tax Telecommunications tax

Workforce Safety and Insurance - Information Technology Transformation Program System Replacement Project

The committee learned Workforce Safety and Insurance hired The Gartner Group in April 2005 to evaluate the agency's information technology platforms due to operational issues with the agency's core computer systems. The Gartner Group concluded that the agency's core technology systems are degrading and the agency should replace the core business applications as soon as possible. As a result, the agency has initiated an information technology transformation program system replacement project that includes the replacement of existing core business applications with a commercial off-the-shelf software solution.

The committee learned the agency is in the process of completing Phase 1 of the project, which includes surveying potential commercial off-the-shelf solutions, gathering system requirements, executing a request for proposal, cleaning data, establishing new in-house

technology-related procedures, and reorganizing the agency Information Technology Division. Funding for Phase 2 of the project, which is the implementation of the new software solution, must be approved by the 2007 Legislative Assembly. The estimated cost for Phase 2 is $8 million to $14 million.

Legislative Assembly - Legislative Applications Replacement System Project

The committee learned there is a need to replace the computer applications used by the legislative branch. Although no funds were appropriated for the replacement of legislative applications for the 2005-07 biennium, Senate Bill No. 2001 provided that any unexpended funds from legislative branch appropriations for the 2003-05 biennium could be used to assist in the cost of the legislative applications replacement project. As a result, approximately $1.5 million is available for this purpose. The Legislative Management Committee approved a proposal by Arbortext, which is now owned by PTC Global Services, for Phase 1 of the project, to provide a budget, a cost-benefit analysis, and an implementation plan for consideration by the 2007 Legislative Assembly. The Legislative Management Committee met on October 3, 2006, and the PTC consultants provided a budget of $4,648,224 for Phase 2 of the project, with an initial amount of $737,397 to begin Phase 2 of the project during the last nine months of the 2005-07 biennium. The net amount of $3.9 million will be required in the 2007-09 biennium for project completion.

INFORMATION TECHNOLOGY DEPARTMENT COORDINATION OF SERVICES

North Dakota Century Code Section 54-59-12 provides for the review and coordination of information technology between the Information Technology Department, higher education, and political subdivisions. Pursuant to that directive, the committee received information from representatives of elementary and secondary education, higher education, and political subdivisions regarding information technology activities.

Elementary and Secondary Education Information Technology Initiatives

The committee learned the Educational Technology Council is a council created by NDCC Section 54-59-17 for coordinating education technology initiatives for elementary and secondary education. The council provides governance for EduTech and the Division of Independent Study. The council's initiatives include:

- Video grants - Video grants were made available to 5 to 10 public high schools without video classrooms. The grants required a 60 percent local match and were awarded in January 2006.
- Classroom transformation grants - Classroom transformation grants were made available to schools as startup grants for new and expanded uses of technology in the classroom. The grants required a 50 percent local match and were awarded competitively in June 2006.
- Atomic learning - The council is implementing an atomic learning project which will enable students, educators, and parents to complete online professional development. For the first year of the project, 50 percent of the state's students, educators, and parents will have access to the project with a goal of 2,500 views per week. For the second year of the project, all of the state's students, educators, and parents will have access to the project.
- Statewide e-rate reimbursement application - The council submitted its 2006-07 statewide e-rate reimbursement application to the Universal Service Administrative Company and the Schools and Libraries Division.
- State educational technology plan - The council revised the state educational technology plan for the 2006-09 time period.

The committee learned the Educational Technology Council base budget and optional budget requests for the 2007-09 biennium are:

Base budget request	
Salaries and wages	$269,718
Operating expenses	267,879
Grants to schools	349,000
Total base budget request	$886,597
Optional budget request - United streaming video statewide licenses	$610,000

The committee learned EduTech provides information technology services and education technology professional development to North Dakota educators and students. EduTech's initiatives include:

- Technology solutions that work - EduTech purchased a one-year license to access a data base of research analysis on reading and mathematics technology applications and interventions for school districts.
- INSTEP - EduTech completed a pilot phase of an instructional technology partnership program to prepare teachers to integrate technology in the curriculum.
- Internet filtering - EduTech requested an evaluation of enterprise reporter, a hardware device that works with Internet filtering servers, to produce reports on Internet usage by school computers.

The committee learned the Division of Independent Study was established in 1935 by the Legislative Assembly to provide distance education courses for students in kindergarten through grade 12 and adults. Mr. Jon Skaare has been named the director of the Division of Independent Study. The division's 2005-06 enrollments and budget were consistent with projections and with the division's 2010 self-sufficiency plan. The division recently completed a North Dakota studies project and a North Dakota civics education project.

Higher Education Information Technology Initiatives

The committee learned the North Dakota University System completed several major information technology projects during the past three years, including a facilities management system, a parking management system, a housing management system, and an On-line Dakota Information Network software project. The North Dakota University System looks to:

- Leverage knowledge of project management by working on new smaller projects.
- Continue involvement with the Information Technology Department in the enterprise architecture process by casting a new future for collaboration of services, including the videoconferencing and audioconferencing solutions provided by the Interactive Video Network.
- Work with the chief information officers at higher education institutions to review and improve other areas of information technology infrastructure.
- Pursue the next generation of networking for the Northern Tier states.
- Expand work on multistate software licensing arrangements through the Midwestern Higher Education Compact.

The committee learned the North Dakota University System has included additional funding of $3,557,200 from the general fund in its budget request for the 2007-09 biennium relating to higher education information technology initiatives, excluding funding for the ConnectND system. The following is a summary of the information technology initiative funding:

Common information services pool - Parity costs	$2,096,200
Wide area network growth	250,000
Standards-based interface to the ConnectND system	161,000
Northern Tier Network annual maintenance	900,000
On-line Dakota Information Network web programmer	150,000
Total	$3,557,200

The committee learned the State Board of Higher Education also identified the following requests for one-time information technology funding for the North Dakota University System for the 2007-09 biennium:

Common collaborative suite - Phase 1	$1,000,000
Campuses network upgrade	2,000,000
Northern Tier Network	2,000,000
Total	$5,000,000

Political Subdivisions

The committee learned the North Dakota League of Cities has been working with the Information Technology Department in the development of records retention schedules for all departments of city government, and the North Dakota League of Cities has had discussions with the Information Technology Department to explore the possibilities that may exist for joint projects in the area of geographic information systems.

STATUS OF THE RECOMMENDATIONS FROM PREVIOUS INFORMATION TECHNOLOGY STUDIES

Background

The Information Technology Committee during the 2003-04 interim was assigned the information technology organizational and information technology management studies as provided for in Section 13 of House Bill No. 1505 (2003).

The information technology organizational study was to include a review and identification of:

1. The cost and benefits of a centralized and decentralized information technology structure.
2. The cost of providing electronic mail administration, file and print server administration, seat management and desktop personal computer support, mainframe and distributed computing hosting services, consolidated storage management and disaster recovery, and software development.
3. The roles and responsibilities of agency personnel providing information technology services under a centralized and decentralized information technology structure.
4. The employee positions and competencies needed by the Information Technology Department to provide the information technology services on a centralized basis, including the organizational changes required within the department to provide the centralized services.
5. The human resource management issues, including change management, training, and employee compensation, to be addressed for a successful centralization.
6. The adequacy and quality of the services as currently provided and proper performance measures.
7. The comparison of current costs to industry and other states' data.
8. Information technology services appropriate to be performed by individual agencies.
9. A plan to either centralize or decentralize the services identified, including the reorganization tasks, personnel transfers, and the changes required for information technology budgeting and cost allocation processes.

The information technology management study was to include a review of:

1. The technology management processes of other states and private industry with respect to prioritizing state agency information technology budget requests, establishing information technology standards and policies, and overseeing information technology expenditures.
2. The role of other states in providing information technology services to nonstate government entities.
3. The level of information technology outsourcing in other state governments and the private

sector and the applicability to the state of North Dakota.

4. The trends that will impact technology deployment and spending in the next 5 to 10 years.
5. The level of coordination in the management of enterprise initiatives, such as the statewide information technology network, the enterprise resource planning system initiative, the geographic information system initiative, and the criminal justice information sharing initiative, compared to other states, including a recommendation regarding the appropriate governance structure to provide the maximum benefits to the state.
6. The potential changes to the organizational structure of the Information Technology Department and other state government entities as related to information technology.

The committee selected and contracted with Pacific Technologies, Inc., a consulting company based in Bellevue, Washington, to conduct the information technology studies. Pacific Technologies, Inc., made the following major recommendations and corresponding primary benefits:

Major Recommendations	Primary Benefits
Workstation support and help desk services consolidation - Consolidate all workstation support and help desk services within the Information Technology Department, including: • Initial problem reporting and resolution • Workstation environment maintenance and support • Adds, moves, and changes • Hardware replacement management • Associated performance measurement and management	Positions the state's information technology environment for the long term Allows state agencies to focus on core business needs rather than technical infrastructure Leads to long-term labor cost-savings
Workstation standardization - Move to a highly standardized workstation environment on a statewide basis with the Information Technology Department managing a workstation replacement program	Improves the state's purchasing power and license management Enhances information sharing and staff productivity through common and current workstation tools Promotes the provisioning of basic information technology services as a "utility"
Server consolidation - Continue to consolidate all agency-managed servers into the Information Technology Department	Allows state agencies to focus on core business needs rather than technical infrastructure Promotes the provisioning of basic information technology services as a "utility" Leads to long-term labor and hardware cost-savings
Information technology governance - Improve the existing information technology governance processes by: • Improving the processes and tools for information technology project evaluation • Improving mechanisms to support cost-containment • Developing meaningful statewide management and reporting views of information technology initiatives • Implementing information technology performance measures • Establishing an information technology innovation fund	Leads to better-informed decisionmaking Provides a more equitable, business-based, and consistent evaluation of information technology initiatives Provides the best opportunity to manage application portfolio costs

Workstation support and help desk services consolidation - Pacific Technologies, Inc., recommended the Information Technology Department target a future staffing ratio of 200 workstations per support FTE position, an increase from the current ratio of 149 workstations per support FTE position. Maintaining service quality at the elevated support ratio depends on gaining efficiencies through the use of specialized staff and successful implementation of a standardized workstation environment and associated support tools. If fully implemented, the consolidation of workstation support and help desk services offers potential labor savings of approximately $519,000 per year in total funds; however, the capturing of all the savings would require the elimination of partial FTE positions at the agency level. Pacific Technologies, Inc., recognized the elimination of partial FTE positions would be difficult due in part to other responsibilities of these employees. A portion of the savings would be offset by annual maintenance costs ranging from $60,000 to $260,000 of total funds and one-time costs for software, hardware, and telephone system upgrades ranging from $160,000 to $1,010,000 of total funds.

Workstation standardization - Pacific Technologies, Inc., recommended the state limit workstations to two or three models (low-end, mid-level, and high-end), tightly control the associated configurations, and allow agencies the option of selecting between a three- to four-year replacement cycle. The Information Technology Department would manage the replacement cycle, including collecting necessary funds from agencies through workstation charges, procuring, configuring, and installing the workstations. The implementation of the standardized workstation environment is critical for the success of the consolidation of workstation support and help desk services. The resulting annual workstation costs would be approximately $2.9 million to $3.7 million in total

funds or $30 to $36 per month per workstation, depending on the mix of workstations and the replacement cycles.

Server consolidation - Pacific Technologies, Inc., recommended the Information Technology Department assume the administration of existing agency-managed servers as the servers are replaced and reduce over 150 servers from the state's inventory. As the number of servers are reduced, the Information Technology Department should maintain a 29-to-1 server to support FTE position ratio. The continued server consolidation has the potential annual labor savings of approximately $162,000 in total funds in addition to significant long-term savings in hardware costs.

Information technology governance - Pacific Technologies, Inc., recommended an information technology project investment review process relating to the evaluation and prioritization of information technology initiatives and an evaluation criteria development process relating to the development of evaluation criteria. The state should develop a set of supporting tools, including business case templates, business plan templates, and an information technology report card, and the state should significantly increase its performance measurement efforts to improve insight into information technology operations and expenditures by implementing performance measurements in the areas of customer satisfaction, financial and management performance, project performance, and consolidation transition performance. Pacific Technologies, Inc., noted the prioritization of proposed major computer software projects by the State Information Technology Advisory Committee is a positive step toward implementing the information technology governance recommendation.

Status of the Recommendations

The committee received information from representatives of the Information Technology Department regarding the status of the recommendations from the 2003-04 information technology organizational and information technology management studies. The committee learned the department supports the recommendations and is in the process of implementing the recommendations. The following is a summary of the status of the recommendations included in the Pacific Technologies, Inc., final report:

Major Recommendations	Status
Workstation support and help desk services consolidation - Consolidate all workstation support and help desk services within the Information Technology Department, including: • Initial problem reporting and resolution • Workstation environment maintenance and support • Adds, moves, and changes • Hardware replacement management • Associated performance measurement and management	The Information Technology Department is requesting funding for the 2007-09 biennium for workstation support to agencies as requested.
Workstation standardization - Move to a highly standardized workstation environment on a statewide basis with the Information Technology Department managing a workstation replacement program	Standard configurations for a single brand of workstations for all state agencies were developed through the enterprise architecture process and the Information Technology Department awarded a contract for desktop and laptop acquisition to Hewlett Packard.
Server consolidation - Continue to consolidate all agency-managed servers into the Information Technology Department	The Information Technology Department completed the functional consolidation process during the 2003-04 interim and eliminated a number of servers. The department continues to reduce the number of servers as outdated applications and servers are replaced.
Information technology governance - Improve the existing information technology governance processes by: • Improving the processes and tools for information technology project evaluation • Improving mechanisms to support cost-containment • Developing meaningful statewide management and reporting views of information technology initiatives • Implementing information technology performance measures • Establishing an information technology innovation fund	The Information Technology Department has implemented an information technology project prioritization process. The department's enterprise architecture process is maturing and procurement and asset management have been strengthened.

In regard to the standardization of workstations, the department has awarded a contract for desktop and laptop acquisition to Hewlett Packard. Under the contract, state agencies, higher education institutions, school districts, and political subdivisions are allowed to purchase a mainstream or power user desktop or a mainstream or power user laptop. From inception of the contract in December 2004 through June 2006, state agencies have spent $2,202,104 under the contract resulting in savings of $843,452 from Western States Contracting Alliance (WSCA) prices. The total amount spent by all entities under the contract for the same period is $6,555,202, a savings of $2,793,413 from WSCA prices. The following is a summary of computer purchases through the contract from December 2004 through June 2006:

	State Agencies	Higher Education Institutions	School Districts	Political Subdivisions	Total
Desktop - Mainstream (per unit price $550)	1,358	229	2,712	597	4,896
Desktop - Power user (per unit price $795)	482	77	1,095	67	1,721
Laptop - Mainstream (per unit price $1,334)	481	301	340	82	1,204
Laptop - Power user (per unit price $1,478)	158	57	283	49	547
Total	2,479	664	4,430	795	8,368

OTHER INFORMATION

Statewide Information Technology Network

The committee received information from representatives of the Information Technology Department regarding the statewide information technology network. The committee learned NDCC Section 54-59-08 requires each state agency and institution that desires access to wide area network services and each county, city, and school district to obtain those services from the Information Technology Department. As a result, the department deployed the statewide information technology network--StageNet--in 2000.

The committee learned the state's contract with Dakota Carrier Network for the statewide information technology network expired in June 2006. As a result, the department completed a procurement process for a new statewide information technology network to meet the state's needs for the next 7 to 10 years. The department released three separate requests for proposal relating to equipment, transport, and wireless aspects of the new network and awarded contracts as follows:

Requests for Proposal	Awards
Equipment	AVI, Corporate Technologies, and Qwest
Transport - Internet component	Sprint
Transport - Backbone and local access components	Dakota Carrier Network
Wireless	None

In regard to the transport backbone and local access components, the committee learned the new statewide information technology network will distribute processing over four main modes instead of two, resulting in less risk of network congestion and higher network availability. The transport backbone and local access components have a two-tier pricing structure because the department had received many complaints from state agencies about the high cost of ATM T-1 access in urban areas and service providers did not support a single postalized rate for the entire state. The current rate for ATM T-1 access is $499 per month. The new rates are $349 per month for urban areas, including Fargo, West Fargo, Grand Forks, Jamestown, Devils Lake, Bismarck, Minot, Dickinson, and Williston and $609 per month for rural areas.

The committee learned the responses to the wireless request for proposal included higher prices and limited additional features; therefore, the department decided to extend the current cellular voice contract through March 2007.

Information Technology Department 2007-09 Budget Request

The committee received information from representatives of the Information Technology Department regarding the department's budget request for the 2007-09 biennium. The committee learned the department's base budget request for the 2007-09 biennium totals $100,287,812, of which $9,880,510 is from the general fund. The general fund base request of $9,880,510 is $92,327 less than the department's 2005-07 general fund appropriation of $9,972,837. The following is a summary of the department's base budget request for the 2007-09 biennium:

	General Fund	Special Funds	Federal Funds	Total
Department operations	$791,362	$84,242,681		$85,034,043
Wide area network	3,395,550	408,000		3,803,550
Geographic information system	686,980			686,980
Criminal justice information sharing	683,923	180,000	$300,000	1,163,923
Division of Independent Study	783,750	5,276,621		6,060,371
EduTech	2,652,348			2,652,348
Educational Technology Council	886,597			886,597
Total	$9,880,510	$90,107,302	$300,000	$100,287,812

The committee learned the department's budget request for the 2007-09 biennium includes several optional package adjustments, including adjustments relating to the Department of Human Services' Medicaid management information system replacement project, implementation of business intelligence tools, technical support for the ConnectND system and the PowerSchool application, Voice over Internet Protocol implementation, kindergarten through grade 12 data warehousing hosting, kindergarten through grade 12 video service, and support of the Northern Tier Network. The following is a partial listing of the general fund optional package adjustments:

EduTech	$70,000
Criminal justice information sharing	1,236,212
Geographic information sharing	251,020
Educational Technology Council	610,000
Total	$2,167,232

Information Technology Department Information System Audit Report

The committee received information from the State Auditor regarding the information system audit of the Information Technology Department for the year ended December 31, 2005. The committee learned the audit report is intended to provide interested parties with information sufficient to understand the general controls of the Information Technology Department. The State Auditor's office received a 2005-07 general fund appropriation of $100,000 to test information technology system security in the Information Technology Department and, as a result, the State Auditor's office contracted with ManTech Security and Mission Assurance, a unit of ManTech International Corporation, to conduct a security study of the state's wide area network. The work of ManTech Security and Mission Assurance was incorporated into the audit. The audit report contained the following eight recommendations:

- Develop a security plan that provides centralized direction and control over information security.
- Limit the information available externally regarding the state's wide area network.
- Extend vulnerability scanning to all state systems that provide services on the Internet.
- Establish a policy for remote management of Windows systems mandating encryption of userids and passwords and all session data.
- Implement a formal incident response program.
- Review all firewall configurations to ensure the rules are necessary and applicable.
- Implement IP-based access controls for state Internet systems.
- Develop a systematic risk assessment framework.

Internet2

The committee received information from representatives of the North Dakota University System regarding Internet2. The committee learned Internet2 is a research and development consortium led by higher education institutions working in partnership with industry and government to develop and deploy advanced network applications and technologies. North Dakota State University and the University of North Dakota are members of Internet2 and the other North Dakota University System higher education institutions, kindergarten through grade 12, and the Flatlands Disability Network are sponsored education group participants. Internet2 facilitates high-performance applications not possible on the Internet, supports development of revolutionary applications, allows the transfer of large data sets quickly, and allows testing of new technologies.

Northern Tier Network

The committee received information from representatives of the North Dakota University System regarding the development of the Northern Tier Network. The committee learned the Northern Tier Network Consortium seeks to develop and sustain advanced networking capabilities in order to support the education, research, and economic vitality of the Northern Tier region. The lack of a high-speed fiber optic network in North Dakota:

- Puts businesses at a competitive disadvantage.
- Diminishes the state's ability to grow and attract new industry.
- Jeopardizes the colleges and universities in recruiting superior faculty, students, and researchers.
- Pushes the state even further behind other states in the race to recruit and retain the best and the brightest.

The committee learned in 2005 the Northern Tier Network Consortium received a National Science Foundation planning grant to develop a network engineering plan with a proposed budget for the states of North Dakota, South Dakota, Montana, and Idaho. The total estimated one-time installation costs for North Dakota's share of the proposed high-speed network across the Northern Tier region is approximately $5 million. The total estimated annual recurring cost for North Dakota's share of the proposed network is $450,000. The North Dakota University System has secured funding of $3.25 million from the Department of Defense to assist with the one-time installation cost of the proposed network. The North Dakota University System is requesting one-time funding of $2 million from the general fund for installation costs and funding of $900,000 from the general fund for recurring maintenance costs for the network for the 2007-09 biennium.

Schools and Libraries Universal Services Program

The committee received information from representatives of the Information Technology Department regarding the Schools and Libraries Universal Services program. The committee learned the Schools and Libraries Universal Services program, or e-rate program, was created as a provision of the Telecommunications Act of 1996 to ensure that all eligible schools and libraries in the United States have affordable access to modern telecommunications and information services. An eligible school or library that completes an application for the program may receive a discount on telecommunications services, internal connections, and Internet access. The state's current e-rate reimbursement funds approximately 64 percent of related statewide information technology costs for schools and libraries.

The committee learned the Information Technology Department has been notified that the state will be able to receive a portion of e-rate reimbursement funding for costs incurred during fiscal year 2002. The department was originally denied e-rate reimbursement funding for fiscal year 2002 due to a technicality in the filing of forms for the e-rate program. As of October 2006, the department was in the process of determining the amount of e-rate reimbursement funding to be received for expenses incurred during fiscal year 2002.

Information Technology Council of North Dakota

The committee received information from representatives of the Information Technology Council of North Dakota regarding benefits resulting from the implementation of the statewide information technology network and future information technology needs. The committee learned the Information Technology Council of North Dakota represents more than 100 information technology-related software developers, telecommunications companies, Internet providers and content developers, systems integrators, educational institutions, and manufacturers across North Dakota. The council's vision is to build a stronger North Dakota through information technology excellence by pursuing initiatives focused on achieving its mission of actively encouraging the use, growth, and development of information technology in North Dakota.

The committee learned that to attract new business and industry the state needs to improve metro network redundancy, interstate network redundancy and bandwidth, and proximity to a major fiber backbone. The state could assist new high-tech companies by providing non-loan investments and expert consulting services. The state should consider taking additional steps to offer statutory provisions that better safeguard the creation of intellectual property in North Dakota by strengthening regulations that better protect trade secrets and allow the use of noncompetitive contract protections with program designers involved in creating intellectual property, such as software development.

COMMITTEE RECOMMENDATIONS

The committee considered, but does not recommend, a bill draft relating to higher education information technology planning, services, and major projects. The bill draft would have:

- Provided that the State Board of Higher Education is responsible for managing and regulating information technology planning and services for institutions under its control; collaborating with the Information Technology Department to coordinate higher education information technology planning with statewide information technology planning; providing advice to the Information Technology Department regarding the development of policies, standards, and guidelines relating to access to or use of wide area network services; and presenting information regarding information technology planning, services, and major projects to the Information Technology Committee.
- Revised the powers and duties of the Information Technology Committee to remove administrative projects from the definition of higher education major information technology projects and to provide that the Information Technology Committee is to receive information regarding higher education information technology planning, services, and major projects.
- Revised the powers and duties of the Information Technology Department to provide that the department shall collaborate with the State Board of Higher Education on guidelines for reports to be provided by institutions under control of the State Board of Higher Education on information technology.
- Excluded institutions under the control of the State Board of Higher Education from having to comply with the policies, standards, and guidelines developed by the Information Technology Department.
- Provided that institutions under the control of the State Board of Higher Education are not required to prepare information technology plans.

The committee considered, but does not recommend, a bill draft relating to the exclusion of certain policies, standards, and guidelines of the Information Technology Department from compliance with the Administrative Agencies Practice Act. The bill draft would have provided that any product and services standard and best practice standards, primarily intended to affect state agencies and with respect to access to or use of wide area network services, institutions under the control of the State Board of Higher Education, counties, cities, and school districts if the policy, standard, or guideline has been reviewed by the State Information Technology Advisory Committee, is not considered a rule under the Administrative Agencies Practice Act.

The committee recommends Senate Bill No. 2037 to:

- Provide that the Chief Information Officer may require as a condition of contracting with the Information Technology Department or other state agencies or department with respect to an information technology project that any individual employed by the contractor or subcontractor to perform the work under the contract submit to a criminal history record check.
- Revise the powers and duties of the Information Technology Committee and the Information Technology Department, including requiring the committee to receive and review project startup reports and project closeout reports for any major information technology project of an executive, legislative, or judicial branch agency, the State Board of Higher Education, or any institution under the control of the State Board of Higher Education.
- Provide that information technology plans are subject to acceptance by the Information Technology Department.
- Revise the contents of the statewide information technology plan and the Information Technology Department annual report.
- Provide that only entities approved by the Criminal Justice Information Sharing Board may access the criminal justice system.

The committee also recommends Senate Bill No. 2038 to provide that the Information Technology Department is to develop policies, standards, and guidelines using a process involving advice from state agencies and institutions and the State Information Technology Advisory Committee is to review policies, standards, and guidelines developed by the Information Technology Department and prioritize proposed major

information technology projects for executive branch state agencies, departments, and institutions, excluding institutions under the control of the State Board of Higher Education and agencies of the judicial and legislative branches.

JUDICIAL PROCESS COMMITTEE

The Judicial Process Committee was assigned four studies. By directive of the chairman of the Legislative Council, in light of a recent United States Supreme Court decision, the committee was directed to study issues relating to the appropriate public uses for the power of eminent domain. House Concurrent Resolution No. 3014 directed a study of judicial elections and recent federal court decisions affecting the conduct of judicial elections. House Concurrent Resolution No. 3042 directed a study of the laws of this state and other states as they relate to the unauthorized acquisition, theft, and misuse of personal identifying information belonging to another individual. Senate Concurrent Resolution No. 4027, as passed, directed a study of the need for dementia-related services, standards, and practices for caregivers and review of the legal and medical definitions used for dementia-related conditions and the funding for programs and services for individuals with dementias. By Legislative Council directive, the scope of the study was limited to a review of the legal and medical definitions used for dementia-related conditions.

The Legislative Council delegated to the committee the responsibility to receive a report, pursuant to North Dakota Century Code (NDCC) Section 19-03.1-44, from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state. The Legislative Council delegated to the committee the responsibility to receive periodic reports from the Commission on Legal Counsel for Indigents regarding the implementation of the Commission on Legal Counsel for Indigents and the responsibility, pursuant to Section 54-61-03, to receive an annual report from the director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices. The Legislative Council also delegated to the committee the authority to request, pursuant to Section 53-12.1-03, a report from the director of the North Dakota lottery regarding the operation of the lottery. Finally, the Legislative Council delegated to the committee the responsibility for statutory and constitutional revision. No statutory or constitutional revision issues came before the committee.

Committee members were Senators Stanley W. Lyson (Chairman), Carolyn Nelson, John T. Traynor, and Constance Triplett and Representatives Ron Carlisle, Dawn Marie Charging, Duane DeKrey, Lois Delmore, Kathy Hawken, Dennis Johnson, Joyce Kingsbury, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, and Shirley Meyer.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

EMINENT DOMAIN STUDY

By directive of the chairman of the Legislative Council, in light of the recent United States Supreme Court decision, *Kelo v. City of New London*, 545 U.S. 469 (2005), the committee was directed to study issues relating to the appropriate public use for the power of eminent domain. The committee was directed to determine whether any statutory or constitutional changes regarding the power of eminent domain issues are appropriate.

Kelo v. City of New London

The portion of the Fifth Amendment of the United States Constitution known as the "Takings Clause" provides that "nor shall private property be taken for public use, without just compensation." In *Kelo v. New London*, the United States Supreme Court concluded that the acquisition of property by the city of New London, Connecticut, through eminent domain for the purpose of commercial development did not violate the public use restriction of the Fifth Amendment of the United States Constitution.

Kelo arose from New London's use of eminent domain to condemn privately owned real property so that the property could be used for economic development. The case was appealed from a decision in favor of the city of New London by the Connecticut Supreme Court, which found that the use of eminent domain for economic development did not violate the public use clauses of the state and federal constitutions. The Connecticut court found that if an economic project creates new jobs, increases tax and other city revenues, and revitalizes a depressed, even if not blighted, urban area, it qualifies as a public use. The court also found that government delegation of eminent domain power to a private entity also was constitutional as long as the private entity served as the legally authorized agent of the government.

The United States Supreme Court granted certiorari to consider questions last raised in *Berman v. Parke*r, 348 U.S. 26 (1954). The issue before the Court was whether the Fifth Amendment protects landowners from the use of eminent domain for economic development, rather than, as in *Berman*, for the elimination of slums and blight.

Appeal to the United States Supreme Court

By granting certiorari in this case, the United States Supreme Court agreed to hear its first major eminent domain case since 1984. In previous cases, states and municipalities had extended their use of eminent domain, frequently to include economic development purposes. The *Kelo* case was different in that the development corporation was a private entity. In the appeal to the Supreme Court, the plaintiffs argued that it was not constitutional for the government to take private property from one individual or corporation and give it to another simply because the other might put the property to a use that would generate higher tax revenue.

Majority and Concurring Opinions

On June 23, 2005, the United States Supreme Court, in a 5-4 decision, found in favor of the city of New London. Justice John Paul Stevens wrote the majority opinion. He was joined by Justices Anthony Kennedy, David Souter, Stephen Breyer, and Ruth Bader Ginsburg. The majority found that the city of New London exercised its eminent domain authority to acquire private property for the purpose of a program of economic rejuvenation. The majority also determined that although the petitioner's property was not blighted, the economic rejuvenation plan would serve a public interest and thus satisfy the public use requirement of the Fifth Amendment. Justice Stevens said that local governments should be afforded wide latitude in seizing property for land-use decisions of a local nature. In his opinion, Justice Stevens said "The city has carefully formulated a development plan that it believes will provide appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue." The opinion addressed the possibility that the decision would be abused for private purposes by arguing that "the hypothetical cases posited by petitioners can be confronted if and when they arise. They do not warrant the crafting of an artificial restriction on the concept of public use." Justice Stevens also emphasized the importance of judicial restraint, stating that the Court recognized that condemnation of property would entail hardship and that the states were free to impose restrictions on the use of this power by local authorities. Justice Kennedy's concurring opinion observed that in this particular case the development plan was not "of primary benefit to . . . the developer" and suggested that, if it had been, the taking might have been impermissible.

Dissenting Opinions

Justice Sandra Day O'Connor wrote the principal dissent, joined by Chief Justice William Rehnquist and Justices Antonin Scalia and Clarence Thomas. Justice O'Connor suggested that the use of this power in a reverse Robin Hood fashion--take from the poor, give to the rich--would become the norm, not the exception: "Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms." She argued that the decision eliminates "any distinction between private and public use of property--and thereby effectively [deletes] the words 'for public use' from the Takings Clause of the Fifth Amendment."

Justice Clarence Thomas also wrote a separate dissent in which he argued that the precedents the Court's decision relied upon were flawed and that "something has gone seriously awry with this Court's interpretation of the Constitution." He said the majority was replacing the Fifth Amendment's "public use" clause with a very different "public purpose" test: "This deferential shift in phraseology enables the Court to hold, against all common sense, that a costly urban-renewal project whose stated purpose is a vague promise of new jobs and increased tax revenue, but which is also suspiciously agreeable to the Pfizer Corporation, is for a 'public use.'"

State and Federal Reaction to *Kelo*

The *Kelo* decision will likely have little effect on those eight states that specifically prohibit the use of eminent domain for economic development except to eliminate blight: Arkansas, Florida, Illinois, Kentucky, Maine, Montana, South Carolina, and Washington. According to the National Conference of State Legislatures (NCSL), as of September 2006, eminent domain legislation in response to *Kelo* has been considered in each of the 46 states that have been in session since the decision came down on June 23, 2005. Legislatures, to date, have passed bills as follows:

- Enacted laws in 26 states - Alabama, Alaska, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Minnesota, Missouri, Nebraska, New Hampshire, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wisconsin;
- Passed a constitutional amendment that will go on the ballot for voter approval in Florida, Georgia, Louisiana, Michigan, New Hampshire, and South Carolina (Florida, Georgia, and New Hampshire also enacted statutes); and
- Vetoed by the Governor in Arizona and New Mexico. In Iowa, the legislature overrode the Governor's veto.

The legislation enacted in these states generally falls into seven categories:

- Prohibiting eminent domain for economic development purposes, to generate tax revenue, or to transfer private property to another private entity.
- Defining what constitutes "public use," generally the possession, occupation, or enjoyment of the property by the public at large, public agencies, or public utilities.
- Restricting eminent domain to blighted properties and redefining what constitutes blight to emphasize detriment to public health or safety.
- Requiring greater public notice, more public hearings, negotiation in good faith with landowners, and approval by elected governing bodies.
- Requiring compensation greater than fair market value in those cases in which property condemned is the principal residence.
- Placing a moratorium on eminent domain for economic development.
- Establishing legislative study committees or stakeholder task forces to study and report back to the legislature with findings.

Congressional Reaction

Congress passed legislation in November 2005 which prohibits states from using certain federal funds in economic development projects “that primarily benefit private entities.” The legislation exempts mass transit,

railroad, airport, seaport, and highway projects and energy, communications, water, wastewater, public utility, and brownfields projects that benefit or serve the general public. The legislation also calls for a year-long study by the Government Accountability Office on the nationwide use of eminent domain.

North Dakota Constitutional and Statutory Provisions

Article I, Section 16, of the Constitution of North Dakota provides a similar protection to that granted under the Fifth Amendment of the United States Constitution with respect to the taking of private property. Section 16 provides that private property may not be taken or damaged for public use without just compensation having been first made or paid into the court for the owner unless the owner chooses to accept annual payments. Section 16 also provides that a right of way may not be appropriated to the use of any corporation until full compensation has been made.

North Dakota Century Code Chapter 32-15 sets forth the requirements for the exercise of the power of eminent domain. Section 32-15-01 defines eminent domain as the right to take private property for public use. Section 32-15-02 sets forth the public uses for which eminent domain may be exercised.

Numerous statutory provisions specifically authorize the state and political subdivisions to exercise eminent domain for specific public purposes or public uses. Among those provisions is NDCC Section 40-58-08, which authorizes a city to exercise eminent domain when necessary for or in connection with a development or renewal project under the urban renewal law.

Other provisions include NDCC Chapter 2-06, which grants eminent domain authority to an airport authority; Section 38-14.2-09, which grants eminent domain authority to the Public Service Commission for abandoned surface mine reclamation; Section 40-33.2-06, which grants eminent domain authority to municipal power agencies; and Section 40-39-02, which authorizes municipalities to take private property by purchase or eminent domain for streets or alleys.

In 2003, legislation relating to the powers of a port authority was passed. The law is codified as North Dakota Century Code Chapter 11-36. Section 11-36-17 provides that the acquisition of land is a public and governmental function exercised for a public purpose.

North Dakota Case Law

A 1996 decision of the North Dakota Supreme Court is somewhat similar to the *Kelo* decision. In *City of Jamestown v. Leevers Supermarkets, Inc*., 552 N.W.2d 365 (N.D. 1996), the Supreme Court concluded that the city of Jamestown did not abuse its discretion in finding the taking of private property, which was used as a parking lot, to be in the interests of the public economy, health, and welfare of its residents so that the property could be used for the building of a new grocery store. However, because the trial court made no finding whether the primary object of the development project was for the economic welfare of Jamestown and its residents rather than for the benefit of the private interests, the court stated that a determination of whether the public use requirement had been satisfied could not be made and directed the trial court to make the necessary finding on that issue. The court stated that if the primary object of the development is for the economic welfare of the city and its residents, rather than the primary benefit of private interests, the trial court should reinstate the judgment of the taking and award just compensation. However, the Supreme Court further stated that if the trial court was to find that the primary object of the development was for the benefit of private interests, it must refuse to allow the taking.

Testimony and Committee Considerations

The committee studied the appropriate public uses for the power of eminent domain. The committee conducted a series of public hearings around the state to receive testimony from individuals and various organizations and entities that had an interest in the appropriate uses for the power of eminent domain and to determine whether there is a need to enact legislation or a constitutional amendment to address the issues raised in *Kelo*. The committee also received extensive testimony regarding an initiated constitutional amendment measure regarding the power of eminent domain. The chairman of the committee emphasized that the purpose of the study was to review the eminent domain issues raised in recent court decisions and to provide a forum for the public to discuss the issues. The chairman also indicated that the committee would not take a position on the initiated measure. The measure, which appeared on the November 7, 2006, general election ballot, passed.

The committee conducted two public hearings in Bismarck and one public hearing each in the cities of Fargo, Minot, and Dickinson. In addition to the general public, the committee invited to the hearings representatives of state and local economic development organizations, local chambers of commerce, elected city officials, the Department of Transportation, the North Dakota Association of Counties, the North Dakota League of Cities, the North Dakota County Commissioners Association, the North Dakota School Boards Association, the North Dakota Farm Bureau, the North Dakota Farmers Union, the Landman's Association of North Dakota, the North Dakota Stockmen's Association, the North Dakota Association of Realtors, and the sponsoring committee of the initiated measure.

The committee also received information regarding the entities in the state which have eminent domain authority.

Bismarck Hearings

At the hearings conducted in Bismarck, the committee received testimony that emphasized that any change to the Constitution of North Dakota should be done slowly and carefully. According to the testimony, the reaction to the *Kelo* decision should not be to amend the constitution without serious consideration of the effects the amendment could have. It was emphasized that it is important to have faith in local governments and

other bodies of elected officials. It was suggested that if eminent domain authority is to be limited, it would be better to have the Legislative Assembly address the issue. Concerns were expressed about how the initiated measure, if passed, would affect urban renewal projects.

Testimony in support of the initiated measure from a member of the initiated measure's sponsoring committee indicated that the constitutional amendment was drafted based upon citizens' concerns about the *Kelo* decision. According to the testimony, the eminent domain issue is a battle between a private citizen's rights and the government's interest. According to the testimony, the initiated measure, which would restrict state or local governments from taking private land for economic development, is the surest way to protect private property from an eminent domain taking. According to the testimony, the decision in *Kelo* is and has been the law in North Dakota since the 1996 *Leevers* decision. It was emphasized that the Constitution of North Dakota and state law allow for a citizen-initiated process to create statutes or to amend the constitution without legislative involvement. It was pointed out that the measure will not affect the ability of the government to build roads or put in a sewer system; rather the measure provides that economic development, an increase in the tax base, or general economic health cannot be used as the rationale for an eminent domain condemnation. According to the testimony, because the United States Supreme Court has been steadily eroding property owners' rights through the eminent domain process since 1954, the *Kelo* decision was not that shocking in light of previous decisions on eminent domain. It also was noted that the measure would allow a governmental entity to condemn property that is blighted if economic development is not the purpose of the taking but rather is only incidental to the taking. According to the testimony, under the language of the proposed initiated measure, incidental economic benefit from an eminent domain taking is allowable. It was also noted that if a governing body takes more land than is needed, the governing body cannot resell the extra property for private use. It was pointed out that if the initiated measure passes, urban renewal law can still exist; however, governing bodies will not be able to use eminent domain to condemn property. The opinion was also expressed that true blight can be addressed by a city's police powers.

Other testimony in support of the initiated measure indicated that the language of the initiated measure would not affect the continuation of traditional government services. According to the testimony, the initiated measure would not prohibit the taking of property to build a road or to provide any other essential government service to an economic development project. The testimony indicated that on its face, the initiated measure would not prevent the taking of property for public uses, such as a public road, park, or school. According to the testimony, the initiated measure would prohibit the selling or transferring of land taken by eminent domain to another private purpose. However, the opinion was expressed that land that is no longer needed for a public use could be returned to any successor in interest or assignment. It was noted that if the measure passes there may be a need for legislation to address the transferability of property. The opinion was also stated that the restriction in the initiated measure would not prevent the sale of land purchased by the government because the restriction only applies to land taken by eminent domain.

The committee received testimony that one of the criticisms of the initiated measure is that as a result of this measure, unused government property will remain idle and will not be available for development. That argument, it was noted, presupposes that only the government can develop land. The testimony indicated the opinion that the measure would permit residual land to be returned to the original owner who could develop the residual property and put that property to use. Finally, the opinion was expressed that perhaps the greatest complaint about this measure is that if it passes, it will be more difficult for the government to take property. According to the testimony, that was the sponsor's intention.

Testimony in opposition to the initiated measure indicated that eminent domain is used judiciously in this state. The opinion was expressed that although eminent domain is used carefully and rarely, it is an important tool for governments. According to the testimony, Grand Forks used eminent domain authority in the late 1960s, in the late 1970s, and most recently after the 1997 flood. It was noted that the city's flood control project would not be as far along as it is without the use of eminent domain authority. It was also noted that North Dakota's eminent domain law is more stringent than the Minnesota eminent domain law. North Dakota law requires the governing body to adopt a resolution, obtain an appraisal, and negotiate in good faith with the property owner. North Dakota law also allows the property owner to ask for attorney's fees. According to the testimony, if the initiated measure regarding eminent domain passes, it would limit what Grand Forks is doing in terms of flood control. The testimony indicated that the measure would also impact the state's urban renewal law. According to the testimony, if a city uses eminent domain to obtain property under the urban renewal law, the city could not permit commercial interests to relocate in that area. The testimony indicated that the property taken by eminent domain could only be used as city property and the city could not resell the property for private development. According to the testimony, there is not an abuse of eminent domain authority in North Dakota. The testimony indicated that the appropriate place to focus on this issue is in the Legislative Assembly.

Other testimony in opposition to the initiated measure indicated that the state's urban renewal law, which has been on the books for 50 years, allows for the use of eminent domain to obtain underused property, not just blighted property. The opinion was expressed that the proposed initiated measure goes too far in its effort to protect individual rights and that those rights can be protected by making changes and modifications to the state's laws without destroying the intent of the Legislative Assembly for the past 50 years. It was

suggested that one of the changes could be made in NDCC Section 40-58-02, which contains the findings and declarations of necessity for urban renewal. This section also states why urban renewal is necessary and requires findings of unemployment, underemployment, and joblessness on a statewide basis. It was suggested one way to address some of the concerns about eminent domain would be to require a finding of unemployment, underemployment, or joblessness in a specific community rather than on a statewide basis. It was noted that another section that could be amended is Section 40-58-05. This section requires a finding that the action is necessary in the interest of the public economy, health, safety, morals, or welfare of the residents of the city. It was suggested that this section could be amended to require the city to prove that the exercise of the urban renewal law powers could reasonably be expected to alleviate the conditions at issue. Another suggested change was to require that an underutilized or unutilized property must also be blighted. It also was suggested that it may be helpful to amend Section 40-58-06 to more clearly define a development plan. It was emphasized that the initiated measure raises the question of whether a city can ever sell property that it acquires. It also was emphasized that the initiated measure would "gut" the state's urban renewal law.

Other testimony in opposition to the initiated measure expressed concern about the impact the proposed initiated measure would have on projects in McLean County. According to the testimony, the initiated measure raises concerns about the government's ability to get easements because easements are a part of eminent domain. It was noted that easements are necessary to agribusiness and development. It was suggested that any legislation dealing with changes to eminent domain should also address concerns about easements.

Additional testimony in opposition to the initiated measure indicated that the only instance in which eminent domain was used in Minot was for several highway projects. It was noted that the threat of eminent domain works well to speed up the process of acquiring land.

Committee members expressed concerns that using the initiated measure process rather than the legislative process to address this issue did not allow for public input in the language of the legislation.

The committee received a copy of a resolution adopted by the North Dakota League of Cities which indicated support for the eminent domain process to be addressed through the legislative process.

Fargo Hearing

At the hearing conducted in Fargo, the committee received testimony from local city officials, city attorneys, area legislators, and other interested persons regarding the uses of eminent domain and the initiated measure.

According to testimony in opposition to the initiated measure, the concept of eminent domain is one area of potential tension between the rights of individuals to own and control their property and the rights of the people as a whole, the government, to acquire the property for a public purpose. It was noted that any time the government gives itself power, there is a possibility of abuse. The testimony indicated that it is appropriate to work toward a goal of striking a balance between the good of the public as a whole and the rights of the individual. It was noted that the current procedural and substantive elements in the state's eminent domain law provide a fair amount of protection for private property owners and the decision whether additional protections should be inserted into the law is a matter for the policymakers to debate.

The testimony indicated that it was unclear whether the proposed constitutional amendment would prohibit a government from ever selling a parcel of property or a portion of that parcel if the parcel were obtained by eminent domain. It was also noted that the measure does not address the issue of economic development that may be incidental to the public use. The testimony indicated that if the language in the initiated measure had been in the constitution in 1996, the *Leevers* case would have been decided differently.

Other testimony in opposition to the initiated measure indicated that eminent domain and economic development are complicated issues with no easy answers. It was noted that the initiated measure would affect urban renewal and would likely invalidate portions of the state's urban renewal law. According to the testimony, North Dakota's eminent domain law is fair and there have not been any major abuses of eminent domain power in the state.

Additional testimony in opposition to the initiated measure indicated that a major water diversion project in neighboring Moorhead, Minnesota, would not have happened without the power of eminent domain. It was noted that if one landowner had refused to sell, the project would have been halted. It also was noted that eminent domain is a tax-saving tool for taxpayers. Without eminent domain, the project would not have happened or it would have cost two or three times more. According to the testimony, eminent domain is a valuable tool and it would be more difficult to negotiate without the power of eminent domain. The testimony emphasized that the initiated measure will cost the taxpayers a lot of money. It also was noted that it is clear that the measure would prevent a city from reselling remnants of property taken by eminent domain back to a private owner. According to the testimony, if a city took property by eminent domain for a water tower and 30 years later no longer needed the water tower, the language in the initiated measure would prevent that land from being sold for private use. The testimony indicated that the measure also would prevent a governmental entity from trading property if the property to be traded were acquired by eminent domain. Concern was expressed that the language used in the initiated measure was very broad.

The North Dakota League of Cities provided information to the committee regarding a survey of cities with a population of over 2,500 regarding the use of eminent domain in municipalities. According to the testimony, the survey indicated that eminent domain

rarely has been used by cities in the state and that it is a tool of last resort.

Testimony in support of the initiated measure indicated that regardless of the wording of the initiated measure, someone will contest it. It was noted that the initiated measure only prohibits the use of eminent domain when done for economic development purposes. It also was noted that the measure does not prohibit incidental economic development. According to the testimony, eminent domain should be a tool of last resort and the taking of land should not be simple.

Other testimony in support of the initiated measure indicated that the initiated measure would not prevent the taking of land for health or safety reasons. It was noted that as long as a landowner is law-abiding and pays taxes, the government should not be able to take the private property. It also was noted that taking of land to build a road that is to be used by the public would not be affected by this measure. Finally, it was noted that whether there are additional changes that may need to be made upon the passage of the initiated measure is an issue for the Legislative Assembly to decide.

Additional testimony in support of the measure indicated that as long as a city relies on property taxes, the incentive will be there to use eminent domain to increase its tax base. According to the testimony, without the safeguards of the measure, affordable housing will be affected.

Minot Hearing

The committee received testimony from the Department of Transportation regarding the department's use of eminent domain. The department acquired 1,791 parcels for highway purposes between October 15, 2000, and October 15, 2005. Seventy-five of those parcels had to be condemned to be acquired. All other parcels were acquired through negotiation without the need to file condemnation paperwork with the courts. The condemned parcels represented 32 ownerships and an appraised value of $940,220.32. The department did not go to trial to resolve any condemnations in the five-year period. It was noted that the department uses the eminent domain process as a last resort to keep projects on track.

According to the testimony, the Department of Transportation does not know how far-reaching the interpretation of the economic development language in the initiated measure will be. There were concerns from the department that the language of the measure may affect some future local economic development projects that also involve roadways. The department secures federal funding for local roadways leading to facilities that are created for the purpose of economic development. It was noted that the department often uses the term "economic development" in the environmental document that defines the fundamental purpose and need of a project. According to the testimony, the department is aware that the initiated measure is not intended to exclude condemnation for constructing roads and bridges or for conducting a common carrier or utility business, but the department is concerned that public activities, including transportation systems, may be construed as relating to an economic development purpose. It was noted that economic development is a big part of most highway projects.

Testimony in support of the initiated measure indicated that the current law needed clarification. The testimony expressed concerns that a family that finds a perfect home could lose it to eminent domain for economic development. It was noted that the ability of government to take land for economic development may affect whether someone would decide to relocate to North Dakota.

Dickinson Hearing

According to the testimony received at the hearing held in Dickinson, there is a fear that the eminent domain court rulings authorize the taking of one business to give it to another business. The *Leevers* case required that the taking must be for the benefit of the public and not for the benefit of a private business. It was noted that there are a number of issues with the proposed initiated measure, specifically the second sentence of the measure. This sentence provides that "[p]rivate property shall not be taken for the use of, or ownership by, any private individual or entity, unless the property is necessary for conducting a common carrier or utility business." The *Kelo* decision emphasized that the entity was required to have a plan before the taking could occur. According to the testimony, North Dakota law, through the *Leevers* decision, already contains that requirement. Consequently, the *Kelo* decision was not a drastic change from North Dakota law. It was noted that it is unclear as to the effect the initiated measure would have on transactions, such as long-term leases. It was noted that the measure would apply not only to land acquired by eminent domain in the future but in the past as well.

Testimony in opposition to the initiated measure indicated that eminent domain is a means of last resort for finding land for development and that it is more likely in North Dakota that a county would take land because of the failure to pay property taxes than by using eminent domain proceedings. It was noted that the government does not like using eminent domain because the process is more expensive and time-consuming than negotiation. According to the testimony, the Dickinson City Commission has had one request from a developer to take land by eminent domain, which the commission refused.

Testimony from a representative of a rural water authority indicated that the eminent domain process is important for securing rural easements. It was noted that eminent domain can be used as a threat. According to the testimony, the laying of water pipeline may involve thousands of landowners. It was noted that there are usually one or two landowners per project who refuse to grant an easement and eminent domain must be used. According to the testimony, the passage of the measure could affect an authority's ability to obtain easements. It was noted that the eminent domain process usually results in more money for the landowner than the negotiation process.

Committee Considerations

During the course of the hearings, some committee members noted that there were conflicting opinions in the testimony as to whether the language of the initiated measure would allow excess property taken by eminent domain to be resold for private use. In an effort to gather additional information, the committee requested a meeting of a subcommittee of the committee with the sponsoring committee of the initiated measure to discuss concerns about the wording and scope of the initiated measure and the possibility of withdrawing and amending the initiated measure. Committee members in opposition to a meeting with the sponsoring committee indicated that the language in the initiated measure was what the sponsoring committee intended. According to the committee members in opposition to the meeting, it was not the responsibility of the Judicial Process Committee to question that language. The chairman of the Legislative Council denied the committee's request to form a subcommittee to meet with the members of the initiated measure's sponsoring committee.

Several committee members also expressed an interest in preparing a sheet of facts and concerns regarding the initiated measure for distribution to the public. Committee members in support of preparing a sheet of facts and concerns indicated the information would be a way to make the public aware of the issues that were raised at the hearings. Committee members opposed to the idea indicated that the issues and concerns would be reflected in the report of the committee. Other committee members opposed to the idea indicated that the committee should let the initiated process work and that the initiated measure process is the people's business, guaranteed to the people by the Constitution of North Dakota. It was noted that the Legislative Assembly should take a "hands off" approach with respect to the initiated measure process. It also was noted that the committee should be very careful about providing any kind of fact sheet or opinions or even a committee vote regarding which way the committee is leaning. Another committee member indicated that it is the responsibility of the sponsoring committee to promote the committee's position and it is the responsibility of those who oppose the measure to organize and make their position known. The chairman of the committee indicated that the role of the committee was to conduct hearings and gather information. The chairman indicated that the committee would not be making any statements regarding concerns about the initiated measure. It was noted that the minutes of the hearing are public records and the public can read the minutes and form opinions regarding the measure. The chairman also noted that individual legislators were free to discuss with others any concerns they may have regarding the measure.

During the course of the study, the committee expressed concerns that there may be a need for a bill draft that would address eminent domain issues in the event the initiated measure failed to get the required signatures to get on the ballot or if the initiated measure failed to pass. According to the committee members, it is appropriate for the Legislative Assembly to review the eminent domain laws of the state and to address any problem raised by the *Kelo* decision. Other committee members expressed concerns that if the initiated measure passes, the Legislative Assembly may want to define the "public benefits of economic development." Other committee members indicated that there may be a need for the Legislative Assembly to address the standard of review for courts in eminent domain cases. It was suggested that courts should have de novo review to allow the courts to look at the merits in eminent domain cases.

The committee considered a bill draft that limits the uses of eminent domain. Testimony in explanation of the bill draft indicated that the bill draft would prohibit private property from being taken for use by a private commercial enterprise for economic development or for any other private use without the consent of the owner; would define economic development as any activity to increase tax revenue, tax base, employment, or general economic health; would provide that public use does not include the public benefits of economic development, including an increase in the tax base or in tax revenues or an improvement of general economic health; would provide that the question of whether a use is a public use must be determined by a court; and would provide that the court is required to try the matter de novo.

Committee members noted that regardless of whether the initiated measure passes, the bill draft would give the Legislative Assembly a vehicle to discuss eminent domain issues during the 2007 legislative session. Committee members also noted that there did not appear to be any provisions in the bill draft which would directly conflict with the language in the initiated measure.

Recommendation

The committee recommends Senate Bill No. 2039 to limit the uses of eminent domain. The bill prohibits private property from being taken for use by a private commercial enterprise for economic development or for any other private use without the consent of the owner; defines economic development as any activity to increase tax revenue, tax base, employment, or general economic health; provides that public use does not include the public benefits of economic development, including an increase in the tax base or in tax revenues or an improvement of general economic health; provides that the question of whether a use is a public use must be determined by a court; and provides that the court is required to try the matter de novo.

JUDICIAL ELECTIONS STUDY

House Concurrent Resolution No. 3014 directed a study of judicial elections and recent federal court decisions affecting the conduct of judicial elections. Testimony in support of the resolution indicated that recent federal court decisions will have an impact on how judicial candidates campaign and solicit funds, thus creating a need for a study.

North Dakota Judicial System

The North Dakota judicial system consists of the Supreme Court, court of appeals, district courts, and municipal courts. The North Dakota Supreme Court is the highest court in the state. This court is composed of five justices elected on a nonpartisan basis for 10-year terms. Each justice must be a licensed attorney and a citizen of the United States and North Dakota.

One member of the Supreme Court is selected as Chief Justice by the justices of the Supreme Court and the judges of the district courts. The Chief Justice's term is five years. The Chief Justice's duties include presiding over Supreme Court conferences, representing the judiciary at official state functions, and serving as the administrative head of the judicial system.

The court of appeals hears only the cases assigned to it by the Supreme Court. The court of appeals is composed of three judges chosen from among active and retired district court judges, retired justices of the Supreme Court, and attorneys. Temporary court of appeals judges are assigned by the Supreme Court for up to one year. The Supreme Court assigns cases to the court of appeals from among those cases filed with it.

The district courts are the courts of general jurisdiction in North Dakota. The office of district judge is an elected position filled every six years by nonpartisan election held in the district in which a judge will serve. The district courts have original and general jurisdiction in all cases, including criminal felony and misdemeanor cases and general jurisdiction for civil cases. The district courts also serve as the juvenile courts in the state and have exclusive and original jurisdiction over any minor who is alleged to be unruly, delinquent, or deprived. The state is divided into seven judicial districts. In each judicial district a presiding judge supervises court services of all courts in the district. There is a district court in each of the state's 53 counties.

Municipal courts in North Dakota have jurisdiction of all violations of municipal ordinances, with some exceptions. All municipal judges in North Dakota are part-time and are elected by the people for four-year terms.

Judicial Conduct

The American Bar Association adopted the first Canons of Judicial Ethics in 1924. These first canons were advisory in nature and were intended to act as a guide for judicial behavior. In 1972 the American Bar Association promulgated the Model Code of Judicial Conduct, which specified a mandatory and enforceable standard of conduct and behavior. This Code of Judicial Conduct was meant to aid the states in adopting their own rules of conduct for sitting judges as well as judicial candidates. Today most states that have an elected judiciary have approved campaign restrictions based on the Model Code, specifically Canon 5. This canon was revised in 1990 due to concerns that certain language was unconstitutionally overbroad. Many states, including North Dakota, updated their codes accordingly, but some states, such as Minnesota, chose not to. Regardless of which version of the Model Code, if any, a state's judicial code is based upon, all 39 states that have elections for judicial positions have statutory regulations of conduct during campaigns.

The states that have elections for judicial positions are Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

North Dakota, like most states, has a code of judicial ethics that restricts a candidate seeking election as a judge from discussing issues that could come before the judge if elected. North Dakota Century Code Section 27-23-03(3) empowers the North Dakota Supreme Court, upon the recommendation of the Commission on Judicial Conduct, to censure or remove a judge for action that constitutes a willful violation of North Dakota Rules of Judicial Conduct. *Judicial Conduct Comm'n v. Wilson*, 461 N.W.2d 105 (N.D. 1990).

Court Decisions

In June 2002, the United States Supreme Court handed down its first ruling regarding judicial elections. A 5-4 majority in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002) held that part of the Minnesota Code of Judicial Conduct was unconstitutional as violating the First Amendment of the United States Constitution. A similar provision in the North Dakota Code of Judicial Conduct was challenged in *North Dakota Family Alliance, Inc. v. Bader*, 361 F.Supp.2d 1021 (D.N.D. 2005). Both cases are summarized below.

Republican Party of Minnesota v. White

In *Republican Party of Minnesota v. White*, the United States Supreme Court held that part of the Minnesota Code of Judicial Conduct was unconstitutional as violating the First Amendment of the United States Constitution. The specific clause at issue in this case is known as the "announce clause" and states that "[a] candidate for a judicial office, including an incumbent judge," shall not "announce his or her views on disputed legal or political issues." In *White*, a judicial candidate alleged that he was forced to refrain from announcing his views on disputed issues during a campaign because of this provision, in violation of the First Amendment. A majority of the Supreme Court agreed and held that Minnesota's announce clause is unconstitutional. Justice Scalia, writing for the majority, found that the standard of there being a compelling state interest, and any restraints being narrowly tailored in order to restrict speech, was not met. Justices Scalia, Rehnquist, O'Connor, Kennedy, and Thomas were in the majority. Justice Stevens filed a dissenting opinion, in which Souter, Ginsburg, and Breyer joined. Justice Ginsburg also filed a dissenting opinion, in which Stevens, Souter, and Breyer joined.

In 1996, Gregory Wersal ran for associate justice of the Minnesota Supreme Court. He distributed literature

critical of several Minnesota Supreme Court decisions. An ethics complaint was filed against him; however, the board that was to review the complaint dismissed the charges. In 1998, Wersal ran again for the same office. This time Wersal preemptively filed suit in federal district court against Suzanne White, the chairman of the Minnesota Board on Judicial Standards, charging that the "announce clause" limited his right to free speech and made a mockery of the election process by denying him the ability to wage a meaningful campaign. The Republican Party of Minnesota joined in the lawsuit, arguing that the restrictions prevented the party from learning Wersal's views on the issues, and as a result either opposing or supporting his candidacy. The district court found that the announce clause did not violate the constitution. Wersal appealed to the United States Court of Appeals for the Eighth Circuit, and the circuit court affirmed the district court's decision. Wersal filed a writ of certiorari to the United States Supreme Court, which was granted.

In *White*, the United States Supreme Court struck down the campaign ethics rule prohibiting judicial candidates from announcing their views. The Supreme Court held that the portion of Canon 5A of the Minnesota Code of Judicial Conduct which provided that a "candidate for a judicial office, including an incumbent judge" shall not "announce his or her views on disputed legal or political issues," violates the First Amendment. Using strict scrutiny, the Court held the "announce clause" was not narrowly tailored to serve the asserted compelling state interest in the judiciary's impartiality. The Supreme Court then remanded the case to the Eighth Circuit Court of Appeals to determine what effect, if any, its decision would have on the rest of the plaintiff's challenge. A three-judge panel of the Eighth Circuit issued a decision and found that some of the candidates' speech prohibitions were unconstitutional but upheld others. *Republican Party of Minnesota v. White*, 361 F.3d 1035 (8th Cir. 2004). The Eighth Circuit vacated the panel decision and decided to hear the case en banc.

On August 2, 2005, in the remand of *Republican Party of Minnesota v. White*, 416 F.3d 738 (8th Cir. 2005) the Eighth Circuit held:

1. Minnesota Code of Judicial Conduct Canon 5B(2), which prohibits a judicial candidate from personally soliciting campaign contributions, is unconstitutional insofar as it prohibits a judicial candidate from soliciting contributions from large groups and transmitting solicitations above their personal signature, to the extent of the plaintiffs' challenge; and
2. Minnesota Code of Judicial Conduct Canons 5A(1) and 5B(1), which prohibit judges or judicial candidates from identifying themselves "as members of a political organization" attending political gatherings, and seeking, accepting, or using endorsements from a political organization, are unconstitutional.

North Dakota Code of Judicial Conduct Canons 5A and 5B contain language that is substantially similar to Minnesota's "partisan-activities clause" and "solicitation clause."

North Dakota Family Alliance, Inc. v. Bader

In *North Dakota Family Alliance, Inc. v. Bader*, 361 F.Supp.2d 1021 (D.N.D. 2005), United States District Judge Dan Hovland held that the "pledges and promises clause" and the "commit clause" of the North Dakota Code of Judicial Conduct Canon 5A unconstitutionally restrict speech. The judicial canon at issue in this case was Canon 5A(3)(d)(i) and (ii) of the North Dakota Code of Judicial Conduct, which provides that a candidate for a judicial office may not "make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office" or "make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court."

In this case, North Dakota Family Alliance, Inc., a nonprofit educational organization, sought to collect and publish data regarding judicial candidates' political philosophy and stance on disputed legal and political issues by sending a questionnaire to judicial candidates. Many judicial candidates refused to answer the questions on the survey and the candidates cited the relevant canon of ethics.

The district court, in its analysis, stated that in *White*, the Supreme Court held that Minnesota's "announce clause" violated the First Amendment because the canon was not narrowly tailored to serve a compelling state interest. The district court also noted that the Supreme Court did not address the constitutionality of the "pledges or promises" clause of Minnesota's Canon 5A(3)(d)(i) which is identical to North Dakota's Canon 5A(3)(d)(i) nor did the Supreme Court address the validity of the "commit clause," which is a clause that prohibits a judicial candidate from making statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court.

The district court held that if North Dakota's interest ultimately concerns a judge's impartiality toward parties, the language of Canon 5A(3)(d)(i) and (ii) is overbroad and does not reflect that interest. The district court held that like the "announce clause" in *White*, the "pledges and promises clause" and the "commitment clause" are too broadly tailored to serve that interest. According to the district court, these clauses forbid the same type of speech that was found to be constitutionally protected in *White*. The court found little distinction between the clauses at issue in *White* and the clauses at issue in this case. The district court concluded that "Canon 5A(3)(d)(i) and (ii) of the North Dakota Code of Judicial Conduct impermissibly burdens free speech and violates the First Amendment of the United States Constitution." According to the district court, "[t]he 'pledges and promises,' and the 'commitment clause,' are essentially de facto 'announce clauses' which were found to be unconstitutional by the United States Supreme Court in *Republican Party of Minnesota v. White*. For the same reasons stated in *White*, the Court finds that these clauses violate the First Amendment."

The district court concluded that there is nothing in its opinion which requires a judicial candidate to respond to a survey in the future; however, the court noted that responding to such a survey may create a serious ethical dilemma that may require recusal at a later date. Finally, the district court concluded that it is clear under *White* that "because North Dakota has chosen to select its judges by popular election, the State may not impermissibly restrict the constitutionally-protected speech of judicial candidates."

In *North Dakota Family Alliance, Inc. v. Bader*, the court also analyzed a challenge to the constitutionality of Canon 3E(1) of the North Dakota Code of Judicial Conduct which relates to the recusal obligations of judges. The canon requires judges to recuse themselves from those proceedings in which impartiality "might reasonably be questioned." The district court concluded that this canon is narrowly tailored to serve a compelling state interest. According to the district court, the recusal provisions in Canon 3E(1) serves the state's interest in impartiality and the canon is narrowly drafted to achieve that interest and, therefore, survives a constitutional challenge.

Testimony and Committee Considerations

The committee received information and testimony from the North Dakota Supreme Court and the State Bar Association of North Dakota regarding judicial conduct and judicial elections.

The committee received testimony from the Supreme Court regarding the effect of recent federal court decisions on certain judicial election canons. According to the testimony, federal judges are of the opinion that a judicial election is the same as any other election. It was noted that while judicial candidates are subject to the same campaign statutes as are any other election candidates, the Rules of Judicial Conduct add another layer of rules on top of the election laws. The state's election laws provide that a judicial candidate cannot solicit funds but rather must set up a committee for that purpose. The election laws also provide that the candidate is not permitted to know the identity of the contributors. The testimony indicated that this process may not survive the recent federal court rulings.

The testimony from the Supreme Court also indicated that judges who seek political party endorsements, solicit campaign contributions, and declare their beliefs on issues are more likely to have to recuse themselves from hearing cases because their impartiality might be questioned. It was noted that because North Dakota has a very small judiciary, if judges are recusing themselves, it creates a problem in finding judges to replace them. According to the testimony, while a general statement about judicial philosophy may not be grounds for recusal, it is difficult to determine at what point a recusal is appropriate.

According to the testimony, as a result of the recent Court decisions, a judge or a judicial candidate is permitted to answer certain questions but is not required to answer. According to the testimony, while there is no requirement that the candidate answer certain questions, there may be political repercussions for not answering. The testimony indicated that the Rules of Judicial Conduct which were held to be unconstitutional will need to be revised before the next judicial election.

The committee also received extensive testimony, information, and recommendations from a special task force formed by the State Bar Association of North Dakota. The task force was formed to address issues raised by the recent Court decisions involving judicial elections. The task force was composed of judges, lawyers, and legislators from around the state. The committee received regular reports from the task force. Based upon these reports, the committee's considerations focused on four areas: the North Dakota Code of Judicial Conduct; the election statutes affecting judicial elections; the method of selecting judges in North Dakota; and the task force's conclusions and recommendations.

North Dakota Code of Judicial Conduct

The committee received testimony from the task force that in the past the North Dakota Rules of Judicial Conduct have limited what candidates for judicial office were allowed to say and do when campaigning. It is portions of these rules that were specifically addressed and declared unconstitutional by the United States Supreme Court and the Eighth Circuit Court of Appeals in *Minnesota Republican Party v. White* and the United States District Court in *North Dakota Family Alliance v. Bader*. It was noted that setting ethical standards for the behavior of judges is the responsibility of the North Dakota Supreme Court. According to the testimony, these rules have been or are in the process of being addressed by the Judiciary Standards Committee, one of the Supreme Court's standing committees.

According to the testimony, the *White* decision deals not only with the right of the candidate to speak but also deals with the right of people to endorse a candidate. It was noted that a judicial candidate's refusal to accept an endorsement may only work for a limited time. Because a candidate may want funding from one party or another, the candidate may seek the endorsement of a party.

According to the testimony, changes that have been adopted by the Supreme Court include a restriction on judges and candidates making "pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office," and a definition of "impartiality" that includes not only absence of bias or prejudice for particular parties but also "an open mind in considering issues that may come before the judge." The testimony indicated that other recommendations that have been forwarded to the Supreme Court for its consideration include retaining the limitations on active involvement with "political organizations," but adding an expanded definition of "political organization" which would include not only political parties but also organizations whose purpose is to "support or oppose the continuation, amendment, repeal, enactment, initiative or referendum of any constitutional, statutory or regulatory provision." According to the testimony, the basis for this proposed change is the Eighth Circuit's criticism of the old canon's ban on political involvement as underinclusive.

According to the testimony, the proposed canons would limit political endorsements. It was noted that if the proposed canons stand up to the requirements set forth in the federal cases, seeking an endorsement would be prohibited. It was noted that the proposed canons would permit an organization to give a letter of support. According to the testimony, it is the intent of the Supreme Court to have all amendments in place in time for the 2006 election cycle.

Election Statutes Affecting Judicial Elections

The committee received testimony from the task force regarding North Dakota election statutes, specifically NDCC Section 16.1-11-08. This section requires judicial candidates and others to run on a no-party ballot without reference to a party affiliation. According to the testimony, opinions were divided on whether, in light of the federal decisions, this statute is entirely unconstitutional, whether it might be saved by some form of amendment, or whether a change to the statute was necessary at all. It was noted that if the statute is repealed entirely, questions are raised about the application of some of the other election laws and whether judicial candidates would be forced to run under a party designation if the no-party portion of the ballot were abolished.

According to the testimony, the task force concluded that the *White* and *Family Alliance* cases have no impact on the use of a no-party ballot in North Dakota and therefore raise no concern for the constitutionality of NDCC Section 16.1-11-08 as long as the possibility of endorsement by political parties or other interest groups is permitted.

Method of Selecting Judges in North Dakota

The committee received testimony that any effort to change the method of selecting judges in North Dakota must include long-term structural considerations of whether the method of selecting judges in North Dakota should be modified in some way in order to avoid full-scale political elections for judicial office. It was emphasized that any effort in this area would require an in-depth study and a long-term approach. According to the testimony, North Dakota citizens are comfortable with the no-party approach for judicial elections. The testimony indicated that there likely is not a way to avoid making changes to the conduct of judicial elections as long as the state has judicial elections. It was noted that because North Dakota citizens like elections, there probably is not a great deal of support for adopting the federal system of lifetime judicial appointments. It was the consensus of the task force that the subject of judicial selection in North Dakota requires further study.

Task Force Conclusions and Recommendations

The task force presented the following conclusions and recommendations to the committee:

1. The task force should continue to monitor and comment upon, as appropriate, any proposed changes to the North Dakota Code of Judicial Conduct which deal with judicial selection or election;
2. The State Bar Association of North Dakota should consider and adopt a resolution at its annual meeting in June 2006 setting forth the association's official position on the extent to which judicial candidates should make "pledges or promises" or "commitments" to the voters;
3. The interim Judicial Process Committee should not propose and the Legislative Assembly should not enact any immediate legislative changes as a result of the recent trilogy of cases involving judicial selection and election; and
4. The interim Judicial Process Committee should propose a concurrent resolution draft to continue the present study of the Judicial Process Committee into the next biennium and pursue a joint legislative and State Bar Association of North Dakota public information and education program, including public forums around the state, regarding judicial selection methodology and the conduct of judicial elections.

Based upon the conclusions and recommendations of the task force, the committee considered a concurrent resolution relating to a study of judicial election and selection issues which would continue the present study into the next interim.

Testimony in support of the concurrent resolution indicated that although recent federal court opinions have limited the restrictions the state can place upon judicial elections and judicial candidates, the study could provide for a review of the way judges are selected, including the possibility of changing from an elected system to an appointed system. It was suggested that the concurrent resolution be amended to provide for a joint legislative and State Bar Association of North Dakota public information and education program regarding judicial selection methodology and the conduct of judicial elections. It was noted that the program should include public forums around the state.

Recommendation

The committee recommends House Concurrent Resolution No. 3002 to study judicial election and judicial selection issues. The concurrent resolution also provides that the Legislative Council study should include a public information and education program with the State Bar Association of North Dakota which includes public forums around the state regarding judicial selection methodology and the conduct of judicial elections.

IDENTITY THEFT STUDY

House Concurrent Resolution No. 3042 directed a study of the laws of this state and other states as they relate to the unauthorized acquisition, theft, and misuse of personal identifying information belonging to another individual. Testimony in support of the resolution indicated that a need exists to review the laws of the state to determine if those laws provide the citizens of the state with adequate protection from identity theft.

Background

Identity theft occurs when someone possesses or uses another person's name, address, Social Security number, bank or credit card account number, or other personal identifying information without that person's knowledge with the intent to commit fraud or other crimes. The Federal Trade Commission reports that identity theft is the fastest growing white-collar crime.

Prevalence of Identity Theft

According to a Federal Trade Commission report, between January and December 2004, Consumer Sentinel, the complaint data base developed and maintained by the Federal Trade Commission, received over 635,000 consumer fraud and identity theft complaints. According to the report, consumers reported losses from fraud and identity theft of more than $547 million. The report indicated that credit card fraud (28 percent) was the most common form of reported identity theft followed by phone or utilities fraud (19 percent), bank fraud (18 percent), and employment fraud (13 percent). Other significant categories of identity theft reported by victims were government documents and benefits fraud and loan fraud. According to the report, the percentage of complaints about “electronic fund transfer” related identity theft more than doubled between 2002 and 2004. The major metropolitan areas with the highest per capita rates of reported identity theft were Phoenix-Mesa-Scottsdale, Arizona; Riverside-San Bernardino-Ontario, California; and Las Vegas-Paradise, Nevada.

The Federal Trade Commission's report also indicated that there were 188 identity theft complaints from North Dakota victims, including 53 for credit card fraud (28 percent), 42 for phone or utilities fraud (22 percent); 27 for bank fraud (14 percent); 12 for employment-related fraud (6 percent); 11 for government documents or benefits fraud (6 percent); 9 for loan fraud (5 percent); 52 for other (28 percent); and 11 for attempted identity theft (6 percent). The report also listed the number of identity thefts by city as follows: Fargo (42); Grand Forks (22); Bismarck (17); Minot (17); Cavalier (6); Dickinson (6); Mandan (6); and Minot Air Force Base (6).

North Dakota Law

North Dakota Century Code Section 12.1-23-11 prohibits the unauthorized use of personal identifying information. A violation of this section is a Class B felony if the credit, money, goods, services, or anything else of value exceeds $1,000 in value, otherwise the offense is a Class C felony. A second or subsequent offense is a Class A felony.

In addition to the specific statute for the unauthorized use of personal identifying information, there are a number of theft statutes that are likely to be applicable, including NDCC Sections 12.1-23-02 and 12.1-23-03.

North Dakota Century Code Section 12.1-23-05 provides for the grading of theft offenses. This section provides that theft is a Class B felony if the property or services stolen exceed $10,000 in value or are acquired or retained by a threat to commit a Class A or Class B felony or to inflict serious bodily injury on the person threatened or on any other person. This section also provides that theft is a Class C felony if certain criteria are met, including that the property or services stolen exceed $500 in value; the property or services stolen are acquired or retained by threat and are either acquired or retained by a public servant by a threat to take or withhold official action or exceed $50 in value; or the property or services stolen exceed $50 in value and are acquired or retained by a public servant in the course of official duties. With some exceptions, all other theft under Chapter 12.1-23 is a Class A misdemeanor.

North Dakota also has a body of law that addresses issues relating to consumer fraud. North Dakota Century Code Chapter 51-15 is often referred to as the state's "consumer fraud law." Section 51-15-02 provides that "[t]he act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice."

The law authorizes the Attorney General to conduct and investigate unlawful practices under NDCC Chapter 51-15. The chapter also authorizes the Attorney General, upon court approval, to obtain injunctions, cease and desist orders, restitution, the appointment of a receiver, and the imposition of penalties, attorney's fees, and expenses. Section 51-15-09 creates a private cause of action for violations of the consumer fraud laws.

2005 Changes to Identity Theft Laws

In 2005 the North Dakota Legislative Assembly enacted several pieces of legislation to specifically address identity theft issues. North Dakota Century Code Section 12.1-23-11 was amended to provide that a person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual. Under this section, the offense is a Class B felony if the value of the credit, money, goods, or services obtained exceeds $1,000 in value, otherwise the offense is a Class C felony; and a subsequent offense is a Class A felony. This section also provides that prosecution for a violation must be commenced within six years after the discovery by the victim of the facts constituting the violation.

North Dakota Century Code Chapter 51-31 was enacted to provide that, upon the request of a consumer, a consumer reporting agency is required to include an initial or extended fraud alert in the file of that consumer. This chapter also provides that an individual who learns or reasonably suspects that the individual’s personal identifying information has been unlawfully used by another may initiate a law enforcement action by contacting the local law enforcement agency and that an individual who reasonably believes the individual is the victim of identity theft may petition the district court for an expedited judicial determination of the individual’s factual innocence. In addition, this chapter provides that the

Attorney General may enforce identity theft laws and a violation of the identity theft laws is a violation of the consumer fraud and unlawful credit practices laws.

North Dakota Century Code Chapter 51-30 provides that in the case of a breach of security, a person that conducts business in North Dakota and that owns or licenses computerized data that includes personal information is required to notify the residents of this state who may have been affected by the breach and provides that a person that maintains such computerized data for such an owner or licensee must notify the owner if there is a breach of security. The chapter also provides that the Attorney General may enforce breach of security laws and violation of the breach of security laws is a violation of the consumer fraud and unlawful credit practices laws.

Identity Theft Laws of Other States

Nearly all 50 states have enacted laws that specifically address the issue of identity theft. Several states, including Alaska and Colorado, have not enacted specific identity theft laws but rather rely on their general theft statutes to address the issue. A number of states, including Missouri, Montana, Nebraska, and Pennsylvania, make the act of stealing identifying information a crime even if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained. Although the classification of the offenses varies greatly from state to state, most states base the severity of the penalty on the dollar amount of the theft.

In 2005 at least 25 states enacted legislation to address issues relating to identity theft. For example, Illinois passed a law that removed the statute of limitations for the commencement of an identity theft prosecution and passed another law that increased the penalties for identity theft and aggravated identity theft by one class higher than the current law. Illinois also passed a law that prohibits the denial of credit, public utility services, or the reduction in the credit limit of a consumer solely because the consumer has been a victim of identity theft. Kansas changed the definition of identity theft from someone who uses personal identification to knowingly and intentionally defraud a person for economic benefit to a person receiving any benefit from using someone else's personal identification. A number of states, including North Dakota, Maine, and Montana, enacted legislation that limits the information a consumer reporting agency may report without the consumer's authorization. Several states, including North Dakota, Montana, Maryland, and Hawaii, passed legislation to study issues relating to identity theft.

Federal Identity Theft Laws

Identity Theft and Assumption Deterrence Act of 1998

In October 1998 Congress passed the Identity Theft and Assumption Deterrence Act of 1998 [Pub. L. No. 105-318; 112 Stat. 3007; 18 U.S.C. 1028] to address the problem of identity theft. Specifically, the Act made it a federal crime when anyone "knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law."

Identity Theft Penalty Enhancement Act of 2003

The Identity Theft Penalty Enhancement Act of 2003 [18 U.S.C. 47] established penalties for aggravated identity theft. The Act prescribes sentences of two years' imprisonment for knowingly transferring, possessing, or using, without lawful authority, a means of identification of another person during and in relation to specified felony violations, including felonies relating to theft from employee benefit plans and various fraud and immigration offenses; and five years' imprisonment for knowingly taking such action during and in relation to specified felony violations pertaining to terrorist acts, in addition to the punishments provided for such felonies.

Fair Credit Reporting Act

The Fair Credit Reporting Act [15 U.S.C. 1681 et seq.] establishes procedures for correcting mistakes on an individual's credit record and requires that a credit record only be provided for legitimate business needs. The Act, enforced by the Federal Trade Commission, is designed to promote accuracy and ensure the privacy of the information used in consumer reports. Recent amendments to the Act were intended to expand consumer rights and place additional requirements on credit reporting agencies.

Other Federal Laws

- Fair Credit Billing Act [15 U.S.C. 1601] establishes procedures for resolving billing errors on credit card accounts. The Act also limits a consumer's liability for fraudulent credit card charges.
- Fair Debt Collection Practices Act [15 U.S.C. 1692] prohibits debt collectors from using unfair or deceptive practices to collect overdue bills that a creditor has forwarded for collection.
- Electronic Fund Transfer Act [15 U.S.C. 1693] provides consumer protection for all transactions using a debit card or electronic means to debit or credit an account. The Act also limits a consumer's liability for unauthorized electronic fund transfers.
- Driver’s Privacy Protection Act of 1994 [Pub. L. 103-322; 18 U.S.C. 2721 et seq.] places limits on disclosures of personal information in records maintained by departments of motor vehicles.
- Family Educational Rights and Privacy Act of 1974 [20 U.S.C. 1232g] puts limits on disclosure of educational records maintained by agencies and institutions that receive federal funding.
- Gramm-Leach-Bliley Act [Pub. L. No. 106-102; 113 Stat. 1338, 1436-4515; U.S.C. 6801-6809] requires the Federal Trade Commission, along with the federal banking agencies, the National Credit Union Administration, the Treasury Department, and the Securities and Exchange Commission, to issue regulations ensuring that

financial institutions protect the privacy of consumers' personal financial information.

- Health Information Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 42 U.S.C. 201] regulates the security and confidentiality of patient information.

Testimony and Committee Considerations

The committee received extensive testimony and information from the Attorney General, the Insurance Commissioner, the North Dakota Bankers Association, representatives of the United States Postal Service, and an identity theft victim regarding issues relating to identity theft. The committee's considerations focused on five issues: state efforts and legislation to combat identity theft, federal efforts and legislation to combat identity theft, an identity theft victim testimonial, the impact of credit scores on insurance premiums, and security freeze legislation.

State Efforts and Legislation to Combat Identity Theft

The committee received extensive testimony from the Attorney General's office regarding the prevalence of identity theft and the efforts being made at the state level to combat identity theft.

The committee received testimony that it can take up to 600 hours for an identity theft victim to correct the credit problems created by an identity thief. The average identity theft nets between $45,000 and $50,000 and the thief rarely gets caught while the average bank robber nets $3,000 to $4,000 and usually gets caught. It was noted that it is often very difficult to find an identity thief because identity thieves often relocate to countries in which there is not extradition, e.g., Nigeria.

According to the director of the Consumer Protection and Antitrust Division of the Attorney General's office, a staff of two assistant attorneys general, one field investigator, three investigators, and three administrative assistants receive 100 to 150 calls per day regarding incidents of or questions about identity theft. It was noted that persons are not required to report identity theft to the Attorney General's office so this number may be just the tip of the iceberg. According to the testimony, identity thieves use personal identifying information to go on spending sprees using credit card or debit card account numbers, open new credit card accounts, buy high-ticket items, gain employment, obtain duplicate driver's licenses, and use the victims' reputations without damage to their own. The victims' information can be obtained by discarded ATM receipts, stealing mail from mailboxes, illegally obtaining credit reports, and going through garbage cans. A common way of obtaining information using a computer is a method known as "phishing." There are a number of "phishing" scams that attempt to obtain personal identifying information by fraudulently attempting to represent reputable companies. It was emphasized that people need to guard their personal information and be very careful about what information is revealed. The Attorney General offers an identity theft affidavit for victims to use to prove they have been a victim of identity theft. It also was emphasized that everyone should check their credit reports several times per year to check for errors and suspicious activity. A person can request up to three free credit reports each year, one from each of the credit reporting agencies. The Attorney General's office offers a kit to help victims of identity theft. It was noted that some of the additional law enforcement training funds authorized during the 2005 legislative session are being used to provide training on identity theft. According to the testimony, one of the best solutions for reducing identity theft is consumer education.

The committee received testimony that the 2005 increase in the penalty from a Class C felony to a Class B felony for certain types of identity theft with the offense elevated to a Class A felony for second and subsequent offenses made North Dakota's penalty one of the toughest in the country. The legislation also allowed one jurisdiction to prosecute multiple offenses which made it easier to gain jurisdiction over an offender. In addition, the 2005 legislation that requires fraud alerts on credit reports, makes police reports a mandatory item, allows for a judicial determination of factual innocence, and gives the Attorney General greater enforcement authority has provided effective tools in combating identity theft. It was noted that locking mailboxes is an effective way to prevent identity theft. It was suggested that the committee may want to encourage the United States Postal Service to require locked mailboxes. According to the testimony, the Attorney General's office would be willing to aid in the education efforts.

Testimony from a representative of the North Dakota Bankers Association indicated that when a customer requests an address change, notification that an address has been changed may be sent to both the accountholder's old address and new address. It was noted that there is not a specific requirement that this be done; however, the federal government requires banks to maintain the security of the accountholder's data.

During the course of the committee's study of identity theft and state efforts to combat identity theft, the committee considered a bill draft that prohibited third parties from assisting and facilitating consumer fraud upon the consumers in our state.

Testimony in support of the bill draft indicated that as consumer fraud proliferates, it becomes more organized and more complicated. This often requires the assistance of third parties, such as third-party processors, to facilitate and perpetrate the fraud. It was noted that these third parties are not the individuals directly engaged in the fraudulent solicitations but they are critical to the process of completing the fraud. According to the testimony, the telemarketing fraud industry is largely dependent upon third-party processors, which are businesses that handle the mechanics of taking money out of consumers' bank accounts and transferring that money to the fraudulent telemarketers. The Attorney General has begun investigating the third parties that facilitate fraudulent activity by, for instance, collecting payments from North Dakota victims. According to the testimony, the Attorney

General would like clear legislation authorizing the Attorney General to take enforcement action against third parties that facilitate or assist others who are initially more directly engaged in fraudulent conduct. It was noted that the bill draft provided authority that is similar to the authority granted to federal agencies to prosecute persons engaged in assisting and facilitating consumer fraud in North Dakota. It was also noted that there is a $5,000 penalty imposed for those third parties that assist and facilitate consumer fraud.

Committee members expressed concern over the phrase "substantial assistance or support" in the bill draft. According to the testimony, the word "substantial" was used to exclude those persons who unwittingly become involved in the act or practice. It was noted that the federal version of this law does not use the word "substantial." The committee amended the bill draft to remove the word "substantial."

Testimony in opposition to the bill draft indicated that the bill draft casts a wide net. It was noted that the bill draft could affect many small Internet service providers and shopper newspapers in small towns.

Federal Efforts and Legislation to Combat Identity Theft

The committee received testimony that Congress is considering a bill that amends the Fair Credit Reporting Act and extends protection to sensitive personal information, sensitive financial account information, and sensitive financial identity information. The bill requires notice to consumers if there is a breach that risks "substantial harm" or "substantial inconvenience." The bill preempts state law with respect to the responsibilities of any person to protect confidentiality of consumer information. According to the testimony, other bills, including the Consumer Data Security and Notification Act, the Consumer Identity Protection and Security Act, and the Notification of Risk to Personal Data Act, are also pending in Congress. It was noted that several of the pending Acts would preempt state action.

The committee also received testimony from a postmaster and a postal inspector of the United States Postal Service regarding methods used by the United States Postal Service to combat identity theft. According to the testimony, postal inspectors handle cases relating to mail theft, mail fraud, and burglary. It was noted that identity theft is a big issue for the Postal Service. Four percent of people who have had their identity stolen claim the theft occurred through the United States mail. It was noted that one way identity is stolen is by stealing mail either from a mailbox or from a person's trash; however, most cases involve an item fraudulently mailed through the Postal Service. According to the testimony, the Postal Service uses a financial crimes data base to track identity theft cases. Customers can report cases to this data base. The Postal Service's efforts to combat identity theft include education campaigns, an annual national consumer week, presentations to the public on how to prevent identity theft, and a change of address validation program to prevent fraudulent attempts to change an address. It was noted that the convenience checks sent by credit card companies are one of the most sought after items by thieves.

According to the testimony, the United States Postal Service attempts to educate people on the advantages of having locked mailboxes, which significantly reduce the incidents of mail theft. It was noted that the Postal Service encourages locked mailboxes but often cost is an issue. The testimony indicated there are many jurisdictional issues when dealing with international mail crimes. It was noted that lottery scams create big problems for the Postal Service. According to the testimony, the Postal Service has two postal inspectors who work exclusively on foreign lottery scams.

Identity Theft Victim Testimonial

The committee received testimony from an individual who had personal experience with identity theft. The victim's ordeal began in 1997 when an individual from Minnesota was able to obtain information regarding the victim's bank accounts and a copy of his birth certificate. The individual who stole his identity opened accounts in his name and attempted to purchase a $30,000 truck using those accounts. The individual, who was eventually caught, spent 13 days in jail in North Dakota and 30 days in jail in South Dakota. According to the testimony, that individual offended again and received a three-year sentence. According to the testimony, the whole ordeal cost the victim attorney's fees, over $2,000 in other costs, and many hours of his time. It was noted that as a citizen and consumer, he was the one being punished. The victim emphasized the importance of frequent credit checks. The victim reported that although his credit report was eventually cleared, it took more than a year and many letters and affidavits to accomplish it.

Impact of Credit Scores on Insurance Premiums

The committee received testimony from a representative of the Insurance Commissioner regarding the impact of credit scores on insurance premiums. According to the testimony, in recent years, automobile and homeowner insurance companies have developed a new tool to predict more accurately future losses of their insureds. This new tool is called a "financial responsibility score." It was noted that while this score is similar to the credit score that lenders and mortgage companies use when a person applies for a loan, it is not the same score. A statistical company that was instrumental in developing the system for calculating the credit score used by lenders was the leader in developing a formula for calculating a score that is used in the insurance underwriting and rating process. There is not a standard statistical formula in use by all companies and formulas can vary from 11 attributes to as high as 25 attributes. According to the testimony, some attributes that are common among formulas are timeliness of payments, number of credit cards, amount of indebtedness compared to the total amount of available credit, number of bankruptcies, judgments, or defaults, and the length of time a consumer has had credit. The testimony indicated that the statistical company initially took the credit information of over

15 million automobile insurance policyholders, applied the formula to the policyholders' credit reports to find the score, and found a direct correlation between the scores and the policyholders' insurance loss experience. It is this correlation that serves as the insurance industry's basis for using the score as a tool in determining whether to write certain risks or to decide what the appropriate premium is for the risk.

According to the testimony, when this new methodology was used, North Dakota did not have a law in place to deal with this new concept. The Insurance Commissioner, in an attempt to provide some consumer protections and create some uniformity and guidelines in the use of credit information by the insurance industry, proposed a bill that passed during the 2003 legislative session. That law, codified as North Dakota Century Code Chapter 26.1-25.1, sets requirements and limitations on the use of credit information. For example, the 2003 law prohibits the denial, cancellation, or nonrenewal of a policy solely on the basis of credit information, without consideration of any other applicable underwriting factor independent of credit information.

The testimony also indicated that the 2003 law also provides consumer protections. These protections include requiring disclosure to the consumer at the time of an application that the company may use credit information and requiring the disclosure to the consumer if the use of credit information results in an "adverse action," such as a higher rate or refusal to insure. As of February 2006, approximately 45 states had enacted statutes to address the use of credit information in personal lines insurance. Of the states with laws in place, about 15 are revisiting their laws in attempts to either repeal the laws, add more restrictions, or to completely prohibit the use of credit for predicting future losses.

Security Freeze Legislation

During the course of the committee's study of identity theft, the committee received information regarding security freeze legislation. A security freeze or credit freeze is a tool available to a consumer to lock or "freeze" the consumer's credit report and credit score. When a consumer places a security freeze on the consumer's credit report, all third parties, such as credit lenders and other companies, whose use is not exempt under law, are unable to access the consumer's credit report or credit score without the consumer's consent. The committee received testimony that 23 states have enacted security freeze legislation.

According to testimony from the Attorney General's office, in light of escalating identity theft occurrences and theft or security breaches relating to the storage and collection of confidential personal and financial information, the Attorney General believes it is very important for North Dakota to implement security freeze legislation to provide additional protection to North Dakota consumers. It was noted the Attorney General considered introducing security freeze legislation during the 2005 legislative session but it was late in the legislative process and he opted to research and consider security freeze legislation for the 2007 legislative session. According to the testimony, of the 23 states that have enacted security freeze legislation, 18 made the security freeze available to all consumers, not just identity theft victims. According to the testimony, the Attorney General prefers the security freeze tool be available to all North Dakota consumers. A security freeze should apply to all types of new account fraud and should not be limited to the extension of credit. It was emphasized that it is important that a security freeze be easy to use. It was noted that Congress has legislation pending, the Financial Data Protection Act of 2006, which would preempt all state laws that regulate data security breaches and security freezes. According to the testimony, the Attorney General and 48 other Attorneys General sent a letter to congressional leaders urging them, in the event of preemption, to adopt strong legislation regarding security breach notification and strong security freeze legislation, enforceable by the states' Attorneys General.

The testimony indicated that the Attorney General is preparing a bill draft on security freezes. It was noted the legislation is somewhat controversial in the credit reporting community. It was also noted such a freeze would cause a person delays in obtaining credit.

Testimony from the North Dakota Bankers Association indicated that uniformity of security freeze legislation among states is a concern for banks. It was emphasized that in considering identity theft legislation it is important to keep in mind that North Dakota and South Dakota have the least amount of identity theft. It was noted that security freeze legislation is a new tool so there is not much data available on its effectiveness.

Recommendation

The committee recommends Senate Bill No. 2040 to prohibit third parties from assisting and facilitating consumer fraud upon the consumers in this state.

DEFINITION OF DEMENTIA-RELATED CONDITIONS STUDY

Senate Concurrent Resolution No. 4027, as passed, provided for a study of the need for dementia-related services, standards, and practices for caregivers and a review of the legal and medical definitions used for dementia-related conditions and the funding for programs and services for individuals with dementias. Testimony in support of Senate Concurrent Resolution No. 4027 indicated that because the number of individuals with Alzheimer's disease and related dementia in the state will continue to increase, there is a need to determine whether North Dakota has adequate services to care for these individuals. By Legislative Council directive, the scope of the study was limited to a review of the legal and medical definitions used for dementia-related conditions.

Dementia

Dementia is not a specific disease. It is a descriptive term for a collection of symptoms that can be caused by a number of disorders that affect the brain. Individuals with dementia have significantly impaired intellectual

functioning that interferes with normal activities and relationships. An individual may also lose the ability to solve problems and maintain emotional control and may experience personality changes and behavioral problems, such as agitation, delusions, and hallucinations. A diagnosis of dementia is made only if two or more brain functions, such as memory and language skills, are significantly impaired without loss of consciousness. Some of the diseases that can cause symptoms of dementia are Alzheimer's disease, vascular dementia, Lewy body dementia, frontotemporal dementia, Huntington's disease, and Creutzfeldt-Jakob disease. Physicians have identified other conditions that can cause dementia or dementia-like symptoms, including reactions to medications, metabolic problems and endocrine abnormalities, nutritional deficiencies, infections, poisoning, brain tumors, anoxia or hypoxia (conditions in which the brain's oxygen supply is either reduced or cut off entirely), and heart and lung problems. In some circumstances, dementia may be temporary or is reversible. Some common causes of dementias that may be reversible include brain disease, such as tumors, subdural hematoma, and hydrocephalus; depression; negative drug interactions; drug overdose; alcohol abuse; malnutrition; heart disease; traumas that cause concussions or contusions; metabolic or endrocrine disorders; infections; and environmental changes.

Alzheimer's Disease and Related Dementias

Well-known diseases that cause dementia include Alzheimer's disease, multi-infarct dementia, Parkinson's disease, Huntington's disease, Creutzfeldt-Jakob disease, Pick's disease, and Lewy body dementia. A description of each disease, as provided by the Alzheimer's Association, is:

1. Alzheimer's disease is a degenerative disease that attacks the brain, begins gradually, and progresses at a variable rate. Alzheimer's disease results in impaired memory, thinking, and behavior and can last from three to 20 years from the time of onset of symptoms.
2. Multi-infarct dementia, or vascular dementia, is a deterioration of mental capacity caused by multiple strokes (infarcts) in the brain. These events may be described as mini strokes, where small blood vessels in the brain become blocked by blood clots, causing the destruction of brain tissue. These strokes may damage areas of the brain responsible for a specific function as well as produce general symptoms of dementia. As a result, multi-infarct dementia is sometimes misdiagnosed as Alzheimer's disease.
3. Parkinson's disease is a progressive disorder of the central nervous system. In Parkinson's disease certain brain cells deteriorate for reasons not yet known. These cells produce a substance called dopamine, which helps control muscle activity. Parkinson's disease is often characterized by tremors, stiffness in limbs and joints, speech difficulties, and difficulty initiating physical movement. Late in the course of the disease, some patients develop dementia, Alzheimer's, or some other dementia.
4. Huntington's disease is an inherited, degenerative brain disease that causes both physical and mental disabilities and usually begins in mid-life. Early symptoms can vary from person to person but include involuntary movement of the limbs or facial muscles, difficulty concentrating, and depression. Other symptoms include personality change, memory disturbance, slurred speech, and impaired judgment.
5. Creutzfeldt-Jakob disease is a rare, fatal brain disorder that causes rapid, progressive dementia and other neuromuscular disturbances. Creutzfeldt-Jakob disease is cause by a transmissible agent. The disease can be inherited, but usually is not. Early symptoms of Creutzfeldt-Jakob disease include failing memory, changes in behavior, and lack of coordination. As the disease advances, usually very rapidly, mental deterioration becomes pronounced, involuntary movements appear, and the patient experiences severe difficulty with sight, muscular energy, and coordination. Like Alzheimer's disease, a definitive diagnosis of Creutzfeldt-Jakob disease can be obtained only through examination of brain tissue at autopsy.
6. Pick's disease, also known as frontotemporal dementia, is also a rare brain disorder, characterized by shrinkage of the tissues in the frontal and temporal lobes of the brain and by the presence of abnormal bodies, called Pick's bodies, in the nerve cells of the affected areas of the brain. The symptoms are similar to Alzheimer's disease, with a loss of language abilities, skilled movement, and the ability to recognize objects or people. Initial diagnosis is based on family history, symptoms, tests, and ruling out other causes of dementia. A definitive diagnosis of Pick's disease is usually obtained at autopsy.
7. Lewy body dementia is an irreversible form of dementia associated with abnormal protein deposits in the brain called Lewy bodies. Symptoms of Lewy body dementia are similar to Alzheimer symptoms and include memory loss, confusion, and difficulty communicating. Hallucinations and paranoia also become apparent in the earlier stages of the disease and often last throughout the disease process. Although initial symptoms of Lewy body dementia may be mild, affected individuals eventually develop severe cognitive impairment. There is no treatment available for Lewy body dementia.

2005 Legislation

Several bills enacted in 2005 affected the services provided for individuals with Alzheimer's disease or related dementia. House Bill No. 1190, which related to

the policy of determining further expansion of basic care facilities in the state, stated the two circumstances under which basic care beds may be added between August 1, 2005, and July 31, 2007, provided the process for transferring of basic care beds, and addressed requirements for basic care beds acquired by Indian tribes. House Bill No. 1191 related to the policy of expansion of nursing facilities in the state. The bill retained one exception to limiting expansion of nursing facility beds, allowing a facility to revert a basic care bed to a nursing bed. The bill also allowed transfers of beds from one facility to another and provided a nursing bed that is converted to a basic care bed may be transferred as a basic care bed, but that bed may not then be relicensed as a nursing bed. In addition, the bill addressed requirements for nursing beds acquired by Indian tribes.

Testimony and Committee Considerations

The committee, in its study of the legal and medical definitions used for dementia-related conditions, received testimony from representatives of the Real Choice Systems Change Task Force, the Minnesota-North Dakota Alzheimer's Association, and the Department of Human Services regarding the study and recent projects, including the Alzheimer's Disease Demonstration Grants to States Program and the Real Choice Systems Change Grant Program. The committee also received testimony regarding concerns about problems with a statutory definition of a terminal condition.

Alzheimer's Disease Demonstration Grants to States Program

The committee received testimony regarding the federal Alzheimer's Disease Demonstration Grants to States Program, which was established under Section 398 of the Public Health Service Act [Pub. L. 78-410], as amended by Public Law 101-157 and by Public Law 105-379, the Health Professions Education Partnerships Act of 1998. The program is administered by the Administration on Aging, which is an agency within the United States Department of Health and Human Services.

According to the testimony, the program's mission is to expand the availability of diagnostic and support services for persons with Alzheimer's disease, their families, and their caregivers, as well as to improve the responsiveness of the home and community-based care system to persons with dementia. The program focuses on serving hard-to-reach and underserved individuals with Alzheimer's disease or related dementia. The program awarded demonstration grants to 38 state government agencies in fiscal year 2005, including the North Dakota Department of Human Services through the Aging Services Division.

The committee received testimony that the grant awarded to the Department of Human Services is in the amount of $261,150 per year for up to three years. The purpose of the North Dakota program is to increase dementia identification, treatment, and caregiver respite with a special focus on rural areas and American Indian reservations. Two medical systems will provide protocols, tools, and training to the medical community to facilitate assessment, treatment, and referral for enhanced respite services. The grant requires a 25 percent nonfederal match the first year, 35 percent the second year, and 45 percent the third year. The Dakota Medical Foundation has committed to providing a portion of the match for each of the three years of the project. The remainder of the match is required of the contractors who will be providing services funded by the grant. No state general fund money is budgeted for the grant.

The committee received testimony that Alzheimer's disease is growing at an alarming rate. According to the testimony, this growth will impact in-home services, long-term care services, and the Medicaid and Medicare programs. According to the testimony, in 2000 there were 16,000 North Dakotans with Alzheimer's disease. The testimony estimated that the number will grow to 20,000 by 2025.

Real Choice Systems Change Grant Program

In September 2004 a grant was awarded to the Aging Services Division of the Department of Human Services. The purpose of the $315,000 three-year grant is to provide a single point of access to long-term support and care services for the elderly and individuals with disabilities. The Department of Human Services has contracted with the North Dakota Center for Persons with Disabilities at Minot State University to conduct the project. The project, known as the Real Choice Systems Change Grant Rebalancing Initiative, is working to develop a plan for rebalancing of funds between long-term care services and those services provided in home or community settings. The project is also looking at developing a new system for providing a single point of entry for services for elderly and individuals with disabilities who are considering long-term care and home and community-based services. The project involves bringing together representatives from public and private organizations that play a role or are interested in assuring that North Dakota elderly and persons with disabilities have options and access to the continuum of long-term care services in the state.

The committee received testimony from a representative of the Real Choice Systems Change Task Force regarding the program. According to the testimony, one of the goals of the Real Choice Systems Change Task Force is to support family caregivers. It was noted that many people with Alzheimer's and related dementia can be cared for at home. According to the testimony, it is important to look at the legal and medical definitions of dementia because of how complicated the diseases are and because people with dementia often fall between the cracks in our legal and medical systems. The testimony indicated that a person with dementia may look very healthy physically and may present very well in a situation such as a guardianship, conservatorship, or power of attorney proceeding. It was noted, however, that person may later not remember anything about the proceeding. It also was noted social workers are often available to help families obtain

services for persons afflicted with dementia-related conditions. According to the testimony, although a definitive diagnosis of Alzheimer's disease can be made only at the time of autopsy, by process of elimination, Alzheimer's disease can be diagnosed with about 90 percent accuracy. It was noted that North Dakota ranks first in the nation in the percentage of its population over age 85.

Definition of Terminal Condition

During the course of the study, the committee received information that the need for this study was based more upon a concern about the North Dakota Century Code's definition of terminal condition than the definition of dementia. According to the information, an attorney who prepares health care powers of attorney found the definition of terminal condition in North Dakota law was overly restrictive, unreasonable, and difficult to use in practice. Before the 2005 legislative session, the definition contained in NDCC Section 23-06.4-02(7) provided that a "'terminal condition' means an incurable or irreversible condition that, without the administration of life-prolonging treatment, will result, in the opinion of the attending physician, in imminent death. The term does not include any form of senility, Alzheimer's disease, mental retardation, mental illness, or chronic mental or physical impairment, including comatose conditions that will not result in imminent death." The information also indicated that the Minnesota definition of terminal condition contained in Minnesota Statutes Annotated Section 145B.02(8) was much more useful for medical professionals and did not have the unnecessary general restrictions of the North Dakota definition. The Minnesota statute defines terminal condition as "an incurable or irreversible condition for which the administration of medical treatment will serve only to prolong the dying process."

North Dakota Century Code Chapter 23-06.4, the Uniform Rights of Terminally Ill Act, was repealed by 2005 Session Laws Chapter 232, Section 19. According to the information received by the committee, the 2005 revisions to Chapter 23-06.5, which contain the requirements for health care directives, no longer include a definition of terminal condition. The chairman indicated that, in light of the repeal of Chapter 23-06.4 and the revisions to Chapter 23-06.5, regarding health care directives, the issues with the definition of terminal condition and dementia did not require further action by the committee.

Conclusion

The committee makes no recommendation as a result of this study.

DRUG USE AND ABUSE REPORT OF THE ATTORNEY GENERAL

The committee received a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in the state as required by NDCC Section 19-03.1-44. The report evaluated five sets of statistics, each of which provided a different aspect of the substance abuse problem in the state. The first set evaluated the youth risk behavior survey results. While tobacco, alcohol, and drug use by the state's youth in grades 7 through 12 has steadily decreased since 1999, North Dakota continues to rank near the top in youth who binge drink, drink while driving, and ride with persons who have been drinking. North Dakota's youth tend to be near the top of all states when it comes to alcohol use.

The second set of statistics contained in the report dealt with controlled substance testing. The number of narcotics cases submitted for analysis has steadily increased from 1,735 in 1999 to over 2,900 in 2005. The figures represented a 70 percent increase during the five-year period. The number of exhibits analyzed increased from 5,535 in 1999 to 10,312 in 2005, an 86 percent increase. The exhibits involving marijuana and methamphetamine constituted the majority of exhibits analyzed with marijuana leading the way. The testing indicated that the potency of marijuana is ever-increasing.

The third set of statistics, which was compiled by the Department of Human Services, dealt with treatment information. The department's information is derived from screening interviews conducted when individuals seek treatment at regional centers. Statistics from 2001 through 2004 reaffirm that alcohol, by far, remains the substance of choice in this state, followed by marijuana and methamphetamine and amphetamines. Patients identifying methamphetamine as their primary substance rose by 175 percent between 2002 and 2004. Patients who identified marijuana as their primary substance decreased by 9 percent.

The fourth set of statistics, which was compiled by the Department of Corrections and Rehabilitation, was an analysis that examined the number of admissions for drug offenses for each year. The data provided information on the number of offenders who were court-ordered to treatment, the number of offenders referred to chemical dependency treatment, and the number of offenders who completed chemical dependency treatment. The state has seen a steady increase in each area since 1999. The number of admissions for drug offenses increased by 28 percent between 2002 and 2004 and the number of offenders who completed chemical dependency treatment increased by 15 percent during the same period. The waiting list for criminal offenders who want to get into treatment increased from 44 in 2003 to 95 in 2004. According to the report, this statistic merits further review in future years to ascertain whether the system is handling the treatment needs of those sentenced to incarceration.

The fifth set of statistics, an overview of current law enforcement efforts to combat unlawful drug trafficking and usage, was compiled by the Bureau of Criminal Investigation. The bureau's 2004-05 enforcement activities included partnering with the Highway Patrol, State Radio, and the National Guard to create a fusion center located at Fraine Barracks to receive and disseminate homeland security intelligence to the proper agencies; supporting the concept of intelligence-driven investigations by developing a postseizure analysis team

to help facilitate information sharing among task forces, analysts across the nation, and the international border enforcement teams; working with the Federal Bureau of Investigation and the Bureau of Indian Affairs to establish a Safe Trails Task Force to focus on narcotics enforcement in and around the state's Indian reservations; and conducting a one-week narcotic investigation school for law enforcement officers and conducting a methamphetamine summit in Minot.

According to the report, methamphetamine lab seizures decreased as a result of the vigilant efforts of the nine task forces, legislation regulating the sale of over-the-counter medications containing precursors for manufacturing, and the public's willingness to call law enforcement regarding suspicious activities. It was noted that although the number of methamphetamine lab busts in the state continues to decrease, most of the methamphetamine used in the state is not manufactured in the state. According to the report, most of the methamphetamine used in the state appears to be coming from Mexico. The number of methamphetamine lab busts is down but methamphetamine use is not. It was pointed out that the Byrne grant, a previous source of federal funds for law enforcement efforts, is drying up. According to the report, that grant was used to fund the salaries for local law enforcement.

It was noted that there is a new federal law that restricts the sale of the precursor drugs used in the manufacture of methamphetamine. According to the report, after North Dakota passed its law regarding the sale of these precursor drugs, Minnesota, Montana, South Dakota, Manitoba, and Saskatchewan passed similar legislation, making it very difficult to obtain the precursor drugs in this region.

The report indicated that new information regarding the effectiveness of the treatment for methamphetamine addiction indicated that the treatment can be effective but the treatment must be appropriate. In some cases, it was noted, the appropriate treatment may need to be intensive and inpatient.

Finally, the report indicated that a pilot project to provide locks for anhydrous ammonia tanks has been very successful. No theft of anhydrous ammonia has occurred in any county in which the project was implemented. The report indicated that the Legislative Assembly may want to consider implementing the program statewide but an evaluation should be done as to whether the decrease in anhydrous ammonia thefts is due to that pilot project or if it is because of the restrictions in the sale of the precursor drugs.

REPORT OF COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

The committee received periodic reports from the Commission on Legal Counsel for Indigents and the director of the Commission on Legal Counsel for Indigents regarding the implementation of the indigent defense system, data on the indigent defense contract system, and the establishment of public defender offices as provided in NDCC Section 54-61-03 and 2005 Session Laws Chapter 538, Section 9. The initial report of the commission indicated that Ms. Robin Huseby had been hired to serve as director of the commission. The director assumed her duties on November 1, 2005, with her office located in Valley City. The director's staff includes an administrative assistant and an assistant director. The director provided regular reports to the committee regarding the status of the new indigent defense system.

As of January 1, 2006, all indigent defense duties and funding, including the fees that are deposited in the indigent defense fund, were transferred from the Supreme Court to the commission. The reports indicated that because of the lack of attorneys who are willing to take an indigent defense contract in certain parts of the state, the commission made the decision to open public defender offices in Minot, Dickinson, and Williston. The Minot office employs three attorneys, one paralegal, and one support staff person and the Dickinson and Williston offices each employ two attorneys and one support staff person. All positions are classified state employees. The reports indicated that the public defender offices in all three cities are running smoothly. The Minot public defender office, which began operations on March 20, 2006, had closed approximately 300 cases to date. It was noted that the local bar associations are providing counsel in all cities to handle cases in which there are conflicts. According to the reports, the conflict attorneys are working under the auspices of the commission and local public defenders. It was noted that reports from court personnel who work with the public defender offices have been very positive. According to the reports, public defenders are assigned only new cases; all cases that existed before the creation of the public defender offices continue to be handled by the attorneys who were originally assigned those cases.

The reports also indicated that the commission plans to open a public defender office in Grand Forks in the spring of 2007. The office will have three attorneys and a support staff. According to the report, the commission has had some difficulty maintaining indigent defense service in Grand Forks using only contract attorneys. It was noted that the commission is considering the prospect of an internship program with the University of North Dakota School of Law.

According to the reports, the commission holds monthly meetings to address issues that arise in the implementation of the state's new indigent defense system. The commission, which has approved its budget for the upcoming biennium, requested an optional package of $1.6 million to establish full public defender offices in Fargo and Bismarck. According to the reports, if public defender offices are established in Bismarck and Fargo, the public defenders would handle about one-third to one-half of the cases with the remainder of the cases handled by contract attorneys. According to the reports, a contract that was lost in Fargo cost the commission $60,000. The reports indicated that using public defenders helps alleviate spikes in costs. It was reported that not all contract attorneys are pleased with the change to public defender offices.

The commission also reported that it has been working on standards for the commission, public defenders, and contract attorneys. The commission has developed a web page that contains basic information, forms, standards, newsletters, and contact information. According to the reports, the commission eventually would like to use the web page as a vehicle for the attorneys to report their hours. The commission conducted its first annual attorney training in May 2006. Seventy-five attorneys participated in the training.

It was noted that an issue has been raised by the Supreme Court as to whether NDCC Section 12.1-04.1-02 should be amended to provide that the commission is responsible for mental health evaluation costs. The reports indicated that the commission plans to prepare a bill draft for the 2007 legislative session which will address this section as well as other issues that have arisen since the new indigent defense system was implemented. It was noted that the commission is reviewing the qualifications for indigency as well as ways to recoup costs from those persons who are later able to pay.

According to the reports, the indigent defense system in the state will benefit from a public defender system. The reports indicated that use of public defenders allows for more consistency, especially financial consistency, than the contract system.

NORTH DAKOTA LOTTERY REPORT

The committee received a report from the director of the North Dakota lottery regarding the operation of the lottery pursuant to NDCC Section 53-12.1-03. According to the report, the lottery's mission is to maximize net proceeds for the benefit of the state by promoting entertaining games; providing quality customer service to retailers and players; achieving the highest standards of integrity, security, and accountability; and maintaining public trust.

The lottery employs eight full-time employees and two part-time operators. For the 2003-05 biennium, the lottery's operating revenue was $25.3 million. It was noted that this was more than twice the amount initially projected. The state general fund revenue was $7.19 million, which was five times the amount initially projected. For the 2005-07 biennium, the lottery's projected sales are $38.5 million with state general fund revenue of $10 million. According to the report, the lottery is on track to meet or exceed those projections. For the period March 25, 2004, through December 31, 2005, total sales were $35.1 million. For the period March 25, 2004, to date, total operating revenue has exceeded $40 million. Nearly 1.7 million winning tickets sold in the state. As of December 31, 2005, the total value of unclaimed winning lottery tickets was $483,000. About $7,000 to $8,000 of prize money per week goes unclaimed. The money from unclaimed tickets is used for expenses and lottery net proceeds.

According to the report, at least once per year the lottery transfers its net proceeds, less the Multi-State Lottery Association grand prize and set prize reserve amounts and the $200,000 allocated to the compulsive gambling prevention and treatment fund, to the State Treasurer for deposit in the state general fund. The report indicated that the state's 32 cents per dollar in net proceeds is the highest among states of similar size. It was noted that North Dakota is the only state that is restricted to multistate online lottery games.

According to the report, to maximize revenue for the state general fund, the lottery must offer exciting and attractive games that add value to the lottery's product mix for players to play, license retailers that are in convenient locations to sell tickets, create effective annual marketing plans, provide quality customer service to retailers and players, and control operating expenses. According to the report, the saturation point for North Dakota is probably five or six lottery games. It was noted that total sales are highly affected by the size of the game's jackpot with larger jackpots generating higher sales. During the 2005-07 biennium, the lottery plans to launch one or two new games that add value to the lottery's product mix. One of those games--2by2--was launched on February 2, 2006. The lottery launched a subscription service on November 1, 2005. As of the date of the report from the lottery, there were 527 subscriptions for $45,760 in subscription sales.

According to the report, in accordance with state law, the lottery established a debt setoff program in which a lottery prize of $600 or more is used to set off a delinquent debt owed to a state agency or collected through a state agency on behalf of a third party. As of February 23, 2006, there had been 11 prize claims of $600 or more. There have been three claims against those prizes totaling $2,904.

Scientific Games International, Inc., provides the lottery with online and secondary online gaming systems hardware, games management system software, retailer telecommunications network, 400 lottery terminals, electronic scrolling and logo backlit signs, primary and secondary internal control systems, and five field technicians to provide service to lottery retailers. The lottery's online and secondary online gaming systems are collocated with the primary and secondary online gaming systems of the Montana lottery at a Scientific Games-owned computer data center in Helena, Montana. According to the report, the lottery's online gaming systems were scheduled to be moved to Oklahoma City, Oklahoma, in March 2006.

A five-member Lottery Advisory Commission serves as a policy advisor to the Attorney General and the director of the lottery and as the audit committee of the lottery. The commission provides a perspective on issues and operation of the lottery and presents ideas and recommends solutions while it represents the interests of the state, public, and lottery industry. The commission meets at least quarterly and has met 18 times since the members were appointed on July 1, 2003. A volunteer 12-member retailer advisory board is an informal board that serves as a front-line retailer and player advisor to the lottery.

According to the report, there has been little turnover in retail sites. The 400 lottery terminals are located in 127 cities throughout the state. Some terminals in remote parts of the state are not meeting the required sales quota. The lottery requires retailers to have a

minimum of $250 per week in ticket sales. It was noted that the lottery lost 10 retail sites during the first year, eight of which were located in liquor stores. At the time of the report, there were plans for removing terminals at three locations. It was noted that the lottery has to strike a balance between trying to service all areas of the state and looking at the bottom line.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned three studies. Section 2 of Senate Bill No. 2361 directed the Legislative Council to study the state's marriage laws and methods for strengthening the institution of marriage in the state, including premarital requirements, such as marital education and counseling, waiting periods, and marital blood tests; the availability of marriage counseling and parenting education in the state; and the implementation of predivorce requirements, such as divorce-effects education. Senate Concurrent Resolution No. 4031 directed the Legislative Council to study the Uniform Trust Code to determine the feasibility and desirability of adopting the Uniform Trust Code in North Dakota. Senate Concurrent Resolution No. 4032 directed the Legislative Council to study Revised Article 1 of the Uniform Commercial Code - General Provisions (2001) to determine the feasibility and desirability of adopting Revised Article 1. The Legislative Council delegated to the committee the responsibility to review uniform laws recommended to the Legislative Council by the Commission on Uniform State Laws under North Dakota Century Code (NDCC) Section 54-35-02. The Legislative Council also delegated to the committee the responsibility to receive periodic reports from the Department of Human Services regarding the status of the alternatives-to-abortion funding.

Committee members were Representatives Lois Delmore (Chairman), Bill Amerman, Lawrence R. Klemin, Kim Koppelman, and William E. Kretschmar and Senators Dick Dever, Stanley W. Lyson, Carolyn Nelson, John T. Traynor, and Thomas L. Trenbeath.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

MARRIAGE LAWS STUDY

Section 2 of Senate Bill No. 2361 directed a study of the state's marriage laws and methods for strengthening the institution of marriage in the state, including premarital requirements, such as marital education and counseling, waiting periods, and marital blood tests; the availability of marriage counseling and parenting education in the state; and the implementation of predivorce requirements, such as divorce-effects education. The bill, as introduced, would have provided for a reduced marriage license fee for a couple that completed 12 hours of premarital education. As passed, the bill provided for an increase in the amount of the marriage license fee and did not include a premarital education requirement. Section 2 of the bill, which provided for this study, was added by the conference committee on Senate Bill No. 2361.

Background

In the English common-law tradition, from which American legal doctrines and concepts have developed, a marriage was a contract based upon a voluntary private agreement by a man and a woman to become husband and wife. Marriage was viewed as the basis of the family unit and vital to the preservation of morals and civilization. Traditionally, the husband had a duty to provide a safe house, pay for necessities such as food and clothing, and live in the house. The wife's obligations were maintaining a home, living in the home, having sexual relations with her husband, and rearing the couple's children. Today, the underlying concept that marriage is a legal contract still remains, but due to changes in society the legal obligations are not the same.

Marriage is chiefly regulated by the states. The United States Supreme Court has held that states are permitted to reasonably regulate the institution of marriage by prescribing who is allowed to marry and how the marriage can be dissolved. Entering into a marriage changes the legal status of both parties and gives both husband and wife new rights and obligations. One power that the states do not have, however, is that of prohibiting marriage in the absence of a valid reason. For example, prohibiting interracial marriage is not allowed for lack of a valid reason and because the prohibition was deemed to be unconstitutional.

All states limit individuals to one living husband or wife at a time and will not issue marriage licenses to anyone with a living spouse. Once an individual is married, the individual must be legally released from the relationship by either death, divorce, or annulment before the individual may remarry. Other limitations on individuals include age and close relationship. Limitations that some but not all states prescribe are the requirements of blood tests, good mental capacity, and being of opposite sex.

North Dakota Domestic Relations Law and Caseloads

North Dakota Century Code Title 14 contains the majority of the statutes dealing with domestic relations or family law in the state. Title 14 includes those chapters that deal with marriage, divorce, annulment, separation, custody and visitation, child support, adoption, alternative dispute resolution, and domestic violence. Another area of the code that includes statutes related to the family law process is Chapter 27-20, which contains the Uniform Juvenile Court Act.

In 2005, 9,510 of the 32,431 or 29.3 percent of the civil case filings in district court involved domestic relations cases. The domestic relations case filings decreased 7.2 percent over 2004. In addition, 2,448 juvenile cases were filed, representing a 1.73 percent decrease over the 2004 filings. Within the domestic relations category, child and spousal support proceedings made up 47.2 percent of the cases; divorce, 23.2 percent; paternity, 7.4 percent; protection and restraining orders, 17.7 percent; custody filings, 1.2 percent; and adoption, 3.2 percent. Protection and restraining order filings increased 9.2 percent to 1,680. Divorce filings decreased 6.25 percent in 2005 with 2,202 filings compared to 2,349 in 2004. The number of

divorce filings was 2,774 in 1999, 3,044 in 1998, and 2,911 in 1997.

Paternity case filings were up 6.9 percent with 705 cases filed in 2005, while support proceedings decreased 5.5 percent with 4,487 cases filed, compared to 4,750 cases in 2004.

North Dakota Marriage Laws

The state's laws concerning the marriage contract are contained in NDCC Chapter 14-03. Section 14-03-01 defines marriage as "a personal relation arising out of a civil contract between one man and one woman to which the consent of the parties is essential. . . . A spouse refers only to a person of the opposite sex who is a husband or a wife." Following are some of the requirements for a valid marriage in North Dakota:

- Identification requirement. North Dakota Century Code Section 14-03-17 requires each applicant to provide a birth certificate or other satisfactory evidence of age.
- Residency requirement. Individuals are not required to be residents of the state in order to be married in the state.
- Previous marriage. North Dakota Century Code Section 14-03-17 provides that if a divorce has been granted to either or both of the parties, a certified copy of each decree must be filed with the marriage license application.
- Under 18 years of age. Under NDCC Section 14-03-02, if an individual is between 16 and 18 years of age, a marriage license cannot be issued without the written consent of the parents or guardian. A marriage license may not be issued to any person below age 16.
- Marriage license fees. North Dakota Century Code Section 14-03-22 provides for a marriage license fee of up to $30 and a supplemental fee of $35, which is to be deposited in the domestic violence prevention fund to provide aid to victims of domestic violence.
- Waiting period. North Dakota law does not require a waiting period between the issuance of a license and the marriage.
- Blood tests. No blood tests are required in this state. North Dakota Century Code Section 14-03-12, which was repealed in 1983, provided that a serological test for syphilis was required before individuals could apply for a marriage license.
- Common-law marriage. A common-law marriage is not recognized as valid in this state *Schumacher v. Great Northern Railwa*y, 23 N.D. 231, 136 N.W. 85 (1912).
- Void marriages. North Dakota Century Code Section 14-03-03 provides that certain marriages are incestuous and void. These include marriages between parents and children, brothers and sisters, uncles and nieces, aunts and nephews, and between first cousins.
- Same sex marriage. North Dakota Century Code Sections 14-03-01 and 14-03-08 as well as a constitutional amendment passed in November 2004 provide that same sex marriages are prohibited in the state.
- Officiants. North Dakota Century Code Section 14-03-09 provides that a marriage may be solemnized by a judge of a court of record; a municipal judge; a recorder or another official designated by the board of county commissioners; an ordained minister of the gospel; a priest; clergy licensed by recognized denominations; and by any individual authorized by the rituals and practices of any religious persuasion. Under Section 14-03-21, the officiant must return the original copy of the marriage certificate and license to the official who issued the license within five days after the solemnization of the marriage. A duplicate copy must also be given to the individuals married.
- License valid. According to NDCC Section 14-03-10, a marriage license is valid for 60 days. The license may only be used within the state.

Other North Dakota laws regarding the marriage and divorce process are also contained in NDCC Title 14. Chapter 14-03.1 provides for the Uniform Premarital Agreement Act; Chapter 14-05 addresses issues relating to divorce; and Chapter 14-07 addresses issues relating to the rights and liabilities of the husband and wife.

Testimony and Committee Considerations

The committee received testimony and information from the North Dakota Association of Counties, the Department of Human Services, representatives of religious organizations, representatives of domestic violence prevention organizations, and a family science expert regarding the issues raised in this study. The committee's deliberations centered on four issues--the importance of marriage to society, government efforts to encourage healthy marriages, the domestic violence prevention fund, and marriage license fees.

Importance of Marriage to Society

The committee received testimony that the state has a legitimate and compelling interest in encouraging, preserving, and strengthening healthy marriages. According to the testimony, increased government attention to the marriage and family structure has produced social data that convincingly demonstrates the advantages of marriage for children, adults, and society. It was noted that even after controlling other social and economic factors, children raised outside intact marriages are at higher risk of experiencing a variety of negative economic, social, psychological, educational, and physical outcomes; men and women in marriages are significantly better off than their unmarried counterparts; married people tend to be healthier; and married people save more money for retirement. The testimony also noted the benefits of marriage to society. According to the testimony, marriage creates social bonds that would not happen in single or childless persons, marriage changes a person's lifestyle, married persons are more likely to vote, and there is a lower crime rate in communities with higher percentages of married people.

The committee also received testimony that government policies should treat the married couple as a distinct social, legal, and financial unit. It was suggested that government should ensure that public school curricula treat marriage as a civic institution; treats marriage as the ideal family form, especially for childbearing; do not equate marriage with all other types of relationships; educate about the proven personal, familial, and community benefits of marriage; and equip graduates with the skills needed to avoid bad relationships and build healthy ones. According to the testimony, government can ensure that all state policies and practices respect rather than burden or discourage marriage; give preference in state-funded job creation and location incentive programs to those proposals that provide not only good wages and benefits, but also traditional hours and predictable work schedules; and continue and increase funding for centers that provide positive help for women facing unexpected pregnancies. The testimony indicated that government should explore divorce education or mediation pilot projects designed to reduce unnecessary divorce; fund voluntary marriage preparation and education services for cohabiting and unmarried new parents; and fund voluntary marriage education and other intervention services to reduce conflict, violence, and unnecessary divorce in high-risk couples. Other suggested ideas included establishing a marriage commission charged with evaluating how state agencies treat marriage and developing specific initiatives and policies; holding conferences with faith-based and community organizations on marriage-strengthening policies; investing in initiatives to promote fatherhood; incorporating marriage incentives in the temporary assistance for needy families (TANF) program; and discounting marriage license fees for low-income couples who receive premarital counseling, using TANF funds to offset the cost.

Government Efforts to Encourage Healthy Marriages

The committee received testimony regarding premarital counseling requirements and incentives and other governmental efforts to encourage healthy marriages. According to the testimony, the available research evidence persuasively demonstrates the advantages of marriage for children, adults, and society. According to the testimony, a few of the key findings are that marriage, especially if it is low-conflict and long-lasting, is a source of economic, educational, and social advantage for most children; children from intact families are far less likely to be poor or to experience persistent economic insecurity; children from intact married parent families are most likely to stay in school; warm, responsive, firm, and fair parenting helps to promote healthy emotional development and to foster emotional resilience in children; and married people, on average, are happier, healthier, and wealthier and enjoy longer lives.

The committee received testimony that divorce is a significant problem in our society. According to the testimony, divorce intrusively inserts government control into people's personal lives in the form of divorce settlements, child support enforcement, visitation rights, and many other family decisionmaking issues. The testimony indicated that American citizens are generally supportive of efforts to strengthen marriage and to reduce the number of divorces. According to the testimony, the direct and indirect state, federal, and personal costs of divorce can range from $35,000 to $50,000 per divorce per year.

The committee received testimony that some of the governmental efforts to assist preparation for healthy marriage relationships include incentives to participate in education or counseling before marriage, modification of tax or economic assistance policies to benefit couples, and the delivery of educational programs on relationships to adolescents and youth. The testimony indicated that an emerging pattern in governmental attempts to influence family relationships before marriage involves providing incentives to couples or creating requirements to encourage them to pursue premarital education or counseling. By 2002 five states had implemented policies to reduce marriage license fees or decrease waiting periods to couples who participate in premarital education or counseling. Since 1996 at least six states have introduced legislation to require premarital counseling as a prerequisite to receiving a marriage license; however, none of those bills has passed. According to the testimony, the mandatory requirement approach is often seen as too heavy-handed and intrusive. The testimony indicated that a more successful policymaking approach has occurred among states that invested in providing resources or educational opportunities to marrying couples. According to the testimony, there is an increasing body of recent research that provides evidence that premarital education programs achieve the goal of helping couples form and sustain healthy marriages. The testimony indicated that some important legislative changes regarding the provision of support to couples within marriage also have occurred in several states. One trend is to provide more benefits to married couples. According to the testimony, Oklahoma used $10 million in excess TANF funds to implement programs that provide marriage incentives. The federal TANF legislation encourages states to use TANF funds to encourage and strengthen marriage.

Domestic Violence Prevention Fund

The committee received information and testimony regarding the portion of the marriage license fee which is deposited in the domestic violence prevention fund. According to the testimony, in 2004 there were 4,483 incidents of domestic violence reported to local programs. Thirty percent of those incidents involved victims who were assaulted by their spouses, 10 percent of the incidents involved a former spouse, and 15 percent of the incidents involved abuse by a cohabitating partner. The testimony indicated that of the 825 new victims of sexual assault that were reported in 2004, 14 percent of the victims were either married to or cohabitating with their assailant. According to the testimony, the victims represent only a small percentage of those who are physically and sexually assaulted each year because most victims remain silent. It was noted

that it is often said that marriage is the institution that most strongly protects mothers and children from domestic violence and violent crimes; however, for roughly 1,800 victims in 2004, that was not true.

The committee received testimony that domestic violence advocates work hard to promote healthy relationships as well as to provide education and awareness materials that promote the development of healthy relationships to communities, schools, and churches. It was noted that funds from the domestic violence prevention fund are used consistently to directly support women and children in violent relationships. In 2004, $82,282 was disbursed from the fund to domestic violence agencies around the state. In 2005 the Legislative Assembly increased the portion of the marriage license fee which is deposited into this fund from $29 to $35. It was noted that in the face of federal and state budget cuts, there is a concern that the amount deposited in this fund will be decreased if the marriage license fee is reduced in an effort to encourage and promote marriage. According to the testimony, the fund is vital to direct service work and to help support services such as assistance in securing protection orders, shelter stays, children's services, 24-hour crisis hotline services, counseling and support groups, and batterer's treatment programs. The testimony indicated that advocates offer assistance to the victims, whether it be for leaving relationships or staying in relationships. It was noted that the advocate's role is to support the victim's decision. It was also noted that in cases in which there has been domestic violence, marriage counseling often is not very effective.

Marriage License Fees

The committee, in its discussion of the marriage laws of the state and methods for strengthening marriage, received testimony regarding the fees charged for a marriage license in North Dakota and other states. The committee discussed 2005 Senate Bill No. 2361, which increased the fee for a marriage license from $6 to $30 and increased the supplemental fee deposited in the domestic violence prevention fund from $29 to $35. The committee received testimony from a representative of the counties that all counties in the state are charging $65 for a marriage license. According to the testimony, the County Recorder's Association passed a resolution urging county recorders to ask their county commissioners to raise the marriage license fee to $30. It was noted that the reason for the request for uniformity in the amount of the marriage license fee among the counties was due, in part, to a computer issue. The computer program used by the State Department of Health for the issuance of marriage licenses only allows for a single amount for a marriage license. According to the testimony, the uniform fee eliminates the need for a major computer programming change to allow for different fees for different counties. It was also noted that a single fee prevents couples from shopping around from county to county for a lower fee. The 2005 increase in the state's marriage license fee was the first increase in 36 years. The marriage license fee is deposited in the county general fund. According to the testimony, the $24 increase in the marriage license fee is used to fund the operation of the county office that issues the licenses.

The committee received information regarding marriage license fees of other states. The fees range from a low of $21 in Mississippi to a high of up to $100 in Wisconsin and Minnesota. The information indicated that several states, including Minnesota, Tennessee, and Florida, offered a reduced marriage license fee for those couples who had completed premarital counseling. In Minnesota the fee is reduced from $100 to $30 if the couple completes 12 hours of premarital counseling. The committee noted that North Dakota's fee is among the highest for mandated marriage license fees.

To address the issues raised in the testimony regarding marriage license fees and the benefits of premarital counseling, the committee considered a bill draft that provided for a $25 reduction in the marriage license fee for low-income persons who complete four hours of premarital counseling. The bill draft provided that the premarital counseling should include a discussion of the rights, expectations, needs, obligations, and other commitments incident to the marriage contract, including discussion about children, finances, relationships with new family members and friends, time management, goalsetting, and communication and conflict resolution skills. The bill draft also provided premarital counseling may be provided by a member of the clergy; the staff of a church, including a church volunteer sponsoring couple, or other religious organization with training in premarital counseling or a trained or certified counselor. The bill draft provided for a voucher system that would be administered by the Department of Human Services. The bill draft contained an appropriation of $35,000 from TANF funds for the program.

Testimony regarding the bill draft indicated that TANF regulations permit the use of TANF funds for programs that encourage the maintenance of two-parent families. It was noted that it is not required that eligibility for these programs be based upon income. According to the testimony, for such a program to be utilized, it is important to limit the number of agencies a couple must go to in order to receive the discount. The testimony indicated that program would require staff time to establish and implement.

Committee members expressed concern about whether the program in the bill draft should apply only to low-income persons and whether $25 is enough incentive.

Testimony from a representative of county marriage license officials indicated that the 53 officials in the state who issue marriage licenses are strong supporters of measures that encourage a knowledgeable approach to the decision of marriage. It was noted that the bill draft adds only a small administrative responsibility of receiving and submitting the vouchers to the Department of Human Services. According to the testimony, the bill draft would be easy to implement because it does not require marriage license officials to determine if individual couples are eligible for the discounted fee. It was noted that the most significant impact of the bill draft

would be the necessary changes to the marriage license software. According to the testimony, the change would require a programming change to accept the variation in the fee and for additional reporting if the Legislative Assembly decided to evaluate the use of the discount. It was estimated that the programming changes to implement the program proposed in the bill draft would cost $3,000 to $5,000.

Testimony in opposition to the bill draft indicated that the process in the bill draft seemed cumbersome for the amount of the fee reduction. It was also noted that the bill draft sends a mixed message in that it encourages people to get married but imposes a waiting period. A concern was expressed about the appropriateness of using TANF funds for marriage promotion. According to the testimony, there has not been a reduction in domestic violence in those states that have lowered marriage license fees for couples who complete premarital counseling. The testimony also indicated it is not the goal of the abused adult services programs to save a couple's relationship but rather to provide safety and to give choices to abused adults. It was noted that about 75 percent of people in relationships in which there is domestic violence will leave that relationship.

One committee member expressed concerns that if the purpose of the bill draft was to encourage premarital counseling by reducing the marriage license fee, then this bill draft is essentially the same as the bills considered in the last session. According to the committee member, premarital counseling is available to those couples who want it and the state should not be involved in that process.

Another committee member expressed concern that because marriage is a contract based upon a private agreement between two people, the state should limit its interference with the marriage contract. It was noted that if the state gets involved in mandating or providing incentives for premarital counseling, it is important to realize that not everyone is a Christian, that there are cultural differences, that not everyone speaks the same language, and that not every culture has the same customs.

It was the consensus that the bill draft should be amended to provide that eligibility for a voucher should not be income-based but should be available to any couple willing to participate in premarital counseling.

Recommendation

The committee recommends Senate Bill No. 2041 to provide for a $25 reduction in the marriage license fee for persons who complete four hours premarital counseling. The bill provides for a voucher system that would be administered by the Department of Human Services. The bill, which does not limit eligibility for the voucher to low-income persons, contains an appropriation of $110,000 from TANF funds for the program.

UNIFORM TRUST CODE

Senate Concurrent Resolution No. 4031 directed a study of the Uniform Trust Code to determine the feasibility and desirability of adopting the Uniform Trust Code in North Dakota. The 2005 Legislative Assembly considered Senate Bill No. 2122, which would have provided for the adoption of the Uniform Trust Code. The bill was opposed by the North Dakota Bankers Association, the North Dakota Credit Union League, and the State Bar Association of North Dakota. Senate Bill No. 2122 failed to pass the Senate. This resolution was passed to provide the opponents of the Uniform Trust Code the opportunity to identify the specific provisions that would be detrimental to settlors, beneficiaries, and trustees and those provisions that should be modified to make North Dakota unique in the area of laws governing trusts.

Background

North Dakota Statutory Provisions

North Dakota law regarding trusts is contained in NDCC Chapters 59-01 through 59-05. Chapter 59-01 provides for the general provisions with regard to trusts; Chapter 59-02 provides for trusts for the benefit of third persons; Chapter 59-03 provides for trusts in relation to real property; Chapter 59-04 provides for procedures for the administration of trusts; Chapter 59-04.2 is the codification of the Uniform Principal and Income Act; and Chapter 59-05 addresses powers in relation to real property. With the exception of Chapter 59-04.2, which was enacted in 1999, the majority of the statutes contained in these chapters are based upon the California Civil Code and have remained unchanged since their enactment in 1877.

Uniform Trust Code (2000)

According to the National Conference of Commissioners on Uniform State Laws (national conference), the purpose of the Uniform Trust Code is to provide a comprehensive model for codifying the law on trusts. According to the national conference, while there are numerous uniform Acts related to trusts, such as the Uniform Prudent Investor Act, the Uniform Principal and Income Act, the Uniform Trustees' Powers Act, the Uniform Custodial Trust Act, and parts of the Uniform Probate Code, none is comprehensive. The Uniform Trust Code is intended to enable states that enact it to specify their rules on trusts with precision and to provide individuals with a readily available source for determining their state's law on trusts. The Uniform Trust Code was completed by the national conference in 2000. The Uniform Trust Code has been enacted in Alabama, Arkansas, the District of Columbia, Florida, Kansas, Maine, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, South Carolina, Tennessee, Utah, Virginia, and Wyoming.

A trust is a fiduciary relationship with respect to property in which one person--the trustee--holds the legal title to the trust property, subject to enforceable equitable rights in another--the beneficiary. It is basically a device, whereby one or more persons manage the property for the benefit of others. The trustee ordinarily has legal title to the property and the beneficiaries have equitable title. The testator or grantor who creates an express trust is the trustor or settlor. Most trusts have identifiable beneficiaries. There are, however, charitable

and honorary trusts, which do not have actual beneficiaries. These trusts have a beneficial purpose that substitutes for named or identifiable beneficiaries. Trusts are recognized in the law for many purposes. Trusts are commonly used as part of an individual's estate plan, to avoid probate, and to obtain favorable tax consequences.

A trustee is a fiduciary, sometimes described as the utmost fiduciary. A fiduciary has enforceable obligations to the settlor, beneficiaries, or beneficial purpose. There are many kinds of fiduciary relationships in the law. The vulnerability of the beneficiaries or the beneficial interest is the reason that the law imposes special obligations on the trustee as a fiduciary.

The prior law governing the trust relationship is fundamentally American common law, best represented in the Restatement (Second) of Law of Trusts, and the Restatement (Third) of Law of Trusts. The restatements come from the American Law Institute. There are also statutes in most states that govern aspects of the trust relationship. A handful of states have attempted a codification of the law of trusts. California is an example.

In 2000 the national conference adopted the first national codification of the law of trusts with the Uniform Trust Code. The Uniform Trust Code has it basis in common-law sources, including the Restatements. Existing statutory law is also a source. The objective of the Uniform Trust Code is a codification of existing law, but with elements of law reform. According to the national conference, the reforms are intended to conform trust law to modern needs. The Uniform Trust Code provides fundamental rules that apply to all voluntary trusts.

According to the national conference, the Uniform Trust Code "does not try to incorporate detailed rules for every conceivable kind of trust, nor does it incorporate all of the kinds of trusts there are. It does not contain statutory rules that are already governing trusts in many jurisdictions, and that are working just fine. It does not displace, for example, the Uniform Prudent Investor Act or the Uniform Custodial Trust Act. What the Uniform Trust Code contains is a set of basic default rules that fairly, consistently, and clearly govern voluntary trusts. It is a default statute for the most part, because the terms of a trust instrument will govern even if inconsistent with the statutory rules."

The Uniform Trust Code is divided into 11 articles. The 1st and 11th articles do not address substantive topics but deal with general provisions, such as definitions and rules of statutory interpretation. Article 9 has no content but may be used to include the Uniform Prudent Investor Act within the Uniform Trust Code if a state wishes to include it there. The eight substantive articles are Article 2 - Judicial Proceedings; Article 3 - Representation; Article 4 - Creation, Validity, Modification, and Termination of a Trust; Article 5 - Creditor's Claims, Spendthrift and Discretionary Trusts; Article 6 - Revocable Trusts; Article 7 - Office of Trustee; Article 8 - Duties and Powers of a Trustee; and Article 10 - Liability of Trustees and Rights of Persons Dealing With Trustee.

Testimony and Committee Considerations

The committee received extensive testimony and information from the national conference, the State Bar Association of North Dakota, and the North Dakota Bankers Association regarding the Uniform Trust Code and the feasibility and desirability of adopting the Uniform Trust Code in North Dakota. The committee also received extensive information and recommendations from the Uniform Trust Code Task Force, a group formed by the State Bar Association of North Dakota to conduct an indepth review of the Uniform Trust Code. The task force provided information and recommendations regarding proposed changes to the Uniform Trust Code.

National Conference of Commissioners on Uniform State Laws

The committee received extensive testimony from a representative of the national conference regarding the Uniform Trust Code. It was noted that often the impetus for a new uniform Act is to avoid federal preemption. According to the testimony, the national conference works with the Council of State Governments and other national legislative organizations to find the most effective solution to an issue. The testimony indicated that the goal of the national conference is to get all 50 states involved and to draft a product that is fair and balanced for all states.

According to the testimony, 18 states and the District of Columbia have passed the Uniform Trust Code and at least 8 states are considering the Uniform Trust Code in current or upcoming legislative sessions. The testimony indicated that the Uniform Trust Code is a default law that applies only when the trust instrument is silent. The Uniform Trust Code was completed in 2000 and was amended in 2001, 2003, 2004, and 2005. The committee received a section-by-section comparison of the changes made by the states that have enacted the Uniform Trust Code. It was noted several area states, including South Dakota, Iowa, and Montana, are studying the Uniform Trust Code or have plans to introduce the Uniform Trust Code. It was also noted that the Uniform Trust Code is intended to be a model and that a state may want to tailor the Uniform Trust Code to meet that state's needs.

According to the testimony, the Uniform Trust Code was drafted in close coordination with the revision of the Restatement (Third) of Law of Trusts. It was noted that once a state adopts a statute, the Restatement is no longer considered to be the authority on the subject. The majority of North Dakota's statutes on trusts were passed in 1943 with periodic updates. The testimony indicated that North Dakota's laws on trusts are not as comprehensive as the Uniform Trust Code.

The committee also viewed a videotape on the Uniform Trust Code, which was provided to the committee by the national conference. The videotape discussed the provisions of the Uniform Trust Code, including the advantages of having coordinated provisions in multistate trust instances. The presentation on the videotape also provided information on trustee reporting requirements, spendthrift clauses, trustee

powers and duties, and retroactivity. The presentation concluded that the Uniform Trust Code promotes and retains uniformity, simplifies the law, and provides an updated approach to trust law.

Uniform Trust Code Task Force

The Uniform Trust Code Task Force, a group formed by the State Bar Association of North Dakota to conduct an indepth review of the Uniform Trust Code, also provided information and recommendations regarding the Uniform Trust Code, the feasibility and desirability of adopting the Uniform Trust Code in North Dakota, and proposed changes to the Uniform Trust Code.

Throughout the course of the committee's study of the Uniform Trust Code, the committee received extensive information and frequent updates from representatives of the task force regarding its review of the Code. The task force conducted a thorough section-by-section review of the Uniform Trust Code. In addition to reviewing each section of the Uniform Trust Code, the task force reviewed the modifications to each section which have been enacted by other states. It was noted that although 18 states and the District of Columbia have adopted the Uniform Trust Code, each has made extensive modifications to the Code. It was also noted that a 19th state--Arizona--adopted the Uniform Trust Code and then repealed it before its effective date. In 2003 Minnesota considered the Uniform Trust Code and elected to adopt some of its provisions for inclusion in the Minnesota trust statutes. According to the testimony, the interests of North Dakota would be best served if the state could begin to utilize the Uniform Trust Code in a modified form.

Testimony from the task force indicated that within certain parameters, an individual is free to make the decisions on how a trust is set up. It was noted that the Uniform Trust Code provides for retroactive application and thus it will affect existing trusts. For this reason, the testimony indicated that the spendthrift provision was carefully reviewed. It was also noted that the task force carefully reviewed the special needs trusts provisions of the Uniform Trust Code. According to the testimony, in reviewing the Uniform Trust Code, every attempt was made to preserve the intent of currently existing trusts. The task force also emphasized that the Uniform Trust Code is not a revision of an existing uniform law. There are certain trust topics on which the North Dakota Century Code is silent. The Uniform Trust Code addresses those topics.

At the final meeting of the committee, the task force reported that it completed a review of the first six articles of the Uniform Trust Code. According to the testimony, the task force planned to continue to meet to review and recommend proposed changes to the remaining articles.

The committee considered a bill draft relating to the Uniform Trust Code. Testimony in explanation of the bill draft indicated that the bill draft is substantially similar to the version considered by the 2005 Legislative Assembly; however, the bill draft included those changes recommended by the task force to date.

Recommendation

The committee recommends House Bill No. 1034 to adopt the Uniform Trust Code. The bill includes those changes recommended by the Uniform Trust Code Task Force as of the date the committee completed its work for the interim. The committee also recommends that further changes to the Uniform Trust Code as recommended by the task force be presented to the Legislative Assembly as amendments. The task force was requested to forward the additional changes to the Legislative Council to be prepared as amendments.

UNIFORM COMMERCIAL CODE REVISED ARTICLE 1 - GENERAL PROVISIONS STUDY

Senate Concurrent Resolution No. 4032 directed a study of the Uniform Commercial Code Revised Article 1 - General Provisions (2001). The purpose of the study was to determine the feasibility and desirability of adopting Revised Article 1. In 2005 the Legislative Assembly considered Senate Bill No. 2143, which would have provided for the adoption of Revised Article 1. Senate Bill No. 2143 failed to pass the Senate. Supporters of Senate Concurrent Resolution No. 4032 testified that an interim study of Revised Article 1 would provide opponents of harmonization of the various articles of the Uniform Commercial Code an opportunity to identify those provisions that should be unique to North Dakota.

Background

North Dakota Statutory Provisions

North Dakota's current version of the Uniform Commercial Code Article 1 - General Provisions is contained in NDCC Chapter 41-01. Article 1 was adopted by the Legislative Assembly in 1965. This chapter provides definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the Uniform Commercial Code.

Revised Article 1 of the Uniform Commercial Code

According to the national conference, the purpose of Revised Article 1 is to update the General Provisions section of the Uniform Commercial Code and to harmonize Article 1 with ongoing Uniform Commercial Code projects and recent revisions. Revised Article 1 was completed by the national conference and the American Law Institute in 2001. Revised Article 1 has been approved by the American Bar Association. Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Hawaii, Idaho, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, Oklahoma, Texas, United States Virgin Islands, Virginia, and West Virginia have adopted Revised Article 1.

Uniform Commercial Code Article 1 provides definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the Uniform Commercial Code.

According to the national conference, as other parts of the Uniform Commercial Code have been revised and amended to accommodate changing business practices and development in the law, these modifications need to be reflected in an updated Article 1. In addition, over the years it has been in place, the national conference reports that certain provisions of Article 1 have been identified as confusing or imprecise. Several changes reflect an effort to add greater clarity in light of this experience. According to the national conference, developments in the law have led to the conclusion that certain changes of a substantive nature needed to be made.

The first substantive change is intended to clarify the scope of Article 1. Section 1-102 now expressly states that the substantive rules of Article 1 apply only to transactions within the scope of other articles of the Uniform Commercial Code. The statute of frauds requirement aimed at transactions beyond the coverage of the Uniform Commercial Code has been deleted. Second, amended Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the Uniform Commercial Code is preemptive. Third, the definition of "good faith" found in 1-201 is revised to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing." This change conforms to the definition of good faith that applies in all of the recently revised Uniform Commercial Code articles, except Revised Article 5. Finally, evidence of "course of performance" may be used to interpret a contract along with course of dealing and usage of trade.

Another change in Revised Article 1 deals with default choice of law provisions found in Section 1-301, which replaces previous Section 1-105. Under Article 1, before the 2001 amendments, parties to a transaction could agree to be governed by the law of any jurisdiction that bears a reasonable relation to that transaction. Revised Article 1 provides a different basic rule that applies except for consumer transactions in certain circumstances.

With respect to all transactions, an agreement by the parties to use the law of any state or country is effective, regardless of whether the transaction bears a reasonable relation to that state. However, if one of the parties to a transaction is a consumer, such a choice of law provision in a contract may not deprive the consumer of legal protections afforded by the law of the state or country in which the consumer resides, or of the state or country where the consumer contracts and takes delivery of goods. Also, with respect to all transactions, an agreement to use the law of a designated state or country is ineffective to the extent that application would violate a fundamental public policy of the state or country that has jurisdiction to adjudicate a dispute arising out of the transaction. The forum state's law will govern the transaction if the contract is silent on the issue of choice of law.

Previous Studies and Legislation

The 2001-02 interim Judiciary A Committee, pursuant to NDCC Section 54-35-02, studied the Uniform Commercial Code Article 1 - General Provisions (2001). The committee made no recommendation regarding Revised Article 1. During the 2003 legislative session, the Legislative Assembly considered House Bill No. 1069, which would have codified the changes proposed in Revised Article 1. The bill was withdrawn from consideration.

In addition to the 2001-02 study of Revised Article 1, a number of other articles of the Uniform Commercial Code have been studied in recent years. The 2001-02 interim Judiciary A Committee and the 2003-04 interim Judicial Process Committee studied Uniform Commercial Code Article 2 - Sales, Article 2A - Leases, Article 3 - Negotiable Instruments, and Article 4 - Bank Deposits and Collections. The 2003-04 interim Judicial Process Committee also studied Uniform Commercial Code Article 7 - Documents of Title, which was adopted by the Legislative Assembly in 2005. The 1999-2000 interim Judiciary Committee studied Uniform Commercial Code Article 9 - Secured Transactions, which was adopted by the Legislative Assembly in 2001.

Testimony and Committee Considerations

The committee received extensive testimony and information from the national conference, the State Bar Association of North Dakota, and the North Dakota Bankers Association regarding Uniform Commercial Code Revised Article 1 and the feasibility and desirability of adopting Revised Article 1 in North Dakota. The committee also received extensive information and recommendations from the Uniform Commercial Code Revised Article 1 Task Force, a group formed by the State Bar Association of North Dakota to conduct an indepth review of Revised Article 1. The task force provided to the committee information and recommendations regarding Revised Article 1.

The committee received testimony that the primary objections to the adoption of Revised Article 1 during the 2003 and 2005 legislative sessions were the choice of law provisions of Revised Article 1 and how the definition of "good faith" and "fair dealings" would apply. It was noted that every state that has adopted Revised Article 1 has removed the choice of law provision. It was also noted that those states that have adopted Revised Article 1 have done so with substantive changes. According to the testimony, the choice of law provision in Revised Article 1 creates uncertainty in the choice of law issue.

National Conference of Commissioners on Uniform State Laws

The committee received information and testimony from a representative of the national conference regarding Revised Article 1. Article 1 of the Uniform Commercial Code provides definitions and general provisions that, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the Uniform Commercial Code. According to the testimony, Revised Article 1 contains technical nonsubstantive modifications, such as reordering and renumbering sections, and adding gender-neutral terminology. It was

noted that because of developments in the law, certain substantive changes in Article 1 have been made as well. According to the testimony, Revised Article 1 contains a number of necessary changes that every state should adopt, including a change in the scope of Article 1. This section provides that the substantive rules of Article 1 apply only to transactions governed by other articles of the Uniform Commercial Code. Revised Section 1-103 clarifies the application of supplemental principles of law and provides clearer distinctions about where the Uniform Commercial Code is preemptive. Section 1-201 of Revised Article 1 adopts the objective standard of "good faith" which applies in all of the recently revised Uniform Commercial Code articles, except Revised Article 5. The default choice of law provisions have been revised and are now found in Section 1-301 to replace former Section 1-105. With respect to all transactions, an agreement by the parties to use the law of any state or country is generally effective regardless of whether the transaction bears a reasonable relation to that state. According to the testimony, it appears that most states want to keep their current choice of law provisions.

Uniform Commercial Code Revised Article 1 Task Force

The Uniform Commercial Code Revised Article 1 Task Force, a group formed by the State Bar Association of North Dakota to conduct an indepth review of Revised Article 1, provided to the committee information and recommendations regarding Revised Article 1, the feasibility and desirability of adopting Revised Article 1 in North Dakota, and proposed changes to Revised Article 1. Several committee members served on the task force.

Throughout the course of the committee's study of Revised Article 1, the committee received extensive information and frequent updates from representatives of the task force regarding its review of Revised Article 1. According to a representative of the task force, there was robust discussion about the changes to Revised Article 1, specifically dealing with the issue of the definition of good faith. According to the testimony, the consensus of the task force was to adopt Revised Article 1 with certain changes. It was noted that 2005 Senate Bill No. 2143 was used as the base document for the task force review of Revised Article 1.

The first recommended change of the task force was that instead of adopting Revised Section 1-301, the current version of NDCC Section 41-01-05 should be retained. It was noted that the task force determined it necessary to retain the current version of Section 41-01-05 because to date no state has adopted Revised Section 1-301. It also was noted that there does not seem to be a problem with jurisdiction under the current statute and it is not necessary to cause any further confusion adopting Revised Section 1-301.

The second recommended change was that Revised Section 1-304, codified as NDCC Section 41-01-18 should be modified to provide that "[t]his section does not support an independent claim for relief for failure to perform or enforce in good faith, and does not create a separate duty of fairness and reasonableness which can be independently breached." According to the testimony, the reason this section was suggested is to show that there is no independent claim for relief for a breach of this section. It was noted that there is ample support for this change in the law. It was also noted that this language is supported by the Uniform Commercial Code comments to this section and that the language was lifted, in part, from the comment to the Uniform Commercial Code. According to the testimony, the Uniform Commercial Code's Permanent Editorial Board Comment 10 indicates that there should be no lawsuit solely based upon the provision of good faith. According to the testimony, there may be courts and litigants that still may contend that there is a separate claim for relief based upon this section. Because of this concern, it was noted that North Dakota should eliminate any chance that anyone would interpret this section as an independent basis for a lawsuit.

The third recommended change was that NDCC Section 41-05-02(1)(g) be amended to clarify that the definition of good faith contained in Article 1 does not apply to Article 5. The testimony indicated that there is general agreement that no change to Article 5 was intended by the Revised Article 1 change to the definition of good faith and that adding this language to Section 41-05-02 makes that clear. According to the testimony, there was extensive discussion about the definition of good faith and whether the revised definition of good faith should be adopted. It was noted that the recommendation of the task force is to accept the revised definition of good faith.

Based upon the recommendations of the task force, the committee considered a bill draft relating to the Uniform Commercial Code Revised Article 1 - General Provisions. Testimony in explanation of the bill draft indicated that the bill draft is substantially similar to the version considered by the Legislative Assembly in 2005; however, the bill draft includes the changes recommended by the task force. Those changes included retaining NDCC Section 41-01-05 instead of adopting Revised Section 1-301; modifying Revised Section 1-304, codified as Section 41-01-18 to provide that "[t]his section does not support an independent claim for relief for failure to perform or enforce in good faith, and does not create a separate duty of fairness and reasonableness which can be independently breached; and amending the definition of good faith to clarify that the definition of good faith contained in Article 1 does not apply to Article 5.

Recommendation

The committee recommends House Bill No. 1035 to adopt the Uniform Commercial Code Revised Article 1 - General Provisions. The bill provides definitions and general provisions that, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the Uniform Commercial Code. The bill also includes changes recommended by the Uniform Commercial Code Revised Article 1 Task Force.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of nine members. The primary function of the commission is to represent North Dakota in the National Conference of Commissioners on Uniform State Laws. The national conference consists of representatives of all states and its purpose is to promote uniformity in state law on all subjects on which uniformity is desirable and practicable and to serve state governments by improving state laws for better interstate relationships. Under NDCC Sections 54-35-02 and 54 55-04, the state commission may submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Council for its review and recommendation during the interim between legislative sessions.

According to testimony from a representative of the North Dakota Commission on Uniform State Laws, the national conference has recommended the Uniform Anatomical Gift Act; Uniform Child Abduction Prevention Act; Uniform Prudent Management of Institutional Funds Act; Uniform Power of Attorney Act; Uniform Limited Liability Compact Act; Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act; and the Model Registered Agents Act. The state commission indicated that the uniform Acts that are possibilities for recommendation in North Dakota are the Uniform Commercial Code Revised Article 1 and the Uniform Trust Code, both of which were studied by the interim Judiciary Committee, the Uniform Anatomical Gift Act, the Uniform Environmental Covenants Act, and amendments to the Uniform Disclaimer of Property Interests Act. According to the testimony, the 1987 version of the Uniform Anatomical Gift Act was adopted in North Dakota in 1989. The testimony indicated that the revised Act has added people, in priority order, who can authorize the anatomical gift and the Act clarifies that those same people do not have the authority to revoke a gift.

The committee makes no recommendation regarding these uniform Acts.

REPORTS OF THE DEPARTMENT OF HUMAN SERVICES

The committee received two reports from the Department of Human Services regarding the status of the alternatives-to-abortion services funding program. The department was assigned the responsibility of establishing an alternatives-to-abortion services program in North Dakota. According to the report from the department, it was the intention of the Legislative Assembly that the department seek funds from the federal Office of Faith-Based and Community Initiatives for this project. The report indicated, however, that funds from this office were available only for abstinence programs or grants to agencies that would provide technical assistance to faith-based or community-based programs interested in applying for federal funds. The report indicated that with no funds available from this source, TANF funds are being used to fund the alternatives-to-abortion services program. It was noted that the Charitable Choice provisions in TANF govern the administration of this program.

According to the report, the department provides alternatives-to-abortion services by making vouchers available to individuals needing the service. Those individuals use the vouchers to access the services and the service providers use the vouchers to bill the department. This method allows the department to pay all interested providers for these services. The department contacted all agencies that had been providing alternatives-to-abortion services before the implementation of the program. According to the report, these agencies became partners in developing this program and are receiving payment through the program for their services. The eight agencies currently providing these services are Catholic Charities of North Dakota, Christian Family Life Services, First Choice Clinic, the Perry Center, the St. Gianna's Maternity Home, The Village Family Service Center, the Women's Pregnancy Center, and the YFC Teem Moms. According to the report, the Mental Health Association in North Dakota is also a partner by allowing use of the 211 hotline to direct referrals to the alternatives-to-abortion program. The department has developed a script for the Mental Health Association staff to use when they get a 211 call regarding an unplanned pregnancy.

According to the report, the program became operational shortly before the beginning of 2006. At the time of the report, the eight service providers had submitted claims and all had been paid or approved for payment. That amount, as of July 31, 2006, was $43,555. The total of all clients served and billed for all months since the program began was 556 as of July 31, 2006. The report indicated that the voucher process is an effective way to deliver this service and the current rate of spending suggested that the $500,000 appropriated in Senate Bill No. 2409 was sufficient for the intended purpose. According to the report, program funds cannot be used to provide medical service. All funding must be used for offering alternatives-to-abortion services. The report also noted that the department will have more data on the results and effectiveness of the program for the Legislative Assembly during the upcoming session.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Audit and Fiscal Review Committee is a statutorily created committee of the Legislative Council. Pursuant to North Dakota Century Code (NDCC) Section 54-35-02.1, the committee is created as a division of the Budget Section and its members are appointed by the Legislative Council. The committee's purposes are to:

- Study and review the state's financial transactions to assure the collection of state revenues and the expenditure of state money is in compliance with law, legislative intent, and sound financial practices.
- To provide the Legislative Assembly with objective information on revenue collections and expenditures to improve the fiscal structure and transactions of the state.

Pursuant to NDCC Section 54-35-02.2, the committee is charged with the duty of studying and reviewing audit reports submitted by the State Auditor. The committee is authorized to make such audits, examinations, or studies of the fiscal transactions or governmental operations of state departments, agencies, or institutions as it may deem necessary.

Committee members were Representatives Francis J. Wald (Chairman), Ole Aarsvold, Merle Boucher, Jeff Delzer, RaeAnn G. Kelsch, Andrew G. Maragos, David Monson, Chet Pollert, Earl Rennerfeldt, Bob Skarphol, Blair Thoreson, and Mike Timm and Senators Bill L. Bowman, Randel Christmann, Jerry Klein, Judy Lee, and Tim Mathern.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

During the 2005-06 interim, the State Auditor's office and independent accounting firms presented 4 performance audit and evaluation reports and 86 financial or information technology application audit reports. An additional 70 audit reports were filed with the committee but were not formally presented. The committee's policy is to hear only audit reports relating to major agencies and audit reports containing major recommendations. However, other audit reports are presented at the request of any committee member. At the end of this report is a listing of the audit reports accepted by the committee.

The committee was assigned the following duties and responsibilities for the 2005-06 interim:

1. Receive the annual audit report for the State Fair Association (Section 4-02.1-18).
2. Receive the annual audit report from any corporation, limited liability company, or limited partnership that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state (Sections 10-19.1-152, 10-32-156, and 45-10.2-115).
3. Receive annual reports on the writeoffs of accounts receivable at the Department of Human Services and Developmental Center at Westwood Park, Grafton (Sections 50-06.3-08 and 25-04-17).
4. Receive the annual audited financial statements and a report from the North Dakota low-risk incentive fund. (Section 26.1-50-05 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Council assigned this responsibility to the Legislative Audit and Fiscal Review Committee.)
5. Receive the North Dakota Stockmen's Association audit report (Section 36-22-09 provides for the audit report to be submitted to the Legislative Council. The Legislative Council assigned this responsibility to the Legislative Audit and Fiscal Review Committee.)
6. Receive the performance audit report of Job Service North Dakota upon the request of the Legislative Audit and Fiscal Review Committee (Section 52-02-18).
7. Determine necessary performance audits. (Section 54-10-01(4) provides that the State Auditor is to perform or provide for performance audits of state agencies as determined necessary by the State Auditor or the Legislative Audit and Fiscal Review Committee.)
8. Determine the frequency of audits or reviews of state agencies (Section 54-10-01(2)).
9. Determine when the State Auditor is to perform audits of political subdivisions (Section 54-10-13).
10. Direct the State Auditor to audit or review the financial records and accounts of any political subdivision (Section 54-10-15).
11. Study and review audit reports submitted by the State Auditor (Section 54-35-02.2).
12. Receive reports from the Information Technology Department on state information technology projects and plans, pursuant to Section 54-59-19.
13. Receive reports from the director of Workforce Safety and Insurance and the chairman of the Workforce Safety and Insurance Board of Directors, including a report on the biennial performance evaluation of Workforce Safety and Insurance (Sections 65-02-03.3 and 65-02-30).
14. Study state agency and institution continuing appropriation authority (2005 House Concurrent Resolution No. 3036).

GUIDELINES FOR AUDITS OF STATE AGENCIES

Previous Audit Guidelines

The committee received information on and reviewed the guidelines, which were developed by prior Legislative Audit and Fiscal Review Committees, relating to state agency and institution audits performed by the State Auditor's office and independent certified public

accountants. The guidelines require that audit reports address the following with respect to a particular agency:

1. Whether expenditures are made in accordance with legislative appropriations and other state and fiscal requirements and restrictions.
2. Whether revenues are accounted for properly.
3. Whether financial controls and procedures are adequate.
4. Whether the system of internal control is adequate and functioning effectively.
5. Whether financial records and reports reconcile with those of state fiscal offices.
6. Whether there is compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning.
7. Whether there is evidence of fraud or dishonesty.
8. Whether there are indications of lack of efficiency in financial operations and management of the agency.
9. Whether the actions have been taken by agency officials with respect to findings and recommendations set forth in audit reports for preceding periods.
10. Whether all activities of the agency are encompassed within appropriations of specific amounts.
11. Whether the agency has implemented the Statewide Accounting and Management Information System (SAMIS), including the cost allocation system.
12. Whether the agency develops a budget of anticipated expenditures and revenues and compares, on at least a quarterly basis, budgeted expenditures and revenues to actual expenditures and revenues accounted for using the accrual basis of accounting.

The purpose of the guidelines is to aid auditors in the development of audit programs and reports, so the audit reports will be of maximum value to the appropriate authority and the taxpayers of North Dakota. The guidelines were developed to assist the committee in meeting its statutory responsibilities and to encourage state entities to improve fiscal practices. Auditors generally review the answers to the 12 areas in the presentation of each audit report and the areas are addressed in a positive manner, indicating agencies take the issues seriously and attempt to comply. Areas that are not addressed in a positive manner can alert the committee to areas needing additional review.

New Audit Guidelines - Beginning With Audit Periods Ending June 30, 2006

The committee received suggested changes from the State Auditor's office to revise the 12 audit guidelines identified earlier, as some of the 12 audit guidelines were no longer applicable to state agencies. The six new questions proposed by the State Auditor's office to be addressed would highlight key areas and issues that are of interest to committee members and provide information similar to those made by auditors to an "audit committee." The committee received input and approval from representatives of Eide Bailly LLP, Certified Public Accountants, and Brady, Martz & Associates, P.C., regarding the six new questions.

The committee also considered other areas the auditors could address before the Legislative Audit and Fiscal Review Committee, such as significant changes in accounting policies, accounting estimates, audit adjustments, disagreements with management, consultation with other independent auditors, major issues discussed with management prior to the auditors' retention, difficulties encountered in performing the audits, and high-risk information technology systems critical to an agency's operations.

The committee approved replacement of the 12 audit guidelines with six audit questions and eight other issues to be communicated by the auditors to the Legislative Audit and Fiscal Review Committee. For audit periods covering fiscal years ending June 30, 2006, and thereafter, auditors of state agencies and institutions are requested to address the following six audit questions:

1. What type of opinion was issued on the financial statements?
2. Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?
3. Was internal control adequate and functioning effectively?
4. Were there any indications of lack of efficiency in financial operations and management of the agency?
5. Has action been taken on findings and recommendations included in prior audit reports?
6. Was a management letter issued? If so, provide a summary below, including any recommendations and the management responses.

The eight issues to be communicated to the Legislative Audit and Fiscal Review Committee identify:

1. Significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.
2. Significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditor's conclusions regarding the reasonableness of those estimates.
3. Significant audit adjustments.
4. Disagreements with management, whether resolved to the auditor's satisfaction, relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.
5. Serious difficulties encountered in performing the audit.
6. Major issues discussed with management prior to retention.
7. Management consultations with other accountants about auditing and accounting matters.
8. High-risk information technology systems critical to operations based on the auditor's overall

assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by auditors are directly related to the operations of an information technology system.

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 Bailly LLP for an audit of the State Auditor's office for the years ended June 30, 2005 and 2004. The firm presented its audit report at the committee's January 10, 2006, meeting. The audit report contained an unqualified opinion and did not include any findings or recommendations.

COMPREHENSIVE ANNUAL FINANCIAL REPORT

North Dakota Century Code Section 54-10-01 requires the State Auditor to provide for the audit of the state's general purpose financial statements and to conduct a review of the material included in the Comprehensive Annual Financial Report. The Comprehensive Annual Financial Report contains the audited financial statements for state agencies and institutions. The committee received and accepted the state's June 30, 2004, and June 30, 2005, Comprehensive Annual Financial Reports.

NORTH DAKOTA UNIVERSITY SYSTEM ANNUAL FINANCIAL REPORT

The committee received the North Dakota University System's annual financial report for the fiscal year ended June 30, 2005. An unqualified opinion was issued on the financial statements. As of June 30, 2005, the University System had total assets of $916.6 million and total liabilities of $265.4 million, resulting in a net assets total of $651.2 million. The total net assets increased $11.2 million during fiscal year 2005.

The annual degree credit headcount for the fall of 2004 was 42,503, a 2.1 percent increase over the previous fall enrollment. The revenues from student tuition and fees were $181,280,000 for the fiscal year ended June 30, 2005, which is an increase of 20 percent as compared to the fiscal year ended June 30, 2004. During the 2004-05 academic year, the campuses raised tuition rates an average of 15.4 percent.

The committee reviewed information regarding 2004-05 tuition waivers provided by University System campuses. The information was from the University System February 2006 *Student Affordability Report*. Approximately $20.3 million in tuition waivers was provided by the state campuses to a total of 7,844 students.

The committee learned that the University of North Dakota and North Dakota State University, which are both research institutions, provide the largest number of tuition waivers. Institutions provide tuition waivers to out-of-state students as a method to increase enrollment figures. The tuition waivers to out-of-state students are often provided to reduce the out-of-state tuition rate to an amount closer to the state rate. The State Board of Higher Education plans to address the issue of tuition waivers and provide a recommendation to the 60th Legislative Assembly on solutions to control the use of waivers by the institutions.

PERFORMANCE AUDITS AND EVALUATIONS

Veterans Home Performance Audit Followup

The Legislative Audit and Fiscal Review Committee accepted the followup report presented to the committee on the Veterans Home performance audit. The original performance audit was presented to the Legislative Audit and Fiscal Review Committee in October 2002. The followup report indicated 25 of the original recommendations have been fully implemented, 15 of the original recommendations have been partially implemented, and 6 recommendations were determined not to be implemented. A representative of the State Auditor's office indicated that the Administrative Committee on Veterans Affairs has taken a very active role in the operations of the Veterans Home and is committed to implementing and following the performance audit recommendations.

The Administrative Committee on Veterans Affairs is a 15-member committee with 3 members from each of the five major veteran organizations in the state. A seven-member governing board for administration of the Veterans Home is appointed by the chairman and secretary of the administrative committee, subject to ratification by a majority vote of the administrative committee. Approximately three or four members of the administrative committee are also members of the governing board. The State Auditor's office recommended that the size of the administrative committee be reduced in order to better react to the needs of veterans. The Veterans Home response to this recommendation was that the committee's size was appropriate to represent the 60,000-plus veterans in North Dakota. The committee accepted the Veterans Home performance audit followup report.

Department of Emergency Services

The State Auditor's office was directed, pursuant to Section 5 of 2005 House Bill No. 1016, to conduct a performance audit of the Department of Emergency Services, including a review of fees collected for 911 services and the utilization of fees. The performance audit of 911 fees was done as a separate report and is discussed later in this report. The 2005 Legislative Assembly changed the name of the Division of Emergency Management to the Department of Emergency Services. Because the audit report covers the period July 1, 2002, through April 30, 2005, the performance audit report refers to the agency under its former name--Division of Emergency Management. The performance audit also includes State Radio, which was moved to the control of the Division of Emergency Management by executive order in September 2003.

A representative of the State Auditor's office presented the performance audit report for the Division of Emergency Management, including State Radio. The Division of Emergency Management is responsible for establishing a statewide system for mitigation, preparation for, response to, and recovery from disasters. The Division of Emergency Management is also responsible for preparing and maintaining a state emergency operations plan as well as being responsible for implementation of federal guidelines and programs related to homeland security.

State Radio provides a number of services and operates various programs through its communication center. The communication center is the 911 answering point for 22 small population counties, provides non-911 dispatching services to these 22 counties, is the state dispatch center for the Highway Patrol, and provides dispatching services for other state entities, such as the Game and Fish Department and the Attorney General's office. State Radio provides dispatching services for various federal entities, such as the National Park Service, the United States Border Patrol, and the United States Marshals Service. In addition, State Radio coordinates road closures, answers the security line for the Governor's residence and office, and answers "Report All Poacher" calls.

North Dakota Century Code Chapter 54-23.2 provides for requirements relating to the establishment and charging of fees for services provided by State Radio. State Radio collects fees from the 22 counties for providing 911 answering and dispatching services and collects fees related to the law enforcement telecommunications system (provides information on wanted felons, state-to-state information on crimes, and everyday police activities), and mobile data terminal services (provides law enforcement with mobile communications to access data bases and vehicle information). However, State Radio does not collect fees for the majority of the other services it provides and relies on a general fund appropriation for these costs. Fees for certain services provided by State Radio, such as non-911 dispatching to counties and dispatching for the Highway Patrol, are not provided for in the North Dakota Century Code.

The performance audit included 22 recommendations, including:

1. The Department of Emergency Services should comply with NDCC Sections 54-23.2-08 and 54-23.2-09 to ensure fees charged for 911 services, law enforcement telecommunications system, and mobile data terminal services cover applicable costs of services. At a minimum, the department should establish an adequate cost accounting system to track costs of services and use of special funds. The fees collected by State Radio do not appear sufficient to cover State Radio's costs associated with the 911 system, resulting in state general fund appropriations being used to pay certain costs associated with 911 services.
2. The Department of Emergency Services should improve the billing and collection process involving counties provided 911 services by the Division of State Radio. Counties are billed quarterly for 911 services based on the number of land line and wireless lines in each county. The line information is obtained directly from each county. As part of the billing process, the department should periodically verify information provided by the counties.
3. The Department of Emergency Services should take appropriate action to obtain legislative authority to provide dispatching services to various state entities, political subdivisions, and other entities and to charge fees for the services provided. After such authority is received and an adequate cost accounting system is established to identify estimated costs for services, respective entities should be charged for the costs of services provided.
4. The Department of Emergency Services should adequately manage and monitor the financial and accounting of the state hazardous chemicals preparedness and response program. At a minimum, the department should ensure all appropriate expenditures of the program are from special funds in order to save general fund money, and the department should review the effect of the increase in costs on the fund balance and, if necessary, take appropriate action to increase the fees.
5. The Department of Emergency Services should comply with the salary administration procedures established in North Dakota Administrative Code Chapter 4-07-02. All full-time equivalent (FTE) employees not on probation within the Division of Emergency Management and State Radio received a salary increase during the 2003-05 biennium. The salary increases provided to Division of Emergency Management employees were provided using federal homeland security grant funds. The salary increases provided to State Radio employees were provided using an emergency management performance grant received from the federal Department of Homeland Security. The salary increases were authorized by the former director of the Division of Emergency Management and were not approved by Human Resource Management Services within the Office of Management and Budget.
6. The State Personnel Board and Human Resource Management Services, with assistance from the Attorney General's office, should review the salary increases the Department of Emergency Services provided employees. As part of this review, a determination should be made as to whether any action should be taken regarding the instances of noncompliance with the North Dakota Administrative Code (see the section

later in this report entitled **STATUS OF DEPARTMENT OF EMERGENCY SERVICES SALARY INCREASES**).

7. The Department of Emergency Services should adequately document salary increases. At a minimum, increased amounts need to be defined and allocated by salary increase category as identified in North Dakota Administrative Code Chapter 4-07-02.
8. The Department of Emergency Services should formally review the scheduling of dispatchers at the Division of State Radio's communication center to determine whether the current number of dispatchers on duty is reasonable.

The committee received testimony from representatives of county government regarding the State Auditor's recommendation that the Department of Emergency Services should obtain legislative authority to provide dispatching services to various state entities, political subdivisions, and other entities and to charge fees for the services provided. The committee learned that many of the counties are opposed to the implementation of a fee for non-911 dispatching services.

The committee learned that the Department of Emergency Services has awarded a contract to Maximus, Inc., to do a complete review of State Radio costs and to provide a recommendation for an appropriate fee schedule for services provided, based on State Radio's actual costs. Several subcommittees have been formed consisting of representatives of the North Dakota 911 Association and the Department of Emergency Services Advisory Committee to address the performance audit recommendations. The committee accepted the performance audit report of the Department of Emergency Services.

Collection and Use of 911 Fees

A representative of the State Auditor's office presented the performance audit of the collection and use of 911 fees for the period July 1, 2002, through April 30, 2005. North Dakota Century Code Chapter 57-40.6 establishes the requirements relating to 911 fees. A monthly $1 fee for each telephone access line and wireless access line is charged customers by telephone exchange access service providers and wireless service providers. The State Auditor's office, based on limited review of information, believes the 911 fee amount is more than sufficient to cover the 911 costs. The committee learned that prepaid wireless and Voice over Internet Protocol technologies are not required to participate in collection of the monthly $1 per month service fee.

The telephone service providers are required to submit the 911 fees within 30 days of collection to the appropriate political subdivisions. The telephone service providers are allowed to retain a portion of the fees, not to exceed 5 percent of what is collected, for the actual costs of the administration for collection of the fees.

North Dakota Century Code Section 57-40.6-05 provides that after the 911 fees have been used to make the 911 system operational, the revenues in excess of those obligations may only be used by the political subdivisions for maintaining and operating the emergency services communication system. An emergency services communication system is defined in the North Dakota Century Code as a "radio system, land lines communication network, wireless service network, or enhanced 911 (E911) telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services."

The committee learned that to implement wireless 911 within the state, all political subdivisions receiving 911 fees contracted with the North Dakota Association of Counties to coordinate the implementation of the networking, nonpremise equipment upgrades, testing, and ongoing services necessary for wireless 911. The contracts between the North Dakota Association of Counties and the political subdivisions are for five years and will expire on June 30, 2008. Political subdivisions are to remit 50 cents per wireless access line per month to the North Dakota Association of Counties for the service. The North Dakota Association of Counties entered a contract with telephone service providers for implementing the wireless 911 system.

As of April 30, 2005, the 911 revenues accumulated by the North Dakota Association of Counties in excess of expenditures, or fund balance, were in excess of $2.1 million. The committee learned the funding was accumulated in advance for anticipated fees related to implementing the wireless 911 system. The North Dakota Association of Counties has since returned $500,000 of the fund balance to the participating jurisdictions based on the amounts of wireless 911 funds remitted to the North Dakota Association of Counties and reduced, as of July 1, 2005, the amount to be submitted to 40 percent of the amount received from wireless carriers. Any fund balance remaining after the five-year contract with the counties is completed will be returned to the counties.

A public service answering point (PSAP) is a communications facility operated on a 24-hour basis which first receives 911 calls from individuals in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies. There are 23 PSAPs within the state, 22 of which are locally operated and 1 operated by the Division of State Radio. The majority of the 22 locally operated PSAPs are physically located and operated within law enforcement buildings and others are located in courthouses and commercial buildings. The PSAP operated by the Division of State Radio is located in the basement of a building at Fraine Barracks.

The State Auditor's office report recommended:

1. The political subdivisions receiving 911 fees should ensure the use of such funds comply with legislative intent. Certain political subdivisions need to improve their accounting of 911 fees. Many differences were noted in the use of 911 fees by the locally operated PSAPs. The State Auditor's office indicated that the Legislative

Assembly should consider granting specific authority to a state agency or board or commission to establish guidelines and standards related to the use of 911 fees and to be responsible for establishing a uniform system of accounting for 911 costs.

2. Political subdivisions receiving 911 fees need to ensure the amounts retained by telephone service providers for administration costs are appropriate. Political subdivisions should, at a minimum, ensure the maximum amount for administration costs is not exceeded and should ensure the amount retained by telephone service providers is reasonable by requiring documentation or other information regarding their administration costs. The State Auditor's office identified two telephone service providers that were withholding more than 5 percent of the 911 fee collected.

The committee asked the Legislative Council chairman for authority to have a four-member subcommittee meet with the Department of Emergency Services Advisory Committee to consider the recommendations in the State Auditor's office performance audit of the collection and use of 911 fees. The Legislative Council chairman did not approve the request. The committee accepted the performance audit report of the collection and use of 911 fees.

The North Dakota Association of Counties agreed that there is a lack of uniformity among counties and cities in the county's use of emergency services communication system revenues. The association indicated that urban areas have different emergency communication needs from rural areas of the state and forcing uniformity among the dissimilar jurisdictions may not meet citizen needs. The Department of Emergency Services Advisory Committee has proposed guidelines regarding the use of emergency services communication system revenues.

Department of Transportation Driver and Vehicle Services Performance Audit Followup

The Legislative Audit and Fiscal Review Committee accepted the followup report presented to the committee on the Department of Transportation Driver and Vehicle Services performance audit. The original performance audit was presented to the Legislative Audit and Fiscal Review Committee in September 2003. The followup report indicated 11 of the original recommendations have been fully implemented, 14 of the original recommendations have been partially implemented, and 11 recommendations were determined not to be implemented.

The committee learned that the Department of Transportation considered options to use a check recovery service as recommended by the State Auditor's office. The response from the Department of Transportation was that the task can be performed more efficiently within the division because of the relatively small number of nonsufficient funds (NSF) checks. The Department of Transportation has implemented a policy that if an individual has written two bad checks to the department within the last five years, the department will only accept cash or a money order from that person.

The Bismarck office of the Department of Transportation Motor Vehicle Division reviews 100 percent of the new title and transfer work performed by the motor vehicle branch office due to the potential liability if errors are made. Five temporary Department of Transportation employees are responsible for conducting these reviews. The State Auditor's office identified their total salaries to be approximately $68,000 per year. The State Auditor's office recommended the reviews of the new titles and transfers be done on a sample basis. However, the committee learned that the Department of Transportation is continuing to review 100 percent of the new title and transfer work performed by the motor vehicle branch offices. The Department of Transportation indicated it would discuss the issue with the Risk Management Division.

The State Auditor's office recommended that the Department of Transportation take appropriate action to change the requirements in the North Dakota Century Code to allow for an increase in the drivers' license four-year life cycle. Based on a sample from 10 other states, the average life cycle of a driver's license was 5.2 years. The Department of Transportation has not implemented the recommendation but indicated it will evaluate the life cycle of drivers' licenses, with an emphasis on safety concerns. The committee accepted the Department of Transportation Driver and Vehicle Services performance audit followup report.

Department of Corrections and Rehabilitation Performance Audit

During the 59th Legislative Assembly, the Legislative Audit and Fiscal Review Committee received and accepted the performance audit of the Department of Corrections and Rehabilitation. The committee consisted of members of the Legislative Assembly who served on the committee during the 2003-04 interim.

Future Performance Audits

In addition to the performance audits required by law, the Legislative Audit and Fiscal Review Committee requested, by motion, the State Auditor's office to conduct:

- A performance audit of Workforce Safety and Insurance. (In late November 2006, a special meeting of the Legislative Audit and Fiscal Review Committee is scheduled to receive the performance audit of Workforce Safety and Insurance.)
- A performance audit of the University of North Dakota School of Medicine and Health Sciences.
- A performance audit on state agency cell phone usage, including a review of the propriety of state cell phone usage, the types of cell phone plans purchased, the number of minimally used cell phones, and various alternative methods to reimburse state employees for cell phone usage.
- A performance audit of Fleet Services.

Requests for Performance Audit Consultant

Pursuant to NDCC Section 54-10-01(4), the State Auditor's office may not hire a consultant to assist with conducting a performance audit of a state agency without the prior approval of the Legislative Audit and Fiscal Review Committee. The State Auditor's office is required to notify an agency of the need for a consultant before requesting approval by the Legislative Audit and Fiscal Review Committee. The agency that is audited is responsible for paying the cost of any consultant approved.

The 2005 Legislative Assembly provided in Section 44 of House Bill No. 1015 that the State Auditor's office may not conduct the performance audit of the University of North Dakota School of Medicine and Health Sciences until the completion of the school's accreditation process. The committee learned that the accreditation report was completed in July 2006. The State Auditor's office plans to complete the performance audit of the University of North Dakota School of Medicine and Health Sciences before the end of the 2007 legislative session.

The State Auditor's office requested approval from the committee to hire a consultant to assist with conducting the University of North Dakota School of Medicine and Health Sciences performance audit. The State Auditor's office will conduct a preliminary evaluation of the University of North Dakota School of Medicine and Health Sciences to determine the aspects of the performance audit which will require a consultant. The State Auditor's office plans to review the accreditation report and other recent reports regarding the University of North Dakota School of Medicine and Health Sciences during the preliminary evaluation process so that the performance audit will not duplicate subject areas covered by these reports. The committee approved the State Auditor's request to hire a consultant to assist with conducting the performance audit at a cost not to exceed $100,000, to be paid by the University of North Dakota School of Medicine and Health Sciences, and that the performance audit include a review of the family practice residency programs in Bismarck, Minot, and Grand Forks.

STATUS OF DEPARTMENT OF EMERGENCY SERVICES SALARY INCREASES

The committee received a status report from a representative of the Human Resource Management Services of the Office of Management and Budget regarding salary increases provided to employees of the Department of Emergency Services. The Department of Emergency Services, including State Radio, provided salary increases to 53 employees during the 2003-05 biennium. Human Resource Management Services met with representatives of the Department of Emergency Services on several occasions to gather information relating to the reasons for the increases.

North Dakota Administrative Code provides for the following types of salary increases:

1. Promotion - Not specifically limited in amount but a promotional increase is to consider the magnitude of the job changes and internal salary relationships.
2. Equity - Up to 20 percent in a biennium, the limit was 10 percent in a biennium until June 30, 2004.
3. Relationship/workload - Up to 20 percent in a biennium, the limit was 10 percent in a biennium until June 30, 2004.
4. Performance - Up to a 5 percent in any 12-month period.

Human Resource Management Services indicated that 25 salary increases provided to employees of State Radio were improperly coded as a "responsibility" increase rather than an "equity" increase. The documentation for the salary increases was incorrect and was not submitted to Human Resource Management Services in a timely fashion; however, there was justification for the increases.

The overall mission of the Department of Emergency Services changed with the addition of homeland security functions. A representative of Human Resource Management Services indicated that 20 employees of the Department of Emergency Services received responsibility increases and those increases did not exceed the limit on these types of increases.

Human Resource Management Services indicated that six salary increases provided were analyzed on a case-by-case basis and were determined to be within North Dakota Administrative Code guidelines. The director who made the decisions to provide the salary increases is no longer employed with the agency. The deputy director, during the time the salary increases were provided, is also no longer employed with the agency.

The State Auditor's office indicated that while conducting the performance audit, the State Auditor's office asked the Department of Emergency Services to provide support for the salary increases provided, but the department was unable to provide that information. The State Auditor's office reported the conclusions presented in the Human Resource Management Services report appear to be based on information that either was not made available to the State Auditor's office or was based on after-the-fact allocation of raises that are not supported by appropriate documentation.

The committee learned that in October 2003, the Emergency Commission and Budget Section approved the Department of Emergency Services request to receive federal homeland security funding for the purpose of adding three FTE positions and for temporary employees. The federal homeland security funding was instead used to provide salary increases. Based on an Attorney General's opinion, the agency is limited to spending funding approved by the Emergency Commission to only those purposes as outlined in the agency's request to the Emergency Commission.

Recommendation

The committee makes no recommendation regarding the status of salary increases provided by the Department of Emergency Services.

INFORMATION TECHNOLOGY AUDITS

Information technology audits are audits of computer systems used by state agencies. The State Auditor's office conducted a risk assessment audit dated May 15, 2002, of 379 state computer systems. A risk rating was assigned to each system based on the potential for errors in the system or operation and related effect to the state of North Dakota. The report identified 31 high-risk computer systems and 218 moderate-risk computer systems. The risk rating is used by the State Auditor's office to determine where to best direct its audit resources. The committee received and accepted the following information technology audits:

- **ConnectND human resource management component** (for the year ended December 31, 2004) - ConnectND human resource management is used to maintain and process payroll records for employees of the state of North Dakota and the North Dakota University System.
- **ConnectND finance component** (for the year ended June 30, 2005) - ConnectND finance is used to support integrated enterprisewide business processing and maintain the official accounting records according to generally accepted accounting principles for the state of North Dakota and the North Dakota University System.
- **Information Technology Department** (for the year ended December 31, 2005) - The purpose of this audit was to ensure that necessary general controls of the Information Technology Department are in place and operating effectively. As part of this audit, the State Auditor's office contracted with ManTech International Corporation to test the security of state computer systems. The 2005 Legislative Assembly appropriated $100,000 to the State Auditor's office to hire a consultant for this test. The committee learned that ManTech International Corporation identified some potentially vulnerable systems but was primarily unsuccessful in its attempts to "break into" the system. The specific vulnerabilities identified by ManTech International Corporation were not included in the audit report in order to keep the information from becoming public records.
- **Department of Corrections and Rehabilitation subject tracking and reporting system followup report** (May 18, 2006) - The original report was presented to the Legislative Audit and Fiscal Review Committee in October 2004. As a result of the followup review, two prior recommendations were determined to be fully implemented and one recommendation was determined not to be implemented.

COMMITTEE FOLLOWUP WITH AGENCIES THAT HAVE NOT COMPLIED WITH AUDIT RECOMMENDATIONS

Background

During the 2001-02 interim, the Legislative Audit and Fiscal Review Committee reviewed procedures for enhancing its followup efforts relating to the implementation of audit recommendations. Previous actions taken by the committee to make sure state agencies address audit findings included requiring agency responses in the initial audit reports, inviting agencies to comment, and requesting the State Auditor's office to do a six-month followup review. The committee approved the sending of correspondence to each agency that has not complied with previous audit recommendations requesting the agency to appear before the Legislative Audit and Fiscal Review Committee to explain the reason for noncompliance with audit recommendations or steps taken to address recommendations. The Legislative Council staff is to issue the followup request on a case-by-case basis as directed by the committee.

Committee Followup - Department of Corrections and Rehabilitation

Pursuant to the procedures adopted during the 2001-02 interim, the committee requested by motion and received a followup report from the Department of Corrections and Rehabilitation regarding the implementation of previous State Auditor's office audit recommendations. The State Auditor's office report included recommendations relating to strengthening controls over the pharmacy inventory.

A representative of the Department of Corrections and Rehabilitation indicated that the department agrees with and accepts the State Auditor's office recommendation regarding strengthening internal controls over the pharmacy inventory. The committee learned the State Penitentiary pharmacy is operated by a pharmacist and a pharmacy technician. The pharmacy fills, on average, 3,900 prescriptions per month. In addition to filling and dispensing prescriptions, other duties of the two employees include formulary maintenance, drug research regarding side effects and cost-effectiveness, recordkeeping, ordering and receiving drugs, and stocking the pharmacy. Sound internal control requires segregation of duties, which is not possible with the limited pharmacy staff. The committee learned that the Department of Corrections and Rehabilitation will adopt other procedures that will help mitigate the lack of segregation of duties. These procedures include:

1. All drug purchases will be reviewed and approved for payment by the Department of Corrections and Rehabilitation medical director.
2. All prescriptions filled and dispensed by the State Penitentiary pharmacy will be subject to quarterly peer review.
3. Annual physical inventory of the pharmacy will be conducted by employees other than the pharmacists and pharmacy technician.

4. Drug purchases will be analytically reviewed by the Department of Corrections and Rehabilitation business office, on a quarterly basis, for dollar amount and number of orders.

CONTINUING APPROPRIATION STUDY

House Concurrent Resolution No. 3036 (2005) directed a Legislative Council study of state agency and institution continuing appropriation authority. A continuing appropriation is not specifically defined in the North Dakota Century Code. In general, a continuing appropriation can be defined as an appropriation of funds which is not specific in time or amount. Continuing appropriations are provided by a statutory authorization that remains in force or can be carried on from biennium to biennium, permitting state agencies, boards, or institutions to incur obligations and make payment for specified purposes or uses. The North Dakota Century Code contains many examples of explicit continuing appropriations. These are typically accomplished by using phrases such as "standing appropriation," "continuing appropriation," or "revolving fund."

Because continuing appropriations are not part of the regular legislative budget/appropriation process, the term "off-budget" is often applied to continuing appropriations. An FTE position funded by continuing appropriation authority is also classified as "off-budget." Examples of off-budget FTE positions include employees of state boards and commissions and positions funded by non-general fund revenues of higher education institutions.

Section 34 of Senate Bill No. 2015 (2003), the appropriation bill for the Office of Management and Budget, required executive branch agencies to report to the Appropriations Committees during the 2005 legislative session regarding expenditures made pursuant to continuing appropriations. The summary report compiled by the Office of Management and Budget included each agency's justification for needing the continuing appropriation authority and related revenues and fund balances for the 1999-2001, 2001-03, and 2003-05 bienniums to date and projections for the 2005-07 biennium.

House Bill No. 1282 (2005), which was not approved by the Legislative Assembly, would have amended NDCC Section 54-44.1-06 to require state agencies and institutions to include the statutory provisions authorizing the expenditure of funds, pursuant to continuing appropriation authority, and related revenues, expenditures, and fund balances for each current biennium and projected for the next biennium as part of budget presentations to the Legislative Assembly.

The Office of Management and Budget has directed executive branch agencies to include, as part of their budget requests, summaries of continuing appropriations, including justification for needing the continuing appropriation authority and related revenues, expenditures, and fund balances for the 2001-03, 2003-05, and 2005-07 bienniums to date and projections for the 2007-09 biennium. This continuing appropriations summary report will be made available to the 2007 Legislative Assembly.

The Legislative Audit and Fiscal Review Committee requested selected state agencies and institutions to present information to the committee regarding statutory authority for continuing appropriation authority within the agencies or institutions; justification for continuing the authority; and related revenues, expenditures, and fund balances for previous bienniums and projections for the 2005-07 biennium. The agencies and institutions presenting reports to the committee included:

1. **Workforce Safety and Insurance** - Twelve continuing appropriations funded solely through workers' compensation premiums and investment returns.
2. **Job Service North Dakota** - Three continuing appropriations relating to the federal interest repayment account; the unemployment insurance trust fund; and providing for job task analysis services, testing services, and personal reemployment account services.
3. **Department of Human Services** - Three continuing appropriations relating to the child support disbursement fund, child support improvement account, and cooperative agreements for child support enforcement services account.
4. **Attorney General's office** - Seven continuing appropriations of which three relate to the Racing Commission and the remaining four relate to the lottery, the asset forfeiture fund, the Attorney General refund fund, and the tactical team reimbursement fund.
5. **State Historical Society** - Three continuing appropriations relating to fees and concessions, gifts and bequests, and archaeological permits.
6. **Supreme Court** - Seven continuing appropriations relating to the indigent defense administration fund, the electronic filing administration fund, lawyers disciplinary system/Disciplinary Board, restitution collection assistance fund, court facilities improvement and maintenance fund, juvenile court reinvestment fund, and court receivables fund. The indigent defense administration fund was transferred to the Commission on Legal Counsel for Indigents on August 1, 2005.
7. **Office of Management and Budget** - Eight continuing appropriations relating to risk management premiums, workers' compensation premiums, Human Resource Management Services training fees, Capitol grounds planning funds, preliminary planning revolving funds, postage revolving funds, indigent civil legal services, and central supply revolving funds.
8. **Department of Public Instruction** - Three continuing appropriations relating to revolving printing funds, vision aids and appliances funds, and the displaced homemaker program.
9. **Industrial Commission** - Nine continuing appropriations relating to abandoned oil and gas well plugging and site reclamation funds, cash bond funds for plugging oil and gas wells and reclamation of oil and gas wells, cartographic

products funds, fossil excavation and restoration funds, global positioning system data funds, lignite research funds, North Dakota Building Authority, oil and gas reservoir funds, and oil and gas research funds.

10. **Adjutant General** - Four continuing appropriations relating to the National Guard emergency funds, National Guard military grounds funds, Veterans Cemetery maintenance funds, and Veterans Cemetery trust funds.
11. **State Department of Health** - Three continuing appropriations relating to the environmental quality restoration fund, organ tissue transplant fund, and local public health vaccine purchases.
12. **Department of Agriculture** - Three continuing appropriations relating to the honey promotion fund, turkey fund, and minor use fund.
13. **Department of Commerce** - Four continuing appropriations relating to the ethanol production incentive fund, North Dakota Development Fund, Inc., community development loan fund, and career guidance and job opportunities web site.

Findings

The judicial branch indicated that continuing appropriation authority for the electronic filing administration fund, as provided in NDCC Section 27-03-05, is not necessary as the Supreme Court could request an appropriation from the Legislative Assembly for these costs. In addition, the continuing appropriation authority for the juvenile court reinvestment fund, as provided in Section 54-56-03, is no longer necessary because federal funding for the program was discontinued as of June 30, 2004. The Supreme Court plans to submit a bill to the 2007 Legislative Assembly providing for removal of the statutory references for continuing appropriation authority relating to the electronic filing administration fund and the juvenile court reinvestment fund.

The committee learned that pursuant to NDCC Section 54-60-10, the Department of Commerce is authorized to provide career guidance and job opportunity services through an Internet web site. The Department of Commerce is to deposit in the department's operating fund any money received from subscriptions, commissions, fees, or other revenue from the web site. Money deposited in the operating fund of up to $130,000 per biennium under this section is appropriated to the department on a continuing basis for payment of expenses related to administration of the Internet web site. Any additional amounts deposited in the operating fund during a biennium under this section may be spent pursuant to legislative appropriations or with Budget Section approval.

The committee learned that during 2004 a number of changes relating to web site management and partnership agreements occurred which negatively impacted the department's objective to provide a single statewide web site for posting job openings. After considering the changes and options available, the Department of Commerce discontinued the web site as of February 28, 2005. A representative of the Department of Commerce indicated the department will include "language" in its 2007-09 biennium appropriation bill to remove the continuing appropriation authority for the career guidance and job opportunities web site.

The Legislative Assembly authorizes transfers from the environment and rangeland protection fund to the minor use fund. The Department of Agriculture indicated that the funding from the minor use fund could be appropriated each biennium by the Legislative Assembly rather than by a continuing appropriation.

Recommendation

The committee makes no recommendation regarding the study of continuing appropriations but requested that the Legislative Council staff provide information to the Appropriations Committees during the 2007 Legislative Assembly regarding the committee's review of continuing appropriations.

NORTH DAKOTA RACING COMMISSION AUDIT

Background

The committee received the audit report of the Racing Commission for the years ended June 30, 2004 and 2003, which included information regarding the cost of the racetrack in Fargo (the North Dakota Horse Park), and revenues and liability issues of the commission.

North Dakota Horse Park Construction Costs

The committee learned that 114.5 acres of farmland in Fargo was made available by Sheyenne Development LLP to initiate the process of developing the North Dakota Horse Park for a cost of $250,000, which was paid by the city of Fargo. The land was divided as follows:

- Approximately 14.5 acres were deeded to North Dakota State University Development Foundation.
- Approximately 65 acres were leased on a 99-year lease to the North Dakota Horse Park Foundation for maintaining the racetrack. The North Dakota Horse Park Foundation is a 501(c)(3) nonprofit organization formed to guide and direct the building, management, and operation of the North Dakota Horse Park and to promote the programs associated with the facilities.
- The remaining 35 acres were leased on a 99-year lease to Horse Race North Dakota for the grandstand, parking lots, temporary offices, and adjacent grounds. Horse Race North Dakota is a 501(c)(4) nonprofit organization developed to promote the sport of live horse racing and all equine-related activities.

The committee learned that the city of Fargo provided $1 million of tax increment financing district funds to assist in the construction of the racetrack. The repayment terms for the $1 million of tax increment financing district funds provide for the North Dakota Horse Park property owners to defer or eliminate payment of special assessments based on development of the property surrounding the North Dakota Horse Park. If development does not occur or there is a

shortfall, the North Dakota Horse Park Foundation/Horse Race North Dakota would be levied special assessments totaling $955,718, which would be assessed over a period not to exceed 25 years. The first payment would be due January 1, 2009. The annual assessment for the North Dakota Horse Park would be $85,549. If the special assessments are not paid, the city of Fargo would assume ownership of the North Dakota Horse Park property.

The committee learned that a steering committee was formed to oversee the construction of the North Dakota Horse Park. The steering committee assisted in developing the original architect's estimate. The actual cost of the North Dakota Horse Park was $3,598,000, or $1,798,000 more than the original architect's estimate of $1,800,000. Upgrades to the racetrack due to water and drainage issues and rail and fence safety concerns accounted for the majority of the additional costs above the estimate.

The committee learned that all project expenditures were approved by the project manager, the Racing Commission, and the Attorney General's office. The original architect's estimate was made before the construction bidding process. The actual bids were about 20 percent more than the architect's estimate. Approximately $2.8 million of the funding for construction of the North Dakota Horse Park was from the Racing Commission promotion fund.

The committee learned that Horse Race North Dakota is planning to begin construction on Phase 1 of a three-phased "clubhouse/grandstand" project. Phase 1 of this project is estimated to cost $1.5 million. The clubhouse will allow "year-round" events to be conducted and will generate additional revenues for the operations of the North Dakota Horse Park. There are also future plans for simulcast wagering at the North Dakota Horse Park.

Racing Commission Revenues

The Racing Commission operates three separate funds:

- The breeders' fund, which is used to provide additional funds to North Dakota-born horses that race and win, place, or show in races at North Dakota tracks (NDCC Section 53-06.2-01(1));
- The purse fund, which is used to provide additional funds to North Dakota racetracks for purses for their live races (NDCC Section 53-06.2-01(10)); and
- The promotion fund, which is for promotion of horse racing and a variety of other functions, including providing funding for construction of the North Dakota Horse Park. In addition, the Racing Commission may receive up to 25 percent of this fund for the purpose of payment of operating expenses of the commission (NDCC Section 53-06.2-11(3)).

Parimutuel wagering, which includes both simulcast and live horse race wagering, is a system in which players bet against each other as opposed to the "house" or the management. The winners divide the total amount of the amount wagered, minus the percentage that goes to the house, otherwise known as the "rake," to pay for its expenses. The breeders' fund, the purse fund, the promotion fund, and the general fund each receive a percentage of the total amount wagered through parimutuel horse racing in North Dakota. The committee received information regarding revenues generated since the 1997-99 biennium from horse racing in North Dakota:

	1997-99 Biennium	1999-2001 Biennium	2001-03 Biennium	2003-05 Biennium	2005-07 Biennium (July 1, 2005, to September 30, 2005)
General fund	$592,769	$6,396,078	$7,660,826	$5,250,888	$62,211
Breeders' fund	135,547	1,137,719	2,779,470	795,815	40,453
Purse fund	135,512	1,136,578	2,767,303	795,815	40,637
Promotion fund	308,234	2,071,931	5,229,897	1,391,644	69,392
Total	$1,172,062	$10,742,306	$18,437,496	$8,234,162	$212,693

NOTE: Revenues decreased during the 2003-05 biennium due to a loss of the "big bettors." These were individual bettors that were wagering up to $170 million per year on simulcast racing in North Dakota. These individuals moved their wagering operations to another state during the 2003-05 biennium.

The North American Pari-mutuel Regulators Association (NAPRA) is a tax-exempt organization incorporated in Kansas in 1997 to provide a cost-effective focal point for communications and dispersing information relating to the parimutuel industry. A representative of NAPRA indicated that virtually every horse racetrack in the United States is subsidized by simulcast wagering and without revenues from simulcast wagering nearly every horse track facility would lose money. Horse racetracks in Montana, South Dakota, Wyoming, and Nebraska are subsidized by simulcast wagering. In addition to receiving subsidies from simulcast wagering, a 24-hour card club is located at Canterbury Park (Minnesota) and a casino is located at Prairie Meadows Racetrack (Iowa).

There are 18 days of live racing scheduled annually at the North Dakota Horse Park. Approximately 95 percent of the total amount wagered on horse racing in North Dakota is on simulcast racing and 5 percent is on live in-state racing.

The State Auditor's office indicated that based on projected revenues and expenditures, Horse Race North Dakota will have difficulty continuing without financial support from the Racing Commission. Based on an unaudited income statement, Horse Race North Dakota's total 2004 revenues were $1,013,136, of which $718,400 was from commission grants.

The committee learned that the audit report included a projection that based on estimated revenues and expenditures, the Racing Commission's breeders' fund, the purse fund, and the promotion fund have approximately three to five years of funding remaining. The commission has committed over $2.8 million for construction of the North Dakota Horse Park. In addition, the commission provided funding of $900,000 in 2003 and $718,400 in 2004 for operation of the North Dakota Horse Park. The October 15, 2005, balances in each of the commission funds were:

- Breeders' fund - $1,664,491.
- Purse fund - $1,732,387.
- Promotion fund - $1,140,287.

Liability of the Racing Commission

The committee learned that it would be very unlikely the state or the racing commissioners would be subject to liability for injuries occurring at races licensed by the Racing Commission. The commission does not conduct races or contract with any organization to conduct races. The commission grants licenses to organizations to conduct races. An action cannot be brought against a state employee and a state employee cannot be held personally liable for damages caused by that state employee acting within the scope of the employee's employment.

Conclusion

The committee accepted the audit report of the Racing Commission. The committee by motion asked the commission to request that the respective horse racing tracks licensed by the commission obtain a certificate of insurance extending liability insurance coverage to the state of North Dakota for a minimum amount of $1 million or for the stated amount of the racetrack's liability insurance coverage if that amount is greater than $1 million.

The committee learned that representatives of the Outdoor Recreation Development Association and the North Dakota Horse Park have indicated that they would seek to add the Racing Commission as an additional insured party.

OTHER REPORTS

Ethanol Production Companies

North Dakota Century Code Section 45-10.2-115 provides that any limited liability partnership that produces agricultural ethyl alcohol or methanol and receives a production subsidy from the state must submit an annual audit report to the Legislative Audit and Fiscal Review Committee. Pursuant to this section, the audit report for Alchem, Ltd., LLP, for the year ended December 31, 2004, was filed with the committee.

North Dakota Century Code Section 10-19.1-152 provides that any corporation that produces agriculture ethyl alcohol or methanol and receives a production subsidy from the state must submit an annual audit report to the Legislative Audit and Fiscal Review Committee. Pursuant to this section, the audit report for Archer Daniels Midland Company for the year ended June 30, 2005, was filed with the committee.

Department of Human Services Accounts Receivable Writeoffs

Pursuant to NDCC Sections 25-04-17 and 50-06.3-08, the Department of Human Services is required to present a report to the Legislative Audit and Fiscal Review Committee regarding accounts receivable writeoffs at the State Hospital, Developmental Center, and human service centers as of June 30 of each fiscal year. The department's report for fiscal year 2005 was received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2005, were $4,474,037 at the State Hospital, $215,162 at the Developmental Center, and $913,730 at the human service centers.

The department's report for fiscal year 2006 was also received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2006, were $4,114,117 at the State Hospital, $30,543 at the Developmental Center, and $772,013 at the human service centers.

Information Technology Department

The committee received reports from a representative of the Information Technology Department on the status of information technology projects, services, plans, and benefits, pursuant to NDCC Section 54-59-19. The annual report contained:

- An executive summary of the benefits realized from investments in information technology.
- Executive highlights of the Information Technology Department's goals and accomplishments.
- A summary of the department's strategic planning and performance, including an update on the department's performance measures.
- Information Technology Department rate comparisons.
- Information Technology Department financial statements.
- A summary of major completed and active information technology projects.

AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE DURING THE 2005-06 INTERIM

Agency	Audit Report Date	Meeting Date Accepted
Abstracters' Board of Examiners	August 31, 2005	June 19, 2006
Abstracters' Board of Examiners	August 31, 2004	June 19, 2006
Addiction Counseling Examiners, Board of	June 30, 2005 and 2004	June 19, 2006
Adjutant General	June 30, 2004 and 2003	August 31, 2005
Administrative Hearings, Office of	June 30, 2005 and 2004	January 10, 2006
Aeronautics Commission	June 30, 2005 and 2004	January 10, 2006
Ag PACE fund	June 30, 2005 and 2004	June 19, 2006
Architecture, Board of	June 30, 2004	January 10, 2006
Athletic Training Board	June 30, 2005	June 19, 2006
Athletic Training Board	June 30, 2004	January 10, 2006
Attorney General	June 30, 2004 and 2003	August 31, 2005
Bank of North Dakota	December 31, 2004 and 2003	August 31, 2005
Bank of North Dakota	December 31, 2005 and 2004	June 19, 2006
Bank of North Dakota information system procedures	December 31, 2004	August 31, 2005
Beef Commission	June 30, 2004	August 31, 2005
Beef Commission	June 30, 2005 and 2004	January 10, 2006
Beginning farmer revolving fund	December 31, 2005 and 2004	October 17, 2006
Beginning farmer revolving fund	December 31, 2004 and 2003	August 31, 2005
Bismarck State College	June 30, 2005 and 2004	June 19, 2006
Building Authority	June 30, 2005 and 2004	January 10, 2006
Children's Services Coordinating Committee	June 30, 2005 and 2004	June 19, 2006
Chiropractic Examiners, Board of	December 31, 2004	August 31, 2005
Chiropractic Examiners, Board of	December 31, 2005	June 19, 2006
Clinical Laboratory Practice, Board of	June 30, 2005 and 2004	January 10, 2006
Collection and Use of 911 Fees performance audit	November 18, 2005	January 10, 2006
Community Water Facility Loan Fund	December 31, 2005 and 2004	October 17, 2006
Community Water Facility Loan Fund	December 31, 2004 and 2003	August 31, 2005
ConnectND - Financials component	June 30, 2005	January 10, 2006
ConnectND - Human Resource Management System	December 31, 2004	August 31, 2005
Corrections and Rehabilitation (subject tracking report followup)	May 18, 2006	October 17, 2006
Corrections and Rehabilitation, Department of	June 30, 2005 and 2004	June 19, 2006
Cosmetology, Board of	June 30, 2004	January 10, 2006
Cosmetology, Board of	June 30, 2005	June 19, 2006
Council on the Arts	June 30, 2005 and 2004	January 10, 2006
Counselor Examiners, Board of	June 30, 2004 and 2003	January 10, 2006
Dairy Promotion Commission	June 30, 2004 and 2003	August 31, 2005
Dental Examiners, Board of	June 30, 2005 and 2004	June 19, 2006
Development Fund, Inc.	June 30, 2005 and 2004	January 10, 2006
Development Fund, Inc.	June 30, 2004 and 2003	August 31, 2005
Developmentally Disabled Facility Loan Program	December 31, 2005 and 2004	October 17, 2006
Developmentally Disabled Facility Loan Program	December 31, 2004 and 2003	August 31, 2005
Dickinson State University	June 30, 2005 and 2004	June 19, 2006
Dietetic Practice, Board of	September 30, 2003 and 2002	August 31, 2005
Dietetic Practice, Board of	September 30, 2005 and 2004	October 17, 2006
Division of Emergency Management performance audit	November 18, 2005	January 10, 2006
Driver and Vehicle Services, Office of (performance audit followup)	November 28, 2005	June 19, 2006
Dry Pea and Lentil Council	June 30, 2004 and 2003	August 31, 2005
Education Standards and Practices Board	June 30, 2005	October 17, 2006
Education Standards and Practices Board	June 30, 2004	June 19, 2006
Education Standards and Practices Board	June 30, 2003 and 2002	August 31, 2005
Electrical Board	June 30, 2005 and 2004	January 10, 2006
Financial Institutions, Department of	June 30, 2004 and 2003	August 31, 2005
Firefighter's Association	April 30, 2004	January 10, 2006
Firefighter's Association	April 30, 2005 and 2004	January 10, 2006
Funeral Service, Board of	June 30, 2004 and 2003	June 19, 2006
Game and Fish Department	June 30, 2004 and 2003	August 31, 2005
Governor's Office	June 30, 2005 and 2004	January 10, 2006
Guaranteed Student Loan Program	September 30, 2004 and 2003	August 31, 2005
Guaranteed Student Loan Program	September 30, 2005 and 2004	June 19, 2006
Health, State Department of	June 30, 2005 and 2004	October 17, 2006
Hearing Instrument Dispensers, Board of Examiners for	June 30, 2005 and 2004	June 19, 2006
Hearing Instrument Dispensers, Board of Examiners for	June 30, 2003 and 2002	June 19, 2006
Highway Patrol	June 30, 2004 and 2003	August 31, 2005
Historical Society	June 30, 2004 and 2003	August 31, 2005
Housing Finance Agency	June 30, 2004 and 2003	August 31, 2005
Housing Finance Agency	June 30, 2005 and 2004	January 10, 2006
Human Services, Department of	June 30, 2005 and 2004	January 10, 2006
Indian Affairs Commission	June 30, 2004 and 2003	August 31, 2005
Industrial Commission	June 30, 2005 and 2004	June 19, 2006
Information Technology Department	June 30, 2004 and 2003	August 31, 2005
Information Technology Department information system audit	December 31, 2005	June 19, 2006
Insurance Commissioner	June 30, 2005 and 2004	January 10, 2006
Job Service North Dakota	June 30, 2004 and 2003	August 31, 2005
Job Service North Dakota	June 30, 2005 and 2004	January 10, 2006
Judicial Branch	June 30, 2005 and 2004	January 10, 2006
Labor Department	June 30, 2005 and 2004	October 17, 2006
Lake Region State College	June 30, 2005 and 2004	June 19, 2006

Law Examiners, Board of	June 30, 2005 and 2004	June 19, 2006
Legislative Assembly	June 30, 2005 and 2004	January 10, 2006
Legislative Council	June 30, 2005 and 2004	January 10, 2006
Lottery, North Dakota	June 30, 2005	January 10, 2006
Lottery, North Dakota	June 30, 2004	August 31, 2005
Management and Budget, Office of	June 30, 2005 and 2004	June 19, 2006
Mayville State University	June 30, 2005 and 2004	June 19, 2006
Medical Examiners, Board of	December 31, 2004 and 2003	January 10, 2006
Milk Marketing Board	June 30, 2004 and 2003	August 31, 2005
Mill and Elevator Association	June 30, 2005	January 10, 2006
Minot State University	June 30, 2005 and 2004	June 19, 2006
Minot State University - Bottineau	June 30, 2005 and 2004	June 19, 2006
Municipal Bond Bank	December 31, 2004 and 2003	August 31, 2005
North Dakota State University	June 30, 2005 and 2004	October 17, 2006
North Dakota University System	June 30, 2005	June 19, 2006
Nursing, Board of	June 30, 2004	August 31, 2005
Nursing, Board of	June 30, 2005 and 2004	January 10, 2006
Occupational Therapy Practice, Board of	June 30, 2005 and 2004	June 19, 2006
Oilseed Council	June 30, 2004 and 2003	August 31, 2005
Optometry, Board of	June 30, 2004 and 2003	August 31, 2005
PACE fund	June 30, 2005 and 2004	June 19, 2006
Parks and Recreation Department	June 30, 2005 and 2004	June 19, 2006
Peace Officer Standards and Training Board	December 31, 2004 and 2003	June 19, 2006
Pharmacy, Board of	June 30, 2004 and 2003	August 31, 2005
Pharmacy, Board of	June 30, 2005 and 2004	January 10, 2006
Physical Therapists, Examining Committee for	June 30, 2002 and 2001	August 31, 2005
Physical Therapists, Examining Committee for	June 30, 2004 and 2003	August 31, 2005
Plumbing, Board of	June 30, 2005 and 2004	January 10, 2006
Podiatry Examiners, Board of	December 31, 2003 and 2002	January 10, 2006
Private Investigative and Security Board	June 30, 2003	June 19, 2006
Private Investigative and Security Board	June 30, 2004	June 19, 2006
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 2005	June 19, 2006
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 2004	January 10, 2006
Professional Soil Classifiers, Board of Registration for	June 30, 2005	June 19, 2006
Professional Soil Classifiers, Board of Registration for	June 30, 2004	January 10, 2006
Protection and Advocacy	June 30, 2004 and 2003	August 31, 2005
Psychologist Examiners, Board of	June 30, 2003 and 2002	August 31, 2005
Public Accountancy, Board of	June 30, 2004	August 31, 2005
Public Accountancy, Board of	June 30, 2005	January 10, 2006
Public Employees Retirement System	June 30, 2005 and 2004	January 10, 2006
Public Employees Retirement System	June 30, 2004 and 2003	August 31, 2005
Public Finance Authority	December 31, 2005 and 2004	June 19, 2006
Public Instruction, Department of	June 30, 2005 and 2004	June 19, 2006
Public Service Commission	June 30, 2005 and 2004	June 19, 2006
Racing Commission	June 30, 2004 and 2003	January 10, 2006
Real Estate Commission	June 30, 2004 and 2003	January 10, 2006
Real Estate Commission	June 30, 2005	June 19, 2006
Reflexology, State Board of	June 30, 2005	June 19, 2006
Reflexology, State Board of	June 30, 2004	January 10, 2006
Respiratory Care, Board of	January 31, 2005 and 2004	June 19, 2006
Retirement and Investment Office	June 30, 2004 and 2003	August 31, 2005
Retirement and Investment Office	June 30, 2005 and 2004	January 10, 2006
Secretary of State	June 30, 2004 and 2003	August 31, 2005
Securities Department	June 30, 2004 and 2003	August 31, 2005
Seed Department	June 30, 2004 and 2003	August 31, 2005
Social Work Examiners, Board of	June 30, 2005 and 2004	June 19, 2006
Soybean Council	June 30, 2005 and 2004	January 10, 2006
State Auditor	June 30, 2005 and 2004	January 10, 2006
State College of Science	June 30, 2005 and 2004	October 17, 2006
State Fair Association	September 30, 2005 and 2004	January 10, 2006
State Fair Association	September 30, 2004 and 2003	August 31, 2005
Statewide CAFR	June 30, 2004	August 31, 2005
Statewide CAFR	June 30, 2005	June 19, 2006
Statewide Single Audit	June 30, 2004 and 2003	August 31, 2005
Stockmen's Association	December 31, 2004 and 2003	August 31, 2005
Stockmen's Association	December 31, 2005 and 2004	October 17, 2006
Student Loan Trust	June 30, 2004 and 2003	August 31, 2005
Student Loan Trust	June 30, 2005 and 2004	June 19, 2006
Tax Commissioner	June 30, 2005 and 2004	June 19, 2006
Transportation, Department of	June 30, 2005 and 2004	January 10, 2006
University and School Lands, Board of	June 30, 2005 and 2004	January 10, 2006
University and School Lands, Board of	June 30, 2004 and 2003	August 31, 2005
University of North Dakota	June 30, 2005 and 2004	October 17, 2006
University System office	June 30, 2004 and 2003	August 31, 2005
Valley City State University	June 30, 2005 and 2004	June 19, 2006
Veterans Affairs, Department of	June 30, 2004 and 2003	August 31, 2005
Veterans Home	June 30, 2005 and 2004	October 17, 2006
Veterans Home (performance audit followup)	February 14, 2005	August 31, 2005
Veterinary Medical Examiners, Board of	June 30, 2004 and 2003	January 10, 2006
Water Well Contractors, Board of	June 30, 2004 and 2003	August 31, 2005
Williston State College	June 30, 2005 and 2004	June 19, 2006
Workforce Safety and Insurance	June 30, 2005 and 2004	January 10, 2006
Workforce Safety and Insurance	June 30, 2004 and 2003	August 31, 2005

LEGISLATIVE MANAGEMENT COMMITTEE

The Legislative Council delegated to the Legislative Management Committee the Council's authority under North Dakota Century Code (NDCC) Section 54-35-11 to make arrangements for the 2007 legislative session. Legislative rules are also reviewed and updated under this authority. The Legislative Council also delegated to the committee the Council's:

1. Duty under Section 54-03-26 to determine the computer usage fee for legislators;
2. Power and duty under Section 54-35-02 to determine access to legislative information services and impose fees for providing such services and copies of legislative documents and to control permanent displays in Memorial Hall and use of the legislative chambers;
3. Responsibility under Section 54-03-20 to establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session;
4. Responsibility under Section 54-60-03 to determine which standing committees will receive a report from the Commissioner of Commerce on goals and objectives of the department;
5. Responsibility under Section 4-24-10 to determine when agricultural commodity promotion groups must report to the standing Agriculture Committees;
6. Authority under Section 46-02-05 to determine the contents of contracts for the printing of legislative bills, resolutions, and journals; and
7. Authority under Section 54-06-26 to establish guidelines for use of state telephones by legislative branch personnel.

The Legislative Council also assigned to the committee the responsibility to administer the appropriation for replacing sound system mixers in the House chamber under 2005 Session Laws, Chapter 29, Section 3, and the responsibility under 2005 Session Laws, Chapter 57, Section 4, to determine when the Agriculture Commissioner, Bank of North Dakota, and North Dakota Stockmen's Association must report on the livestock loan guarantee program to the standing Agriculture Committees of the 60th Legislative Assembly. The Legislative Council also designated the committee as the Legislative Ethics Committee under NDCC Section 54-35-02.8 with the responsibility to consider or prepare a legislative code of ethics.

The Legislative Management Committee was charged with the responsibility to review and adopt the project plan and to approve deliverables of each completed project phase for replacement of legislative technology applications under 2005 Session Laws, Chapter 29, Section 5. The committee also was charged with the responsibility to visit and inspect the veterans' memorial on the Capitol grounds and to recommend repairs and updates to Facility Management Division under 2005 Session Laws, Chapter 497, Section 1.

The Legislative Management Committee also conducted three studies directed by 2005 Session Laws, Chapter 29. Section 6 directed a study of the feasibility and desirability of arranging for the printing of bills and resolutions for the 60th Legislative Assembly by using computers and high-speed printers rather than printing multiple copies of all bills and having copies available in the bill and journal room. Section 7 directed a study of the need for additional legislative committee meeting rooms and authorized expenditure of available funds for remodeling legislative meeting rooms if additional meeting rooms are needed. Section 8 directed a study of the appropriateness of increasing the daily compensation for chairmen of substantive standing committee divisions established by rule of the House or Senate.

Committee members were Senators Bob Stenehjem (Chairman), John M. Andrist, Randel Christmann, Michael A. Every, and David O'Connell, and Representatives Rick Berg, Merle Boucher, Scot Kelsh, Matthew M. Klein, and David Monson. Senator Tony Grindberg resigned from the committee after its June 2005 meeting and was replaced by Senator John M. Andrist.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

LEGISLATIVE TECHNOLOGY APPLICATIONS REPLACEMENT PROJECT

Background

During the 1967-68 interim, the Legislative Council staff developed a mainframe-based bill status report system. This system provided information on the status of bills as they progressed through the legislative process from introduction to final disposition. Initially developed as an in-house tracking system for the Legislative Council staff, starting in 1973 two interns in the Legislative Council office completed forms containing status information, delivered those forms nightly to Central Data Processing (the predecessor to the Information Technology Department), and personnel in Central Data Processing keyed the information from the forms into the system and prepared printed bill status reports for the "next" day which was distributed outside the Legislative Council office. In the 1970s, the Legislative Council developed a mainframe-based bill drafting system, which substantially automated the preparation of bill drafts by allowing reuse of routine boilerplate language and by providing access to the North Dakota Century Code data base--a mainframe-based data base created in the 1970s for computer-assisted keyword searches of the North Dakota Century Code.

The bill status system and the bill drafting system were the core applications around which custom-built applications were based. During the early 1980s,

applications were developed to automate various processes during the legislative session, e.g., the journal system provided for the journals to be prepared by legislative staff rather than a third-party printer, the calendar system provided for automated preparation of the daily calendars, the committee hearing system provided automated compilation of individual standing committee hearing schedules and display of those schedules on monitors throughout the legislative wing of the State Capitol, the conflicts system identified bills affecting the same Century Code sections, the chamber message system automated messages between the houses, the Legislator's Automated Work Station (LAWS) system retrieved information from the other applications and provided that information to legislators, and the Session Laws and Session Laws index systems were used to publish the Session Laws. These legislative session applications are tightly integrated and are highly dependent on each other for data and information sharing. As the applications were enhanced over the years, the bill drafting and journal applications became the primary applications. The budget status system, although developed primarily for use during legislative sessions, is based on more modern technology and its interconnection with other session applications is limited--budget amendment information must be reentered into the bill drafting system for final amendment preparation and for transfer to the journal.

In addition to applications primarily used during legislative sessions, the Legislative Council staff also developed applications to publish the North Dakota Administrative Code; maintain, store, and retrieve office documents; maintain mailing lists; prepare vouchers keyed to legislative committee activities; maintain Legislative Assembly and Legislative Council inventory; track work projects; and inventory library resources.

Infrastructure Analysis

The legislative branch applications were developed at different times using different technologies, tools, and techniques. The applications are hosted on different platforms and rely on a mix of operating systems and environments. No single person or team understands the entire system and the support infrastructure relies on many contractors, numerous product vendors, various groups from the Information Technology Department, and the Legislative Council staff.

Major concerns are the risk of having systems that are unsupportable in the near future due to technology obsolescence (key computer programs are over 30 years old) and the potential loss of key personnel (due to retirement or job change). Also, critical system technologies may become unsupported within the next four years. Failure of a system essential to the legislative process would substantially affect the ability of the Legislative Assembly to complete its work in a timely manner.

In 2003, $200,000 was appropriated for an infrastructure analysis. Techwise Solutions, Fargo, was hired as contract manager for the infrastructure analysis. Techwise Solutions prepared a request for proposal (RFP) and sent the RFP to 30 consulting firms nationwide. Enterprise Solutions, Bismarck, was recommended by Techwise Solutions and selected from the respondents to the RFP.

Enterprise Solutions prepared an infrastructure analysis that documented the current applications environment, captured business and technical requirements, researched solutions implemented in other states, and researched solutions provided by vendors. The infrastructure analysis also provided a recommended solution and budget estimates. The recommended solution was to purchase commercial off-the-shelf components (as applicable) that met standards of the Information Technology Department and integrated with other systems. This solution was viewed as a way to provide functionality and integration with other systems, but the risks were viewed as the difficulty to fit all functionality into a single biennium and the possible need to obtain expertise from multiple vendors. The projected budget for replacing the applications was estimated at $3,550,000 for the 2005-07 biennium and $1,350,000 for the 2007-09 biennium. The 10-year total cost for replacing the applications, running the current systems until replaced by the new systems, and ongoing maintenance and support was estimated at $7,570,000. The 10-year total cost for remaining with the current legislative applications was estimated at $10,720,000.

2005-06 Activity

Funds

The Legislative Council requested an appropriation of $4,200,000 during the 2005-07 biennium to proceed with replacement of legislative applications. In lieu of appropriating the requested amount, however, the Legislative Assembly removed the entire appropriation for this project and instead authorized the Legislative Council to use unexpended funds from the appropriations to the Legislative Assembly and Legislative Council for the 2003-05 biennium to assist in the cost of the legislative applications replacement project, including preplanning costs. In August 2005 the amount determined as being available for the project was $1,523,037.

Project Plan

Senate Bill No. 2001 (2005), the appropriation bill for the legislative branch, required the Legislative Council to develop a design, an analysis, and a plan for implementation of the legislative applications replacement system. The Legislative Council staff and the Information Technology Department staff were required to develop a project plan, and the Legislative Management Committee was required to review and adopt the project plan. The project plan was required to be developed in a phased approach and to include a process for soliciting suggestions from members of the Legislative Assembly regarding system functions.

Enterprise Solutions presented a project plan to the committee which included appointment of an executive steering group, development of an RFP, selection of a vendor, negotiation of a contract and statement of work that includes deliverables and schedule, and

performance of the work. This process included performing an analysis that captured detailed business and technical requirements and increased the stakeholder involvement; creating a design that defined business processes, selected products, and developed an architectural prototype; refining the budget, including the cost-benefit analysis and return on investment analysis; developing a project plan that included a phased approach with milestones and deliverables; and implementing a solution, the extent of which would be determined primarily by funds available.

Steering Group

Senate Bill No. 2001 also authorized the Legislative Council chairman to appoint an executive steering group for the project. The Legislative Council chairman appointed an executive steering group consisting of three members of the Senate, three members of the House, three representatives of the Information Technology Department, and four members of the Legislative Council staff. The steering group's responsibilities involved monitoring project budget and implementation plan timelines, reviewing and monitoring a communication plan, reviewing milestone progress, and providing the escalation point for project issues. The steering group met throughout the interim. The initial timelines included creation of a vendor list in August 2005, approval of the RFP in September 2005, selection of the vendor in November 2005, analysis and design during January through June 2006, cost-benefit and return on investment analyses completion by June 2006, and possible implementation of the project July 2006 through June 2007.

Vendor Selection

The RFP for the legislative applications replacement project was distributed to over 100 firms and five responded--Arbortext, Ann Arbor, Michigan (Arbortext has since been acquired by Parametric Technology Corporation (PTC), Needham, Massachusetts); International Roll Call Corporation, Mechanicsville, Virginia; MSI Systems Integrators, Omaha, Nebraska; Object Partners, Inc., Minneapolis, Minnesota; and Propylon Ltd., Harrisburg, Pennsylvania. The steering group invited four of the five to make formal presentations to the steering group, and the steering group selected two--Arbortext and MSI Systems Integrators--to present their proposals to the Legislative Management Committee. The Arbortext/PTC proposal for Phase I was a fixed price of $570,708 and $202,640 for a proof of concept and $75,000 travel expenses. The MSI Systems Integrators proposal for Phase I was a fixed price of $355,000 and $35,000 travel expenses.

After receiving the proposals, the committee selected Arbortext/PTC as the consulting firm for the legislative applications replacement project. Arbortext/PTC is a world leader in enterprise document publishing and XML data management. The proposal by Arbortext/PTC included partnering with Capstone Consulting, Omaha, Nebraska, due to Capstone's expertise in systems integration. Arbortext/PTC also has experience with 10 legislatures.

Phase I of the Project

As approved by the committee, the project plan involved two distinct phases. Under Phase I, PTC captured business requirements, i.e., what the Legislative Assembly and the Legislative Council do. Over 50 individuals, including legislators, Legislative Council staff, desk force personnel, and state agency representatives were interviewed. In addition, a survey was sent to all legislators and about half returned the surveys. The results were placed in a *Business Process Analysis* document. Based on the business process analysis, PTC prepared a *Functional Specifications* document, an *Architectural and System Schematics* document, a *Technical Specifications* document, and a *Proof of Concept* document. Once these were prepared, PTC completed the *Proposed Solution Budget for Phase II*, the *Cost Benefit Analysis Return on Investment (ROI)*, and the *Timeline (Phase II Implementation Plan)*.

The cost-benefit analysis of proceeding with the legislative applications replacement project identified benefits of enhanced service to key stakeholders, increased operational efficiency, reduced costs resulting from migration from the mainframe applications, and reduced risk. The operational efficiencies were projected as resulting primarily from use of XML technologies. The projected cumulative costs of maintaining and operating the current legislative applications through the 2013-15 biennium were estimated at $7,684,625. The projected cumulative costs of replacing the current applications and maintaining and operating the replacement applications through the 2013-15 biennium were estimated at $6,871,791, which provides a cumulative cost-savings by the end of the 2013-15 biennium of $812,834.

The committee, under the charge to review and approve deliverables from each complete project phase before any consideration could be made for a subsequent phase, approved these deliverables and approved proceeding with Phase II.

Phase II of the Project

The PTC proposal for Phase II includes Stage 0 - Project Initiation (Phase II Catalyst Initiative), Stage I - Foundation, Stage II - Data Creation, Stage III - Integration, and Stage IV - Approval and Tracking. The Phase II timeline shows completion by October 2008.

Under Stage 0 - Project Initiation (Phase II Catalyst Initiative), the hardware and software identified under Phase I would be installed, a conference committee system would be in place in 2007, and PTC would meet with and interview stakeholders during the 2007 legislative session to validate business processes PTC identified under Phase I. Committee members considered the validation of business processes the important feature of the catalyst initiative because PTC would be contacting individuals and reviewing processes during the legislative session as well as gathering information to ensure the business processes documented under Phase I were accurate. The fixed price quoted by PTC for the Phase II Catalyst Initiative was $737,397, which is included in the total fixed price

quoted by PTC of $4,648,224 for Phase II. The committee approved initiating Stage 0 as soon as possible due to the extremely tight timeline to complete Phase II by October 2008.

LEGISLATIVE SPACE RENOVATION PROJECTS

Legislative Committee Meeting Room Space Study

Additional Meeting Rooms

The directive to study the need for additional legislative committee meeting rooms also authorized the expenditure of any funds available for the remodeling of legislative meeting rooms if the study concludes that additional meeting rooms are needed. Under Senate Bill No. 2001 (2005), $200,000 was available for designing and remodeling space in the Capitol for an additional committee room or for refurnishing committee rooms. Two problems were experienced by the House during the 2005 legislative session--the Government Operations Division of the Appropriations Committee hearing room (the House Conference Room) is not very accessible and the Government Performance Division of the Appropriations Committee met in the Brynhild Haugland Room or other areas, but coordination was difficult.

The committee reviewed the square footage and seating capacity of current committee rooms. Square footage ranged from 528 square feet in the Roosevelt Park Room to 2,600 square feet in the Pioneer Room. The committee identified three potential areas that could be remodeled into committee rooms--the bill and journal room - 1,322 square feet; the bill and journal room without the former hallway - 904 square feet; the House locker room - 575 square feet; and the bill and journal room, former hallway portion - 418 square feet.

The committee consulted with Tvenge Associates Architects & Planners PC, the architectural firm that designed the 1977-82 legislative wing renovation project. Tvenge Associates prepared two remodeling concepts for the bill and journal room.

Concept 1 remodeled the bill and journal room into two committee rooms and a substantially smaller bill and journal room. A sound-deadening foldable divider divided the semicircle area into two meeting rooms of a quarter-circle shape. The entire area provided a meeting area of 834 square feet. Each 417 square-foot room allowed committee tables and 9 desk chairs and 24 side chairs. When the divider between both committee room areas is open, the resulting area allowed committee tables seating 16 and 47 side chairs. The former hallway between the former bill and journal room (pre-1981 remodeling) and the north wall of the main hallway was recreated as a bill and journal room totaling 360 square feet. That space was designed with compartments and shelving units and space for a copier, a computer desk, a file cabinet, and a worktable. The estimated cost of Concept 1 was $168,000.

Concept 2 remodeled the bill and journal room into two committee rooms and moved the bill and journal room to the public coatroom and vending machine area across the hallway. A sound-deadening foldable divider divided the semicircle area into two meeting rooms of a quarter-circle shape. The entire area provided a meeting area of 1,214 square feet, 607 square feet in each committee room. The table size would have been the same as Concept 1, but side chair capacity would have increased to 56, with 28 on each side. The bill and journal room area totaled 382 square feet. The estimated cost of Concept 2 was $193,000.

Another concept remodeled the House locker room into one committee room. The meeting room area would cover 533 square feet and would provide for 9 table chairs and 24 side chairs. The estimated cost of this concept was $66,900.

Committee members discussed the desire to find a handicap-accessible committee room on the ground floor to replace the House Conference Room. In addition, the fact that the Government Operations Division consisted of six members and the Government Performance Division consisted of four members was a determining factor in assessing the need for two smaller, rather than larger, committee rooms.

Committee members also discussed the need to provide a public coatroom area during legislative sessions. With respect to remodeling the House locker room into a meeting room, discussion focused on where House members without offices would leave their coats or other personal items. Coatracks placed in the ground floor study were not considered as secure as the lockers.

Substantial discussion focused on whether the bill and journal room could be substantially reduced in size by eliminating preprinted bills, resolutions, journals, and daily calendars and thus eliminating the need for shelf space. A substantially reduced bill and journal room would contain a personal computer networked with a printer and one person could print copies on demand. A few copies of each item could be maintained in three or four file cabinets to meet immediate demand for one or two copies. Also suggested was that in the future there may be little need for a bill and journal room because of the ever-increasing use of the Internet to view and make copies of bills, journals, calendars, and committee hearing schedules. Concern was expressed, however, over loss of efficiency if bills were stored in filing cabinets and the delay in fulfilling requests to print a number of bills or large bills. Discussion also included consideration of the future potential of using a substantial portion of whatever space is provided in the remodeled area for the bill and journal room as a committee room or as additional space for the newly remodeled meeting rooms.

The committee reviewed bill and journal room requirements. A bill and journal room needs readily accessible storage space for 50 to 100 copies of 1,080 bills and resolutions; readily accessible storage space for 50 to 100 copies of 166 journals; readily accessible storage space for materials sorted and held for subscribers to legislative documents; table space for sorting materials for distributing to the House, Senate, committee clerks, subscribers, and the Capitol mailroom; a copier; and a personal computer and a computer desk for bill status inquiries.

The committee approved a revised version of Concept 1. The plan approved by the committee remodeled the bill and journal room into two committee rooms and a smaller bill and journal room. The wall between the two committee rooms was revised to be a permanent wall, rather than a sound-deadening foldable divider, which reduced the cost of the project by approximately $16,500. Each meeting room occupies 417 square feet. The space allows committee tables and 9 desk chairs and 24 side chairs. The bill and journal room occupies 360 square feet and is sufficient for substantially reduced numbers of preprinted materials, as described under **PRINTING BILLS WITH COMPUTERS AND PRINTERS STUDY**. Bids for remodeling the area were solicited and a contract was awarded to the lowest bidder at a price of $134,510.

During the 2005 legislative session, the House Appropriations Committee clerk was located in the committee clerk room located within the Roughrider Room, and the assistant clerk for the Education and Environment Division was located in the Roughrider Room, the assistant clerks for the Human Resources Division and the Government Performance Division were located in the Sakakawea Room, and the assistant clerk for the Government Operations Division was located in the House Conference Room. After the Legislative Management Committee approved a revised version of Concept 1, the chairman of the House Appropriations Committee was contacted and approved relocating the assistant clerks for the Education and Environment Division, the Government Performance Division, and the Government Operations Division to space that was available in the secretarial and telephone message services area due to the reduction in the number of contract employees to be located in that area during the 2007 legislative session, as explained under **SESSION ARRANGEMENTS**, **Secretarial, Telephone Message, and Bill and Journal Room Services**.

Meeting Room Names - Conclusion

The addition of two committee meeting rooms led to the committee considering names for the rooms. Committee rooms were given names during the legislative wing renovation project from 1977 through 1982. Basically, names were selected which represented a good cross-section of North Dakota, which recognized physical or historical points of interest, and which allowed rooms to be relatively easy to decorate using color, pictures, or displays from the Heritage Center. Generally, the rooms were named from east to west in the state with the hallway dividing north and south, e.g., Red River Room in the east, the Missouri River Room in the middle, and the Roosevelt Park Room in the west. Current room names in the semicircle of rooms surrounding the two new committee rooms being made from the former bill and journal room are geographically accurate, from west to north to east--Roosevelt Park, Fort Union, Peace Garden, and Fort Totten.

After considering a variety of names, the committee makes no recommendation on names. The committee deferred final action on names until the organizational session. When finalized, the names will be added to the brass wall plates over the doors to the hallway to the committee rooms and will be used to identify these rooms for the fire suppression and climate control system.

Committee Room Member Chairs

Under Senate Bill No. 2001 (2005), $200,000 was available for designing and remodeling space in the Capitol for an additional committee room or for refurnishing committee rooms. The committee reviewed 17 different makes and models of chairs for use as committee member chairs. The committee determined the chairs should have loop arms, pneumatic chairlift, and a tilt mechanism. In addition, the committee expressed preference for fabric rather than leather due to durability; mid-back chairs rather than high-back chairs to allow better visibility of committee members and meeting attendees; urethane arms rather than fabric or leather due to durability; and polished aluminum rather than black urethane or composite bases due to the ease of urethane or composite being scuffed.

The committee authorized the acquisition of 190 HON Park Avenue 5022 chairs as the new committee member chairs in legislative committee rooms. The lowest bid received for 190 chairs was $260.49 per chair, depending on the grade of fabric.

House Chamber Sound System Mixers

Because of the problems experienced by the House with its sound system during the 2005 legislative session, the Legislative Assembly appropriated $26,085 to replace the sound system mixers in the House chamber with digital mixers. The committee authorized completion of the project as proposed during the 2005 legislative session--installation of 8 digital mixers and 15 front panel controls. By November 2005, the new mixers and front panel controls were installed and all microphones had been adjusted and tested. The new mixers have separate control knobs for each microphone to allow individual level adjustments.

Roughrider Room Technology Update

The Information Technology Committee requested the Legislative Management Committee to investigate the costs necessary to enhance the technological aspects of the Roughrider Room, especially addressing the concern that audience members are unable to view PowerPoint presentations.

At the time of the request, the Roughrider Room was arranged so that committee members faced north, east, and west, while audience members face south and could not see the projection screen because the screen faced southwest and was located between audience members and committee members. After the request was received, the Appropriations Committee division clerk workstation previously located in the northeast corner of the room was removed because that clerk, along with two division clerks located in the Sakakawea and House Conference Rooms, will be relocated to the secretarial and telephone message service area as a result of the reduction in the number of contract employees as

explained under **LEGISLATIVE SPACE RENOVATION PROJECTS**, **Legislative Committee Meeting Room Space Study**, and under **SESSION ARRANGEMENTS**, **Secretarial**, **Telephone Message**, **and Bill and Journal Room Services**. The audience chairs then were rearranged to form a "V" with one leg of the "V" facing southwest and the other facing southeast. The projection screen was relocated along the north wall between the narrow part of the "V." This arrangement allows most audience members to view presentations.

Although the Roughrider Room audience chairs were rearranged and the projection screen was relocated, the committee received information from AVI Audio-visual, Inc., Bismarck, concerning a solution embracing use of technology. A preliminary quote of $6,072 was given for providing one screen to be lowered from the ceiling near the north wall, one screen to be lowered on the south wall in the southeast corner, a projector for each screen either on the ceiling or on the walls, remotes for lowering the screens and operating the projectors, and installation of this hardware. The committee makes no recommendation with respect to adding screens and projectors in the Roughrider Room.

LEGISLATIVE SPACE USE

Legislative Chambers and Memorial Hall

Since 1981 the Legislative Council has delegated to the committee the responsibility under NDCC Section 54-35-02(8) to control the legislative chambers and any permanent displays in Memorial Hall. In exercising this responsibility, the committee has adopted guidelines for use of the legislative chambers and displays in Memorial Hall.

Under the guidelines, last approved by the committee in January 1996, the first priority for use of the chambers is for the legislative branch. When the Legislative Assembly is not in session, the chambers may be used by other groups or organizations if certain requirements are met. A state agency may use the chambers for official purposes of that agency. Any other group or organization may use the chambers for mock legislative sessions if the group or organization has not employed a registered lobbyist or contracted for independent lobbying services by a registered lobbyist within two years before the request for use. Any use cannot interfere with legislative branch activities, the sponsor of the function must make suitable arrangements with the Office of Management and Budget, the sponsor must assume full responsibility for the care of the chambers, and prior approval must be obtained from the Legislative Management Committee or from the director of the Legislative Council or the director's designee.

During its review of the guidelines, the committee approved requests for use of both chambers by the North Dakota High School Activities Association State Student Congress on November 2-3, 2006, and on November 1-2, 2007; use of the House chamber by the Supreme Court on August 22, 2005, for the investiture of Justice Daniel J. Crothers; by the Secretary of State on March 22-23, 2006, to conduct a statewide biennial elections conference; by the North Dakota Leadership Seminar on June 3, 2006, for a leadership seminar; by the Silver-Haired Education Association on July 26-28, 2006, for a Silver-Haired Assembly; and by the Land Department for oil and gas lease auctions on August 2 and November 1, 2005, on February 7 and August 1, 2006, and on May 1 and August 7, 2007. In addition, approval under the guidelines was given for use of the Senate chamber by the Council on the Arts on April 7, 2006, for a state competition and awards ceremony for the Poetry Out Loud: National Recitation Contest, and for use of the House chamber by the Supreme Court on October 3, 2005, and on September 25, 2006, for the admission to the bar ceremony.

Under the guidelines, any permanent display in Memorial Hall is to be reviewed annually. Since removal of two statues and a replica of the liberty bell in 1984, Memorial Hall does not contain any permanent display.

Legislative Committee Rooms

Joint Rule 803 provides that during a legislative session committee rooms may be used only for functions and activities of the legislative branch, but the Secretary of the Senate or the Chief Clerk of the House may grant a state agency permission to use a room at times and under conditions not interfering with the use of the room by the legislative branch. With respect to use during the interim, NDCC Section 48-08-04 applies and provides that committee rooms may not be used without authorization of the Legislative Council or its designee.

The Legislative Council adopted the policy governing approval of use of committee rooms in 1998 and revised the policy in 2000. The policy is similar to that governing use of the chambers. The policy also applies to proper use of the press studio on the ground floor of the legislative wing whether during the session or during the interim--the press studio may not be used during a legislative session by anyone other than a legislator and may not be used during other periods by anyone other than a legislator or an elected state official, except as authorized by the director of the Legislative Council or the director's designee. The committee makes no recommendation with respect to revisions to the policy.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. After the 2005 legislative session, a legislative process questionnaire was distributed to every legislator. The questionnaire asked specific questions on legislative procedures and also requested comments on how to improve the legislative process. The committee also reviewed a side-by-side comparison of Senate and House rules.

Bill Introduction Deadlines

The Legislative Council, at its meeting on June 22, 2005, selected Wednesday, January 3, 2007, as the date of convening the 60th Legislative Assembly. The committee discussed the effect of the Legislative Assembly convening on Wednesday. When the Legislative Assembly convenes on Tuesday, the 5th, 10th, and 15th legislative days fall on a Monday. In recognition of the fact that Friday evening, Saturday, and Sunday are necessary for the preparation of bill drafts

requested during the days immediately preceding a deadline, the Legislative Assembly has customarily continued Monday deadlines when the Legislative Assembly convenes on days other than Tuesday. The committee recommends amendment of Senate and House Rules 402 to change the bill introduction deadlines from the 5th, 10th, and 15th legislative days to the 4th, 9th, and 14th legislative days. This will continue the Monday deadlines during the 2007 legislative session.

Crossover Deadline

Because the Legislative Assembly will convene on Wednesday, January 3, 2007, the day for all bills to crossover to the other house would fall on Monday, February 19, rather than Friday, February 16. This would also result in the traditional Monday and Tuesday recess after crossover to fall a week after crossover--Monday and Tuesday, February 26-27. A crossover deadline of Friday maintains the emphasis to complete work on bills in the original house with a view of an extended recess over the weekend. The committee recommends amendment of Joint Rule 203 to change the crossover deadline from the 34th legislative day to the 33rd legislative day. This will continue the Friday crossover deadline during the 2007 legislative session.

LEGISLATIVE INFORMATION SERVICES

Since 1990 the Legislative Procedure and Arrangements Committee and subsequently the Legislative Management Committee has reviewed the cost of providing various printed documents to persons outside the legislative branch. Subscription fees have been established which, generally, approximate the cost of printing a set of the relevant documents during the previous legislative session, e.g., the cost of printing the documents is divided by the number of sets of documents printed. Representatives of the media as determined under Joint Rule 802 and state agencies and institutions are not charged the fees for copies of bills and resolutions as introduced and printed, daily journals, daily calendars, and committee hearing schedules.

Bill Status Report Subscription

The printed version of the bill status system provides information on the progress of bills and resolutions, the sponsors of measures, and an index to the subject matter of measures. Five entities paid a $350 subscription fee to receive these reports during the 2005 legislative session and one paid $460 to receive the bill status reports by mail.

The committee determined that printed bill status reports should continue to be made available through the bill and journal room only to those who subscribe to the 2007 bill status reports and pay a $350 subscription fee, $460 if mailed. The committee determined, however, that two copies of the bill status reports should be provided to the press room in the State Capitol without payment of subscription fees.

Bills, Resolutions, and Journals Subscription

During the 1991-92 interim, the Legislative Management Committee determined that anyone who requests a set of bills, resolutions, or journals should pay a fee to cover the cost of printing a set of bills, resolutions, and journals and, if mailed, the cost of mailing these documents. During the 2005 legislative session, 11 entities paid to pick up a set of bills and resolutions from the bill and journal room; 37 paid to pick up a set of bills and resolutions as introduced and as engrossed and two paid to receive a set by mail; 18 paid to pick up a set of journals and one paid to receive a set by mail; and 12 paid to receive the journal index.

The committee established the following fees with respect to these documents during the 2007 legislative session--$160 for a set of bills and resolutions as introduced and printed or reprinted, $270 if mailed; $290 for a set of bills and resolutions as introduced and printed or reprinted, including a set of all engrossed and reengrossed bills and resolutions, $465 if mailed; and $90 for a set of daily journals of the Senate and House, $200 if mailed. The fee for the journals includes final covers after the legislative session adjourns. The committee established a subscription fee of $30 to receive the index to the Senate and House journals.

The committee continued the policy provided under Joint Rule 603 that anyone can receive no more than five copies of a limited number of bills and resolutions without charge.

Committee Hearing Schedules and Daily Calendars Subscription

The committee continued the practice of making committee hearing schedules and daily calendars available at no charge. The committee also determined that if a request is received for mailing the committee hearing schedules or daily calendars, the policy followed during the 2005 legislative session should continue and a fee should be imposed to cover the cost of mailing. During the 2005 legislative session, one entity paid to receive the hearing schedules by mail and one entity paid to receive the calendars by mail. The committee established a subscription fee of $30 for mailing a set of the weekly hearing schedules for Senate and House committees and a subscription fee of $55 for mailing a set of daily calendars of the Senate and House.

PRINTING BILLS WITH COMPUTERS AND PRINTERS STUDY

The committee studied the feasibility and desirability of arranging for the printing of bills and resolutions for the 60th Legislative Assembly by using computers and high-speed printers rather than printing multiple copies of all bills and having copies available in the bill and journal room. The committee received information on use of a high-speed printer (offset press), a printer networked with a personal computer, and a photocopier networked with a personal computer.

An offset press would be noisy, and the noise would permeate throughout the ground floor hallway. In

addition, an offset press would require alcohol, other chemicals, and a distilled water storage area. The press would require manual involvement through making a plate, placing a plate in the press, and running the press. For any bill over one page in length, the press would require a separate collation process by which the operator would manually move copies from the press to a collator.

A small, fast printer, e.g., an IBM Infoprint 1572 laser printer and necessary accessories, networked with a personal computer, could print 50 pages per minute, could print on both sides, and could staple multiple pages. The current cost of one printer with the accessories and a three-year maintenance agreement is $3,070.

A photocopier, e.g., a Xerox Document Centre 490ST copier, networked with a personal computer, could produce 90 copies per minute. During the 2005 legislative session, this model of copier was leased at a cost of $1,224 per month, plus a $300 setup fee, plus $.0092 per copy over 50,000 copies per month, plus the cost of toner cartridges at $168 each, plus the cost of staples at $88 a carton, plus the cost of paper at $2.34 per ream.

During the 2005 legislative session, 163 copies of bills as introduced were needed for immediate distribution upon introduction and 134 copies of engrossed bills were needed for immediate distribution upon engrossment. One set of bills and resolutions contained 3,697 pages (a page is one side of a sheet) on 2,041 sheets. Using 2005 figures, a copier would run 602,611 copies on 332,683 sheets of paper to provide 163 copies of bills as introduced; and would run 301,305 copies on 166,342 sheets of paper to provide copies of engrossed bills. In total, 99 reams (or 100 cases) of paper would be needed to provide copies required for immediate distribution. Based on the 2005 figures, leasing a copier and purchasing the supplies necessary to photocopy the minimal number of copies of bills required for immediate distribution would cost approximately $21,416. During the 2005 legislative session, 325 copies of bills as introduced were printed at a cost of $53,590 and 200 copies of engrossed bills were printed at a cost of $26,078.

Use of an offset press, a networked printer, or a networked copier would require a substantial storage area for supplies. No copies could be made while the printer or photocopier is jammed or being serviced, nor could copies be made while the computer network is down or otherwise not available.

Based on the concerns with the special needs of an offset press, the potential for delays for waiting to receive multiple copies, the expressed desire by some individuals to maintain a public coatroom, and the ability to design the existing bill and journal room to include one or two committee rooms as well as bill and journal room space, as described under **LEGISLATIVE SPACE RENOVATION PROJECTS**, **Legislative Committee Meeting Room Space Study**, the committee recommends retaining a bill and journal room to provide limited storage of bills and journals printed by a contract printer but reducing the copies of items initially printed so as to reduce space needs. The intent in reducing the number of preprinted materials is to provide for photocopying additional material as needed. To assist in implementing this intent, a larger capacity photocopier will be placed in the bill and journal room. This will also be a means of testing the feasibility of using a photocopier to meet immediate demands for copies of materials.

CONTRACTS FOR PRINTING LEGISLATIVE DOCUMENTS

Background

Under NDCC Section 46-02-05, the Legislative Council is authorized to determine the contents of contracts for printing legislative bills, resolutions, and journals. The Central Services Division of the Office of Management and Budget prepares the requests for bids for the printing of these items in accordance with the requirements set by the committee.

Contract Contents

With respect to the contract for printing bills, resolutions, and journals for the 60th Legislative Assembly, the committee reduced the number of introduced bills and resolutions printed from 325 to 250 (based on the surplus of bills remaining after the 2005 legislative session), increased the number of engrossed bills printed from 200 to 250 (based on the demand for these bills during the 2005 legislative session), and reduced the number of journals printed from 750 to 250 (based on the surplus of journals remaining after the 2005 legislative session). The substantial reduction in the number of bills and resolutions printed also reflects committee discussion concerning whether to use a high-speed copier to print bills on demand rather than have preprinted materials. The intent is to reduce the number of preprinted bills to the level estimated for immediate distribution. If there is a need for additional copies, plans are to use a photocopier to make the additional copies, as described under **PRINTING BILLS WITH COMPUTERS AND PRINTERS STUDY**.

SESSION ARRANGEMENTS

Committee Recorders

The Legislative Assembly has 39 microcassette recorders, 27 of which are used by committee clerks. The committee discovered that 15 of the recorders do not work and replacements have been difficult to find. The cost of purchasing new microcassettes for a legislative session ranges from $5,000 to $7,000.

The committee received information on the type of digital recording system that would be of a professional grade quality, would provide for storage and retrieval of audio, and would be compatible with technology applications that would be used by committee clerks after replacement of the legislative information systems.

The committee approved acquisition of Olympus DS4000 digital portable recorders, along with audio management software. The management software will allow significant automation in handling committee

testimony, e.g., a committee clerk will use the recorder to record the hearing; the clerk will "dock" the recorder and transfer the testimony to the clerk's personal computer; the software will file the testimony under the committee name, date, and time; and the recorder will be ready for use again. The software also will allow testimony to be indexed by bill number. A main feature of the digital recording system is the considerable automation to assist the clerks in managing audio records.

Committee Preference Compilation

The committee reviewed the information provided as the result of compiling legislators' committee preference questionnaires. A computer program developed in the 1980s provided four different reports--by standing committee, listing members in alphabetical order showing their preference; by party, listing members in alphabetical order showing their preference; by a proposed committee membership, using member's preference, previous experience on the committee, seniority, and party representation on the committee; and a report by members who did not receive their first or second choices.

The committee approved replacing use of this computer program with use of an Excel-generated spreadsheet listing the names of legislators in alphabetical order and providing columns across the page for the five-day committee, the three-day committees, and the two-day committees.

Legislator Wellness

Legislative Assembly Wellness Program

North Dakota Century Code Section 54-52.1-14 requires the Public Employees Retirement System Board to develop an employer-based wellness program encouraging employers to adopt a board-approved wellness program. The incentive for adoption of a program is a 1 percent of health insurance premium charge to agencies that do not participate in the wellness program. The first year for a wellness program under Section 54-52.1-14 is July 1, 2006, to June 30, 2007.

A wellness program must include the "mandatory activity" of communicating wellness materials provided by the Public Employees Retirement System and Blue Cross Blue Shield of North Dakota to individual employees on a monthly basis and promoting the Public Employees Retirement System smoking cessation program to employees. In addition to this mandatory activity, different "optional" activities must be developed each year.

The committee approved as a wellness activity for 2006 an e-mail to all legislators requesting that they sign up for the monthly *Healthy Choices* newsletter from Blue Cross Blue Shield of North Dakota, which is distributed via e-mail. Although three legislators did not have state computers at the time the committee considered this activity, the goal is to have 100 percent participation by those who have computers.

The committee also approved as a wellness activity for 2006 a stress management program for all legislators. Under this activity, the Legislative Assembly employee assistance program (EAP) provider (St. Alexius) will distribute written materials, schedule a speaker, and provide evaluation materials. The e-mails and written materials will be distributed to all legislators after the November election and a presentation by the EAP will be made to all legislators during the organizational session. This will give 100 percent participation by the Legislative Assembly. The thought was that offering a stress management program before a legislative session would be the most beneficial time for the program.

Legislator Wellness Day

After the committee approved the wellness program for the Legislative Assembly, Altru Health System, Grand Forks, offered to conduct a wellness program in partnership with the North Dakota Medical Association. The program would include a short health assessment, blood pressure, height, weight, and fingerstick blood test for blood sugar and cholesterol level, individual sessions for legislators, and group sessions. The committee authorized use of the ground floor legislative study for the wellness day proposed by Altru Health System.

Legislators' Supplies

Stationery

The committee approved continuation of the policy that every legislator be given the option of receiving 250 sheets of regular (8.5 inches x 11 inches) or Monarch (7.5 inches x 10.5 inches) stationery and envelopes, 250 sheets of each type of stationery and envelopes, or 500 sheets of either type of stationery and envelopes. A legislator can also request no stationery or envelopes. An additional option was added to allow legislators to request window envelopes. Under the policy, a legislator also can request an additional 500 sheets of stationery and 500 envelopes, up to 1,000 sheets and envelopes total. The Speaker, each leader, and each assistant leader continue to receive as much regular and Monarch stationery as needed.

Brief Bags

The committee approved continuation of the policy, first established in 1984, of providing a brief bag (also referred to as a letter file or carrying case) to each legislator on request. With respect to newly elected legislators, the request form will be included in the information packets distributed to newly elected legislators during the organizational session. The committee continued use of a canvas-type carrying case first provided in 2002.

Capitol Access Cards or Key Tags

Since October 1999, the Capitol has operated under a security key system. Access to the Capitol on weekdays before 7:00 a.m. or after 5:30 p.m. or on weekends requires use of a security key to present near a reader that unlocks the door and records use of the card. Each security key is coded and a computerized record is kept of use. During the 2001 session, every legislator received a security card for access to the Capitol and during the 2003 and 2005 sessions, a

security card or key tag was provided to a legislator on request.

The committee approved continuation of the policy initiated during the 2005 legislative session that a security card or key tag be provided to a legislator who requests one and signs a form acknowledging receipt of the card or tag.

During the 2005 legislative session, a legislator received a photo identification card from the Legislative Council to assist in properly identifying legislators who desire access to the Capitol after hours. Every legislator will continue to receive a photo identification card.

Legislator Photo ID Cards

The committee approved providing a credit card size photo identification card to each legislator as was done in 2005. The card will contain the 2007 legislative photo, the 2005 signature for returning legislators, the 2007 signature for new legislators, and the 1-888 legislative session WATS line number, the Legislative Council telephone number, and the Legislative Council WATS line.

Legislative Parking Stickers

During a legislative session, the parking lot west of the legislative wing of the Capitol is reserved for legislators and certain Legislative Assembly employees, and three spaces are reserved for representatives of the press and one space for the doctor of the day.

Legislators receive a Mylar sticker for parking in the legislative parking lot. The sticker adheres permanently to the window of a vehicle. Some legislators request multiple stickers for use on various vehicles. In addition, legislators have requested stickers from previous Legislative Assemblies of which those legislators were members to apply those stickers to replacement vehicles.

The committee considered a proposal to provide a cling-type sticker that would cling to the inside of the window and could be transferred easily from vehicle to vehicle.

The committee recommends that a cling-type parking sticker of a design similar to previous stickers be used as the parking sticker for legislators.

Standing Committee Division Chairmen Compensation Study - Conclusion

During the 2005 legislative session, an issue arose as to whether chairmen of divisions of the House Appropriations Committee should be entitled to receive additional compensation as chairmen. The committee was directed to study the appropriateness of increasing the daily compensation for chairmen of substantive standing committee divisions established by rule of the House or Senate. The standing committee divisions established by rule are the Education and Environment Division, the Government Operations Division, the Government Performance Division, and the Human Resources Division of the House Appropriations Committee.

North Dakota Century Code Section 54-03-10 provides additional daily compensation to legislators who hold certain offices or positions in the Legislative Assembly. The Speaker of the House, the House majority leader, the Senate majority leader, the House minority leader, and the Senate minority leader receive an additional $10 per calendar day during a legislative session. Chairmen of substantive standing committees, the House assistant majority leader, the Senate assistant majority leader, the House assistant minority leader, and the Senate assistant minority leader receive an additional $5 per calendar day during a legislative session.

Committee members discussed whether division chairmen had the same workload as full committee chairmen, whether a category in addition to the $10 and $5 per day should be created, whether the additional compensation should be raised and thus allow a greater "spread" between the categories, and the impact of providing additional compensation to chairmen of divisions but not to chairmen of informally created subcommittees.

The committee makes no recommendation as a result of this study.

Legislators' Expense Reimbursement Policies

Article XI, Section 26, of the Constitution of North Dakota provides that payment for necessary expenses of legislators may not exceed that allowed for other state employees. Legislators receive up to $900 per month as reimbursement for lodging. The policy followed for the 59th Legislative Assembly was to allow these items as reimbursable lodging expenses during a legislative session--electricity and heat, water (including garbage collection and sewer charges), basic telephone service, telephone installation charges, rental of furniture and appliances, and transit charges for moving rental furniture and appliances. The committee recommends the legislative expense reimbursement policy for the 60th Legislative Assembly be the same as that followed for the 59th Legislative Assembly.

North Dakota Century Code Section 54-03-20 provides that lodging expenses of two or more legislators sharing lodging in a single dwelling could be subject to guidelines approved by the Legislative Council. The committee recommends that lodging expense reimbursement of two or more legislators sharing housing in a single dwelling be subject to approval by the Legislative Council chairman.

Legislators' Computer Training

The committee approved the agenda for providing computer training to legislators before the convening of the 60th Legislative Assembly and authorized the Legislative Council staff to conduct training sessions for legislators. The training focuses on two areas--general computer training and LAWS system training.

New legislators with computer experience are scheduled for training immediately after the organizational session adjourns and into Wednesday afternoon. This training includes the signout of computers, review of the policies governing use of computers, and general introduction to the software

packages on the computers. The training for new legislators with limited computer experience is scheduled for Thursday, December 7.

During the organizational session, returning legislators can take 90-minute, concurrent miniclasses on e-mail, the Internet, and Microsoft Word similar to the miniclasses provided during the 2004 organizational session. The miniclasses are scheduled for Monday morning and afternoon and Tuesday morning and afternoon.

Legislators can receive LAWS system training in any of three 2.5-hour blocks of instruction on Tuesday, January 2, the day before the regular session convenes. During the legislative session, legislators can request individualized training at their desks in the chambers and can receive individual online learning through Internet classes.

Personal Computer Use Policy

To ensure proper use of personal computers by legislators, the committee reviewed and approved the *Policy on Use of Personal Computers by Legislators* as last approved by the Legislative Management Committee in November 2004. The policy describes statutory restrictions on use of personal computers, governs use of privately owned personal computers to access legislative information systems, and governs use of state-owned personal computers. The committee makes no recommendation regarding changing the personal use fee of $10 per month, first established during the 1997-98 interim, which allows legislators a personal use option under NDCC Section 54-03-26.

Legislators' Photographs

The committee approved the invitation to bid for photography services to the 60th Legislative Assembly. Generally, the invitation to bid contained the same specifications as the contract for the 59th Legislative Assembly. With respect to the House, the specifications provide for two poses and two wallet-size color pictures of each pose of 97 individuals; color touchup of the final pose; one composite color picture approximately 50 inches x 60 inches, proofed, framed, and ready to hang; and 97 copies of the composite picture 11 inches x 14 inches in size. With respect to the Senate, the specifications provide for two poses and two wallet-size color pictures of each pose of 51 individuals; color touchup of the final pose; one composite color picture approximately 30 inches x 40 inches, proofed, framed, and ready to hang; and 51 copies of the composite picture 11 inches x 14 inches in size. The committee continued the option for oak frames for the small composite, available for purchase by individual legislators. The photographs of legislators are to be taken during the organizational session in 2006, and the photographs of the six elected legislative officers are to be taken during the first week of the regular session.

For the large composite pictures, the Legislative Council provides the frames from previous Legislative Assembly pictures. The large composites of the previous Legislative Assembly are transferred to the State Historical Society and are placed in the state archives. The photographer is to provide the digital image of the pose selected by the photographer to the Legislative Council by Wednesday, December 20, 2006, for use in updating the legislative branch web site, and the photographer is to provide the digital image of the final pose to the Legislative Council by Friday, February 16, 2007.

The invitation to bid was sent to 31 photography firms in western North Dakota. Three firms submitted bids--Anderson Photography, Crosby, $3,500; Renner Photography, Mandan, $4,295; and Diamond Photography, Bismarck, $4,500. The committee awarded the contract to the lowest bidder--Anderson Photography--the firm that was also the photographer for the 54th through 59th Legislative Assemblies.

Journal Distribution Policy

The committee approved continuation of the policy that a legislator may have daily journals sent, without charge, to any person upon approval of that legislator's leader. Because journals are available on the legislative branch web page, legislators providing journals will be requested to ask the person to whom journals are to be sent whether that person has Internet access. The intent is to encourage those persons with Internet access to use that access, which reduces labor and postage costs.

Video Coverage

Community Access Television is the local public, education, and government access facility cable casting to over 33,000 households in the Bismarck-Mandan area. Community Access Television has provided some coverage of the Legislative Assembly since 1989. Coverage has been limited, however, to live floor sessions of the Senate and House of Representatives, alternating each week, and occasional meetings in the Brynhild Haugland Room.

During the 2001 and 2003 legislative sessions, Community Access Television broadcast the coverage on the local Bismarck-Mandan community access channel and provided the video signal to the North Dakota Interactive Video Network and the Information Technology Department. These entities combined the video signal from Community Access Television with the House and Senate audio feed and provided live video/audio streaming of the floor sessions on the Interactive Video Network and the Internet.

During the 2003-04 interim, Community Access Television expressed concern over the cost incurred by Community Access Television and lack of available airtime throughout the day when floor sessions may be scheduled. Without involvement of Community Access Television, loss of the video signal would eliminate the live video/audio streaming of the floor sessions on the Interactive Video Network and the Internet. As a result, an arrangement was reached whereby Community Access Television would provide a digital camcorder, tripod, necessary cables, and camera operator for a minimum of two hours each day for a minimum of 80 days to supply a video signal for web streaming over the Internet. The arrangement was for $30 per hour

labor and $50 per day for equipment. The total cost of Community Access Television providing coverage during the 2005 legislative session was $9,702. Community Access Television broadcast floor sessions on local Cable 12 approximately 75 percent of the time, i.e., when broadcast time was available, but all video signal from Community Access Television was streamed over the Internet.

The committee received a proposal from Community Access Television for televising proceedings of the 2007 legislative session. Under the proposal, Community Access Television would provide one camera and camera operator onsite for a minimum of two hours each day for a minimum of 80 days and would provide a digital camcorder, tripod, and necessary cables to connect to a video input. The Legislative Assembly would provide and locate the video input within 10 feet of the camcorder position, would provide a secure area for overnight and weekend equipment storage, would provide daily onsite guidance and direction for the camera operator as to daily start time, which activity to cover in the Senate, House, or Brynhild Haugland Room, and whether to continue transmission beyond the two-hour daily minimum. The proposal was for $30 per hour for labor and administration, $30 per hour for additional hours beyond the two-hour daily minimum, and $50 per day for equipment. This was essentially the same arrangement as that for coverage during the 2005 legislative session.

The committee contacted the three primary cable systems in the state (Midcontinent Communications, Cable One, and Polar Cablevision) and six major community access television entities (Bismarck, Dickinson, Fargo, Grand Forks, Minot, and Williston) and inquired whether the cable systems and community access channels would be interested in rebroadcasting locally the signal off the web stream or otherwise would be interested in a pool arrangement to share costs of providing and using a video feed of legislative floor sessions. Four community access entities responded, each with a slightly different response. Of the responses, one encouraged expanded coverage to include committee meetings, two expressed interest in replaying recorded material provided to them, and one expressed an interest in broadcasting floor sessions if the video/audio feed was received through the state's IP network rather than through the Internet. Three specifically indicated no resources were available to cover costs. Midcontinent Communications responded and expressed interest in obtaining the video and audio feed and distributing that signal through its fiber stream to its cable systems around the state. The issue, however, was the cost. The Information Technology Department reviewed the responses received and provided information on equipment necessary to allow simultaneous video coverage of Senate and House floor sessions.

The committee considered the proposal by Community Access Television to provide coverage on the same basis as during the 2005 legislative session--basically, coverage of floor sessions of the Senate and House on an alternating weekly basis and selected meetings in the Brynhild Haugland Room. The committee also considered a proposal for acquiring two digital camcorders, two tripods, necessary wiring, and the equipment to provide simultaneous coverage of the Senate and House floor sessions. The committee also considered whether to employ two operators on a part-time basis to provide the video coverage or to contract with Community Access Television or a temporary personnel services contractor to provide two operators.

The committee authorized the purchase and installation of two digital camcorders, two tripods, necessary wiring, and the equipment to provide simultaneous coverage of the Senate and House floor sessions. The camera operators either will be Legislative Assembly employees or employees contracted through Kelly Services--the contractor who will provide secretarial, telephone message, and bill and journal room services during the 2007 legislative session.

Incoming WATS Line Service

Beginning with the 1985 legislative session, incoming WATS lines have been provided for residents in the state to contact legislators or obtain information concerning legislative proposals. Even if all telephone lines are in use, callers do not receive a “busy” signal. If all lines are in use or the call is made after regular business hours, a caller is given two options--one for staying on the line (if the call is during regular business hours) and one for leaving a message for legislators from the caller’s district. This message feature is available 24 hours a day 7 days a week during regular legislative sessions.

The committee discussed whether the policy restricting the messages to messages only for legislators from the caller's district or for legislators specifically named by the caller should be changed to allow callers to leave messages for any or all legislators.

The committee recommends continuation of the incoming WATS line telephone message service for the 60th Legislative Assembly. The WATS number will continue to be 1-888-ND-LEGIS (1-888-635-3447).

The committee recommends that the policy for telephone messages for legislators be that a caller may leave a message for the caller's local legislators and for specifically named legislators identified by the caller. Local legislators include legislators from the caller's district and legislators of the city of the caller.

Session Employment Coordinators

The committee approved the hiring of personnel representing the two major political parties to receive and coordinate the handling of applications for legislative session employment.

Session Employee Orientation and Training

The committee approved the agenda for orientation and training of legislative session employees between November 16, 2006, and January 4, 2007, and authorized the Legislative Council staff to conduct training sessions for various session employees.

The training will be similar to that provided before the 2005 legislative session, except the payroll clerk will receive training in mid-November, the journal reporters will receive training before the organizational session convenes, committee clerks will not receive training on preparing amendments before the legislative session, and committee clerks will receive training on using the legislative branch web site.

The committee recommends that session employees be hired to begin work at various times before the convening of the Legislative Assembly, depending on the nature of each employee's duties and the training required of the employee.

Session Employee Positions

The committee reviewed the number of employee positions during the 2001, 2003, and 2005 legislative sessions, the impact computerization has had on both houses, the potential impact of increased use of technology in providing legislative information, and the impact resulting from contracting for secretarial, telephone message, and bill and journal room services rather than hiring employees for those areas.

During the 2003-04 interim, the Legislative Management Committee recommended that the Employment Committees provide for 35 Senate employee positions and 40 House employee positions during the 2005 legislative session. The Employment Committees provided for 34 Senate employee positions and 41 House employee positions.

The committee reviewed a legislative session employee position plan that provided for 77.5 employment positions in the Senate and House during the 2007 legislative session. The plan continued the rotation of two positions between the Senate and House--the payroll clerk is to be a Senate employee in 2007 and the information kiosk attendant is to be a House employee in 2007. Rather than rotate the parking lot attendant from the House to the Senate in 2007, the plan recognized that the Senate employed a parking lot attendant in 2005 in addition to the attendant employed by the House under the regular rotation. Thus, the plan provided for a parking lot attendant for each house. The plan also recognized that the Senate has employed three rather than two page and bill book clerks since the 2003 legislative session. The plan also recognized that the House has employed an additional one-half time assistant sergeant-at-arms since the 2003 legislative session. Thus, the plan provided for a parking lot attendant for each house, three page and bill book clerks in the Senate, and 2.5 assistant sergeants-at-arms in the House. Although the House employed a one-half time information kiosk attendant in 2005 in addition to the attendant employed by the Senate, the plan did not provide for 1.5 employees at the information kiosk in 2007. The plan continued the position of the supply room coordinator as a Senate employee. This is intended to make that employee available for providing assistant sergeant-at-arms services during the Senate floor sessions as needed. As presented to the committee, the plan provided for 35 Senate employee positions and 42.5 House employee positions.

The committee recommends that the Employment Committees provide for 35 Senate employee positions and 42.5 House employee positions.

Session Employee Compensation

The committee reviewed legislative session employee compensation levels during the 2005 legislative session. In 1999 a general increase of 7 percent was provided as well as a skills recognition adjustment ranging from an additional $1 to $11 per day for certain legislative session employees in recognition of supervisory, technical, and communication skills. In 2001 a general increase of 5 percent, rounded to the nearest dollar, was provided as well as a skills recognition adjustment ranging from an additional $2 to $11 per day for certain legislative session employees in recognition of increased technical ability requirements of their positions as well as increased responsibility for accuracy of legislative session information. In 2003 a general increase of 5 percent, rounded to the nearest dollar, was provided. This was primarily in recognition of the average pay increases of 3 percent and 2 percent approved by the 57th Legislative Assembly for state employees. In 2005 a general increase of 5 percent, rounded to the nearest dollar, was provided. This was primarily in recognition of the difficulty in attracting qualified applicants for session employment.

The committee recommends a general increase of 8.16 percent. This was primarily in recognition of the increases of 4 percent and 4 percent (or a total of 8.16 percent) approved by the 59th Legislative Assembly for state employees. The committee also recommends increases in per day compensation for the Senate and House assistant committee clerks and the administrative assistant to the Speaker of the House. As a result of this recommendation, compensation will range from $77 to $130 per day ($9.63 to $16.25 per hour based on an eight-hour day). The committee recommends continuation of the authorization for employees to receive an additional $1 per day for each previous regular session employed, up to an additional $10 per day.

North Dakota Century Code Section 54-03-10 requires the compensation of Legislative Assembly employees to be set by concurrent resolution. The committee recommends that the concurrent resolution establishing employee positions continue the practice of not including specific names or identifying specific individuals. This type of resolution was first adopted in 1997 as a means to provide flexibility in the hiring of employees after adoption of the resolution. By designating positions and compensation levels, and not naming employees, an Employment Committee report that names an employee and designates the position is sufficient to identify that employee, the position, and the compensation level. The committee also recommends that the concurrent resolution continue to refer to the generic position of "legislative assistant" in place of employees formerly classified as assistant sergeant-at-arms, supply room coordinator, desk page, page and bill book clerk, information kiosk attendant, and parking lot attendant; continue to include provisions authorizing

conversion of full-time positions to part-time positions; and continue to authorize the leaders to consolidate staff assistant positions.

Secretarial, Telephone Message, and Bill and Journal Room Services

Secretarial Services

In 1993 the joint secretarial pool consisted of the equivalent of 10.5 stenographers and typists and cost $56,629.20 and each house employed a chief stenographer and payroll clerk at a cost of $14,326.59. Beginning with the 1995 legislative session, the Senate and House have shared a part-time payroll clerk and the Legislative Assembly has contracted with a third party to provide secretarial services rather than employ stenographers and typists as a joint secretarial pool. During the 2005 legislative session, the contractor--Spherion--provided four secretarial service employees for a total cost of $29,630.59.

In 2005 the contractor's employees completed 154 speeches (and made 598 copies), 106 press releases (358 copies), 29 charts (217 copies), 295 letters (643 copies), 49 faxes (162 copies), 65 mail merges (6,150 copies), and 6,300 miscellaneous documents (6,891 copies). For comparison purposes, 157 speeches, 86 press releases, 8 charts, 424 letters, 251 faxes, 50 mail merges, and 119 miscellaneous documents were prepared in 2003.

To ensure proper use of secretarial services, the committee reviewed and approved the *Policy Regarding Secretarial Services to Legislators* last approved by the Legislative Council in November 2004. The policy points out that secretarial service employees are not legislative employees; describes secretarial services as being available between 7:30 a.m. and 5:00 p.m.; provides for 24-hour turnaround of most projects; limits requests for transcripts of committee hearing tapes to the majority leader, as requested by the committee chairman when the committee clerk is unable to prepare minutes due to illness, disability, or absence; limits merge requests to 25 individual addresses unless otherwise approved by a majority leader or minority leader, as appropriate; and provides the procedure for any comment or complaint regarding the service. A copy of the policy is included in the legislators' information packets distributed during the organizational session.

Bill and Journal Room Services

In 1995 the Legislative Assembly employed 12 bill and journal room clerks at a cost of $57,170.61. Beginning with the 1997 legislative session, the Legislative Assembly has contracted with a third party to provide bill and journal room services rather than employ bill and journal room attendants. During the 2005 legislative session, the contractor--Spherion--provided three employees for bill and journal room services for a total cost of $21,988.86.

Telephone Message Service

In 1999 the Legislative Assembly employed a chief telephone attendant, eight telephone attendants, and two telephone pages at a total cost of $57,169.69. Beginning with the 2001 legislative session, the Legislative Assembly contracted with a third party to provide telephone message services rather than employ telephone attendants. During the 2005 legislative session, the contractor--Spherion--provided five telephone message service employees at a cost of $25,229.34.

The number of telephone calls using the incoming WATS lines to the message center has gone down every legislative session since 1993, when 62,320 calls were received. During the 2005 legislative session, 6,282 calls were received.

Consolidated Services

During the 1999-2000 interim, the Legislative Management Committee recommended that the separate contracts for secretarial services and telephone message services be awarded to the same contractor to determine if efficiencies could be obtained by moving employees from one area to the other as necessary. After the 2001 legislative session, the contractor--Spherion--described efficiencies resulting from workload management between the two areas and suggested that there could be additional savings if employees could be assigned among three areas--secretarial, telephone message, and bill and journal room. These services were open to bid under alternate proposals--bill and journal room services; secretarial and telephone message services; and secretarial, telephone message, and bill and journal room services. The committee recommended accepting the bid by Spherion to provide 18 employees for combined secretarial, telephone message, and bill and journal room services during the 2003 legislative session.

During the 2003-04 interim, Spherion recommended additional cross-training for secretarial service employees to allow additional assignment to other areas and fewer total employees because of decreased workload and ability to transfer employees among the three areas as necessary. As a result, the invitation to bid to provide consolidated services during the 2005 legislative session provided for 12 employees rather than 18--9 in the secretarial and telephone message service area and 3 in the bill and journal room area. Three of the secretarial and telephone message service area employees were trained in secretarial services as well as telephone message services, and during the first three weeks of the session an employee from the secretarial and telephone message service area was assigned to the bill and journal room area to handle the workload during the bill introduction period. With reduction in the total number of employees under the contract, the telephone message employees were collocated with the secretarial service employees in the secretarial service area behind the Senate balcony and the room formerly used as the telephone message area was converted to a Senate conference room.

During the 2005-06 interim, the committee received a report from Spherion which recommended fewer employees in the telephone message service area. The committee also reviewed the space needs of the bill and

journal room, as described under **LEGISLATIVE SPACE RENOVATION PROJECTS**, **Legislative Committee Meeting Room Space Study**, and determined that fewer employees could staff the bill and journal room. As a result, the committee approved an invitation to bid for services during the 2007 legislative session to provide eight employees for secretarial, telephone message, and bill and journal room services. Five employees and the onsite supervisor are to be located in the secretarial and telephone message services area. All six are to be trained to provide telephone message services and three employees and the onsite supervisor are to be trained to provide secretarial services. During the first three weeks of the legislative session, one or more of the employees primarily responsible for telephone message services are to be assigned to assist the two employees in the bill and journal room area as workload requires.

With respect to bill and journal room services, the contractor reported very little use of copying services and no use of fax services during the 2005 legislative session. The committee approved revising the invitation to bid for services during the 2007 legislative session to eliminate the requirement that the contractor provide photocopy and fax services to third parties.

The invitation to bid to provide secretarial, telephone message, and bill and journal room services was sent to 11 temporary personnel services in the Bismarck-Mandan area. The committee received two bids. The daily bids were $714.25 by Kelly Services and $751.60 by Spherion. The hourly pay range in the Kelly Services bid is telephone message services - $7.75 to $8.25; bill and journal room services - $7.75 to $8.25; and secretarial and telephone message services - $8.00 to $9.00.

The committee recommends accepting the bid by Kelly Services, Bismarck, to provide eight employees for secretarial, telephone message, and bill and journal room services during the 2007 legislative session.

Legislative Internship Program

Since 1969, the Legislative Assembly has sponsored a legislative internship program in cooperation with the School of Law and the graduate school at the University of North Dakota and the graduate school at North Dakota State University. The program has provided the Legislative Assembly with the assistance of law school students and graduate school students for a variety of tasks, especially the preparation of amendments, and has provided the students with a valuable educational experience. Since the beginning of the program, each intern has received a stipend as a means of covering the expense of participating in the program.

The committee approved continuation of the program for the 60th Legislative Assembly at the same number as authorized in 2005--12, with an original allocation of 8 from the School of Law, 2 from the graduate program at the University of North Dakota, and 2 from the graduate program at North Dakota State University, and with 10 interns assigned to committees and 2 assigned to the Legislative Council office. The committee also authorized an increase in the stipend to $1,730 per month for the 3.5-month program.

Legislative Tour Guide Program

For the past 15 legislative sessions, the Legislative Council has operated a tour guide program that coordinates tours of the Legislative Assembly by high school groups. The tour guide program is extensively used by high school groups during legislative sessions, and other groups have been placed on the tour schedule at their request. Since 1987, two tour guides have been hired each session due to the heavy workload in scheduling tour groups. The committee approved the continuation of the tour guide program for the 2007 legislative session.

Doctor of the Day Program

The committee accepted an offer by the North Dakota Medical Association to continue the doctor of the day program during the 2007 legislative session under the same arrangements as in the past. The association is planning to arrange health screening days to assist members of the Legislative Assembly in its wellness program.

Chaplaincy Program

The Bismarck and Mandan Ministerial Associations have coordinated the scheduling of a chaplain in each house to open the daily session with a prayer. Each chaplain receives a daily stipend of $25. The committee authorized the Legislative Council staff to invite the Bismarck and Mandan Ministerial Associations to continue to schedule chaplains for opening prayers for both houses each day of the 2007 legislative session.

The committee reviewed the procedure in effect since 1985 which gives legislators until the end of December to schedule out-of-town clergy to deliver prayers during the legislative session. The committee authorized the Legislative Council staff to notify all legislators that they have until December 31, 2006, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective houses during the 2007 legislative session.

Organizational Session Agenda

The committee approved a tentative agenda for the 2006 organizational session. Two major changes first made in 2002 were continued--convening the session on Monday rather than Tuesday and convening at 1:00 p.m. rather than 9:00 a.m. As the result of amendment of NDCC Section 54-03.1-02 in 2005, the "default" day for convening the organizational session is the first Monday in December. The convening of the organizational session on Monday allows additional time to update computers for new legislators, assign computers to new legislators, and provide computer training to new legislators. Convening the session at 1:00 p.m. allows veteran legislators the opportunity to travel to the Capitol on Monday rather than during the evening of the previous day, while continuing to provide orientation to new legislators and computer training to veteran legislators beginning at 9:00 a.m.

New in 2006 will be a presentation on stress management as part of the legislative wellness program, which is required under NDCC Section 54-52.1-14. The presentation is scheduled to be given before the ethics presentations in the House and after the ethics presentations in the Senate.

The training sessions on e-mail, Internet, and Microsoft Word for legislators who have been assigned personal computers continue to be scheduled on tracks parallel to the orientation sessions received by freshman legislators. On the third day, just as in 2004, each house is scheduled to convene at 8:30 a.m. so the Governor's budget message can be presented at 10:00 a.m. and the Legislative Assembly can adjourn at 10:45 a.m. This will allow the Budget Section to convene at 11:00 a.m. and complete its work by 5:00 p.m. on Wednesday.

State of the State Address

During the 2005 legislative session, the House and Senate convened in joint session at 1:15 p.m. on the first legislative day. Four escort committees were appointed to escort various officials, former officials, and spouses into the chamber--one for the Lieutenant Governor and his spouse, one for the Chief Justice, one for former Governors and their spouses, and one for the Governor and his spouse. The joint session was called to order at 1:30 p.m. and the Governor presented his State of the State address.

The committee authorized the Legislative Council staff to contact the Governor for presentation of the State of the State address on the first legislative day of the 2007 legislative session.

State of the Judiciary Address

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the Supreme Court for the State of the Judiciary address to a joint session on the second legislative day of the 2007 legislative session.

Tribal-State Relationship Message

During the 1983-84, 1985-86, and 1987-88 interims, representatives of the Indian tribes in North Dakota requested permission to appear before the Legislative Assembly to describe their perspective of the status of the relationship between the tribes and the state of North Dakota. As a result of invitations extended by the Legislative Procedure and Arrangements Committee and the Legislative Management Committee, a spokesman from the tribes has addressed each house of the Legislative Assembly during the first week of the 1985 through 2001 legislative sessions and has made an address to a joint session since 2003.

The committee authorized the Legislative Council staff to extend an invitation to representatives of the Indian tribes to make a presentation to the 60th Legislative Assembly on the third legislative day.

Legislative Compensation Commission Report

The committee requested that the report of the Legislative Compensation Commission be a written report submitted to the presiding officer of each house. The practice of submitting a written report rather than an oral report was started in 1993.

Agricultural Commodity Promotion Groups Report

The committee reviewed NDCC Section 4-24-10, which requires 13 agricultural commodity promotion groups to file a uniform report at a public hearing before the standing Agriculture Committee of each house. The report must be filed between the 1st and 10th legislative days of the regular legislative session. The committee designated the second legislative day the Agriculture Committees meet--Friday, January 5, 2007--as the day for a joint hearing by the Senate and House Agriculture Committees to receive this report.

Commissioner of Commerce Report

The committee reviewed NDCC Section 54-60-03, which requires the Commissioner of Commerce to report between the 1st and 10th legislative days of the regular legislative session to a standing committee of each house as determined by the Legislative Council. The report is to be with respect to the department's goals, objectives, and activities. The committee determined the reports should be made to the Industry, Business and Labor Committees on the second legislative day those committees meet--Tuesday, January 9, 2007.

Agriculture Commissioner, Bank of North Dakota, and North Dakota Stockmen's Association Report

The committee reviewed 2005 Session Laws, Chapter 57, Section 4, which requires the Agriculture Commissioner, the Bank of North Dakota, and the North Dakota Stockmen's Association to provide a joint report regarding the livestock loan guarantee program to the standing Agriculture Committee of each house. The report must be provided between the 1st and 10th legislative days of the regular session. To avoid conflict with the agricultural commodity promotion groups report to these committees on Friday, January 5, the committee designated the fourth legislative day the Agriculture Committees meet--Friday, January 12, 2007--as the day for the committees to receive the report regarding the livestock loan guarantee program.

LEGISLATIVE ETHICS COMMITTEE

North Dakota Century Code Section 54-35-02.8 requires the Legislative Council to appoint an ethics committee to consider or prepare a legislative code of ethics. Since 1995, the Legislative Council has appointed the Legislative Management Committee as the Legislative Ethics Committee.

During the 1995-96 interim, the Legislative Management Committee reviewed North Dakota laws affecting legislative ethics. That committee recommended legislative rules declaring a legislative ethics policy, urging members to maintain ethical standards and recognize the importance of standards

contained in the rules, urging members to apprise themselves of constitutional provisions and statutes that prohibit conduct for which criminal penalties may apply, and requiring the Legislative Council to conduct classes on legislative ethics and laws governing the activities and conduct of public officials. The Legislative Assembly adopted those rules as Joint Rules 1001 through 1004.

The committee makes no recommendation regarding changes to the legislative code of ethics.

TELEPHONE USAGE GUIDELINES

Under NDCC Section 54-06-26, a state official or employee may use a state telephone to receive or place a local call for essential personal purposes to the extent that use does not interfere with the functions of the official's or employee's agency. When a state official or employee is away from the official's or employee's residence for official state business and long-distance tolls would apply to a call to the city of residence, the official or employee is entitled to make at least one long-distance call per day at state expense. A state agency may establish guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

The committee makes no recommendation for guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

CAPITOL GROUNDS VETERANS' MEMORIAL REPAIRS

Committee members visited and inspected the veterans' memorial on the Capitol grounds. The veterans' memorial consists of panels listing military personnel from North Dakota killed on active duty during wartime. The panels contain over 4,200 names. About 80 names are misspelled, and there is inadequate panel space to add names of military personnel killed in recent and ongoing conflicts. To correct even one letter in a misspelled name, an entire panel needs to be replaced. To replace all the panels to correct misspelled names would cost approximately $100,000.

After viewing the memorial, committee members suggested that the space available in the northeast corner of the memorial could be used to add a third panel, which would allow expansion and space for additional names. Committee members also suggested that rather than replace a panel to correct a known error (which would not correct unknown errors discovered in the future), the best time to correct errors would be when a panel needs to be replaced due to excessive wear and tear. Committee members noted that the memorial was funded by individual and private organizations. While the state provided the space and the Facility Management Division of the Office of Management and Budget incurs the costs of providing normal maintenance, Facility Management does not have the funds to cover "big ticket" repairs.

The committee was provided with an estimate of $11,571.48 to manufacture and deliver an additional panel for the northeast corner of the memorial and an estimate of $11,000 for installation. Facility Management Division staff informed the committee that letters would be sent to veterans' organizations inquiring as to whether they would provide funding for this project.

MISCELLANEOUS MATTERS

2010 Census Data Project

The United States Census Bureau is making preparations for the 2010 census. Phase 1 of the census data project will allow state legislatures to identify current legislative district boundaries for the Census Bureau, which in turn will provide 2010 census information for those legislative districts. This would be useful in North Dakota because the Legislative Assembly created its own lines in certain legislative districts rather than use census block boundaries.

The committee approved state participation in Phase 1 of the 2010 census data project. This will entitle the state to identify current legislative district boundaries and to receive current population information for those districts from the Census Bureau.

ConnectND Paperless Payroll

The committee received information about the ConnectND/PeopleSoft self-service process. Until May 1, 2006, state employees who had their paychecks deposited directly with a financial institution received a letter-size document that appeared to be a photocopy of a paycheck and which contained payroll deduction information. As of May 1, 2006, state employees with direct deposit received the payroll deduction information only through online access.

With respect to legislators, the decision was made to continue to send paper information to legislators who use direct deposit but to allow a legislator to opt-in to the online access as the way of obtaining that information rather than the paper document.

State Capitol Fire Suppression Project

In May 2006 the Capitol fire suppression project started. Under this project, fire sprinklers are being installed in the Capitol. The project is scheduled for completion by August 2007. The contractor's staging area is north of the mailroom door which resulted in a loss of 36 parking spaces, including handicapped parking spaces. The Facility Management Division of the Office of Management and Budget proposed relocating 10 handicapped parking spaces to the east end of the west parking lot, which is used by legislators during a legislative session. The west parking lot contains 177 spaces--141 assigned to legislators, 31 assigned to Legislative Assembly employees, 4 assigned to the press, and 1 assigned to the doctor of the day. The proposal was for the easternmost four nonhandicap parking spaces in each row to be designated as handicap parking spaces. The 12 parking spaces would provide for 8 regular handicap-spaces and 2 van-accessible spaces. Committee members suggested that the Facility Management Division staff review alternative parking spaces on the Capitol grounds.

NO CHILD LEFT BEHIND COMMITTEE

North Dakota Century Code (NDCC) Section 54-35-21 directs the Legislative Council to appoint an interim committee consisting of five members of the Senate and six members of the House of Representatives for the purpose of studying the No Child Left Behind Act, amendments to the Act, changes to federal regulations implementing the Act, and any applicable policy changes and letters of guidance issued by the United States Secretary of Education. The interim committee, which is named the No Child Left Behind Committee, was also directed to receive three reports. The first report addressed the costs that are likely to be incurred by the state in meeting the requirements of the No Child Left Behind Act. The second report addressed operations of educational associations governed by joint powers agreements, and the third report addressed requests for exceptions to the requirement that individuals be licensed to teach in a particular course area or field before being allowed to teach in such an area or field.

Committee members were Representatives RaeAnn G. Kelsch (Chairman), Bob Hunskor, Joe Kroeber, Darrell D. Nottestad, Margaret Sitte, and John Wall and Senators Dwight Cook, Tim Flakoll, Layton W. Freborg, Gary A. Lee, and Ryan M. Taylor.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

NO CHILD LEFT BEHIND ACT

Background

In 1965 President Lyndon B. Johnson signed into law the Elementary and Secondary Education Act. The purpose of the Act was to close the achievement gap that existed between advantaged and disadvantaged children. The Act marked the first time that federal funds had been allocated to the individual states for the purpose of elementary and secondary education. Every six to seven years since the Act's enactment, the Act has been reauthorized by Congress. The 1994 reauthorization was called the Improving America's Schools Act. Congress found that after nearly 30 years of federal intervention in elementary and secondary education, not only did the achievement gap still exist, the gap had not narrowed. As a consequence, the 1994 Act sought to change the manner in which education was delivered.

The Improving America's Schools Act encouraged comprehensive systemic school reform, upgraded instructional and professional development to align with high standards, strengthened accountability, and promoted the coordination of resources to improve education for all children. The Act also imposed requirements on states that received Title I funding. Those requirements included:

- Submitting to the United States Secretary of Education an accountability plan of standards and assessments, developed in consultation with local education agencies;
- Developing challenging content standards and challenging student performance standards;
- Developing a system of high-quality yearly student assessments, including assessments in reading and mathematics;
- Disaggregating the assessment results by gender, racial and ethnic group, English proficiency status, migrant status, disability, and economic status; and
- Demonstrating adequate yearly progress based on the state's assessment system.

Congress determined that these stringent requirements, together with high academic standards, were needed to promote a national program of education reform. What the 1994 Act lacked, however, was a timeline within which the states were to meet the Act's requirements and consequences for those states that failed to do so. By 2001 when President George W. Bush took office, only 11 states were in compliance with the 1994 Act and no state had been denied funding for not complying with the Act.

In 2001 the Act was again reauthorized and, this time, it was called the No Child Left Behind Act. The No Child Left Behind Act, like its predecessor, required each state to submit an accountability plan of standards and assessments. Unlike its predecessor, the No Child Left Behind Act set a date certain by which all states were to submit their accountability plans to the United States Secretary of Education. That date was June 2003 and all 50 states, together with the District of Columbia and Puerto Rico, met the deadline. Like its predecessor, the No Child Left Behind Act required each state to implement challenging content standards and performance standards, to develop a system of high-quality assessments, and to disaggregate those assessments by subgroups. The No Child Left Behind Act provided funding for the development and implementation of the assessment systems. Like its predecessor, the No Child Left Behind Act requires each state to demonstrate adequate yearly progress. Unlike its predecessor, the No Child Left Behind Act provides options for students who attend schools that do not meet the goal of adequate yearly progress.

In crafting the No Child Left Behind Act, Congress allowed states to define both adequate yearly progress and advanced, proficient, and basic levels of achievement. States were given the flexibility to determine minimum group size for accountability, to define their major ethnic and racial groups, and to determine annual measurable objectives. States were also given the flexibility to integrate adequate yearly progress with previously existing accountability systems, to account for unique schools such as small rural schools, and to determine testing standards for new teachers and evaluation standards for experienced teachers.

The No Child Left Behind Act passed by an overwhelming bipartisan vote in Congress and was signed into law on January 8, 2002.

Standards and Assessments

The No Child Left Behind Act requires each state to adopt challenging academic content standards and challenging student achievement standards that are applicable to all schools and all students in the state. The academic content standards must:

- Specify what students are expected to know and be able to do;
- Contain coherent and rigorous content; and
- Encourage the teaching of advanced skills.

The student academic achievement standards must:

- Be aligned with the state's academic content standards;
- Include two levels of achievement that indicate students' mastery of the material in the academic content standards; and
- Include a third level of achievement that can provide information about lower-achieving students and their progress toward mastery of the material.

Accountability

The No Child Left Behind Act requires each state to develop and implement a single statewide accountability system that will be effective in ensuring that all local school districts and all public elementary and high schools make adequate yearly progress. Each state accountability system must be based on the state's academic standards and academic assessments and must take into account the achievement of all public school students. The accountability system also must include methods by which a state can hold its school districts and public schools accountable for student achievement and for ensuring that adequate yearly progress is made.

Statewide Student Achievement

CTB/McGraw-Hill, LLC, was the primary contractor for the development and administration of North Dakota's state assessments. The assessments were developed according to industry standards, validated for content alignment, calibrated to state achievement standards by North Dakota teachers, and peer reviewed by the United States Department of Education. These assessments became the base on which achievement proficiency ratings were established for all participating students. North Dakota also developed alternate assessments for students with significant disabilities. These assessments are based on differentiated content standards and alternate achievement standards.

During the 2004-05 school year, North Dakota administered state assessments to 53,000 students in grades 3 through 8 and 11. Alternate assessments also were administered to 825 students with significant cognitive disabilities.

Adequate Yearly Progress

The No Child Left Behind Act requires each state to demonstrate adequate yearly progress toward meeting the academic achievement standards with respect to the state, each of its school districts, and all of its public schools. While each state may define what constitutes adequate yearly progress, those definitions must:

- Apply the same high standards of academic achievement to all public school students in the state;
- Be statistically valid and reliable;
- Result in continuous and substantial academic improvement for all students;
- Measure the progress of public schools, school districts, and the state on the basis of academic assessments;
- Include separate measurable annual objectives for continuous and substantial improvement in the achievement of all public school students, economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency;
- Include graduation rates for public high school students; and
- Include at least one other academic indicator, as determined by the state, for all public elementary school students.

The definitions may also include other academic indicators, as determined by the state for all public school students, and measured separately for each subgroup. Examples of such indicators include achievement on additional state or locally administered assessments, decreases in grade-to-grade retention rates, attendance rates, and changes in the percentage of students completing gifted and talented, advanced placement, and college preparatory courses.

The student performance data for the 2004-05 school year was released in September 2005 and indicated that of the state's 486 public schools, 419 made adequate yearly progress, 43 did not make adequate yearly progress, and 24 had insufficient data for purposes of reporting adequate yearly progress. Among the state's 202 school districts, 168 made adequate yearly progress, 21 did not make adequate yearly progress, and 13 had insufficient data for purposes of reporting adequate yearly progress. Each school's and school district's adequate yearly progress report is posted on the Department of Public Instruction web site.

If a Title I school is identified as not making adequate yearly progress for two consecutive testing periods, the school is placed on program improvement. If a school then makes adequate yearly progress for two consecutive testing periods, the school is removed from program improvement. Schools that have been removed from program improvement tend to have certain commonalities. Those include:

- Having strong leadership, generally by an individual who coordinates the school's program improvement and professional development efforts;

- Having a low administrative turnover rate;
- Having consistent access to program improvement funding;
- Developing a strong school improvement plan that includes research-based reforms;
- Implementing a full-day kindergarten program;
- Incorporating strong professional development activities; and
- Implementing an extended schoolday and an extended school year.

During the 2005-06 school year, North Dakota administered state assessments to 52,000 students in grades 3 through 8 and 11. Alternate assessments also were administered to 1,100 students with significant cognitive disabilities. The Superintendent of Public Instruction reviewed the assessment results with the committee and indicated that the final adequate yearly progress reports would be posted on the Department of Public Instruction web site upon certification.

Highly Qualified Teachers

Under the No Child Left Behind Act, "highly qualified" means that an individual has passed the state teacher licensing examination, holds a license to teach, and has not had licensure requirements waived on an emergency, temporary, or provisional basis. To be deemed "highly qualified" under the Act, an elementary teacher who is new to the profession must hold at least a bachelor's degree and have demonstrated, by passing a rigorous state test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum.

To be deemed "highly qualified" under the Act, a middle school or high school teacher who is new to the profession must hold at least a bachelor's degree and have demonstrated a high level of competency in each academic subject in which the individual teaches. This may have been done by passing a rigorous state test in each academic subject the individual teaches or by successfully completing, in each academic subject the individual teaches, an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

To be deemed "highly qualified" under the Act, an elementary, a middle school, or a high school teacher who is not new to the profession must hold at least a bachelor's degree and either have met the requirements applicable to new teachers at the appropriate level of instruction or have demonstrated competence in all the academic subjects the individual teaches, based on a high-objective uniform state standard of evaluation that:

- Is set by the state for both grade-appropriate academic subject matter knowledge and teaching skills;
- Is aligned with challenging state academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;
- Provides objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects that the individual teaches;
- Is applied uniformly to all teachers in the same academic subject and at the same grade level throughout the state;
- Takes into consideration, but is not based primarily on, the time the individual has been teaching the academic subject;
- Is made available to the public upon request; and
- May involve multiple objective measures of teacher competency.

As of September 2006, 1,896 North Dakota teachers became highly qualified using one of the multiple options available to attain that status. The portfolio option was the means by which 667 of those teachers became highly qualified.

The Federal Perspective

The committee was told that the United States Department of Education will continue to implement the No Child Left Behind Act in a way that retains the focus of accountability and the goal of grade level proficiency by the 2013-14 school year. The department believes the Act has provided unprecedented data about student performance and school performance. The department believes that the Act has raised standards and resulted in the educational progress of more children than ever before. The department also believes that its role is to insist on standards, provide resources, hold people accountable, and help school districts meet the standards.

The State Perspective - Resolution to Congress

The committee emphasized that it supports accountability in education and it recognizes the need for highly qualified teachers. The committee further emphasized that it did not want to leave any child behind. However, the committee also wanted Congress and the United States Department of Education to recognize that the education of students is a state responsibility and that, as a state, North Dakota is not enamored with having the federal government run its education system.

North Dakota Century Code Section 54-35-21 allows the No Child Left Behind Committee to communicate directly with the United States Secretary of Education, employees of the United States Department of Education, and any other federal officials, both elected and appointed, regarding implementation of the Act. The committee acted on this authorization and crafted a resolution urging Congress to amend the No Child Left Behind Act. Specifically, the resolution urged the creation of a new state-federal partnership, which recognizes that school improvement takes place at the state and local levels, that the role of the federal government must be limited to supporting state and local efforts, and that with appropriate encouragement and resources, every state can ensure that each child, regardless of race, income, ethnicity, or disability, will have access to rich and challenging curricula, will be taught by teachers who have outstanding academic

standards and expectations, and will demonstrate achievement through valid and reliable assessments and measurements. A copy of the resolution was forwarded to the President of the United States, to the United States Secretary of Education, and to each member of the North Dakota Congressional Delegation.

ESTIMATED COSTS OF THE NO CHILD LEFT BEHIND ACT - REPORT

The No Child Left Behind Act, depending on its print size, can run several hundred pages or more than 1,000 pages. The Act is accompanied by equally voluminous regulations and policy letters from the Secretary and the Deputy Secretary of the United States Department of Education. These policy letters, according to the United States Department of Education, are designed to provide guidance and insight to state educational agencies, school districts, federal program directors, and others charged with implementing the Act. To date, the policy letters have addressed accountability, adequate yearly progress in Title I targeted assistance schools, adjustments to Title I allocations, alternative methods for distributing Title I funds, assessments, calculating participation rates for adequate yearly progress determinations, choice, flexibility, highly qualified teachers, identification of districts for improvement, identification of schools for improvement, and paraprofessionals.

The Act itself consists of numerous funded subparts, including Title I grants, school improvement grants, Reading First grants, Even Start grants, migrant grants, neglected and delinquent grants, comprehensive school reform grants, impact aid grants, improving teacher quality grants, mathematics and science partnership grants, educational technology grants, 21st century community learning center grants, innovative program grants, state assessment grants, rural and low-income school grants, small rural school achievement grants, Indian education grants, safe and drug-free school grants, and language acquisition grants. North Dakota's level of federal funding for the No Child Left Behind Act reached a high of $96.3 million during the 2005-06 school year. For the 2006-07 school year, federal funding is set at $91.6 million and is estimated to be $93.2 million for the 2007-08 school year.

Attributing costs specifically to the No Child Left Behind Act remains difficult, largely because doing so would require a monumental effort on the part of each school district and because there is no framework within which one can distinguish those expenses that result strictly from the verbiage of the No Child Left Behind Act versus those expenses that would have resulted in the normal delivery of education services.

OPERATIONS OF EDUCATIONAL ASSOCIATIONS GOVERNED BY JOINT POWERS AGREEMENTS - REPORT

The Constitution of North Dakota requires the provision of a free and uniform system of education. The committee was told that the greatest challenge to this directive comes from demographics, particularly declining enrollment and enrollment concentration. In 1966, public school enrollment was 148,000 students. Today, public school enrollment is approximately 98,000. In a normal school district population, there will be more students in grades 1 through 3 than in grades 10 through 12. North Dakota high schools having an enrollment of more than 550 students are seeing a reversal in this pattern and a consequent enrollment shift of -8.1 percent. The enrollment shift is -29.1 percent for school districts having 150 to 549 students enrolled in their high schools. The smallest high schools, i.e., those that have student enrollments below 75, are experiencing an enrollment shift of -29.8 percent. The eight largest districts are educating 52 percent of the students. The other 188 districts educate the remaining students. Those are the districts that are declining at a very significant rate. In fact, 99 of the state's school districts have fewer than 185 students. Fifty-two high schools have enrollments of fewer than 60 students.

No school district is totally independent. Even the state’s largest districts rely on collaboration in order to provide services, such as distance learning and career and technical education. As districts become smaller, their reliance on other organizations for services increases.

The nine educational associations governed by joint powers agreements have become such service providers. Today, these educational associations serve 94 percent of all North Dakota students and allow participating school districts to obtain multiple services in a very cost-effective fashion. The committee was told that educational associations governed by joint powers agreements are school district support organizations. They are capable of providing even more services and support than they do now. However, in order to grow and better serve their school district constituencies, educational associations governed by joint powers agreements will need the ability to hire staff and to receive adequate funding levels. The Superintendent of Public Instruction will request an appropriation of at least $5 million for the 2007-09 biennium.

Because the interim Education Committee included educational associations governed by joint powers agreements in its study of elementary and secondary education, and considered a bill draft addressing the needs of such associations, the interim No Child Left Behind Committee did not engage in a detailed and duplicative study of the topic.

EXCEPTIONS TO LICENSURE - REPORT

North Dakota Century Code Section 15.1-09-57 states that if the board of a school district or of a nonpublic school is unable to fill a particular position by recruiting or assigning an individual who is licensed to teach in that particular course area or field, the school board may fill the position with an individual who is not licensed to teach in that particular course or field, provided the individual is licensed to teach by the Education Standards and Practices Board or is approved to teach by the Education Standards and Practices Board, holds at least a minor or a minor equivalency in

the course area or field in which the individual seeks to teach, and has received a temporary exception from the Education Standards and Practices Board.

Temporary exceptions are valid only through the conclusion of the school year in which a request for the exception is submitted to the Education Standards and Practices Board. The board may, however, extend such exceptions by one-year increments.

The Legislative Assembly also placed on the Education Standards and Practices Board the requirement that it report all requests for exceptions under this section, together with the board's response to each request and a brief description of the board's rationale. The committee was told that during August and September 2006, five requests were filed for teaching alternative flexibility endorsements and all five were granted.

TRANSPORTATION COMMITTEE

The Transportation Committee was assigned three studies. The Legislative Council chairman assigned by directive a study of federal highway appropriations and state matching requirements, a study of the effectiveness of financial responsibility requirements imposed on individuals convicted of driving without liability insurance, and a study of cost-shifting of medical costs of individuals injured in automobile crashes. In addition, the Legislative Council delegated to the committee the duty to receive a report from the Upper Great Plains Transportation Institute on the outcome of the institute's study of how improvement to the transportation infrastructure of this state might enhance the business climate and the state's competitive position on economic development.

Committee members were Senators David O'Connell (Chairman), Dennis Bercier, and Thomas L. Trenbeath and Representatives LeRoy G. Bernstein, Kathy Hawken, Craig Headland, Todd Porter, Clara Sue Price, Arlo E. Schmidt, Dorvan Solberg, Elwood Thorpe, Mike Timm, Don Vigesaa, and Robin Weisz.

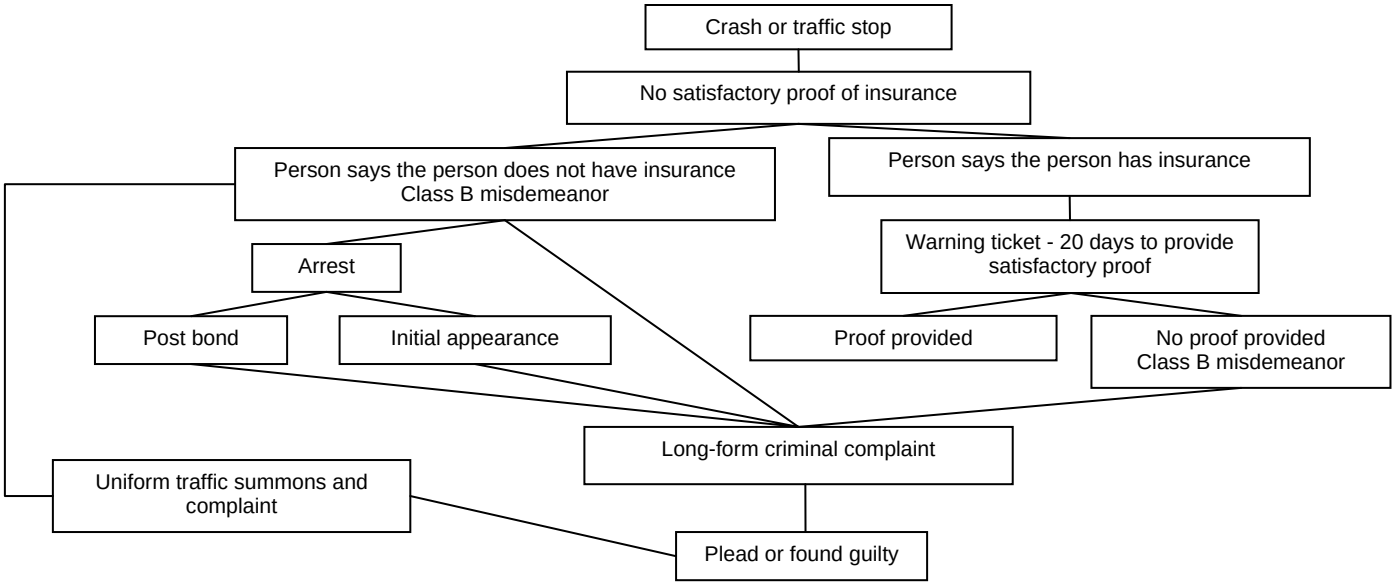
The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

EFFECTIVENESS OF FINANCIAL RESPONSIBILITY REQUIREMENTS FOR DRIVING WITHOUT LIABILITY INSURANCE STUDY

Statutory and Procedural Framework

Under North Dakota Century Code (NDCC) Section 39-08-20, a person may not drive a motor vehicle in this state without liability insurance. The owner of a vehicle is responsible for acquiring liability insurance. The liability insurance must be in the amount required by Chapter 39-16.1. The minimum limits for liability insurance in Section 39-16.1-11 are $25,000 per person and $50,000 per accident for bodily injury and $25,000 per accident for property damage.

The following flow chart tracks the criminal procedure for driving without liability insurance.



Legislative History

The Legislative Assembly has substantially changed the law relating to driving without liability insurance since 1975.

The duty to purchase liability insurance began in 1975. Senate Bill No. 2146 provided that a person driving without liability insurance was subject to a noncriminal offense punishable by two demerit points. A statutory fee was specifically prohibited under the bill. In 1981, House Bill No. 1220 removed the prohibition on a statutory fee and the statutory fee was set at not less than $25 nor more than $100. In addition, the demerit points were increased from two to six.

In 1975, House Bill No. 1214 provided that the Department of Transportation may not register and must rescind or suspend the registration of a vehicle without basic no-fault benefits and coverage for liabilities under motor vehicle liability insurance. In 1981, Senate Bill No. 2069 prohibited the department from issuing a certificate of title or transferring a certificate of title for failure to provide basic no-fault benefits or motor vehicle liability insurance coverage.

In 1985, House Bill No. 1287 made driving without liability insurance a criminal violation--a Class B misdemeanor. As a result, the statutory fee was repealed. As a consequence of being in violation of a criminal violation under NDCC Section 39-07-09, a person stopped for driving without liability insurance may be brought by the halting officer to the nearest

accessible magistrate instead of releasing the person upon a promise to appear.

In 1987, House Bill No. 1613 assigned 14 demerit points to driving without liability insurance if the violation was discovered as a result of investigation of an accident in which the driver is the owner.

In 1989, House Bill No. 1242 created a mandatory fine of at least $150 for a violation. In addition, the bill imposed the duty on a person driving a motor vehicle to provide satisfactory evidence of a motor vehicle liability insurance policy upon request by a law enforcement officer. The person was given up to 20 days to provide the evidence. In 1993, House Bill No. 1488 clarified that a person who produces a valid policy of liability insurance cannot be convicted or assessed court costs for a violation.

In 1991, House Bill No. 1134 provided in addition to the prohibition on a person driving without liability insurance that an owner may not cause or knowingly permit to be driven a motor vehicle without liability insurance.

In 1995, House Bill No. 1492 increased the demerit points for a second violation of driving without liability insurance within 18 months to 12 points. The bill provided that the mandatory minimum fine of $150 may not be suspended. The bill created a mandatory minimum penalty for driving without liability insurance within an 18-month period of $300.

In 1997, House Bill No. 1195 increased the maximum fine for a Class B misdemeanor from $500 to $1,000.

In 1999, Senate Bill No. 2406 provided that if a driver of a motor vehicle is not an owner of the motor vehicle that is stopped for being operated without liability insurance, the driver does not violate the law if the driver provides the court with evidence identifying the owner and describing the circumstances under which the owner allowed the driver to drive the motor vehicle. The bill required a person who has been convicted of driving a motor vehicle without liability insurance to provide proof of insurance for three years to the Department of Transportation or else that person's driving privileges are suspended. The proof of insurance must be a certificate from an insurance carrier. The convicted person's license must contain a notation showing that the person must keep proof of liability insurance on file with the department. The fee for the notation and removal is $50. The bill required insurance carriers to notify the director of the Department of Transportation of a cancellation or termination of an insurance policy required for a person convicted without liability insurance. In 1999, House Bill No. 1326 required a person without motor vehicle liability insurance who causes damages to another person or another's property with a motor vehicle to be court-ordered to pay the other person's deductible.

In 1999, Senate Bill No. 2376 limited the recoverable damages of a person who is in a motor vehicle accident and does not have liability insurance if that person has at least two convictions of operating a motor vehicle without liability insurance. This provision was set to expire on August 1, 2003. In 2003, House Bill No. 1190 removed the July 31, 2003, expiration date. In addition, the bill lowered the previous convictions requirement from two to one.

In 2003, House Bill No. 1238 provided that the time of the acquisition of satisfactory evidence of a valid policy of liability insurance in effect at the time of an alleged violation for driving without liability insurance is the burden of the owner. The bill created an exception to NDCC Section 26.1-30-18 which provides that an insurance policy begins at 12:01 a.m. on the day on which coverage begins and expires at 12:01 a.m. on the day of expiration of the policy. The exception is that a person may be convicted for failure to have a valid policy of liability insurance if the time of acquisition of the policy was after the time of the alleged incident of driving without liability insurance.

Statutory Framework for Proof of Financial Responsibility

North Dakota Century Code Chapter 39-16.1, "Proof of Financial Responsibility for the Future," works in concert with Chapter 39-16, "Financial Responsibility of Owners and Operators." The purpose of these two chapters is to protect innocent victims of motor vehicle accidents from financial disaster. Both chapters are for motor vehicle owners who have already had accidents or have been convicted of certain traffic offenses. The sanctions imposed by Chapter 39-16 are intended to guarantee financial responsibility for a first accident. In contrast, the sanctions imposed by Chapter 39-16.1 are designed to establish proof of financial responsibility for future accidents.

Under NDCC Section 39-16-06, after the director of the Department of Transportation receives an accident report, the license of the driver involved in the accident is suspended unless the driver deposits security to satisfy any judgment for damages resulting from the accident. However, if the driver purchases liability insurance and provides proof of financial responsibility, the driver may drive until the accident is settled or determined by a court. If the driver is found negligent, the driver's license is suspended. However, the license is not suspended if the person had liability insurance at the time of the accident. Under Section 39-16-07, a license suspended under Section 39-16-05 remains suspended until security is deposited to answer for damages, one year has passed since the accident and no action or damages have been instituted, or the case has been settled.

Under NDCC Section 39-16.1-01, a person who commits certain offenses or fails to pay a judgment needs to provide proof of financial responsibility. Also, a person who did not have liability insurance in effect at the time of an accident is required to provide proof of financial responsibility. In addition, proof of financial responsibility is required under the following circumstances:

- Conviction for driving under the influence.
- Conviction for actual physical control.
- Refusal of chemical tests.
- Conviction for driving under revocation.
- Conviction for driving under suspension when length of suspension is for 91 days or more.

- Until a judgment for an automobile accident is fully satisfied.
- Conviction for manslaughter in which a motor vehicle is used.
- Conviction for negligent homicide in which a motor vehicle is used.
- Conviction for a felony in which a motor vehicle is used.

This proof of financial responsibility may be given by a certificate of insurance, a bond, or a certificate of deposit of money or securities with the Bank of North Dakota. If the proof of financial responsibility provided is a certificate of insurance, this certificate is called an SR-22 filing.

Under NDCC Section 39-16.1-03, the clerk of court sends notice to the director of the Department of Transportation of the failure to satisfy a judgment. Under Section 39-16.1-04, the director upon receiving this notice suspends the license unless there is an installment plan to pay the judgment and the person has proof of financial responsibility, the judgment creditor consents to a license and there is proof of financial responsibility, or the individual files an affidavit with the director stating the individual had insurance and the insurer is liable to the amounts required by the chapter. Under Section 39-16.1-05, the judgment is satisfied under the chapter if the proof of financial responsibility limits are credited to the judgment.

Under NDCC Section 39-16.1-19, proof of financial responsibility is required for one year.

Severity of the Problem and Characteristics of Uninsured Motorists

According to the Insurance Research Council, approximately 14 percent of drivers are uninsured based upon 1995-97 data. The state with the highest percentage of uninsured drivers for that time period was Colorado with 32 percent. The lowest percentage was Maine with 4 percent. North Dakota ranked 45th among the states, including the District of Columbia, and tied with New York, Nebraska, Wyoming, and Massachusetts. The three states with lower percentages of uninsured motorists were South Dakota, North Carolina, and Maine.

In 1999 the California Department of Insurance compiled the results of a questionnaire in a report entitled *Characteristics of Uninsured Motorist*. The findings included:

> About 10% of those surveyed reported owning an uninsured vehicle. One of the surprising findings was that most of those who owned an uninsured vehicle also owned a vehicle that was insured. These uninsured are called hybrid uninsured and represent 58% of the uninsured in the sample. The remaining 42% were pure uninsured and did not own any insured vehicles.
>
> The uninsured were more likely to have the following characteristics:

Variable	Uninsured More Likely to Be
Home ownership	Renter
Income	Less than $20,000
Age	18 to 24
Education	High school or less
Sex	Male
Ethnicity	Hispanic or Black
Stability	Less time in present home

The survey reported 47 different reasons for being uninsured. Most of the reasons for being uninsured fell into two categories--nonuse of vehicle or the cost of the insurance. The majority of the pure uninsured did not insure because of the high cost of insurance. The majority of the hybrid did not insure because they claimed they did not use the vehicles.

In a 2000 article in the *Journal of Insurance Regulation* entitled "What We Know About Uninsured Motorists and How Well We Know What We Know," the author concluded that in general, uninsured motorists are found in highest numbers in metropolitan areas. In general, the rural states in the Northeast and North Central regions have a relatively small population of uninsured motorists. As to the profile of uninsured motorists, there is general agreement from most sources that male drivers make up the majority of uninsured motorists; however, there is no agreement on the magnitude. According to the article, the insurance industry has argued in several forums that uninsured motorists tend to be involved in more accidents and more severe accidents than insured motorists. However, the reason for this may be that young male motorists make up a substantial number of the uninsured motorists. The article went on to list the reasons for uninsured motorists. These reasons include:

- Low socio-economic status.
- Rigidity of the current method of pricing of insurance services.
- High insurance rates where most uninsured motorists reside.
- Low probability of being caught combined with cost of being caught compared with high insurance cost.
- Unavailability of public transportation.
- Lack of awareness of the existence of mandatory laws.

State Responses to Address Uninsured Motorists

Proof and Verification

Forty-seven states require drivers to carry automobile insurance. The remaining three states--New Hampshire, Tennessee, and Wisconsin--have financial responsibility laws. To enforce these laws, the state agencies with authority over motor vehicles and law enforcement must know if a vehicle is insured. There are two ways this information is obtained--proof of insurance by driver or owner and insurer verification of insurance. There are three times when states require proof of insurance:

1. At registration.
2. At time of accident.
3. At all times in vehicle.

Insurer verification takes four forms:

1. The insurer must notify the state agency with authority over motor vehicles of cancellations or nonrenewals.
2. The insurer must verify after an accident or arrest.
3. The insurer must verify randomly selected insurance policies upon request.
4. The insurer must submit an entire list of insurance in effect.

Insurer verification of insurance through a data base takes two forms--book of business and cancellation reporting programs. An example of a book of business program is Nevada. Nevada requires every insurer to provide the Department of Motor Vehicles with a monthly record of each policy issued, amended, or terminated in the previous month. The department compares the records of current motor vehicle registrations with the records received from insurers and mails notices to owners of uninsured vehicles. The department must send the owner, by first-class mail, a form about insurance which the owner must return to the department within 20 days. If the department does not receive a response, a second form is sent by certified mail which the owner must return within 15 days. If the owner does not return either form, the information on the form is unverifiable or the owner admits to not having insurance, the department suspends the vehicle's registration. The owner must pay a reinstatement fee of $250 to reinstate the registration. Revenue from the reinstatement fee pays for the data base.

Another example of a book of business program is Utah. In Utah the program is run by a private vendor. The private vendor collects information from the Department of Motor Vehicles and insurers and sends notices to owners of uninsured vehicles and if they do not acquire insurance, the Department of Motor Vehicles cancels the registration for those vehicles. All registered owners of vehicles pay a $1 fee per year to fund the program. According to the private vendor, Utah reduced uninsured motorists from 23 to 9.3 percent in approximately four years. In addition, the Utah State Tax Commission reports that the data base may have helped identify 90,000 Utah vehicles that may have been improperly registered in other states. Other states that contract with vendors include Connecticut, Colorado, and New Mexico.

A book of business program within state government allows for law enforcement to access that information as part of a driving record check. If the program is administered by a private vendor, access may not be so convenient. For instance, in Utah the records may be only accessed through the Internet by law enforcement.

Maine has a cancellation reporting program. The law requires insurers to report the cancellation or termination of mandatory liability coverage on vehicles registered in Maine. The law requires the Bureau of Motor Vehicles to issue a notice to the owner of a vehicle reported canceled or terminated informing the owner that the registration will be suspended if the owner does not provide evidence of new insurance coverage. This evidence must be provided within 30 days. North Dakota has a cancellation reporting program for people convicted of driving without liability insurance.

Criminal and Civil Penalties

Consequences for not having automobile liability insurance include fines, jail time, license or registration revocation, confiscation of license plates, and vehicle impounding. As to the frequency of the use of a penalty:

- 43 states impose fines.
- 22 states revoke or suspend vehicle registrations.
- 21 states revoke or suspend vehicle licenses.
- 7 states confiscate license plates.
- 3 states impound vehicles.

In a 2001 article in the *Journal of Insurance Regulation* entitled "The Uninsured Motorist Problem: An Investigation of the Impact of Enforcement and Penalty Severity on Compliance," the authors found that compulsory insurance laws significantly reduced the uninsured motorist rate. In addition, the higher level of fines for failure to comply with the law helped to reduce the level of noncompliance. However, this did not apply to jail sentences. As to the effectiveness of jail sentences, the article suggested that "while these laws are on the books, it is unlikely that they are actually being enforced and therefore are not effective. Effectiveness could be increased by consistency and uniformity of application."

The article stated that one conclusion in response to the characteristics of uninsured motorists would be for a state to more efficiently use resources by targeting individuals with the characteristics, because the likelihood of noncompliance is higher for these individuals. Another conclusion could be to increase enforcement. The article stated "it is often difficult to ascertain whether penalties exist for noncompliance, what those penalties are, and what the likelihood for getting caught is. One low-cost suggestion from this study is that states need to more fully disclose this information to all drivers." This information may be provided through insurance agents explaining the specific consequences of failing to buy liability insurance. In addition, driver's license testing could focus more on the understanding of compulsory insurance laws.

The article stated "it is important to consider the cost of the insurance and individual's ability to pay in assessing the overall potential for the laws to reduce the uninsured motorist problem."

Automobile Insurance Programs

California has enacted a low-cost automobile insurance program to provide low-cost and lower coverage insurance. The California low-cost automobile insurance program is available only to residents of Los Angeles and San Francisco who meet certain income requirements. For an accident caused by an insured, these policies provide a maximum of $10,000 liability for bodily injury or death per person with a maximum of $20,000 for all persons and a maximum of $3,000 liability for damage to personal property. The standard California policy is $15,000 per person and

$30,000 for all persons and a maximum of $5,000 liability for damages to personal property.

Saskatchewan, Canada, has a unique approach to compulsory insurance. Under that province's compulsory liability insurance and financial responsibility law, insurance is mandatory and included with the purchase of license plates and certificates of registration. In Saskatchewan a valid license plate is proof of valid insurance.

Testimony and Discussion

Severity and Characteristics

The committee was informed that in North Dakota approximately 7 percent of the motorists are uninsured. This is a low percentage when compared nationally. This may be attributable to the fact that this state has the lowest, or near the lowest, cost of liability insurance in the nation. The committee was informed that it is difficult to measure the number of individuals driving without liability insurance because the statistics only relate to those individuals who are caught driving without liability insurance. The current number of individuals convicted of driving without liability insurance is approximately 3,700 per year and if the present trend continues, there will be approximately 5,200 individuals convicted in 2009.

The committee was informed that economics is the major factor in determining whether individuals purchase liability insurance. As such, more people would not have liability insurance if the price of the insurance increased. In general, the average cost for liability insurance is $193 per year. This amount does not include mandatory no-fault and uninsured and underinsured motorist coverages. In addition, individuals driving without liability insurance would most likely pay much more than the average cost if they had insurance. The committee was informed that if the coverage of liability insurance were doubled, the cost would increase by approximately 15 percent. The vast majority of automobile accidents fall well within the range of mandatory liability coverage limits.

The committee was informed that approximately 50 percent of individuals convicted for driving without liability insurance have had a previous license suspension. It was argued there is a core group that is not going to change regardless of any change in the law and that caution should be exercised in making any change because of the relative success of this state's laws. In addition, committee discussion included disfavor for any mandatory insurance.

Proof and Verification

The committee received testimony on proof of insurance in the form of proof at registration and proof in the automobile. Although in the past an individual had to list that individual's insurance policy number on the registration renewal form, that individual still states to the department that that individual has insurance when the registration renewal application is signed. The committee was informed that listing the policy number is not effective as a means of enforcement because an individual can cancel a policy immediately after listing the number.

The committee was informed that when an individual is stopped for another offense, the law enforcement officer may and usually does ask for proof of liability insurance. The committee was informed that it appears that all insurers provide proof of insurance to customers. The committee was informed that the problem with proof of insurance cards is that a person can cancel insurance or change companies.

The committee was informed that the computer in a patrol car does not have information on the status of liability insurance for a driver. If a driver does not have liability insurance, the driver has 20 days to provide proof. According to a representative of the Highway Patrol, this provision of law is administratively burdensome. It was argued that a civil citation would be administratively less burdensome on law enforcement and the courts than a criminal citation for driving without liability insurance. A representative from the Department of Transportation argued that there should be a penalty for not having proof of insurance in a motor vehicle or there should be an incentive to have it in a motor vehicle. The committee was informed that Minnesota requires a person to produce proof of insurance and has a mandatory penalty if the person does not have proof.

To the contrary, there was testimony in support of the 20 days to provide proof of adequate insurance because it is difficult for businesses to have the correct card in the correct vehicle. In addition, without the 20 days, individuals with insurance would be punished the same as people without liability insurance.

The committee received testimony on an insurance verification system. The Department of Transportation is investigating a notification system by which the department is informed of canceled or terminated insurance policies. If the department had the system, the department would address driving without liability insurance during the registration renewal process. The committee was informed that most insurance companies do not want to have 50 systems in 50 states.

The committee was informed that present insurance verification systems do not work. The best systems in other states are 30 days behind in providing accurate information. This produces mailings to individuals who have a valid reason for not having insurance with a particular company. The committee was informed that Minnesota used to verify insurance for every driver; however, that state now does random checks.

Penalties

The committee received testimony on changes in the sanctions for driving without liability insurance and any corresponding effect on the number of convictions for driving without liability insurance. According to a representative from the Department of Transportation, there is usually a six-month period after a change in the law relating to uninsured drivers in which there is a decrease in the number of individuals driving without liability insurance. After this six-month period, any decrease is lost and the increase in the number of drivers continues as if there were never a change.

The committee received testimony on the statutory sanction for driving without liability insurance. Under NDCC Section 39-16.1-20.1, the department is prohibited from returning a license for any reason without a verified statement confirming insurance coverage and the department is more actively enforcing this provision.

The committee was informed that minimum fines were adopted by the Legislative Assembly at the urging of the North Dakota Professional Insurance Agents because judges were routinely suspending fines and were applying court costs. There was testimony in support of mandatory fines and even increasing those fines. It was suggested that an increased fine could fund unpaid property damages in a manner similar to the unsatisfied judgment fund for bodily injury.

However, a representative of the Highway Patrol indicated that there should be flexibility in fines so people who cannot afford to buy insurance can buy insurance instead of paying the fine. It was suggested that the committee may want to have the penalty be the cost of insurance but have the fine waived if the person purchased insurance. The committee was informed that individuals who drive without liability insurance have other costs besides the fine, including high-risk insurance.

The committee considered a bill draft that changed driving without liability insurance from a criminal to an administrative penalty with a fee of up to $150. The bill draft required insurers to issue proof of insurance. The bill draft removed an administrative burden from law enforcement by having drivers provide proof of insurance to the court before or at the hearing on the offenses. The committee also considered a similar proposal that provided for a mandatory penalty of $150 and clarified language relating to point reductions for violation-free driving.

The committee also considered a bill draft that changed the citation procedure for driving without liability insurance. While keeping the procedure criminal, the bill draft replaced the 20-day grace period to provide proof of insurance with the defense to the charge of providing proof to the appropriate court. In addition, the bill draft required insurers to provide proof of insurance.

The committee was informed that the proof of liability insurance issued by an insurer would be more useful if it had a bar code. The license of a person who does not pay the fee for a noncriminal offense would be suspended. The committee was informed that changing from a criminal to an administrative procedure would result in violations not being printed in the paper, which may remove a deterrent to driving without liability insurance. Committee discussion included support for requiring proof of insurance to be issued by insurance companies to customers, not lessening the fine or fee, and keeping the fine or fee mandatory.

Impounded Plates

The committee was informed by a representative of the Department of Transportation that no action is taken against an individual's motor vehicle registration when the individual is convicted of driving without liability insurance. The committee was informed that the computerized driver's license and registration systems are somewhat mutually exclusive and it would be difficult to program a suspension of registration for an individual convicted of not having liability insurance. Committee discussion included the opinion that the department should coordinate the information systems after a conviction of driving without liability insurance so that the validity of the registration can be reviewed by the department.

North Dakota does not have a law that provides for the confiscation of license plates of individuals who have driven without liability insurance. Committee discussion included support for legislation that addresses the vehicle of the uninsured and it was suggested that the legislation should provide for the confiscation of license plates for a second offense. At the last meeting of the committee, the committee amended both bill drafts that were under consideration to include license plate confiscation for a second offense of driving without liability insurance.

The committee was informed of the issues created with the confiscation of license plates. The committee was informed that the violator should be the owner as a condition of the license plates being confiscated. In addition, the committee was informed that self-issue permits may create administrative problems with a blanket confiscation. It was argued that confiscation required more study and there are many fact scenarios that need to be addressed to make the confiscation process clear.

Committee discussion included the opinion that the major issue with the confiscation of license plates is enforcement. The committee was informed that in the administrative context, the department would have to ask a person to return the license plates for confiscation. Law enforcement would have to retrieve the license plates if the plates were not returned. Committee discussion included support for the idea that the confiscation should apply to the primary owner driving the motor vehicle without liability insurance.

Committee discussion included the idea that it would be better for the committee to attach the amendment and have it removed during the legislative session instead of bringing forth the amendment later in the legislative process. The former manner provides that the issue is guaranteed to be reviewed by the Legislative Assembly. Committee discussion included that although the idea of license plate confiscation for driving without liability insurance has merit and deserves study, the idea should be contained in a separate bill draft.

Recommendations

The committee recommends House Bill No. 1036 to provide for an administrative procedure for driving without liability insurance. The bill removes an administrative burden from law enforcement by having a driver provide proof of insurance to the court before or at the hearing on the offense, instead of to the law enforcement officer. The bill provides for a mandatory fee of $150 and clarifies language relating to point reductions for violation-free driving. The bill requires

insurers to issue proof of insurance. In addition, the bill requires license plate confiscation for a second offense of driving without liability insurance.

The committee recommends House Bill No. 1037 to change the citation procedure for driving without liability insurance. While keeping the procedure criminal, the bill replaces the 20-day grace period to provide proof of insurance with a defense to the charge by providing proof to the appropriate court. The bill requires insurers to provide proof of insurance. In addition, the bill requires license plate confiscation for a second offense of driving without liability insurance.

HIGHWAY FUNDING STUDY

Federal Highway Appropriations

Federal highway appropriations were greatly affected by the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which the President signed into law on August 10, 2005. The Act guarantees $244.1 billion in funding for highways, highway safety, and public transportation. The Act provides funding through federal fiscal year 2009. The Act is a continuation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21). The federal highway trust fund is the source of funding for most of the programs in the Act. Federal motor fuel taxes are the major source of income into the highway trust fund.

At the beginning of the interim, the Department of Transportation estimated that this state will receive an additional $25.7 million of conventional funding for highways this biennium, of which $6.4 million will go to cities and counties. These conventional funds are in addition to the amount the Department of Transportation projected this state would receive during the 2005 legislative session. These additional conventional funds will increase the amount needed for state matching funds for conventional funding by approximately $3,944,000 for this biennium.

The Legislative Assembly provided budget authority to meet $5.4 million of the anticipated $8.4 million in federal emergency relief funds for projects to be constructed during this biennium. However, the Act provided an extra $10 million per year for the construction of necessary measures for the continuation of roadway surfaces or the impoundment of water to protect roads at Devils Lake. At the beginning of the interim, the Department of Transportation estimated that because only a third of this amount will be used for state roads, this state will receive approximately $6.7 million per year in additional emergency relief funds. The additional emergency relief funds will require approximately $1.7 million per year in additional state matching funds, or $3.4 million for the biennium.

At the beginning of the biennium, the Department of Transportation estimated that because of the additional conventional federal funds and emergency relief expenditures, this state will require $10.6 million in additional matching funds. This figure includes $3 million in matching funds needed to receive the full $8.4 million in emergency relief funds. To meet the shortfall, at the beginning of the interim the department anticipated using NDCC Section 24-02-44, which provides that the department may borrow money from the Bank of North Dakota to match federal emergency relief funds upon approval of the Emergency Commission. If the department does not repay the amount borrowed within the biennium, the department is required to request a deficiency appropriation from the state highway fund.

In addition to the $10.6 million difference between the total state matching funds needed as a result of the Act and the Department of Transportation's revenue this biennium, there is projected to be a $5.9 million difference in the 2007-09 biennium and a $21.3 million difference in the 2009-11 biennium. Unless the department finds internal savings or receives actual income that exceeds projected income, increased or other sources of income may need to be investigated. The major present sources of income are motor vehicle fuel taxes, motor vehicle registration fees, and special fuels taxes.

State Matching Sources

In general, fuels taxes and registration fees are deposited in the highway tax distribution fund. However, $13 of each registration fee for a passenger motor vehicle, bus, and truck weighing over 20,000 pounds goes directly into the state highway fund. The highway tax distribution fund is distributed 63 percent to the state, 23 percent to the counties, and 14 percent to the cities. Money received by the state goes into the state highway fund.

Certain income sources have recently been increased or implemented to match federal funds. In 2005, Senate Bill No. 2012 increased registration fees $10, classified pickups as passenger motor vehicles but limited the increase due this reclassification to one-half for this biennium, and deposited $13 of each registration fee in the state highway fund. The bill increased motor vehicle fuel and special fuels tax rates from 21 to 23 cents per gallon. The bill allowed for grant or revenue anticipation financing for the Liberty Memorial Bridge improvement project and the United States Highway 2 project improvements. This financing provides for federal reimbursement for debt financing costs relating to federal aid highway projects. This financing is done through the issuance of bonds. The bill would have redirected money collected for motor vehicle excise taxes from the general fund to the state highway fund. This transfer of revenue was vetoed by the Governor because the "diversion of funds increases the risk of an allotment, or could force the calling of a special session of the legislature to deal with future revenue requirements." In 2005 the Legislative Assembly considered, but did not pass, House Bill No. 1450, which would have doubled the driver's license fee, and Senate Bill No. 2255, which would have dedicated a one-half of 1 percent increase in the motor vehicle excise tax to the state highway fund.

Alternative Revenue Sources

During the 2003-04 interim, the Budget Committee on Government Administration studied highway construction and maintenance funding, including revenue sources and distribution formulas for the state, cities, and counties. The committee reviewed other states' methods of financing highway projects. The majority of states' highway revenue is generated from fuels taxes and motor vehicle registration fees.

In addition, states generate additional funding for highways from a variety of other sources. The following schedule summarizes select revenue sources that are used for highway purposes in other states in addition to fuels taxes and registration fees:

Revenue Type	State
Sales tax - General	Arizona, Illinois, Kansas, Nevada, Utah, and Virginia
Motor vehicle excise tax	Iowa, Kansas, Michigan, Missouri, Nebraska, North Carolina, and South Dakota
Motor fuels sales tax	California, Georgia, and Michigan
Auto parts sales tax	Michigan
Gaming tax	Colorado
Rental car tax	Florida, Hawaii, Iowa, South Dakota, and Utah
Severance tax	Arkansas, Kentucky, New Mexico, Oklahoma, Tennessee, and Wyoming
Corporate income tax	Maryland
Lubricating oil tax	Alabama, Mississippi, and Texas
Contractor tax	Mississippi

The 2003-04 interim Budget Committee on Government Administration reviewed information prepared by the Florida Department of Transportation regarding alternative transportation revenue sources. Alternative revenue sources identified include:

1. Vehicle miles of travel fees - An annual assessment based on the number of miles traveled in the preceding year.
2. Weight distance fees - An annual assessment based on factors, including miles driven and vehicle weight.
3. New vehicle or auto parts sales tax - Taxes on new or used vehicle purchases or on sale of automobile parts.
4. Emissions fees - An annual fee based on a vehicle's emissions characteristics and on the annual number of miles traveled.
5. Highway right-of-way lease income - Collections from leases of highway right of way for fiber optic cables, cell phone towers, or other purposes.
6. Road-branding fee - A fee charged for naming a segment of a highway for an individual or business.

At the committee's request, the Department of Transportation identified the following potential options for providing additional transportation revenue:

1. Increasing the motor vehicle fuel tax on gasoline, gasohol, and diesel fuel (a one cent per gallon increase would generate $5 million per year, or $10 million per biennium).
2. Increasing motor vehicle registration fees (a $1 increase would generate $700,000 per year, or $1.4 million per biennium).
3. Increasing the 2 percent special fuels tax (a 1 percent increase, from 2 to 3 percent, would generate $2.3 million per year, or $4.6 million per biennium).
4. Increasing the excise tax on the sale of new and used motor vehicles (a 1 percent increase would generate $10.75 million per year, or $21.5 million per biennium).
5. Dedicating a portion of the general sales tax to transportation (a .25 percent sales tax increase would generate $20.5 million per year, or $41 million per biennium).
6. Increasing the tax on rental cars (a tax of $1 per day on rental cars would generate $360,000 per year, or $720,000 per biennium, while a 1 percent rental car tax would generate $180,000 per year, or $360,000 per biennium).
7. Dedicating a portion of severance tax revenues on natural resources to transportation.
8. Imposing a sales tax on motor fuels (a 1 percent sales tax would generate $6.4 million per year, or $12.8 million per biennium at $1.20 per gallon).
9. Increasing the sales tax on auto parts (a 1 percent increase would generate $1.5 million per year, or $3 million per biennium).
10. Shifting the funding for the ethanol incentive program to another source (this change would generate $1.25 million per year, or $2.5 million per biennium).
11. Providing funding for the Highway Patrol from sources other than the highway fund.
12. Enacting a personal property tax on vehicles.
13. Dedicating gambling funds to transportation.
14. Establishing toll bridges and toll roads.
15. Developing private/public partnerships.
16. Enacting a vehicle miles of travel tax.
17. Enacting a weight distance tax.
18. Bonding for highway projects; however, a revenue source would be needed to repay the bonds.
19. Appropriating money from the general fund.
20. Enacting taxes on other petroleum products.
21. Utilizing corporate income tax collections.
22. Developing rest area concessions.
23. Utilizing traffic fine collections.
24. Increasing taxes on beer and cigarettes.
25. Enacting a contractor tax.
26. Utilizing collections from mineral leases on state-owned land.
27. Utilizing room tax collections.
28. Charging for use of highway right of way.
29. Utilizing collections from an annual insurance underwriters fee.
30. Taxing alternative fuel sources.

Testimony and Discussion

Federal Funding and Matching Requirements

The committee received testimony on the importance of federal funding for road construction and maintenance. The committee was informed that there has been an increase in the number of states that pay more in through federal fuels taxes than they receive from the federal government in highway funding. In SAFETEA-LU, some states wanted to be guaranteed at least a 95 percent return. The minimum guarantee under SAFETEA-LU is 92.5 percent over the life of the bill. Rural states are protected as to the money they receive in that it will not be less in the future. Historically, for every $1 that North Dakota drivers have paid into the federal highway trust fund, North Dakota has received $2 of federal highway funds.

In November 2005 the Department of Transportation reduced the projected shortfall of $10.6 million to $4.1 million. One reason for the reduction was that there were no state highways that were roads acting as dams projects this biennium. The roads are all on Bureau of Indian Affairs routes. The committee was informed that the only known road acting as a dams project for the 2007-09 biennium is reinforcing a section of North Dakota Highway 20 near Acorn Ridge. This project will require approximately $500,000 in state match. Another reason was that there was less federal funding than expected.

In March 2006 the committee was informed that the federal formula funding is estimated to be $410 million versus the budgeted amount of $407 million. As a result, the match needed by this state will be $600,000. The committee was informed that with the $600,000, the current projected shortfall is $3.1 million.

Federal Mandates - REAL ID Act

The REAL ID Act of 2005 was passed in September 2005. The committee was informed that the purpose of the REAL ID Act is to allow computers to work together among the states to retrieve motor vehicle and birth certificate information. Under the Act, it will become easier to share pictures among different licenses and identifications. Under the Act, the state driver's license will become a national identification that is accessible by all the states. The committee was informed that the REAL ID Act is good for safety but is costly.

The committee was informed it will cost approximately $14 million to implement the REAL ID Act in this state, in addition to the cost of recent changes in driver's licenses that comply with the standards of the American Motor Vehicle Association. The state will need to comply with the requirements of the Act by 2008. Of the total cost, $6 million is attributable to developing a data base that is part of a national data base and providing access to the data base. Other costs include authenticating the identity of individuals applying for identification.

Congress did not provide any funding for the implementation of the REAL ID Act. Noncompliance does not result in the loss of funding but will result in the citizens of the noncompliant state not being able to use their identification for federal purposes, e.g., boarding an airplane.

Committee discussion included that if there is no federal funding, a state should refuse to follow the requirements of the REAL ID Act.

No state has opted out of the Act; however, the House of Representatives in New Hampshire passed a resolution not to follow the Act, but the Senate tabled the resolution. The committee was informed that states are considering whether to comply with the Act. The committee was informed that the Department of Transportation will follow the Act unless told not to by the Governor or the Legislative Assembly. The department is attempting to secure federal funding for the Act.

The committee was informed that a REAL ID Act compliant license may not be good enough to enter Canada because the identification required to cross the border may require a chip that can be read from 35 feet.

State Funding Sources and Alternatives

The committee received testimony on the impact of increased motor fuel prices on the consumption of motor fuel, and hence the collection of motor fuels taxes. Projected revenues are very close to collections. There have been fewer miles driven in this state but the revenue has been fairly stable. The revenue may increase as people drive more as they become accustomed to higher gas prices.

The committee was informed that the total impact on fuel consumption has been minimal as the total consumption for the first 10 months of 2005 compared to 2006 has shown a decrease of about 2.5 million gallons, or about .58 percent. In addition, during the same timeframe the use of gasohol increased approximately 54 percent and gasoline usage decreased 29 percent. Part of the increase may be attributable to the tax exemption on E85 fuel, which expired on April 30, 2006. Diesel fuel usage increased almost 5.2 million gallons, or about 4 percent. The increased usage of gasohol and diesel fuel came very close to offsetting the decline in gasoline consumption. The slight decrease overall in motor fuel consumption is partially offset by the increased revenue from the 2 percent special fuels tax. Even though the gallons used which are subject to the tax have decreased, the total amount collected under the tax has increased due to the increase on the price on which the tax is calculated. This increase in price was approximately 37 percent.

The committee was informed that this state having a higher gas tax than Minnesota has not appeared to have resulted in people going to Minnesota to avoid the tax. The committee was informed that the lower cigarette taxes in this state tend to bring people in from Minnesota who then buy fuel as well as cigarettes. The committee was informed the relationship between gas tax and gas price is a mystery. For example, the gas tax in Montana is four cents more than in this state; however, on a particular weekend the price for gas in Montana was 14 cents less than in this state.

The committee was informed that there are potential funding sources other than the gas tax. Other sources of funds may include tolls, concessions, design/build,

and bonds. Oregon is piloting a program to implement a per mile tax. The difficult part of implementing a per mile tax is that the taxing authority needs to have a computer in the automobile measure the miles driven and the state in which the miles are driven.

The committee received testimony on the taxation of coal, oil, and gas as a potential source of highway funding. In addition, the committee received testimony on present proceeds from oil and gas gross production tax proceeds which are transferred to the oil and gas impact grant fund and are used for road repair and maintenance. The oil and gas impact grant fund is administered by the Energy Development Impact Office. The office provides financial assistance for basic governmental services to local units of government affected by energy activity.

Committee discussion included that the state does not share in impact funding for state roads. It was argued that the oil and gas industry wants good roads and heavily uses the roads and therefore should share in the expense. It was argued that increased state highway funding may be able to be provided through the shifting of these taxes, without a significant increase in taxes. Committee discussion included that although more money for roads is always an issue, it may not be a wise precedent to divert taxes collected from the oil and gas industry.

The committee was informed that state highways are impacted by the oil and gas industry and the department is developing a report that will estimate this impact. The report will focus on the western portion of the state. Out of the ordinary damage is done to the roads in the western portion of the state because of certain equipment that is moved for oil rigs.

The committee received testimony on additional state funding for highway projects. It was argued that there needs to be a change in funding on a state level. Many states have projects funded above federal match projects.

Increased Costs

The committee was informed that every road construction project scheduled is needed and some have not been done because of high bids. The Department of Transportation has not accepted bids that have been 15 to 20 percent higher than the engineers' estimates. The reason for the increase in bid amounts is that prices have increased for raw materials and labor. For example, the average asphalt cement bid was $224 per ton in 2005 and was $388 per ton in May 2006--a 73 percent increase.

As a result of increased costs, $24 million in construction projects originally scheduled for 2006 have been delayed. Bids on United States Highway 12 and United States Highway 2 near Devils Lake have been rejected because the bids were significantly over the engineers' estimates. These projects will be rebid. The department anticipates that over $91 million in projects for 2007 and 2008 will be scheduled at a later date.

The committee received testimony on the importance of timely road repair. The committee was informed that every $1 million spent on road construction creates 47.5 jobs and for every $1 spent on preventative maintenance, $4 to $5 is saved in construction costs in the near future. In addition, national studies have demonstrated that every $1 invested in transportation yields approximately $5.40 in reduced delays, improved safety, and reduced vehicle operating costs.

The committee was informed that contracts for highway construction with the department have a special provision for changing the amount paid based on a change in diesel fuel prices between the time of the bid and the time of the project. The increase in diesel fuel costs will affect the cost of projects by less than 5 percent.

The committee received testimony on costs attributable to maintaining employees at the department. The committee was informed that North Dakota has fewer employees per mile of road than any other state. The department is having particular problems recruiting and retaining equipment operators, engineers, and engineer technicians. The department utilizes every tool available to retain employees, including recruitment bonuses, performance bonuses, and scholarship programs. The department is looking at improving the perception of state employment. The committee was informed that the perception is that state employment is not stable and has low pay. It was argued that an incentive based upon a project or job may be the sort of compensation needed to retain and hire engineers and engineer technicians.

Liberty Memorial Bridge

In November 2005 the Department of Transportation informed the committee that there were no bids for the Liberty Memorial Bridge. There has been a steady decline in the number of bids over the past few years because there are fewer and larger contractors. The department receives on average three to four bids for a project, whereas the department used to receive six to seven bids.

Although the Liberty Memorial Bridge was later bid for replacement, the committee was informed that repairs on the Liberty Memorial Bridge were required before the replacement. The repairs are planned to last until the new bridge is open. The closure of the bridge affected approximately 15,000 cars per day. If those cars have to drive at least two additional miles because of the closure, then an extra 30,000 miles are driven each day. The cost of these extra miles is at least $10,000 per day. The cost of the repairs were estimated between $300,000 and $400,000.

The committee was informed that bridges are monitored on a monthly basis and are thoroughly inspected every two years. The department has 59 certified bridge inspectors to inspect approximately 5,300 bridges. The last thorough inspection of the Liberty Memorial Bridge was in late 2003 or early 2004 and there was no indication of damage at that time. In January 2006 the department discovered problems on the outside of the columns and the outside flaws warranted further testing that revealed internal problems.

COST-SHIFTING OF MEDICAL COSTS IN AUTOMOBILE CRASHES STUDY

The end result of any automobile crash is that some person pays or is liable to pay for medical costs that result from the automobile crash. Depending on the fact scenario, and the insurance and drivers involved in the accident, that person may be:

1. An automobile no-fault or medical payments insurance company.
2. An automobile liability insurance company.
3. An automobile uninsured insurance company.
4. An automobile underinsured insurance company.
5. A health care insurance company.
6. The at-fault driver.
7. The driver not at fault.
8. A health care provider.
9. A medical assistance program.

The following is a table contained in *The Economic Impact of Motor Vehicle Crashes 2000* compiled by the National Highway Traffic Safety Administration. The table lists the estimated source of payments for motor vehicle crashes. The most common of these are private insurance claims. Medicare is the primary payer for people over age 65. When these sources are not available, government programs, for instance Medicaid, may provide coverage. Expenses not covered by private or governmental sources must be paid out of pocket by individuals or absorbed as losses by health care providers.

Estimated Source of Payment by Cost Category

	Federal	State	Total Government	Insurer	Other	Self	Total
Medical	14.40%	9.77%	24.16%	54.85%	6.36%	14.62%	100%
Emergency services[1]	3.87%	75.75%	79.62%	14.74%	1.71%	3.93%	100%
Market productivity	16.20%	3.06%	19.26%	41.09%	1.55%	38.10%	100%
HH productivity				41.09%	1.55%	57.36%	100%
Insurance administration	.89%	.51%	1.40%	98.60%			100%
Workplace costs					100.00%		100%
Legal/court				100.00%			100%
Travel delay					100.00%		100%
Property damage				65.00%		35.00%	100%

[1]Police and fire department responses.

Source: Blincoe, 1996

The following will review the law and recent bills that have changed the law relating to the payer of medical costs in automobile crashes. Because no-fault automobile insurance has the primary obligation for economic loss from bodily injury in an automobile crash, the law and bills relate to no-fault insurance.

Statutory Framework

Generally, the term "no-fault automobile insurance" refers to a type of automobile insurance under which claims for personal injury are made against a claimant's own insurance company rather than against the insurer of the party at fault.

In 1975 the Legislative Assembly enacted the North Dakota Auto Accident Reparations Act, which provided for a no-fault automobile insurance system. This no-fault automobile insurance law became effective on January 1, 1976, and remains in effect, with amendments. North Dakota Century Code Chapter 26.1-41 comprises most of the state's no-fault automobile insurance law. Under this system, the owner of an insured motor vehicle (secured person and secured motor vehicle) is required to have insurance coverage for the payment of basic no-fault benefits and liabilities covered under motor vehicle liability insurance.

Under a no-fault system, there are limitations on the right of a victim to sue if injured in a motor vehicle accident. North Dakota Century Code Chapter 26.1-41 precludes tort actions by injured parties for damages covered by no-fault insurance. Chapter 26.1-41 prohibits all tort actions for the bodily injury unless there is a serious injury. A serious injury means an accidental bodily injury that results in death, dismemberment, serious and permanent disfigurement, or disability beyond 60 days, or which results in medical expenses in excess of $2,500.

Under NDCC Section 26.1-41-13, a basic no-fault insurer has the primary obligation for economic loss from bodily injury unless there is workers' compensation coverage. Under Section 26.1-41-13(3), the basic no-fault insurer pays for the first $10,000 of medical expenses and the health care insurer pays the remainder. This coordination of benefits is designed to ensure that there is not a double payment.

Legislative History

Coordination of Benefits

In 1977, House Bill No. 1510 created the amount of no-fault medical expenses a no-fault insurer may coordinate with a health care insurer in the amount of $5,000. As introduced, the bill would have repealed the coordination of benefits provisions. Before the passage of House Bill No. 1510, if an individual had medical expenses in excess of $15,000, depending on the coordination of benefits, the first $15,000 might be paid by the no-fault insurer and the excess paid by the health care insurer. However, this did not leave any money left under the no-fault benefits for work loss, replacement services, or death benefits. The amendment allowed the no-fault carrier to subrogate against the health care insurer after the first $5,000 of no-fault benefits are paid, thereby leaving more benefits for items other than medical expenses.

In 1981, Senate Bill No. 2061 included health maintenance organizations as health care insurers in the coordination of benefits provision.

In 1987, Senate Bill No. 2413 provided that a basic no-fault insurer may coordinate any benefits it is obligated to pay for medical expenses as a result of accidental bodily injury in excess of $5,000. The bill clarified the coordination of benefits happened after the first $5,000 in medical expenses.

In 1991, Senate Bill No. 2089 clarified the exclusion of basic no-fault insurers from the prohibition from coordinating benefits without providing the purchaser with an equitable reduction or savings in cost. In addition, the bill allowed a basic no-fault insurer to recover all no-fault benefits, not solely basic no-fault benefits, from another no-fault insurer when tort law would require recovery.

In 2003, Senate Bill No. 2275 increased the amount of no-fault medical expenses a no-fault insurer may coordinate with a health care insurer from in excess of $5,000 to $10,000. In short, the no-fault insurer pays the first $10,000 of medical expenses and the health care insurer pays medical expenses after $10,000. Generally, health care insurers were for the increase because inflation had increased the cost of medical procedures. Because the threshold was at $5,000 for 18 years, health care insurers had to pay more medical expenses as inflation caused more expenses to exceed the threshold. Generally, no-fault insurers were against the increase because health care insurers are more efficient at administering insurance for medical expenses. One example showed that health care insurers had over a 30 percent lower expense ratio than no-fault insurers.

Other Major Legislation

In 1985, House Bill No. 1528 increased the maximum level for basic no-fault benefits from $15,000 to $30,000 and optional excess no-fault benefits for motor vehicle insurance from $40,000 to $80,000. The bill increased the threshold amount defining serious injury from $1,000 to $2,500 of medical expenses. The stated reason for the bill was that $15,000 was not large enough to cover serious accidents. In those accidents, if an individual does not have medical insurance, the individual must pay the balance above the no-fault limits. The reason for the increase in the medical expenses threshold was to balance the increased benefit with the removal of more of the right to sue.

In 1989, House Bill No. 1467 increased the time for filing a no-fault insurance claim in an action to recover further benefits for a loss in which the basic or optional excess no-fault benefits have been paid from two to four years after the last payment of benefits. The time for filing was increased in an action for benefits for survivors' income loss and replacement services loss and funeral expenses for one to two years after the death or from four to six years after the accident from which the death results, whichever is earlier. The time for filing was increased in an action to recover further survivors' income loss or replacement services loss benefits from two to six years after the last payment for benefits. The bill increased the time for filing if basic or optional excess no-fault benefits have been paid for loss suffered by an injured person before death and action to recover survivors' income loss or replacement services loss benefits from one to two years after death or from four to six years after the last benefits are paid, whichever is earlier.

In 1991, Senate Bill No. 2555 increased the funeral expense benefit from $1,000 to $3,500. The increased benefit was expected to cost approximately 22 cents per vehicle per year.

In 2005, Senate Bill No. 2047 made modifications to mandatory no-fault automobile insurance. Basically, no-fault insurance pays for medical expenses for accidental bodily injury from a crash while occupying the motor vehicle. The bill removed from the definition of "accidental bodily injury" injury resulting from entering or alighting from a stopped motor vehicle and not caused by another motor vehicle. The bill changed the definition of "medical expenses" so that the charges must be usual and customary instead of merely reasonable. The bill expressly included diagnostic services as medical expenses and excluded charges for drugs sold without a prescription, experimental treatments, and medically unproven treatments. The bill changed the definition of "occupying" to exclude getting into or out of a motor vehicle. The bill provided for a court to order the insured to reimburse the insurer for an independent medical examination that the insured failed to appear for without good cause.

Senate Bill No. 2047 also repealed NDCC Section 26.1-41-17, which provided for equitable allocation of losses among insurers. This section provided for an insurer to recover no-fault benefits paid to an injured person from the motor vehicle liability insurer of a secured person based upon tort law principles. In other words, if an individual drives a motor vehicle and causes an accident with another motor vehicle, the individual in the other vehicle goes to that individual's insurance company to collect no-fault benefits; after that the insurance company can proceed against the first individual's insurance company for equitable allocation. The legislative history reveals that under this procedure, insurance companies recover as much as they pay over time. As such, this reimbursement system drives up the cost of administration with no benefit to insurers.

No-Fault Insurance in Other States

Saskatchewan has had no-fault insurance since 1946 and Puerto Rico has had no-fault insurance since 1968. The first state to adopt the modified no-fault insurance system was Massachusetts in the early 1970s. In the 1970s no-fault laws were enacted in 16 states. Since that time, five of those states repealed no-fault laws--Colorado, Connecticut, Georgia, Nevada, and Pennsylvania. Although Pennsylvania repealed its law in 1984, it adopted a new law in 1990.

Twelve states have some form of no-fault insurance. No state has enacted a no-fault law since 1976.

Theoretically, there are three ways to classify no-fault insurance:

- Absolute no-fault.
- Modified no-fault.
- Choice no-fault.

Absolute no-fault is when a driver relinquishes the right to sue for pain and suffering in exchange for coverage for all economic loss. No state has this form of no-fault. The state with the closest form to absolute no-fault is Michigan. Michigan has unlimited coverage and it is very difficult to sue for noneconomic loss.

Modified no-fault is coverage in which first-party benefits are provided regardless of fault and the right to sue for pain and suffering is permitted only after meeting a statutorily defined threshold. Some states use a dollar threshold and some states use a verbal threshold. Every state with a no-fault law is a modified no-fault state. These states are Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah.

Of the states that are modified no-fault states, three are choice no-fault states. Under this system, a driver may choose to be included in the modified no-fault system or the tort system. States with this form of no-fault coverage are New Jersey, Pennsylvania, and Kentucky.

"Add-on" insurance is expanded first-party coverage that has no-fault benefits for medical expenses and lost wages but does not restrict lawsuits for pain and suffering. Although this type of insurance is closely related to no-fault, it is not no-fault. The reason the coverage is called "add-on" is because it is added on to the existing tort liability system. The nine add-on states are Arkansas, Delaware, Maryland, Oregon, South Carolina, South Dakota, Texas, Virginia, and Washington.

The remaining 29 states are tort liability states. An individual injured in a motor vehicle accident must collect payment from the at-fault driver, if any, and must be able to prove negligence. However, some vehicle owners purchase medical payments coverage to provide personal injury protection.

Colorado

The most recent state to convert to a tort system, after being in a no-fault system, is Colorado. Colorado's no-fault insurance statutes sunsetted on July 1, 2003. During the 2003 session, the General Assembly of Colorado considered a number of bills to reform the no-fault insurance system. However, legislation was not adopted to reform the no-fault system. The General Assembly considered bills with many cost-saving provisions, including a bill that would have reduced average premiums for no-fault insurance by as much as 30 percent. The most viable options appeared to have died after intense lobbying efforts by trial lawyers and health care providers. This resulted in the application of the sunset clause and a return to the tort system.

The impetus for change was that Colorado's average insurance premiums were the ninth highest in the country. This resulted in the Governor challenging the General Assembly to either fix the "broken" no-fault insurance system or join the other states that have a tort system. The Governor indicated he would not sign any legislation extending no-fault unless there were significant savings attached to the legislation. He also expressed comfort with going to a tort system.

Commentators stated the main reason for the need for change to the no-fault system was it provided expensive and broad medical coverage. Policyholders were required to buy $130,000 in no-fault coverage. This was the third largest medical benefits package in the country. It was argued that this much coverage was not required because the average claim was about $7,800 and 96 percent of the claims were under $25,000. In addition, the law did not have delineated cost-containment standards but limited the medical expenses to those that were reasonable. This allowed for a broad range of treatments to be included under the no-fault insurance.

The Colorado Health and Hospital Association wants to reinstitute mandatory medical coverage on automobile insurance policies because of the shift of costs to medical facilities after the repeal of no-fault. On August 18, 2005, the Colorado interim Committee on Auto Insurance received a memorandum from the Colorado Legislative Council staff on funding for trauma care and emergency medical services. The memorandum stated "because of the growing financial problems of trauma centers, many states have passed legislation to establish dedicated funding sources for trauma centers or to provide temporary funding until long-term solutions are addressed.

Pennsylvania

In the *Journal of Insurance Regulation* published by the National Association of Insurance Commissioners in 2004, an article entitled "Choice Automobile Insurance: The Experience of Kentucky, New Jersey, and Pennsylvania" provided a history on conclusions about Pennsylvania. Pennsylvania became a choice no-fault state after having a near absolute system repealed in favor of a tort system. The original no-fault system allowed accident victims to recover unlimited medical and rehabilitation benefits and had a tort threshold of $750. According to the article, given those standards it is not surprising that automobile insurance premiums in Pennsylvania increased 875 percent over the life of the original no-fault system; however, converting to a tort system did little to help.

Under the current system, Pennsylvania drivers are offered two options--limited tort and full tort. Drivers who choose full tort preserve the right to seek noneconomic damages for injuries caused by others. Full tort is the default choice of the driver. If the driver wishes to choose limited tort, then the driver must choose in writing. Policyholders who choose limited tort can expect a minimum savings of 15.3 percent relative to full tort. Because limited tort is less expensive, insurance agents have little incentive to recommend it; however, about 60 percent of the drivers in metropolitan areas and 33 percent of drivers in counties where premiums are relatively low choose limited tort.

Both full and limited tort drivers are required by law to purchase bodily injury coverage as well as personal

injury protection. The legal personal injury protection minimum is $5,000 and if a limited tort driver sustains economic injuries in excess of this limit, the driver can sue the at-fault driver for the remainder of economic damages. In short, Pennsylvania drivers are essentially offered a choice between a tort system with a mandatory personal injury protection add-on and a no-fault system with a verbal threshold.

In 2005 the Insurance Research Council released a study comparing automobile injury claims in New Jersey and Pennsylvania, two states that have choice automobile insurance systems. Pennsylvania had lower claim costs and hence lower insurance rates. The study attributed the lower claims to Pennsylvania's stricter restrictions on no-fault claims for pain and suffering and half of the visits to a chiropractor, uses of MRIs, and hiring attorneys as compared to New Jersey. Pennsylvania also has medical cost-containment provisions that limit reimbursement levels for medical care to 110 percent of the prevailing Medicare rate.

Testimony and Discussion

The committee received testimony from the North Dakota Healthcare Association on the repeal of no-fault in Colorado and the effect on hospitals. The association supports the retention of mandatory no-fault insurance. It was argued that the repeal of no-fault would have negative consequences to large institutions with trauma centers.

A representative from the insurance industry informed the committee that the major issue for insurers is excessive treatments by chiropractors and massage therapists. The committee was informed that the cause for this may be that consumers like chiropractic care and massage therapy and are motivated to attribute any ache or pain to an automobile accident to receive this treatment.

Committee discussion included that if no-fault insurance is repealed, health care insurance premiums will increase. In addition, one member of the committee was informed by a legislator in Colorado that the repeal of no-fault created a cost-shift from a payer to no payer.

REPORT ON IMPROVEMENTS IN TRANSPORTATION INFRASTRUCTURE BY THE UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Section 23 of Senate Bill No. 2032 provided for a report to be given by the Upper Great Plains Transportation Institute before July 1, 2006, on the outcome of the institute's study of how improvements to the transportation infrastructure of this state might enhance the business climate and the state's competitive position in economic development. In addition, Senate Bill No. 2018 provided a general fund appropriation of $360,000 to the Upper Great Plains Transportation Institute to conduct this study.

The Upper Great Plains Transportation Institute is established by NDCC Chapter 54-53. The institute is administered by and in conjunction with North Dakota State University. The purpose of the institute is to conduct research in the field of transportation and logistics to better understand the marketing factors associated with the geographical location of the state and the Upper Great Plains in the field of transportation and their influence on the socio-economic systems of the state, region, and country. Research areas include the study of commodity and other freight movements into and out of the state to better understand the various factors affecting the marketing of area products and services.

The institute consults with an Advisory Transportation Council made up of a diverse group of governmental and private sector interests. The council was made up of one representative from the Greater North Dakota Chamber of Commerce, the Public Service Commission, the North Dakota Farmers Union, the North Dakota Grain Growers Association, the Wheat Commission, the Department of Commerce, the North Dakota Grain Dealers Association, the North Dakota Motor Carriers Association, the Aeronautics Commission, the Department of Transportation, the Agriculture Commissioner, the North Dakota Association of General Contractors, the North Dakota railway industry, and the North Dakota primary sector of manufacturing.

The study made the following highway recommendations:

- A preservation program that keeps pavement in good condition generates substantial economic benefits.
- Highway access to key industrial and agricultural facilities should be analyzed on a case-by-case basis.
- The benefits and costs of eliminating or mitigating spring load limits on key highway segments should be analyzed on a case-by-case basis; however, load limit elimination on highway segments serving key agricultural and manufacturing locations may be cost-effective.
- New mechanistic pavement analysis techniques offer potential for improved forecasting of pavement lives and may make it possible to shorten the durations of spring load restrictions in some cases and identify more cost-effective designs. As such, it is important to develop data and input to fully utilize these advanced procedures.
- Selective case studies should be undertaken of highway load limits in counties so that a cost-effective analysis plan can be developed. A great deal of information must be developed in order to assess the benefits and costs of uniform county load limits.

The study made the following rail recommendations:

- The Department of Transportation should continue its rail assistance program.
- Additional funds are needed for rail assistance programs.
- Increased axle loads, travel speed, and efficiency will make the state more attractive to business.

The study made the following air service recommendations:

- Infrastructure and capacity constraints that limit growth and expansion need to be addressed to accommodate increased demand.
- Encroachment of incompatible land development and attendant concerns with noise and safety need to be addressed.
- Funding will become a greater problem as time passes so there is an urgency to developing air service.

The committee was informed that the figures in the study are based on 2005 construction costs and actual construction costs are greater now. In addition, the cost to travelers also has increased because of the increase in the price of petroleum products. The committee was informed that presently the state has approximately 90 percent of the highway transportation funds available that the state needs to ideally have available.

TRIBAL AND STATE RELATIONS COMMITTEE

House Bill No. 1524 (2005) established the Tribal and State Relations Committee. The Tribal and State Relations Committee is composed of the Legislative Council chairman or the chairman's designee; three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives; and three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate. The Legislative Council chairman, or the chairman's designee, serves as chairman of the committee.

House Bill No. 1524 directed the Tribal and State Relations Committee to conduct joint meetings with the Native American Tribal Citizens' Task Force to study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development. After the joint meetings have concluded, the committee is to meet to prepare a report on its findings and recommendations, together with any legislation required to implement those recommendations, to the Legislative Council. The Native American Tribal Citizens' Task Force is composed of six members, including the executive director of the Indian Affairs Commission, or the executive director's designee; the chairman of the Standing Rock Sioux Tribe, or the chairman's designee; the chairman of the Spirit Lake Nation, or the chairman's designee; the chairman of the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation, or the chairman's designee; the chairman of the Turtle Mountain Band of Chippewa Indians, or the chairman's designee; and the chairman of the Sisseton-Wahpeton Oyate, or the chairman's designee. House Bill No. 1524 has an expiration date of July 31, 2007.

Committee members were Senators Bob Stenehjem (Chairman), Randel Christmann, Stanley W. Lyson, and David O'Connell and Representatives Rick Berg, Duane DeKrey, and Kenton Onstad.

Members of the Native American Tribal Citizens' Task Force were Ken W. Davis, Chairman, Turtle Mountain Band of Chippewa Indians; Gerald Flute, Chairman, Sisseton-Wahpeton Oyate; Tex G. Hall, Chairman, Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation; Ron His-Horse-Is-Thunder, Chairman, Standing Rock Sioux Tribe; Cheryl Kulas, Executive Director, Indian Affairs Commission; and Myra Pearson, Chairman, Spirit Lake Nation. James "J. C." Crawford, Sisseton-Wahpeton Oyate, was a member of the Native American Tribal Citizens' Task Force until replaced by Chairman Flute.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

FEDERAL INDIAN LAW AND POLICY

Indian law is a very complex area of law. Due to the sovereign character of Indian tribes, most Indian law is necessarily federal in nature. Under the federal system, there have been several distinct eras of federal-tribal relations.

During the initial era of federal-tribal relations, 1789 to approximately 1820, known as the nonintercourse era, the federal government sought to minimize friction between non-Indians and Indians by limiting the contacts between these groups. This era was followed by the Indian removal era, approximately 1820 to 1850, when the federal government sought to limit friction between non-Indians and Indians by removing all Indians from east of the Mississippi River to open land in the Oklahoma Territory. This era was followed by what may be called the reservation era, 1850 to 1887, when as non-Indians continued to move westward and friction developed between non-Indians and Indians, the federal government developed a policy of restricting Indian tribes to specified reservations. This policy was implemented by treaty in which each tribe ceded much of the land it occupied to the United States and reserved a smaller portion to itself. This is the origin of the term reservation.

With the enactment of the General Allotment Act of 1887, or Dawes Act, United States-Indian relations entered a new era. This era is known as the allotment era because the General Allotment Act authorized the President to allot portions of reservation land to individual Indians. Under this system, allotments of 160 acres were made to each head of a family and 80 acres to others, with double those amounts to be allotted if the land was suitable only for grazing. Title to the allotted land was to remain in the United States in trust for 25 years, after which it was to be conveyed to the Indian allottee in fee free of all encumbrances. The General Allotment Act also authorized the Secretary of the Interior to negotiate with tribes for the disposition of all excess lands remaining after allotment for the purpose of non-Indian settlement. The General Allotment Act resulted in a decline in the total amount of Indian-held land from 138 million acres in 1887 to 48 million acres in 1934.

The allotment era was followed by the Indian reorganization era, 1934 to 1953, during which the land base of the tribes was protected by extending indefinitely the trust period for existing allotments still held in trust and encouraging tribes to establish legal structures for self-government. The Indian reorganization era was followed by the termination and relocation era, 1953 to 1968, when the federal government sought to terminate tribes that were believed to be prosperous enough to become part of the American mainstream, terminate the trust responsibility of the federal government, and encourage the physical relocation of Indians from reservations to seek work in large urban centers.

The policy of termination and relocation was regarded as a failure and the modern tribal

self-determination era began with the Indian Civil Rights Act of 1968. The effect of this Act was to impose upon the tribes most of the requirements of the Bill of Rights. The Indian Civil Rights Act of 1968 also amended Public Law 280 so that states could no longer assume civil and criminal jurisdiction over Indian country unless the affected tribes consented at special elections called for this purpose. There have been a number of federal Acts since 1968 designed to enhance tribal self-determination. These include the Indian Financing Act of 1974, which established a revolving loan fund to aid in the development of Indian resources; the Indian Self-Determination and Education Assistance Act of 1975, which authorized the Secretaries of the Interior and of Health, Education, and Welfare to enter contracts under which the tribes themselves would assume responsibility for the administration of federal Indian programs; the Indian Tribal Government Tax Status Act of 1982, which accorded the tribes many of the federal tax advantages enjoyed by states, including that of issuing tax-exempt bonds to finance governmental projects; the Tribally Controlled Schools Act of 1988, which provided grants for tribes to operate their own tribal schools; the Indian Child Welfare Act of 1978; the American Indian Religious Freedom Act of 1978; and the Indian Gaming Regulatory Act of 1988.

STATE-TRIBAL RELATIONS

Probably the most important concept in state-tribal relations is the concept of sovereignty. Both the states and Indian tribes are sovereigns in the federal system. In *Johnson v. McIntosh*, 21 U.S. 543 (1823), the United States Supreme Court stated "[T]he rights of the original inhabitants were, in no instance, entirely disregarded; but were, necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil . . . but their rights to complete sovereignty, is as independent nations, were necessarily diminished, and their power to dispose of the soil, at their own will, to whomsoever they please, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it." In *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), the Supreme Court held that the Cherokees could not be regarded as a foreign state within the meaning of Article III of the Constitution, so as to bring them within the federal judicial power and permit them to maintain an action in the Supreme Court. However, Chief Justice John Marshall characterized Indian tribes as "domestic dependent nations." In *Worcester v. Georgia*, 31 U.S. 515 (1832), the Supreme Court further discussed the status of Indian tribes. The Court stated that "[t]he Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed . . . ." The Court concluded that the laws of Georgia have no force in Cherokee territory. Based upon these early cases, the tribes are sovereign and free from state intrusion on their sovereignty. Thus, state laws have generally been held inapplicable within the boundaries of reservations, although exceptions have been made under the plenary power of Congress to limit tribal sovereignty.

STATE-TRIBAL COOPERATIVE AGREEMENTS

North Dakota Century Code (NDCC) Chapter 54-40.2 provides for agreements between public agencies and Indian tribes. As used in this chapter, public agency means any political subdivision, including a municipality, county, school district, and any agency or department of North Dakota. Tribal government means the officially recognized government of an Indian tribe, nation, or other organized group or community located in North Dakota exercising self-government powers and recognized as eligible for services provided by the United States. The term does not include an entity owned, organized, or chartered by a tribe that exists as a separate entity authorized by a tribe to enter agreements of any kind without further approval by the government of the tribe.

North Dakota Century Code Section 54-40.2-02 provides that any one or more public agencies may enter an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments is authorized to perform by law and to resolve any dispute in accordance with Chapter 54-40.2 or any other law that authorizes a public agency to enter an agreement. This section provides that the agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

North Dakota Century Code Section 54-40.2-03.1 provides that after the parties to an agreement have agreed to its contents, the public agency involved is required to publish a notice containing a summary of the agreement in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice must also be published in any newspaper of general circulation for the benefit of any members of the tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must state that the public agency will hold a public hearing concerning the agreement upon the request of any resident of the county in which the notice is published if the request is made within 30 days of the publication of the notice.

North Dakota Century Code Section 54-40.2-03.2 provides that if the public agency involved receives a request pursuant to Section 54-40.2-03.1, the public agency is required to hold a public hearing, before submitting the agreement to the Governor, at which any person interested in the agreement may be heard. Notice of the time, place, and purpose of the hearing must be published before the hearing in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice of the public hearing must also be published in a

newspaper of general circulation published for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must describe the nature, scope, and purpose of the agreement and must state the times and places at which the agreement will be available to the public for inspection and copying.

North Dakota Century Code Section 54-40.2-04 provides that as a condition precedent to an agreement made under Chapter 54-40.2 becoming effective, the agreement must have the approval of the Governor and the governing body of the tribes involved. If the agreement so provides, it may be submitted to the Secretary of the Interior for approval.

North Dakota Century Code Section 54-40.2-05 provides that within 10 days after a declaration of approval by the Governor and following approval of the agreement by the tribe or tribes affected by the agreement and before commencement of its performance, the agreement must be filed with the Secretary of the Interior, the clerk of court of each county where the principal office of one of the parties is located, the Secretary of State, and the affected tribal government.

North Dakota Century Code Section 54-40.2-05.1 provides that upon the request of a political subdivision or any tribe affected by an approved agreement, the Indian Affairs Commission is required to make findings concerning the utility and effectiveness of the agreement taking into account the original intent of the parties and may make findings as to whether the parties are in substantial compliance with all provisions of the agreement. In making its findings, the commission is required to provide an opportunity, after public notice, for the public to submit written comments concerning the execution of the agreement. The commission is required to prepare a written report of its findings made pursuant to Section 54-40.2-05.1 and to submit copies of the report to the affected political subdivision or public agency, the Governor, and the affected tribes. The findings of the commission made under Section 54-40.2-05.1 are for informational purposes only. In an administrative hearing or legal proceeding in which the performance of a party to the agreement is at issue, the findings may not be introduced as evidence, or relied upon, or cited as controlling by any party, court, or reviewing agency, nor may any presumption be drawn from the findings for the benefit of any party.

North Dakota Century Code Section 54-40.2-06 provides that an agreement made pursuant to Chapter 54-40.2 must include provisions for revocation. Section 54-40.2-08 enumerates specific limitations on agreements between public agencies and Indian tribes. This section provides that Chapter 54-40.2 may not be construed to authorize an agreement that enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either North Dakota or tribal governments located in North Dakota; authorize a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country; authorize a public agency or tribal government to enter into an agreement except as authorized by its own organizational documents or enabling laws; or authorize an agreement that provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States. Finally, Section 54-40.2-09 provides that Chapter 54-40.2 does not affect the validity of any agreement entered between a tribe and a public agency before August 1, 1999.

2005 LEGISLATION

The 59th Legislative Assembly enacted several bills relating to Indian issues. House Bill No. 1081 required a school district that is contemplating entering an agreement with an Indian tribe to provide written notice to the Superintendent of Public Instruction that it is contemplating entering an agreement and consider written recommendations that the Superintendent makes regarding the agreement.

House Bill No. 1190 set the policy of determining further expansion of basic care facilities in the state. The bill stated the two circumstances under which basic care beds may be added between August 1, 2005, and July 31, 2007, provided the process for transferring basic care beds and addressed requirements for basic care beds acquired by Indian tribes.

House Bill No. 1191 set the policy of expansion of nursing facilities in the state. The bill retained one exception to limiting expansion of nursing facility beds, allowing a facility to revert a basic care bed to a nursing bed; allowed transfers of beds from one facility to another; provided a nursing bed that is converted to a basic care bed may be transferred as a basic care bed, but that bed may then be relicensed as a nursing bed; and addressed requirements for nursing beds acquired by Indian tribes.

House Bill No. 1254 provided that acceptable identification for the purpose of voting means identification that allows the individual's residential address and date of birth and may include an official form of identification issued by the state or a tribal government, a form of identification described by the Secretary of State, or a combination of those forms of identification.

House Bill No. 1526 required the Industrial Commission to establish at the Bank of North Dakota a guaranty program for a business located in the state which contracts with a business located in the state which is either owned by one of the five North Dakota Indian tribes or which is an American Indian-owned small business located in the state. The Industrial Commission is required to limit participation in the guaranty program so that the cumulative value of the guaranteed portion of the receivables under the program does not exceed $5 million at any one time. The bill is effective through June 30, 2007.

Senate Bill No. 2012 increased motor vehicle fuels and special fuels tax rates from 21 cents per gallon to 23 cents per gallon. The bill also allowed an American Indian to claim a refund of motor vehicle fuel or special fuel taxes on fuel purchased from a retail fuel dealer located on the Indian reservation where the American Indian is an enrolled member. The refund provision applies to purchases made after December 31, 2004.

Senate Bill No. 2041 provided that an individual hunting on Indian land pursuant to a tribal hunting license is not required to possess a state license to hunt on that land. For purposes of this provision, Indian land includes land within the exterior boundaries of an Indian reservation held in trust by the federal government for the benefit of an Indian tribe or an Indian and land within the exterior boundaries of an Indian reservation owned in fee by an Indian tribe or an Indian. The bill also allowed properly tagged game birds legally taken on Indian land to be possessed, transported, or shipped in state and big game legally taken on Indian land to be transported, shipped, or possessed off that land.

Senate Bill No. 2372 directed the Legislative Council to study the feasibility and desirability of establishing an organization or ombudsman to support and coordinate federal, tribal, state, including institutions of higher education, and local government and private efforts to discourage destructive behavior, including alcohol and drug abuse and tobacco use. This responsibility was assigned to the Advisory Commission on Intergovernmental Relations.

House Concurrent Resolution No. 3001 directed the Legislative Council to study the legal and enforcement issues relating to child support collections on Indian reservations, including state and tribal court jurisdictions, recognition of income-withholding orders, and logistics involved in transferring child support collected to custodial parents. This study was not prioritized.

House Concurrent Resolution No. 3019 urged the United States Army Corps of Engineers to retain sufficient water in the upper portion of Lake Oahe to ensure a stable water supply for the residents of the Standing Rock Indian Reservation and surrounding communities. The resolution also complimented the Governor and the Attorney General on their efforts and urged them to continue their actions to ensure federal officials retain sufficient water in the upper portion of Lake Oahe to protect the health and well-being of the citizens of the area.

House Concurrent Resolution No. 3031 directed the Legislative Council to study issues relating to tribal-state relations, including methods for encouraging greater tribal-state cooperation; the promotion of economic development on Indian reservations in the state; the identification and study of health care, child welfare services, social services, environmental protection, education, and law enforcement issues on the reservations; the identification and study of the social and fiscal impact of providing social services in counties within and adjacent to the reservations; and the identification and proposals for the resolution of the water issues affecting the state and the tribes. This study was not prioritized.

Senate Concurrent Resolution No. 4024 urged Congress and the Secretary of the United States Department of the Interior to provide funding for the United Tribes Technical College.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

The committee reviewed implementation of Section 36 of Senate Bill No. 2018 (2005), the appropriation bill for the Department of Commerce, which expanded the responsibilities of the North Dakota American Indian Business Office to include the provision of services to assist in the formation of partnerships between American Indian and non-American Indian businesses.

Representatives of the Department of Commerce reported that the goals of this office are to provide leadership in state government to work in partnership with tribal and individual economic developers, businesses, and entrepreneurs to help grow American Indian-led businesses in the state. The office also is charged with facilitating partnerships between Indian and non-Indian businesses. Representatives of the Department of Commerce reported that a director has been hired and an additional responsibility of the office will be to improve communication between non-Indian businesses and tribal-owned and Indian-owned businesses. The functions of the office will include conducting strengths, weaknesses, opportunities, and threats analysis with top American Indian businesses, facilitating partnerships between Indian and non-Indian businesses, providing a link to government and private resources and programs, promoting the Bank of North Dakota tribal-state guaranty program, building a resource data base, communicating government procurement opportunities to American Indian businesses and helping to leverage their status, understanding current government programs and keeping up to date on changing regulations, providing recommendations to the Legislative Assembly on law and regulation changes, and working closely with the federal Small Business Administration.

The committee reviewed the implementation of the tribal-state loan guaranty program. The program was created by House Bill No. 1526 (2005). Representatives of the Bank of North Dakota reported that the Bank had formed a tribal-state guaranty working group to develop recommendations concerning implementation of the program. The working group reported that the real issue is communication between non-Indian business and tribal-owned or Indian-owned business. The working group noted that the North Dakota American Indian Business Office should facilitate improved communication between these entities. The working group reported that there are a number of loan guaranty programs available from the Bureau of Indian Affairs, Small Business Administration, United States Department of Agriculture's rural development business and industry program, and the Bank's beginning entrepreneur loan program which may be accessed. The working group reported that there does not appear to be payment problems between holders of

8A contracts and subcontractors, but there may be an issue with attracting contractors to perform work on reservations, although there are alternative methods of attracting these contractors such as escrow of funds and letters of credit. Finally, the working group reported that the Bank of North Dakota as a financial institution could help with the timing differences between paying out on a claim and final settlement, but the Bank does not have the legal expertise to review contracts required to be in the performance and payment bond business.

TAXATION IN INDIAN COUNTRY

The committee reviewed existing tax collection agreements between the state and Indian tribes in North Dakota. North Dakota Century Code Chapter 54-40.2 addresses agreements between public agencies and Indian tribes and specifically provides authority for a public agency to perform administrative services. This includes the authority for the Tax Commissioner to administer a tax collection agreement that previously has been approved by the Governor and the affected tribe. The committee learned the first tax collection agreement entered by the state occurred on May 28, 1993, with the Standing Rock Sioux Tribe. This agreement provides for the collection of cigarette and tobacco products taxes. A second tax collection agreement was entered by the state on December 1, 1998, also with the Standing Rock Sioux Tribe. This agreement provides for the collection of motor fuel and special fuel taxes.

Representatives of the Tax Commissioner reported the cigarette and tobacco products tax collection agreement between the state and the Standing Rock Sioux Tribe was a result of the tribe approving a tribal cigarette and tobacco products tax ordinance. The ordinance provides for the administration of the taxes in a manner similar to that provided for state cigarette and tobacco products taxes and having the same tax rates. For state cigarette and tobacco products taxes, licensed distributors located in this state are required to pay these taxes on cigarettes and tobacco products intended for sale to retailers in this state. This means cigarettes and tobacco products purchased by retailers from licensed distributors have been subjected to tax. However, for sales occurring on tribal lands, an exemption exists in the state's cigarette and tobacco products tax law which allows a licensed distributor to sell untaxed products to Indian retailers. Products intended for non-Indian retailers on tribal lands remain taxable. Under the tax collection agreement with the Standing Rock Sioux Tribe, only licensed distributors may sell cigarettes and tobacco products to tribal retailers, and out-of-state distributors or retailers who are not licensed are not authorized to sell these products to tribal retailers.

The motor fuel and special fuel taxes tax collection agreement between the state and the Standing Rock Sioux Tribe was the result of the tribe approving a motor fuel and special fuel tax ordinance. For purposes of the tribal tax, motor fuel includes all products commonly known or sold as gasoline and includes agriculturally derived alcohol blended with gasoline. Special fuels means all clear diesel fuel sold for use in a motor vehicle intended for use on public roads. The motor fuel and special fuel tax ordinances apply only to the sale of fuel intended for use in motor vehicles to be used on public roads. The tax ordinances for the motor fuel and special fuel provide for the administration of the taxes in a similar manner as those provided by the state's fuel tax laws, including the same tax rates. The tribe uses the fuel tax revenues received from the tribal fuel taxes to maintain roads under the tribe's jurisdiction.

The committee learned that both of the tax collection agreements between the state and the Standing Rock Sioux Tribe recognize the tribal share of tax revenues collected on the reservation to equal 75 percent of the total tax collections less a small administration fee to be paid the state for the service of collecting the tribal taxes. The remaining 25 percent represents the sales subject to state taxes. The tribal tax is paid to the tribe on a monthly basis and the remainder is retained by the state.

The state cigarette and tobacco products portion is deposited in the general fund and the state fuel tax portion is deposited in the highway distribution fund. The formula that resulted in the 75 percent and 25 percent fixed allocation of taxes for the agreement between the state and the Standing Rock Sioux Tribe was approved based upon population demographics provided by the United States Bureau of the Census at the time the agreements were entered. The following table shows the tax collection agreement distributions for the Standing Rock Sioux Tribe for fiscal years 2001 through 2005.

Standing Rock Sioux Tribe Tax Collection Agreement Distributions for Fiscal Years 2001 to 2005*

	Cigarette and Tobacco Products	Motor Fuels	Special Fuels
Fiscal year 2001	$70,985	$296,424	$31,208
Fiscal year 2002	$95,185	$320,145	$23,317
Fiscal year 2003	$61,872	$299,667	$22,504
Fiscal year 2004	$74,403	$285,362	$18,986
Fiscal year 2005	$74,910	$272,518	$222,351

*These amounts are after the administrative fee and adjustments (refunds).

For those tribes that do not currently have a tax collection agreement for cigarette and tobacco products, the state's authority in administering and collecting taxes is limited. The state is permitted to apply tax on products sold by an Indian retailer to a nonmember of the tribe, but the tribe's sovereign immunity prevents the state from requiring the Indian retailer operating on tribal lands to participate in the collection and remittance of taxes.

For fuel purchases occurring on tribal lands other than the Standing Rock Indian Reservation, and where a tax collection agreement does not exist and where the fuel has been subjected to state fuel tax laws, tribal members may apply for refunds of fuel taxes directly from the Tax Commissioner. The 2005 Legislative Assembly approved legislation that provides a refund of tax for fuel purchased by tribal members. To qualify for this refund, a person must be a member of a tribe located in this state, the fuel must have been purchased from a retailer or distributor located on the tribal lands of

the member's tribe, and the fuel must have been subject to the state's fuel taxes. The actual claim for refund must then be accompanied by the original receipts or invoices for the fuel purchases or an affidavit from the seller certifying the fuel purchases. The state's fuel tax laws provide a provision identifying tribal agencies as being eligible for refund for fuels used in tribal agency vehicles.

Concerning administration of tax collection agreements, representatives of the Tax Commissioner reported that tax collection agreements between the state and a tribe provide a means for the tribe to ensure state taxes are not applied incorrectly to enrolled members based on the tribe's sovereign immunity, yet enable the state to collect taxes owed by nonmembers of the tribe. The benefits of tax collection agreements, such as those between the Standing Rock Sioux Tribe and the state, allow the tribe to use the Tax Commissioner's tax collection processes and thereby receive a stable revenue source.

The committee learned that tribal tax ordinances in place are similar to those provided by state law. For cigarette and tobacco products, all retailers located on the Standing Rock Indian Reservation must purchase products from licensed distributors. With this requirement, the tribe and the state have assurances that cigarettes and tobacco products purchased and subsequently sold by non-Indian retailers and Indian retailers located on the Standing Rock Indian Reservation have been subjected to tax. This benefit to the tribe and the state is evidenced by the assurance that cigarette and tobacco products are not being purchased tax-free from out-of-state unlicensed distributors or retailers for which the state has no jurisdictional authority.

Although motor fuel and special fuel taxes do not prevent the sale of tax-free fuel to retailers located on the Standing Rock Indian Reservation, the tax collection agreements do provide for the registration of retailers and the monthly reporting of fuel purchases. In the event tax-free fuel is purchased by a retailer, the retailer is responsible under the agreement to make payment of the fuel tax. This reporting requirement provides assurances to both the tribe and the state that fuel intended for use in motor vehicles on tribal lands has been subjected to tax.

The committee learned that tax collection agreements between the state and tribes encourage fair competition between businesses operating on and off tribal lands. This goal is accomplished by having agreements in place that provide for similar laws and tax rates regardless of location. Representatives of the Tax Commissioner reported that tax collection agreements provide the process that can remove many of the jurisdictional issues and misunderstandings that may come to the attention of both the tribe and the state as it relates to transactions occurring on tribal land involving tribal members and nonmembers.

The committee learned for fuel purchases occurring on tribal lands other than the Standing Rock Indian Reservation, where a tax collection agreement does not exist and where the fuel has been subjected to state fuel taxes, enrolled tribal members can apply for a fuel tax refund directly from the Tax Commissioner. This fuel tax refund is subject to the same requirements as other refund programs, such as agriculture and business purposes, and that the person seeking the refund must provide a receipt for the fuel. The committee also reviewed the Tax Commissioner's education program for motor vehicle fuel tax refunds for individual American Indians.

DELIVERY OF SERVICES AND CASE MANAGEMENT SERVICES IN INDIAN COUNTRY

The committee reviewed the provision of home and community-based services case management and other home and community-based services available to tribal members and other eligible citizens who are older persons or persons with physical disabilities. Case management for home and community-based services may be defined as the process within the framework of generic social work practice of providing specialized assistance to aged and disabled individuals desiring and needing help in selecting or obtaining resources and services and in coordinating the delivery of the services in order to assist functionally impaired persons to remain in the community in the most effective manner. Specialized assistance is based on the result of a comprehensive assessment.

The committee learned the provision of home and community-based services case management is currently limited to county social service boards. Case management services are currently provided to approximately 2,057 home and community-based services consumers, 214 of whom are identified as American Indian. Other services that are available to tribal members include personal care, homemaker, family home care, chore, emergency response system, respite care, adult foster care, adult day care, nonmedical transportation, environmental modification, specialized equipment, adult residential, traumatic brain injury residential, traumatic brain injury transitional living, and traumatic brain injury supported employment. These services are funded through the long-term care services budget of the Department of Human Services, which includes service payments for elderly and disabled, expanded service payments for elderly and disabled, Medicaid state plan for personal care, Medicaid waivers for aged and disabled and traumatic brain injury, and targeted case management. Home and community-based services recipients currently have the right to choose who will provide their services for all service categories except case management.

The committee learned there are currently two tribal entities enrolled as providers of home and community-based services. In addition, several tribal members are enrolled as qualified service providers of in-home care.

The committee learned that Older Americans Act Title III-funded services are also available to tribal members. The Department of Human Services Aging Services Division contracts with each of the tribal governments except the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation, to provide

transportation, outreach, health maintenance, and congregate and home-delivered meals. In addition, each tribal government receives Title VI Older Americans Act funds directly from the Administration on Aging to provide services to elders. This includes the National Family Caregiver Support Program.

Adult protective services, provided through the regional human service centers, are available to tribal members on the Spirit Lake and Turtle Mountain Reservations through an agreement between the Lake Region Human Service Center and both of the tribal governments. The West Central Human Service Center coordinates adult protective services with the elder protection team of the Standing Rock Sioux Nation.

The committee learned that consumer choice and consumer direction are concepts increasingly supported by the federal and state governments. As part of the New Freedom Initiative, the state has applied for and received two Real Choice Systems Change grants. One of the projects funded by the first grant, through the Olmsted Commission, was to the Indian Affairs Commission to increase the cultural appropriateness of home and community-based services.

The committee learned that the Aging Services Division of the Department of Human Services is currently implementing a Real Choice Systems Change Grant Rebalancing Initiative. The goals of this grant are to increase access to and utilization of home and community-based services for people aged 60 and above and people with disabilities, to provide a financing mechanism for home and community-based programs and services, to increase choice and self-direction for people aged 60 and above and people with disabilities, to decrease reliance on institutional forms of care, and to develop quality management mechanisms for service delivery.

The committee learned that the Governor's Committee on Aging includes five members appointed to represent each of the tribal governments and the Trenton Indian Service area. Also, two of the individuals who represented North Dakota at a recent White House conference on aging were tribal members.

The committee reviewed the status of nursing facility and basic care bed licensing on the Turtle Mountain Indian Reservation. House Bill Nos. 1190 and 1191 (2005) required basic care and nursing facility beds to be licensed within 48 months of acquisition. Representatives of the Department of Human Services reported that the Turtle Mountain Band of Chippewa Indians acquired 15 basic care beds on October 22, 2004, and the 48-month period will expire on October 22, 2008. The tribe acquired 45 nursing facility beds between August 1, 2003, and October 8, 2003, and the 48-month period will expire between August 1, 2007, and October 8, 2007. Although the State Department of Health will not license an entity on tribal property, the entity must meet licensing requirements in order to be eligible for Medicaid payments. The chairman of the Turtle Mountain Band of Chippewa Indians reported the original financing package for the Turtle Mountain Band of Chippewa Indians facility was delayed when the tribe was unable to secure a grant from the United States Department of Agriculture for the facility. However, a site has been selected, feasibility studies have been completed, and the design is complete. The tribe is confident the new financing package will be completed and construction will commence in 2007. However, the facility will not be completed by August 1, 2007, when the 48-month expiration commences, and thus it will be necessary for the tribe to request an extension during the 2007 legislative session.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

The committee reviewed the interaction of child support enforcement services between the tribes and the state. One of the greatest challenges for the North Dakota Child Support Enforcement office is the jurisdictional issue that arises between the tribes and the state in an environment overshadowed by the federal government. The Child Support Enforcement office's caseload includes approximately 1,100 court orders issued by tribal courts in North Dakota. The office also handles court orders issued by other tribes throughout the county but has not tracked those separately. The office has approximately 5,000 additional cases, primarily with the Devils Lake and Bismarck regional child support enforcement units, where the office's options may be limited because it lacks jurisdiction to take the next step to obtain or enforce a court order.

The committee learned the federal government is a major player in addressing tribal child support issues, primarily through its authority to control intergovernmental operations and the ability to fund or not fund programs. The federal role has impacted child support enforcement in several ways. The Child Support Enforcement office has underwritten a tribal and state workgroup that has addressed a number of subjects and searched for solutions for existing problems. Regulations have been modified so tribes can obtain funding to start their own child support programs. The regulations authorize up to $500,000 over a two-year period for a tribe to develop and implement the needed infrastructure and provide 14 core services, either through staff or contract. Federal law prescribes that states must enact the Uniform Interstate Family Support Act, which governs reciprocity among states. However, tribes are not subject to this law; instead, they follow the Full-Faith and Credit for Child Support Orders Act, which states that a court, tribal or state, which first enters a support order over parties within its jurisdiction retains continuing, exclusive jurisdiction in the case until none of the parties reside in that jurisdiction. Representatives of the Child Support Enforcement office reported the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation has received federal approval to run its own child support program.

TRANSPORTATION FINANCE ISSUES IN INDIAN COUNTRY

Representatives of the Department of Transportation reported the department is holding annual meetings with each tribe to discuss the department's four-year

construction and transit programs. The department also is holding tribal meetings to update the state transportation plan, TransAction.

The committee learned the state has concurrent jurisdiction with the tribes on state roads that run through the reservations. For Bureau of Indian Affairs roads, the bureau, and not the state, has jurisdiction on roads located on the reservation. The committee learned that fuel tax revenues returned to the tribes may be used by the tribes to match federal transportation funds for construction and maintenance of roads on the state's reservations.

SOVEREIGN LANDS AND OIL AND GAS RESOURCE DEVELOPMENT IN INDIAN COUNTRY

The committee invited a representative of the Attorney General to discuss the issue of sovereign lands. The representative reported that beds of rivers and lakes owned by the state are known as sovereign lands. The State Engineer manages these lands with the exception of minerals that are managed by the Board of University and School Lands. The board leases the Missouri River's riverbed throughout the oil and gas-producing areas of the state, including that area within the Fort Berthold Indian Reservation's original boundaries. At least since the mid-1980s, the Land Department has issued oil and gas leases in this area and there are approximately 100 outstanding leases. Lands leased are based on the river's pre-Garrison Dam characteristics. Relying primarily on aerial photographs from the 1940s and early 1950s, the Land Department identifies the location and acres over which it asserts authority. The department has not leased the bed of Lake Sakakawea, only the old riverbed under the lake.

When North Dakota entered the Union in 1889, the state took title to the beds of all navigable waters. An origin of this title is English law. Under English law, the Crown owned navigable waterways because title to navigable waters was important to the sovereign's ability to control navigation, fishing, and other commercial activities and thus was an essential attribute of sovereignty. The Crown's title extended to waterways in the colonies. After the Revolution and the creation of the United States, the original 13 states, as sovereign successors to the Crown, assumed title to the beds of navigable waters. The original 13 states held absolute right to all their navigable waters and the soils under them. Each new state entering the Union was entitled to the same rights held by the original states; each state enters the Union on an equal footing with the original states. State title to navigable waters thus became founded on the equal footing doctrine. This doctrine also requires the federal government to hold sovereign lands in trust for future states.

The Missouri River was navigable in 1889 and, therefore, North Dakota acquired title to it. However, where navigable waters border or flow through an Indian reservation, the question has arisen whether the equal footing doctrine applies. The tension between state title under the equal footing doctrine and tribal title recognized by treaty has resulted in considerable litigation. The strong presumption to state title to land under navigable waters provides perhaps the best rationale under which the Land Department exercises jurisdiction over the minerals in question. This presumption can be overcome if the intent to do so was definitely declared or otherwise made plain. A state can be deprived of title to navigable waters but only in the most unusual circumstances.

WATER ISSUES IN INDIAN COUNTRY

The committee reviewed water issues in Indian country. The State Engineer briefed the committee on tribal water rights and water issues. Many western states have entered negotiations with Indian tribes to settle Indian reserved water rights claims. These claims are usually adjudicated based upon one of two standards, the practicable irrigable acreage standard or the economic viability standard. Under the practicable irrigable acreage standard, the tribe receives sufficient water to irrigate the reservation it occupies; while under the economic viability standard, the tribe receives the amount of water necessary for economic viability or to fulfill the purposes of the reservation. Whichever standard is adopted, the settlement of Indian reserved water rights claims requires a large amount of water. Indian reserved water rights have a priority date from the date the reservation was created and thus are senior to any other water rights in a specific area. Recently, an agreement was negotiated between New Mexico and several tribes from that state which is awaiting congressional ratification. The agreement calls for over $1 billion in water development in New Mexico. The cost of the settlement is one reason the settlement has not been ratified by Congress.

The State Engineer testified that negotiation is preferable to litigation and although North Dakota does not have much experience negotiating Indian reserved water rights, there is a lot of experience nationwide. Also, there have not been any Indian reserved water rights settlements involving the Missouri River. It is incumbent upon a tribe to determine if and when it wishes to quantify and adjudicate its reserved water rights claims. The State Engineer reported the only tribe in North Dakota that has expressed any interest in pursuing its reserved water rights claims is the Turtle Mountain Band of Chippewa Indians.

The State Engineer also briefed the committee on the Indian municipal, rural, and industrial water supply program. This program is administered by the Bureau of Reclamation. Garrison municipal, rural, and industrial water supply funds are essentially split 50-50 between the state and tribes. One difference between the state program and the tribal program is that the federal government pays 100 percent of Indian municipal, rural, and industrial water supply operation and maintenance costs. Under the state municipal, rural, and industrial water supply program, water users are responsible for 100 percent of the operation and maintenance costs. The state municipal, rural, and industrial water supply program is composed of 75 percent federal funds and 25 percent nonfederal funds.

The Indian municipal, rural, and industrial water supply program was authorized under two federal Acts--the Garrison Reformulation Act of 1986 and the Dakota Water Resources Act of 2000. The Garrison Reformulation Act of 1986 authorized $200 million of state municipal, rural, and industrial water supply projects and $20 million in Indian municipal, rural, and industrial water supply projects. The Indian municipal, rural, and industrial water supply funds were indexed for inflation while the state funds were not. All of the money authorized in this Act has been expended. The Dakota Water Resources Act of 2000 authorized $200 million in state projects, $200 million in Indian projects, and a $200 million Red River Water Supply Project. The 2000 authorizations were indexed for inflation. The state has not received any of the money authorized in 2000 and, indexed for inflation, the total authorization is now $260 million. Tribes in North Dakota have spent $48 million in Indian municipal, rural, and industrial water supply funds since 1986 and have approximately $240 million in authorized funds remaining.

GAME AND FISH ISSUES IN INDIAN COUNTRY

The committee reviewed the implementation of 2005 Senate Bill No. 2041, which dealt with hunting on Indian land. Representatives of the Game and Fish Department reported that, in general, the legislation is working very well and there have been fewer conflicts involving Indian and non-Indian hunters hunting on or off reservation. Also, the bill has led to improved communication between the state Game and Fish Department and tribal fish and game departments. Positive aspects include the cooperative season on mountain lions, separate regulations implemented for North Dakota and South Dakota by the Wahpeton-Sisseton Oyate Tribe, and similarity of seasons between the state and the Three Affiliated Tribes - Mandan, Hidatsa and Arikara Nation. However, representatives of the Game and Fish Department reported the department does have several concerns. These concerns involve the Standing Rock Sioux Tribe which has adopted certain regulations counter to state law and there is a lack of coordination between state and tribal seasons.

Representatives of the Three Affiliated Tribes - Mandan, Hidatsa and Arikara Nation testified that enactment of 2005 Senate Bill No. 2041 was a huge success and emphasizes state and tribal cooperation in the game and fish area. They characterized North Dakota as a leader among the states in relations between the states and tribes on game and fish issues.

METHAMPHETAMINE ISSUES IN INDIAN COUNTRY

The committee reviewed the methamphetamine problem and how the state and tribes can work together to confront the methamphetamine epidemic in North Dakota. Representatives of the Bureau of Criminal Investigation reported that from January 1, 2003, to October 10, 2003, the state discovered 254 methamphetamine laboratories. The state discovered 175 laboratories during the same period in 2004 and 184 during the same period in 2005, while only 38 laboratories have been discovered during the same period in 2006. The representative of the Bureau of Criminal Investigation attributed the decline in methamphetamine laboratories in North Dakota to the work the Legislative Assembly and the Attorney General have done to control the distribution of psuedophedrine. However, the majority of methamphetamine present in North Dakota is not being produced in North Dakota but is being brought in from out-of-state producers. Thus, 40 percent of the state's Highway Patrol officers have been trained to identify drug couriers.

Representatives of the Bureau of Criminal Investigation reported the Safe Trails Task Force has recently been established. The task force is composed of 10 members, including tribal and Federal Bureau of Investigation officers, and is headquartered in Bismarck. The task force is establishing contacts on each of the state's reservations to combat the methamphetamine problem. Also, the Bureau of Indian Affairs and the Indian Affairs Commission assisted the United Tribes Technical College in applying for and receiving a grant to develop information-sharing techniques between state, federal, and tribal law enforcement agencies. The grant is designed to reduce alcohol and drug-related crimes in a borderless environment.

The president of United Tribes Technical College reported the objective of the task force established under the grant is to develop better communication between the state and the tribes on law enforcement issues. The task force learned that because methamphetamine does not respect jurisdictional lines, there needs to be greater cooperation among the state's various law enforcement agencies to combat these problems. The task force is grappling with the issue of how sensitive information can be shared between law enforcement agencies without violating any confidentiality restrictions.

LAW ENFORCEMENT ISSUES IN INDIAN COUNTRY

The committee reviewed law enforcement issues in Indian country. The committee learned the North Dakota Supreme Court has recognized that NDCC Section 11-15-02 provides a sheriff wide latitude in the appointment of special deputies. The appointment of a special deputy is not limited to only one-time conditions and the special deputy appointed by a sheriff does not have to be a peace officer licensed by the Peace Officer Standards and Training Board. As a deputy to a county official, a special deputy has the same peace officer powers of the sheriff unless such powers are limited by the appointment.

EDUCATION IN INDIAN COUNTRY

The committee reviewed the activities of the P-16 Education Task Force. In September 2005, the State Board of Public School Education, State Board of Higher Education, the Education Standards and Practices Board, and State Board for Career and Technical Education established a steering committee

charged with developing a P-16 Education Task Force. The task force consisted of members representing various levels of education, the business community, school boards, associations, agencies, students, and parents selected from throughout North Dakota. The task force was established to examine all levels of education and to review standards, student assessments, the rigor of the curriculum, data availability, public awareness, teacher availability and development, resources, and best practices.

Goals agreed upon by the task force included the goal that North Dakota should put in place and enforce throughout its P-16 education system uniform, consistent proficiency expectations and standards to ensure that each student has a support system in place to enable the student to achieve proficiency; the goal that all North Dakota students should have equitable access to and the expectation of completing a rigorous core curriculum and standards taught by effective and highly qualified P-16 educators; the goal that top performing North Dakota students should be encouraged to become P-16 educators; the goal that North Dakota should provide academic and career assessment and counseling that is comprehensive, developmental, and systematic from preschool through postsecondary education and to employment and life to help students enhance their academic achievement by linking classroom studies to future choices, achieve skills the students will need to transition successfully to post-secondary education and work, and develop the skills needed to make informed decisions throughout life; the goal to educate the public about the importance of identifying and correcting weaknesses in the North Dakota education system; and the goal to seek new and to reallocate current resources to accomplish these goals.

In order to accomplish the first four goals, the task force developed 26 strategies, including establishing statewide requirements for graduation from high school and admission into postsecondary institutions of four years of language arts and reading, four years of mathematics, three years of science, three years of social and multi-cultural studies, one year of physical education, and two years of foreign language or career and technical education or fine arts by 2014; developing a statewide data system, ensuring that all students are proficient in these areas through regular assessments and individual assistance; creating an alignment commission to develop on a continuing basis a common set of standards and expectations at all levels of education in North Dakota; increasing the number of student-teacher contact days from 173 to 183 by 2013; enhancing educator salaries consistent with increased number of teaching days and student achievement and providing more professional development incentives and opportunities; adding three units to the current 21 units required to graduate by 2011; requiring immediate implementation of full-day kindergarten beginning at age 6; and increasing substantially the number of academic and career counselors to assist students and parents to set and achieve appropriate career paths and goals.

The executive director of the Indian Affairs Commission reported that the tribal members of the P-16 Education Task Force identified several goals in addition to the six contained in the final report. The tribal members believed the task force should have endorsed the adoption of a policy of systematic representation and creation of an Indian education advisory council so that education professionals would have a cadre of educators to work on American Indian specific strategies designed to approve student achievement. This goal may be realized through legislation enacted during the 2007 legislative session. This legislation should target schools with significant enrollments of American Indian students, provide focused professional development for teachers of American Indian students on culturally sensitive and appropriate strategies, provide summer school enrichment strategies for students, create college-bound cohorts of American Indian students, and provide career path counseling.

The superintendent of the Twin Buttes Public Schools reviewed high school tuition shortfalls for the Twin Buttes Public School District. The Twin Buttes Public School District is an elementary school district located within the Fort Berthold Indian Reservation in the southern segment of the reservation. The district has had to send its high school students to off-reservation public high schools for their high school education. The Twin Buttes Public School District is being asked to pay as much as $24,000 for tuition per student per year by the Halliday Public School District, $10,359 by Golden Valley, and $5,000 by Killdeer. The cost for tuition and transportation payments has become cost-prohibitive to the Twin Buttes Public School District. The superintendent testified that NDCC Section 15.1-29-03 should be amended so that elementary school districts that are charged with educating their students outside the district are given the resources to pay the high school tuition and transportation costs.

Representatives of the state's tribal colleges briefed the committee on the function of the state's tribal colleges and the services provided by these institutions. There are five tribal colleges located in North Dakota--Fort Berthold Community College at New Town, Turtle Mountain Community College at Belcourt, Cankdeska Cikana Community College at Fort Totten, Sitting Bull Community College at Fort Yates, and United Tribes Technical College at Bismarck. The Sisseton-Wahpeton Community College is located just across the border in Sisseton, South Dakota. There are 54,074 tribal members in North Dakota, and reservations in North Dakota consist of 3,829,221 acres of land. American Indian unemployment and poverty rates greatly exceed the national average while high school and college graduation rates are less than the national average. Ten percent of North Dakota's school-age population is American Indian, and this segment of the state's population is the only portion that is growing. The tribal college system was created because of a lack of a state commitment to the tribes and the need for tribal access to higher education. Tribal colleges are distinctly indigenous and do what other colleges cannot. Tribal colleges provide education for American Indians,

including American Indian culture, history, languages, rights, and law. In addition, the state's tribal colleges are land grant colleges similar to North Dakota State University and thus can compete for United States Department of Agriculture grants. There are no enrollment caps at the state's tribal colleges and the colleges have an open door policy in that they turn no students away. Tribal colleges and universities receive no Section 471 federal money or state funds for education for non-Indian students and thus must absorb the cost for educating non-Indian students. Non-Indian students comprise 7.3 percent of total enrollment at the state's tribal colleges.

The president of Sitting Bull College at Fort Yates testified that tribal colleges provide a valuable service to American Indian students and benefit not only the tribes and tribal communities but the entire state of North Dakota. The president of United Tribes Technical College testified the state's tribal colleges have a large economic impact on the state. United Tribes Technical College has experienced a near doubling of its enrollment in the last few years and as United Tribes Technical College grows, so does its impact on Bismarck and Mandan. United Tribes Technical College's total direct impact on Bismarck and Mandan is $21,552,865 and accounts for 1.8 percent of taxable sales in those cities. During the United Tribes International Powwow, total direct impact on Bismarck and Mandan is $4,344,320 with a statewide impact of $4,551,525. United Tribes Technical College's total direct impact in North Dakota is $21,780,070.

The president of United Tribes Technical College testified the state's tribal colleges are facing several fundamental issues. These include non-Indian student enrollment; transfer students; cooperation and collaboration protocol; the P-16 Education Task Force recommendations; economic development; and inequity in science, technology, engineering, and mathematics. The state's tribal colleges are recommending that partnerships be formed that respect the integrity of tribes and tribal colleges, that the state and tribal colleges explore mechanisms to fund non-Indian students attending tribal colleges and universities, that tribal colleges be included in the state's centers of excellence program and that the state work with tribal colleges to strengthen partnerships in education, business, technology, health, and research.

CONCLUSION

The committee makes no recommendation concerning tribal and state relations.

WORKERS' COMPENSATION REVIEW COMMITTEE

North Dakota Century Code (NDCC) Section 54-35-22 establishes the Workers' Compensation Review Committee. The committee is directed by law to review workers' compensation claims brought to the committee for the purpose of determining whether changes should be made to the workers' compensation laws.

North Dakota Century Code Section 54-35-22 establishes the membership of the six-member committee as follows: two members of the Senate who are appointed by the majority leader of the Senate, one member of the Senate who is appointed by the minority leader of the Senate, two members of the House of Representatives who are appointed by the majority leader of the House of Representatives, and one member of the House of Representatives who is appointed by the minority leader of the House of Representatives. The chairman of the Legislative Council designated the chairman of the committee. Committee members were Representatives George J. Keiser (Chairman), Bill Amerman, and Nancy Johnson and Senators Duaine C. Espegard, Joel C. Heitkamp, and Jerry Klein.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

BACKGROUND

General Background

The state laws addressing workers' compensation in North Dakota are primarily found in NDCC Title 65. The administrative rules adopted by Workforce Safety and Insurance (WSI) are found in North Dakota Administrative Code Title 92. Additionally, Article X, Section 12, of the Constitution of North Dakota specifically addresses the state's workers' compensation agency, essentially providing for a constitutional continuing appropriation to the workmen's compensation fund for the purpose of paying workers' compensation benefits.

North Dakota Century Code Section 54-35-22 became effective August 1, 2005, and remains in effect through July 31, 2007. The committee must meet once each calendar quarter unless the committee chairman determines a meeting that quarter is not necessary because there is no claim to review. The committee is required to operate according to the laws and procedures governing the operation of other Legislative Council interim committees. The committee followed the typical interim calendar.

2005-06 Interim

Although the Workers' Compensation Review Committee was the only interim committee specifically charged with studying a workers' compensation-related issue, the following committees were charged with receiving audits and reports from WSI during the 2005-06 interim:

Legislative Audit and Fiscal Review Committee

The Legislative Audit and Fiscal Review Committee was charged with receiving annual reports from the executive director of WSI and the chairman of the WSI Board of Directors under NDCC Section 65-02-03.3 and with receiving a report from the executive director of WSI, chairman of the WSI Board of Directors, and the auditor regarding the biennial performance audit of WSI under Section 65-02-30.

Budget Section

The Budget Section was charged with receiving a biennial report from WSI on all revenues deposited in and expenditures from the building maintenance account of the WSI fund under NDCC Section 65-02-05.1 and with receiving periodic reports from WSI and the Risk Management Division of the Office of Management and Budget on the success of a single workers' compensation account for state entities covered by Chapter 32-12.2 under Section 65-04-03.1.

Industry, Business, and Labor Committee

The interim Industry, Business, and Labor Committee was charged with receiving from WSI a safety audit of the Roughrider Industries work program and performance audit of the program of modified workers' compensation coverage under NDCC Section 65-06.2-09.

Previous Interims

2003-04 Interim

The Legislative Council chairman directed the Commerce Committee to receive a report from WSI regarding the 2004 rate increase proposed by WSI and projections for future rate assignments. The committee did not recommend any bill in response to the report.

House Concurrent Resolution No. 3050 (2003) would have provided for a study of the equity of the current system for awarding workers' compensation death benefits and the feasibility and desirability of creating a death benefit investment system. The Legislative Council did not give priority to this study.

2001-02 Interim

House Concurrent Resolution No. 3064 (2001) would have provided for a study of workers' compensation fraud by employers, employees, attorneys, health care providers, and rehabilitation service providers in order to identify the financial impact of such fraud on the workers' compensation fund, the most appropriate method of addressing such fraud, and the cost of addressing such fraud. The Legislative Council did not give priority to this study.

1999-2000 Interim

Section 3 of House Bill No. 1422 (1999) provided for the Legislative Council to receive a report from the Workers Compensation Bureau regarding recommendations from the bureau's study of the awards

provided to injured employees with permanent impairments caused by compensable work injuries. The interim Commerce and Labor Committee received this report and did not recommend any bill in response to the information received.

Section 5 of Senate Bill No. 2214 (1999) provided for the Legislative Council to receive a report from the Workers Compensation Bureau regarding the recommendations from the bureau's study of the benefits available to persons receiving long-term disability or death benefits from the bureau. The Commerce and Labor Committee received this report and did not recommend any bill in response to the information received.

1995-96 Interim

Section 3 of Senate Bill No. 2403 (1995) provided for a Legislative Council study of the feasibility and desirability of the Workers Compensation Bureau establishing a system through which injured employees whose disability benefits cease upon reaching retirement age under House Bill No. 1228 (1995) would receive a pension or an annuity in lieu of further disability benefits and a review of the different methods through which the pension or annuity would be established and paid, who would be responsible for administering the pension or annuity, and to which injured employees the pension or annuity would be paid. The Commerce Committee did not recommend any bill as a result of this study.

PROCEDURE ESTABLISHED

The committee began the interim by establishing a procedure for conducting its charge. The committee designed an application packet, which included a cover letter explaining the application process and eligibility requirements, a copy of NDCC Section 54-35-22, a "Release of Information and Authorization" form, and a "Review Issue Summary" form. In preparing this application packet, the committee discussed the importance that applicants understand the case review process is not a forum for appeal. Additionally, the committee determined for purposes of the committee's activities a survivor of an injured employee would qualify as an injured employee and would be eligible to apply for case review.

The committee discussed how best to notify injured employees of the committee's activities. The application forms were made available online on the Legislative Council's web site. The committee received testimony that Concerned Advocates Rights for Employees (CARE) is an association in the state which could notify injured employees; however, this association generally works with active claims. A representative of the North Dakota AFL-CIO testified the organization would try to distribute application forms as appropriate.

The committee made an affirmative decision to attempt to hold committee hearings around the state as may be appropriate to accommodate the location of the injured employees having their cases reviewed by the committee. The committee received testimony raising the concern that once an injured employee's case becomes final, the injured employee may not have any incentive to appear before the committee.

The committee recognized the personal nature of the case reviews and made a determination that the committee members, a representative of WSI, and interested persons should not raise or discuss nonpertinent details of an injured employee's workers' compensation record.

The committee discussed whether steps could be taken to assist an injured employee in organizing and presenting the employee's case for review. The committee considered the concern that injured employees do not have the high technical level of expertise held by the lawyers and other professionals of WSI, resulting in what could turn out to be an unfair playing field for case reviews.

The committee requested $10,000 from the Legislative Council to provide $500 per injured employee for the purpose of allowing the injured employee to pay a third party for assistance in organizing and clarifying the case to be brought forward to the committee. The chairman of the Legislative Council denied this request.

In addressing the issue of how to help an injured employee summarize workers' compensation issues for a case review, the executive director of WSI offered the assistance of an employee of the WSI Office of Independent Review to serve as an ombudsman to assist injured employees in preparing their cases for review by the committee. A representative of the North Dakota AFL-CIO testified in support of having the employee of the Office of Independent Review serve as an ombudsman to assist in case preparation and suggested the committee should provide the ombudsman with specific instructions and expectations.

The committee accepted the offer of the executive director of WSI and utilized the services of this ombudsman for each of the 11 cases reviewed by the committee. The committee chairman and committee counsel worked with the ombudsman to establish a procedure that was used throughout the interim. As part of this procedure, the executive director of WSI identified an employee of WSI who would serve as the primary respondent to the workers' compensation issues raised by the injured employees.

The following procedure was followed to determine eligibility for a case review and to prepare for the committee meeting at which the case was reviewed:

1. An injured employee would submit to the Legislative Council office a complete "Release of Information and Authorization" form. In addition, the applicant could submit a "Review Issue Summary" form on which the applicant could summarize the issues the applicant wanted the committee to review.
2. Upon receipt of a completed application, the Legislative Council staff forwarded a copy of the application information to the ombudsman, who reviewed the application to make a recommendation regarding whether:
    a. The applicant was an injured employee or the survivor of an injured employee;

b. The workers' compensation claim was final; and
c. All of the administrative and judicial appeals were exhausted or the period for appeal had expired.

3. Following this review, the ombudsman contacted the Legislative Council staff to provide a recommendation regarding eligibility for review. Upon receipt of this recommendation, the Legislative Council staff contacted the committee chairman to make a determination of eligibility.
4. Upon a determination of eligibility, the injured employee was contacted by the ombudsman to begin the case preparation. Injured employees had a choice of whether to work with the ombudsman.
   a. Regardless of whether the injured worker accepted the assistance of the ombudsman, the ombudsman prepared a summary of the case to present at the committee meeting.
   b. At the injured employee's discretion, the ombudsman assisted the applicant in organizing the issues for review.
   c. The ombudsman prepared a case review packet and included this in a binder of information prepared for each committee member, committee counsel, and the representative of WSI. Although these binders were distributed at each committee meeting, they remained the property of the Office of Independent Review and were returned to the ombudsman at the completion of each committee meeting.
5. Before each committee meeting, the ombudsman met with committee counsel to review the case summary and workers' compensation issues being raised.
6. Upon receipt of these workers' compensation issues, committee counsel notified the representative of WSI of the:
   a. Identity of the injured employee who would be appearing before the committee for a case review; and
   b. Statutory cites of the basic issues being raised by the injured employee.

The committee established the following committee meeting procedure, which was followed for each of the 11 cases reviewed by the committee:

1. Committee members had an opportunity before and during each committee meeting to review the binder of case review packets and to review each injured employee's WSI electronic records. The binder also contained a copy of NDCC Title 65.
2. The ombudsman summarized the injured employee's case.
3. The committee received a list of the workers' compensation issues brought forward for review. At the discretion of the injured employee, these issues were presented by the ombudsman, the injured employee, a representative of the injured employee, or more than one of these individuals.
4. One or more representatives of WSI commented on the workers' compensation issues raised.
5. Interested persons were invited to comment on the workers' compensation issues raised as part of the case review.
6. The committee members had an opportunity to discuss the issues raised.

Each of the 11 cases reviewed was allocated a half-day, either the morning or the afternoon portion of a committee meeting, during which the initial review was conducted. Following the initial review, the committee retained the authority to continue to discuss issues raised as part of the review. Periodically, the committee would request additional information on specific issues and review this information at one or more future meetings. During each committee meeting at which cases were reviewed, a representative of WSI was available to access the injured employee's workers' compensation records electronically.

CLAIMS REVIEWED

The committee held seven meetings. The first meeting was primarily devoted to establishing the case review procedure; the second meeting reviewed the first case; the third meeting reviewed the second and third cases; the fourth meeting reviewed the fourth, fifth, sixth, and seventh cases; the fifth meeting was committed to committee work; the sixth meeting reviewed the eighth, ninth, tenth, and eleventh cases; and the seventh meeting was primarily devoted to concluding the work of considering issues raised in the case reviews, including the consideration of bill drafts.

First Case

Case Summary

The following is a chronological list of events of the injured employee's workers' compensation case:

- September 1991 - The injured employee incurred a compensable work-related injury. The injured employee returned to work and experienced a worsening in her medical condition until June 2002, at which point the injured employee could no longer work due to the work-related injury incurred in 1991. In September 2003, WSI declared the injured employee was permanently and totally disabled.
- December 1, 2005 - The Workers' Compensation Review Committee reviewed the injured employee's case. At the time of review, the injured employee's monthly workers' compensation disability benefits and Social Security widow's benefits were approximately $1,684.
- December 31, 2005 - Workers' compensation disability benefits terminated due to the workers' compensation retirement presumption and workers' compensation additional benefits payable began. The injured employee's monthly additional benefits payable and Social Security widow's benefits were estimated to be approximately

$768. October 2010 is the estimated date upon which the additional benefits payable will terminate.

Issues for Review

The injured employee's workers' compensation issue was that she disagreed with the application of the retirement presumption law to her claim. Because her injury date was in 1991 and the retirement presumption law was not enacted until 1995, the 1995 law should not apply to her situation. The fact she had a break in the continuous flow of disability benefits after July 31, 1995, should not jeopardize her ongoing disability benefits as long as she remains disabled and unable to work due to the 1991 injury. The date of injury should be the deciding factor in determining which benefits structure applies.

The injured employee brought forward the following points in support of her issue:

1. The current system penalizes injured employees who are motivated and make every effort to go back and work. In a comparable case study in which there is a different outcome, a hypothetical employee was injured before the retirement presumption went into effect in 1995; however, since the date of injury, this hypothetical injured employee maintained that she was totally disabled and unable to return to work and as a result retained her disability benefits through the present date even though she is over age 65. Because this hypothetical injured employee had no break in her disability benefit payments after July 31, 1995, she will be able to qualify for ongoing disability benefits into the future and will not be impacted by the retirement presumption law.
2. Workforce Safety and Insurance should remain the responsible government entity to provide her with the necessary financial assistance that will allow her to pay her bills and maintain a reasonable livelihood. Up until her injury in 1991, the injured employee had been setting aside money for retirement; however, following her injury and the illness and death of her husband, she was forced to drain these retirement savings. Her ability to work and earn a living and to establish retirement savings has been compromised by her work-related injury. The termination of disability benefits effective December 31, 2005, puts her in a very difficult financial position. In preparation for the reduction in income that will become effective January 1, 2006, the injured employee went through bankruptcy proceedings and she will need to apply for public assistance. There will be a cost-shifting of her financial needs to other government programs.

Workforce Safety and Insurance Response

The representative of WSI provided a brief legislative and judicial history of the workers' compensation retirement presumption law. The WSI representative testified that in 1995 the workers' compensation fund was $240 million in debt. In 1995 the Legislative Assembly enacted a statutory presumption that an injured employee who becomes eligible for Social Security retirement benefits is considered retired and therefore no longer eligible for workers' compensation disability benefits. This retirement presumption is addressed under NDCC Section 65-05-09.3(2). The legislation creating this presumption became effective on August 1, 1995, and as enacted applied to all injured workers regardless of the date of injury. Legislative history indicated the retirement presumption was enacted to provide an initial savings reduction in benefits of $35 million and ongoing savings to the fund of $2 million to $5 million per year.

In 1997 the Legislative Assembly amended the retirement presumption law and created an additional benefit payable for injured employees whose disability benefits were canceled due to the retirement presumption. The additional benefits payable benefit is computed as a percentage of the workers' compensation weekly disability benefit and is based on the length of time the injured employee received these disability benefit payments.

Additionally, following the enactment of the 1995 retirement presumption law, two cases began working their way through the court system. In 1998 the North Dakota Supreme Court issued decisions in these two cases, providing that the 1995 amendments did not apply to injured employees who were receiving permanent total disability benefits before August 1, 1995. The North Dakota Supreme Court ruled there is a constitutional protection for the injured employee's expectation of ongoing benefits. It is because of these two Supreme Court cases that under the hypothetical case raised by the injured employee, the hypothetical injured employee receives full benefits even after reaching retirement age.

If an injured employee is continuously receiving workers' compensation disability benefits, the North Dakota Supreme Court determined that the retirement presumption does not apply; however, if an injured employee has been in and out of receipt of workers' compensation disability benefits, the retirement presumption under NDCC Section 65-05-09.3 applies.

The WSI representative testified WSI research indicates there is an estimated $40 million pricetag associated with granting the injured employee's request if this class of injured employees avoids the retirement presumption and continue to receive full workers' compensation disability benefits. Approximately 101 to 103 injured employees appear to be in a similar situation as the injured employee appearing before the committee.

The $40 million figure was based upon the cost to the fund projected until the time of death of the injured employees. These costs would come directly out of the WSI reserve fund and would not be charged back to the injured employees' past employers.

Comments by Interested Persons

A representative of CARE testified bills were introduced in past legislative sessions to address these retirement presumption issues but the bills were defeated. Testimony of interested persons questioned the validity of the $40 million pricetag, and there was testimony that if the $40 million pricetag is accurate, the correct response is to increase premiums to help the injured employees.

Concern was raised that although health insurance premium rates have been going up, workers' compensation premiums have not been going up in North Dakota. The explanation posed for this inconsistency was that instead of raising workers' compensation premiums, the injured employee benefits were lowered.

The committee received testimony from a representative of the North Dakota AFL-CIO stating the adversarial business of insurance impacts WSI decisions of whether to make an award. Under the state's workers' compensation system, the injured employee is put in the position of having to maximize a claim's potential by requesting the maximum amounts and types of benefits for which the injured employee may be eligible because if the injured employee does not do this, the injured employee loses and WSI wins by accomplishing its goal of limiting liability. The bottom line is that WSI works for the WSI Board of Directors, which has the goal of limiting liability.

Second Case

Case Summary

The following is a chronological list of events of the injured employee's workers' compensation case:

- January 28, 2005 - The injured employee filed an application for workers' compensation benefits in connection with a heart condition. The injured employee was a full-time paid firefighter whose annual physical, required of firefighter personnel, produced results indicating she had a heart condition, the result of which made her ineligible to work as a firefighter.
- February 17, 2005 - The injured employee's physician examined her and indicated her tests did not show any heart condition. The physician cleared the injured employee to return to work without restrictions.
- February 25, 2005 - Workforce Safety and Insurance issued a notice of decision dismissing the application, indicating the injured employee did not establish that she sustained a compensable injury by accident arising out of and in the course of her employment. The injured employee requested reconsideration of the decision, but WSI did not change its decision. The injured employee filed an untimely appeal and the denial decision became final.

Issues for Review

The injured employee's workers' compensation issues were that her temporary disability should have qualified as a compensable injury by accident arising out of and in the course of her employment; if WSI denies a claim, WSI should have to provide the injured employee sufficient information regarding why the claim was denied so that the injured employee can take any necessary actions to correct any mistakes that might have been made; and she should have been given a longer period to appeal the WSI decision.

The injured employee brought forward the following points in support of her issues:

- The injured employee used 107 hours of sick leave, incurred medical expenses, and used 12 hours of family leave in order to accommodate her time off work. Until she received the medical determination that the initial test was a "false positive," she was required to behave as if she had a heart condition.
- If a firefighter ignores a bad test and it turns out to be a real heart event, that firefighter not only puts the firefighter but the firefighter's coworkers in danger. To make matters worse, if a firefighter refuses to take a physical provided by the employer, the firefighter is disqualified from the presumption clause.
- Shift work makes it difficult for firefighters to meet the 30-day appeal deadline.

Workforce Safety and Insurance Response

The WSI representative testified that although it is correct that the presumption of compensability for firefighters is addressed under NDCC Section 65-01-15.1, the issue brought forward was even more basic than this presumption clause. The real issue is whether there is an injury. In this injured employee's situation, there was a positive test but no cardiac condition and therefore a determination of no injury. Recognizing the purpose of workers' compensation, it is imperative that the system require proof of a work-related injury. If the workers' compensation system provided benefits in the case of no injury, the system would change to be something else, such as a health insurer.

The WSI representative testified that the 30-day period that is set to allow a person to appeal a notice of decision is a balancing act. Workforce Safety and Insurance needs to balance the interest of managing claims and giving a reasonable amount of time to appeal a decision. The 30-day window for appeal is specifically designed for finality. Testimony of the WSI representative was that 30 days is enough time to register an appeal, and all that is required to meet the 30-day requirement is a telephone call.

The committee received the testimony of the executive director of WSI indicating WSI would have paid the injured employee's claim if WSI could have found a way to interpret the law in her favor. However, it is the opinion of WSI that the law does not provide for payment of such claims.

Comments by Interested Persons

The committee received the testimony of a local attorney in support of providing WSI coverage of unpaid medical bills associated with a firefighter's medical

examination that followed from her false positive test results. Additionally, the attorney commented on the injured employee's good fortune to have received the assistance of a union representative in addressing the committee. The attorney pointed out the state's workers' compensation system is run by doctors and lawyers, and this is a problem that plays into the 30-day appeal issue. Under the workers' compensation system, injured employees have given up their rights and are supposed to be getting something in return. The attorney testified the quid pro quo arrangement is not working.

The committee received the testimony of a representative of CARE in support of extending the 30-day period for appeal. Although there is a need for finality, an injured employee does not always have enough information from the medical profession in order to make a determination on whether to appeal.

The committee received the testimony of a representative of North Dakota Firefighters No. 1099 in support of an extension for appeals from 30 to 45 days.

Third Case

Case Summary

The following is a chronological list of events of the injured employee's workers' compensation case:

- August 1990 - The injured employee filed for workers' compensation benefits in connection with a July 1990 work-related automobile accident. The accident resulted in a spinal cord injury causing quadriplegia. At the time of injury, the injured employee had been earning $60,138.54 per year, which qualified her to receive the maximum weekly benefit in effect at the time of her injury, equal to $321 per week. In addition, the injured employee received a workers' compensation permanent partial impairment award of approximately $153,000.
- July 2005 - The injured employee received a workers' compensation supplemental weekly benefit adjustment of $9, which brought her disability rate to 60 percent of the state's current average weekly wage. From this date forward, the injured employee will be eligible for annual adjustments in the supplementary benefits as long as she is entitled to permanent and total disability benefits. Although the amount of the supplementary benefits is related to the state's average weekly wage, it is estimated to increase approximately 3.9 percent per year.
- March 29, 2006 - The committee reviewed the injured employee's claim. At the time of review, the injured employee's net weekly workers' compensation benefit was $261.81, which reflected a Social Security offset of $68.19 to recognize her receipt of Supplemental Security Income.

Issues for Review

In presenting her issues for review, the injured employee received the assistance of a family member who is an attorney. The injured employee's workers' compensation issues were:

- The 15-year period during which the amount of her workers' compensation benefits did not increase is bad public policy. Workforce Safety and Insurance should be required to provide her with a lump sum payment to compensate her for this 15-year period in which WSI did not provide her cost-of-living increases.
- The WSI vehicle modification allowance is inadequate.

The injured employee brought forward the following points in support of her issues:

- If the injured employee's 1990 preinjury earnings were adjusted to current day value, her earnings would be comparable to $120,000 per year.
- The injured employee's income is inadequate, resulting in her subsidizing her daily expenses with credit; her being unable to repair her vehicle; her being unable to afford a handicapped-accessible apartment, which would cost more than $700 per month in rent; and her being unable to perform background checks on the workers she hires as assistants, which has resulted in making her very vulnerable and being a victim of theft by some of her workers.
- She essentially is being punished. The injured employee's employer paid her workers' compensation premium at a high rate for a high wage earner; however, the benefits she is receiving do not reflect what her employer paid into the system.
- She has been able to live on her own by managing her own care and hiring assistants to help her. The fact that she can live on her own saves the state $1,500 per month compared to nursing home expenses. She has not exploited the system and is a very hard worker who should be commended.
- Inflation can be a friend of government but it is an enemy of individuals on fixed incomes. The system is morally wrong to degrade an injured employee from the highest-paid employee to the lowest-paid employee.
- In civil lawsuits an award takes into account cost-of-living adjustments. Under the workers' compensation system, the injured employee has given up the right to bring lawsuits but is not given the same benefits of cost-of-living adjustments under this system.
- Her daily living expenses differ from most individuals in that in addition to paying for food and housing, she hires workers to help her with every aspect of daily living and has travel needs for medical purposes.
- The state's investment in modifying her van was a very good investment because it has allowed her to travel to her medical appointments in Minnesota and Colorado in a much less expensive manner than air travel.

Workforce Safety and Insurance Response

The WSI representative testified that in the case of a catastrophically injured employee who requires a

modified vehicle, WSI pays for the modifications and installation of a lift for the injured employee's van. However, the law does not allow WSI to continue to supply vehicle modifications or lifts. He said this is a one-time benefit.

The committee reviewed examples of how the law calculates supplementary benefits for injured employees based upon the date of injury and distinguishing between high and low wage earners. The law relating to supplementary benefits was amended in 1999 and then again in 2001. The 2001 amendments apply to injured employees who were injured in 2001 and forward. The injured employee having her case reviewed by the committee is covered under the pre-1999 law.

The WSI representative testified using the same scenario examples of injured employees under the current law, every one of the injured employees would be eligible to receive supplemental benefits beginning in the eighth year. However, under current law, the amount of a lower-earning injured employee's supplementary benefits would be higher than that of a higher-earning injured employee.

Under the pre-1999 supplementary benefits law, the long-term goal was to put all injured employees at the same rate over time. Under current law, lower wage earners receive larger supplementary benefits and higher wage earners receive smaller supplementary benefits; however, all injured employees begin receiving these benefits after seven years.

The WSI representative testified in comparing North Dakota's law with other states, the majority of workers' compensation systems do not provide for any cost-of-living adjustments. If the law were changed to give the same supplementary benefits to employees injured before 1999, there would have to be a retroactive alteration of the benefits scheme. Anytime there is retroactive application, there is a risk of constitutional problems because there are typically winners and losers under such a transition.

Comments by Interested Persons

The committee received testimony from a representative of CARE recommending the state make funds available to assist injured employees in buying modified vehicles and recommending the state take better care of injured employees. The committee received the testimony of an injured employee in support of giving special consideration to catastrophically injured employees.

Fourth Case

Case Summary

The following is a chronological list of events of the injured employee's workers' compensation case:

- January 2000 - The injured employee filed a compensable workers' compensation claim.
- June 2001 - The injured employee underwent a functional capacity evaluation, which placed the injured employee in the light physical demand level of employment; in October 2002 the injured employee completed a 25-hour training course, providing her with administrative assistant, customer service, and basic computer skills training; and in November 2002 the vocational consultant's report indicated that the injured employee had the necessary skills to obtain employment as a customer service representative, administrative assistant, and secretary. At the time of injury, the injured employee's weekly earnings were determined to be $420. The occupations for which the injured employee was trained were determined to have weekly earnings of approximately $389.
- December 2002 - Workforce Safety and Insurance issued an order denying the injured employee further disability and vocational rehabilitation benefits. In January 2003 the injured employee requested the assistance of the Office of Independent Review to review the WSI order. The injured employee reported that she did not feel she was capable of acquiring employment within the occupations listed and earning at the salary amounts listed. Workforce Safety and Insurance offered to adjust the estimated earning to $360 a week, which would make the injured employee eligible for temporary partial disability benefits, but the injured employee rejected the proposal and elected to proceed to hearing.
- July 2003 - The administrative hearing was conducted but the injured employee did not participate. In September 2003 the administrative law judge upheld the order denying further disability and vocational rehabilitation benefits.

Issues for Review

The injured employee's workers' compensation issues were:

- Following her injury, the training she received through WSI did not make her whole. She said the training was inadequate, in part because it did not consider her age, background and experience, and a realistic view of the job market and starting wages.
- Her employer made it very difficult for her to return to work. She said she faced harassment and discrimination from her preinjury employer when she returned to part-time work following her injury and her employer requested that she work beyond her medical limitations.
- Workforce Safety and Insurance did not provide adequate assistance in finding a postinjury job and ultimately she found her own job.

Workforce Safety and Insurance Response

The WSI representative testified that before the injured employee's workplace injury, her work history showed she had been employed in the service sector. As a result of her injury, she is required to leave that type of work and enter a different, safe sector of employment. Following the injury, WSI enrolled the injured employee and she completed a skill refresher course. The workers' compensation system allows and provides an injured employee with a forum in which to disagree with proposed retraining schedules or plans.

However, this injured employee requested a hearing on the matter but then chose not to attend the hearing.

The WSI representative testified when an injured employee is faced with changing job sectors, WSI tries to employ both the carrot and the stick. Under the training process, WSI first looks for the least invasive form of retraining program. Workforce Safety and Insurance does ask for the injured employee's opinions and preferences in what type of employment the injured employee would like to enter postinjury.

Comments by Interested Persons

The committee received testimony from a representative of CARE disputing the WSI claim that when WSI arranges for rehabilitation services, the injured employee gets an opportunity to give preferences and is given a choice regarding what kind of training or rehabilitation is undertaken. When an employee is injured, it is very hard for that employee to know what options are available under the system.

The committee received testimony from injured employees who had received workers' compensation rehabilitation services. Some of these injured employees voiced dissatisfaction with the rehabilitation system.

Fifth Case

Case Summary

This injured employee had a very long and detailed list of entries in his workers' compensation record; therefore, the list of events has been significantly abbreviated. A more complete list of events is included in the North Dakota Supreme Court decision *Gronfur v. North Dakota Workers' Compensation Fund*, 2003 ND 42; 658 N.W.2d 337, and the supporting briefs. The following is the abbreviated chronological list of events of the injured employee's workers' compensation case:

- July 1996 - The injured employee filed a compensable workers' compensation claim in connection with a workplace injury. The initial diagnosis indicated a herniated disc at the L4-L5 level, and this was the basis upon which the employee received his initial medical care and his return-to-work services. Based on this diagnosis, the injured employee was released to return to gainful employment as an advertising sales representative, general merchandise sales representative, communication equipment sales representative, or management trainee. Temporary partial benefits were to be paid to the injured employee for a period of up to five years. The injured employee never returned to work.
- October 1999 - The injured employee underwent an MRI of his entire lumbar spine, resulting in a different diagnosis of mild facet hypertrophy at L3-L4, L4-L5, and L5-S1; a small left paracentral neural foraminal disc extrusion at T11-T12; and a small left paracentral disc protrusion at T12-L1. In April 2000 the injured employee underwent a spinal fusion at T11 and T12 and T12 and L1 levels of the spine and WSI accepted liability for this medical condition.
- February 23, 2000 - The injured employee filed a request for disability benefits indicating a worsening of his injury and in April 28, 2000, WSI issued an order denying reapplication indicating that although the injured employee had sustained a significant change in his compensable medical condition, the injured employee had not suffered an actual wage loss (because he had not returned to work after the 1996 injury) caused by the significant change in his compensable medical condition.
- April 2003 - The Supreme Court upheld the order denying reapplication.
- April 26, 2006 - The committee reviewed the injured employee's claim and in August 2006 the committee learned WSI denied the injured employee's recent request to have WSI exercise its continuing jurisdiction and reopen the injured employee's case.

Issues for Review

In presenting his issues for review, the injured employee received the assistance of his brother. The injured employee's brother presented the injured employee's issues, distributing to committee members a folder containing a significant amount of information compiled to help present the injured employee's case for review. The injured employee's brother testified the information presented for the injured employee primarily relates to the three areas of:

- The injured employee's injury and the medical treatment he received;
- The injured employee's release to return to work; and
- Legal issues relating to medical treatment, the requirement that loss of wages be established, and the appeal and review process.

The specific concerns raised include disagreement with the North Dakota Supreme Court decision; Job Service North Dakota and WSI come to different conclusions regarding an injured employee's ability to perform work; inadequate legal counsel; inadequate medical services in the initial diagnosis; and that throughout the whole workers' compensation process, the injured employee was on high doses of narcotics that have impacted his ability to follow the status of his case. The injured employee's request was that he would like the law to allow him to essentially "go back in time" to allow the right decision to be made.

Workforce Safety and Insurance Response

The WSI representative testified if an injured employee believes he or she is unable to work, there is an appeal process that can be pursued. In the case of this injured employee, the injured employee did not pursue the appeal process to address the determination of disability and ability to perform work. When the injured employee finally did appeal, it was related to the issue of wage loss and the district court and the Supreme Court did not overturn the decision of WSI. There is a process established to appeal decisions and

in order to make the system work, this process needs to be followed.

The WSI representative testified that in the situation in which the process fails to protect an injured employee, there is the ability to make the situation right. If the matter relates to the injured employee's injury, WSI may review an injured employee's case through WSI's continuing jurisdiction.

The WSI representative testified that the North Dakota Supreme Court decision addressing the injured employee's appeal was one of four cases addressed by the North Dakota Supreme Court in 2003 dealing with a specific issue of reapplication based upon a significant change in the compensable medical condition. The Supreme Court cases were *Lesmeister*, *Beckler*, *Bachmeier*, and *Gronfur*. In the case of this injured employee, the medical records and the court records indicated the injured employee could work. It is the injured employee's contention that he could not, and he failed to appeal this issue.

The committee received the testimony of the executive director of WSI that if WSI had thought it reached the wrong decision in the injured employee's case, WSI has the authority to reopen the case to make things right.

Comments by Interested Persons

The committee received testimony from interested persons regarding the issues raised in the injured employee's case review. Members of the public commented on the significant amount of preparation and time the injured employee's brother invested in assisting his brother present his case for review. Testimony of other injured employees addressed concerns about the injured employee's experience with receiving an improper diagnosis; with the inadequate rehabilitation services provided to the injured employee; and with the possible discrimination the injured employee received due to his weight.

The committee received the testimony of a representative of the North Dakota AFL-CIO that the issues raised by the injured employee go to the question of how a WSI decision becomes final and therefore unappealable. Once a WSI decision becomes final, even after receipt of additional medical evidence, these cases are unable to be reopened. The issue of after-acquired medical evidence is not a new issue. In 2003, Senate Bill No. 2167 was introduced to address the issue. Under this 2003 bill, an injured employee would have had four years in which to request a case be reopened to reassess compensability based on after-acquired medical evidence.

Committee Discussion

The committee discussed the issues of reapplication for disability benefits; reopening of claims; and after-acquired medical evidence. Committee members raised concerns regarding finality and problems related to lack of closure. The committee also discussed equity issues related to after-acquired evidence.

Sixth Case

Case Summary

The following is a chronological list of events of the injured employee's workers' compensation case:

- April 1983 - The injured employee filed an application for workers' compensation benefits in connection with a compensable work-related injury to his right wrist. The injured employee participated in return-to-work services and was released to return to work. The injured employee held a variety of jobs, each ending the employment when pain from repetitive arm, wrist, and hand movements became too severe to continue working. The injured employee filed a series of reapplications for disability benefits claiming a worsening in his condition. The dates for reapplication of benefits were February 12, 2001; June 18, 2001; August 27, 2001; October 18, 2001; December 3, 2001; and June 10, 2002.
- January 2003 - Workforce Safety and Insurance entered a stipulated settlement with the injured employee, in which it was agreed to resolve all of the applications for benefits for the year 2001. It was further agreed that WSI and the injured employee would proceed to litigate the 2002 reapplication, which was denied by an administrative law judge in August 2002.
- At the district court level, the district court denied the injured employee's request to reopen the record and supplement the record with exhibits for consideration. The district court affirmed the WSI order denying reapplication benefits, concluding that the claimant did not establish an actual wage loss as required under law. In February 2005 the North Dakota Supreme Court affirmed the district court decision, denying the injured employee's reapplication for benefits.

Issues for Review

The injured employee's workers' compensation issues were:

- The inability to admit additional evidence into the record following the administrative hearing.
- The impact of a Social Security determination of disability. Once an injured employee is determined to be eligible to receive Social Security disability benefits, the injured employee should automatically be found to be eligible to receive workers' compensation disability benefits for that injury.
- The impact of an injured employee being found in noncompliance. As an injured employee, there is a constant threat of termination of benefits for failing to comply with medical treatment plans and retraining programs. The threat of suspension or termination causes undue stress and pressure. Workforce Safety and Insurance needs to be more sensitive to the injured employee's physical and psychological well-being. Additionally, there is an issue that arises when an injured employee needs to follow the medical advice of the treating

physician when this advice conflicts with the injured employee's existing workers' compensation program and there is a concern that following the physician's directions may result in a WSI finding of noncompliance, resulting in suspension or termination of benefits.
- Unnecessary spending of WSI funds, including spending of funds on unnecessary fraud investigation, forcing injured employees into retraining programs, trigger point injection limitations, and excessive litigation costs spent defending WSI decisions.
- Timeframe limitations for a claimant to recognize a workforce injury.

Workforce Safety and Insurance Response

The WSI representative testified that from a legal standpoint, he had never reviewed a more litigated claim than this injured employee's claim. The injured employee's case includes two North Dakota Supreme Court decisions. However, for purposes of the issues brought to the committee for review, the topics generally relate to reapplication. The intent of WSI in entering the settlement was to leave the most legally valuable application to go to the North Dakota Supreme Court, hoping the Supreme Court would provide some guidance in this area of reapplication.

The WSI representative testified there is a medical basis for limiting trigger point injections. WSI has addressed the issue of trigger point injections through North Dakota Administrative Code Section 92-01-02-34(5)(i). The general rule is that WSI treatments are intended to help an injured employee's medical condition improve; however, once a medical treatment stops improving the condition, it becomes palliative in that it does not improve the underlying condition. A trigger point injection is a palliative treatment.

The WSI representative reviewed the closed claim presumption that if an injured employee does not receive treatment for a period of four years, the injured employee then has the burden to prove the work injury was the sole cause of the new injury, which is a higher standard than for initial application. Although aging is usually a contributing factor to most degenerative conditions, which makes it difficult to prove the workplace injury was the sole cause of the new injury, approximately one-third of the applications for reopening are accepted by WSI.

The WSI representative testified that as it relates to retraining programs, there are social and psychological benefits to rapidly returning an injured employee to some type of employment following an injury. Generally, there is a 12-week window to successfully get an injured employee back to work, and after 12 weeks, the chance of returning to work decreases to 50 percent. Workforce Safety and Insurance does push injured employees into retraining because of the problems associated with an injured employee remaining in an unsafe job.

The WSI representative testified that as it relates to the loss of wage requirements, the statute is quite clear and the series of North Dakota Supreme Court cases have supported the interpretation of WSI. Loss of wages is necessary to give WSI the incentive to get an injured employee to return to work or undergo retraining.

The WSI representative testified the tests used to qualify for Social Security disability benefits and workers' compensation benefits are different; the basis of awarding benefits is different; and the parties involved are different. Additionally, linking the two programs could result in constitutional issues regarding improper delegation of legislative authority.

Comments by Interested Persons

The committee received testimony from a representative of the North Dakota AFL-CIO. The testimony on the issues raised by this injured employee and the rebuttal made by WSI made it clear WSI seeks to limit its liability and will not pay to relieve an injured employee's pain. This position is contrary to the statutory requirement that the workers' compensation system is designed to provide injured employees with sure and certain relief. The committee is faced with the issue of determining what is sure and certain relief. Under NDCC Section 65-01-01, as amended in 1994, the law now provides Title 65 is not to be construed liberally to any party. Under the old law, Title 65 required liberal construction in favor of the injured employee, and this liberal construction helped provide an injured employee with sure and certain relief.

Seventh Case

Case Summary

The following is a chronological list of events of the injured employee's workers' compensation case:

- December 1990 - The injured employee filed a workers' compensation claim in response to a compensable work-related injury. In November 1992 the parties entered a stipulated settlement agreement through which the injured employee was paid a lump sum settlement of $15,159 as full and complete settlement of the claim for disability benefits and vocational retraining benefits. The stipulation provided the lump sum money was to be used for the sole and exclusive purpose of the injured employee becoming a residential paint contractor and establishing the self-employment venture.
- October 1995 - Workforce Safety and Insurance issued an order denying further benefits and a demand for repayment in the amount of $15,159. Workforce Safety and Insurance concluded the injured employee breached the agreement between the parties, resulting in an overpayment of benefits. The injured employee requested a hearing before an administrative law judge, and in April 1996 the administrative law judge affirmed the order and it became final.
- December 2003 - The injured employee filed a workers' compensation claim in connection with an injury incurred as a painter. Workforce Safety and Insurance denied the application for benefits, determining the injured employee was not entitled to any additional workers' compensation benefits

in connection with the December 1990 injury and that his 2003 work injury was to the same exact body part and was therefore denied. The injured employee appealed this decision and the administrative law judge affirmed the order of WSI. The injured employee appealed to the district court and the district court affirmed the decision of the administrative law judge. This order became final.

Issues for Review

The injured employee presented multiple pages of workers' compensation issues. The injured employee's primary workers' compensation issues were:

- Workforce Safety and Insurance is not abiding by its requirement to provide sure and certain relief to injured employees, regardless of question of fault.
- During the course of processing his 1990 workers' compensation claim, the claims analyst made false statements and made mistakes that were not fixed.
- Employers are not providing safe work environments for employees. More should be done to provide employees with a safer work environment.
- The Office of Independent Review is not doing the job it was intended to do and therefore should be closed.
- The North Dakota workers' compensation system should be changed from its current no-fault insurance model to a private insurance company model.
- Retraining opportunities for injured employees are inadequate.
- Injured employees in North Dakota do not have access to legal counsel. The limitations on an injured employee's attorney's fees are improper and the result of the attorney's fees limitations is that injured employees are left without legal representation.
- The district court standard of review should be changed so the district court is able to reevaluate the facts of the case.

Workforce Safety and Insurance Response

The WSI representative testified the 2003 claim filed by the injured employee centered around the 1990 claim. Following the 1990 injury, the rehabilitation evaluation found that the activity of painting was inappropriate given the injured employee's limitations; therefore, it was arranged to have the injured employee participate in rehabilitation and retraining. The injured employee and his attorney objected to the rehabilitation retraining and proposed the injured employee begin a venture as a painting contractor under which he would submit bids and hire painters to actually perform the painting.

The WSI representative testified it was brought to the attention of WSI that the injured employee was painting. Upon investigation, the injured employee reported that he was a contractor and had purchased the necessary equipment to perform this venture; however, the investigation indicated this was not the case.

The WSI representative testified the fraud case went to an administrative law judge and there was a finding the injured employee knowingly and willingly violated the terms of the stipulation. Under NDCC Section 65-05-33, the fraud provisions, the injured employee was required to forfeit any additional benefits in connection with the December 1990 injury as well as being required to repay the overpayment amount.

Eighth Case

Case Summary

The following is a chronological list of events of the injured employee's workers' compensation case:

- July 2001 - The injured employee filed an application for workers' compensation benefits in connection with a compensable workplace injury to her lower back. The injured employee participated in return-to-work activities and in July 2002 she began receiving temporary partial disability benefits.
- January 2003 - Workforce Safety and Insurance received a fraud hotline report and as a result investigative services were assigned to the injured employee's claim, and in June 2004 WSI issued a notice of intention to discontinue benefits based on the investigation results. The injured employee filed a request for reconsideration of the notice of decision.
- August 2004 - Workforce Safety and Insurance issued a fraud order against the injured employee, denying payment of any further benefits on the claim. The order included an order for repayment of disability benefits in the amount of $5,263.27. The injured employee appealed this order.
- March 2005 - Workforce Safety and Insurance offered a stipulated settlement that would have provided for the following provisions: claimant remains eligible for payment of reasonable and necessary medical expenses for treatment directly related to her lower back injury; claimant is not entitled to any further disability or vocational rehabilitation benefits in relation to this claim; WSI agrees not to collect any part of the $5,263.27 overpayment directly from the claimant, except out of any benefits resulting from a future workers' compensation claim; the claimant does not admit to any wrongdoing; and WSI will revoke its fraud order if the claimant withdraws her request for hearing regarding that issue. The injured employee rejected the proposed stipulation and the claim went on to an administrative hearing.
- November 2005 - The administrative law judge issued her findings of fact and conclusions of law, concluding the injured employee willfully misrepresented her physical condition, capabilities, and activities to WSI and her medical providers. The injured employee's statements were obviously intentional and material to an accurate determination of her work ability and for WSI's process of determining her eligibility for

benefits; however, the evidence did not show that the injured employee's false statements caused WSI to pay benefits in error and the injured employee was not required to reimburse WSI for benefits paid. The injured employee was ordered to forfeit any additional benefits relative to her injury. Workforce Safety and Insurance adopted the recommended order of the administrative law judge and the order became final.

Issues for Review

The injured employee explained the circumstances surrounding her workplace injury; provided a detailed explanation of the independent medical examination that took place as part of the second opinion requested by WSI; and provided details regarding the errors made by the private investigator hired by WSI to investigate her claim.

The injured employee testified she never knowingly committed any fraud of any kind to anyone and the videotapes of the WSI private investigator clearly provide that she did nothing wrong and the private investigator hired by WSI told one lie after another.

The injured employee raised the issue that the rates set for attorney's fees are inadequate. The rate is far lower than the actual cost, which results in the injured employee being forced to pay this difference. Additionally, the injured employee testified that as a result of this workers' compensation situation, WSI dropped all coverage and her private medical insurance, for which she pays a monthly premium, does not provide any coverage for her work-related injury.

The injured employee testified WSI takes the position an injured employee is not entitled to do anything after an injury except the little bit of work WSI claims fits the injured employee. She said it is wrong that the injured employee is required to stay down, rest, and get up out of bed only to go to work.

Workforce Safety and Insurance Response

The WSI representative testified that it is uncontested that the injured employee received a workplace injury. However, it was the activities following the injury that resulted in the termination of benefits. Workforce Safety and Insurance analysts are trained to pick up signs regarding conflicting medical reports. Procedurally, in the case of the injured employee, there was a functional capacity evaluation performed in February 2003 which placed limitations on the injured employee. Because there were limitations and because there did not appear to be any positive movement in her condition, WSI requested a second opinion. The second opinion was radically different from the treating physician's medical report. In the case of conflicting evidence, the decisionmaker needs to establish the credibility of the evidence.

The WSI representative testified the administrative law judge's findings of fact are very instructive. Essentially, the findings indicate the injured employee has limitations but her activities differ from her claimed limitations. The representative testified WSI is not obligated to follow up on hotline tips and WSI considers the tips in light of the case and the information available. The WSI representative testified WSI often contracts with private investigators. If WSI were to learn that a private investigator was not truthful or was not credible, it would no longer contract with that private investigator.

Comments by Interested Persons

The committee received the testimony of an interested person that fraud investigations are not necessarily a true reflection of an entire situation. Instead, a fraud investigation is nothing more than a single snapshot in time. In the case of an injured employee who is on pain medication and antidepressants, that injured employee is not a very accurate historian, especially as time passes, and this impacts the injured employee's ability to manage a claim.

Additional testimony indicated that all parties have the same goal of wanting to see the injured employee return to work. The real issue should be whether the injured employee can return to work, not whether the injured employee stopped every 7 to 10 minutes when she drove her car.

Ninth Case

Case Summary

The following is a chronological list of events of the injured employee's workers' compensation case:

- June 2004 - The injured employee filed a workers' compensation claim in response to a workplace injury. Workforce Safety and Insurance accepted her claim and awarded specific benefits for the treatment of her acute lumbosacral back sprain through the date she reached preinjury status. However, WSI limited the benefits because the injured employee had a preinjury history of back problems, and in 1997 she had undergone non-work-related surgery fusing the L5-S1 vertebrae.
- November 2004 - Workforce Safety and Insurance issued a notice of decision denying further liability. The injured employee filed a timely request for appeal. The administrative law judge concluded the injured employee's sacroiliitis is related to preexisting lumbar back conditions, not to the work injury of June 2004. The administrative law judge further concluded the injured employee had not met her burden of proving that her June 2004 work injury either actually caused a new injury to her S1 joint or worsened the severity of or substantially accelerated the progression of preexisting back problems. Workforce Safety and Insurance adopted the recommended findings of fact and conclusions of law. The order became final.

Issues for Review

The injured employee brought forward the following workers' compensation issues and points in support of these issues:

- Workforce Safety and Insurance is not accountable and therefore there should be a monitoring organization.

- Injured employees are victims of the system if they have inadequate legal representation. In this case, it was only after the administrative level that the injured employee found out her attorney had not requested any additional medical information. She said she tried to appeal the administrative order but by the time the attorney contacted her, the time for appeal had passed. She submitted a complaint to the attorney disciplinary board but feels the complaint was discounted.
- The appeal system is inadequate. Workforce Safety and Insurance should be required to follow the recommended finding of the administrative law judge. At the administrative hearing, the administrative law judge informed the injured employee that WSI had the choice of whether to accept the administrative law judge's recommended order. Additionally, when a physician testifies at a hearing for WSI, that physician should be required to be a specialist in the area of the injury. In her case, the injury was the S1 joint; however, neither of the physicians who testified at the administrative level specialized in S1 fusions.
- It should be the law that an injured employee has a right to a second opinion by a specialist. A Minot physician reviewed the injured employee's records but refused the case because he did not know how to treat or perform S1 joint procedures. The system needs to be changed to allow specialists' opinions to weigh more heavily in the decisionmaking.
- Workforce Safety and Insurance tries to drag out the process as long as possible so an injured employee gets into a financial bind and has no choice but to go back to work, regardless of whether there is an ongoing injury. Additionally, WSI always sides against the injured employee, with the belief the injured employee is trying to defraud the system.

Workforce Safety and Insurance Response

The WSI representative testified the workers' compensation issue brought forward is that a determination needed to be made by WSI regarding whether the injury was work-related or non-work-related. The WSI representative testified in the evaluation of workers' compensation claims there is an ongoing struggle to determine preexisting conditions versus work-related conditions and it is not uncommon to have conflicting medical information while trying to make these determinations.

Tenth Case

Case Summary

The following is a chronological list of events of the injured employee's workers' compensation case:

- June 1992 - The injured employee filed a workers' compensation claim for a compensable work-related lower back injury. The injured employee returned to her preinjury employment on a part-time basis and WSI paid temporary partial disability benefits. She retained this part-time employment, with periodic lapses due to worsening of the work-related injury, until July 2005 when she stopped work due to her worsening medical condition. Workforce Safety and Insurance awarded the injured employee temporary total disability benefits.
- May 2006 - The injured employee participated in an independent medical evaluation, as a result of which the physician indicated the injured employee could be released back to gainful employment with no restrictions on the number of hours she could work during the day or the number of hours she could work during the workweek, provided she works within her physical restrictions. The injured employee's treating physician reported he disagreed with the findings of the independent medical evaluation physician, stating the injured employee is not capable of gainful employment.

Issues for Review

The injured employee's workers' compensation issues include:

- Over the period of time from her injury in 1992 to the present, the injured employee never benefited from a wage adjustment at her place of employment. At the time of the injured employee's injury in 1992, she was earning $8.69 per hour and at the time she stopped working July 2005, she was making $12.50 per hour; however, with the workers' compensation benefits setoff, her net take-home pay remained essentially the same for over 10 years. The injured employee's current WSI benefits are $232 a week, and this amount will be reduced to $135.42 a week as a result of her recently being determined eligible for Social Security disability benefits. Additionally, since her injury, the injured employee received bonus lump sum payments to compensate her for excellent performance at her job, but all of these payments have gone to WSI as setoffs against her workers' compensation benefits.
- She is concerned about her ability to return to work and earn a competitive wage. Workforce Safety and Insurance recently denied her treating physician's request for a discogram, which the physician requires in order to determine whether a second surgery is needed. A discogram is a diagnostic procedure used to establish the health of the disc.
- She takes issue with the independent medical examination performed by the physician chosen by WSI. The physician to whom she was sent does not perform back surgeries but instead refers his patients to her treating physician. The system is wrong to the extent it would allow a nonspecialist to decide the treatment standard for a specialist.

Workforce Safety and Insurance Response

The WSI representative testified that in accordance with WSI policy, the injured employee has been treated conservatively for her back injury. Under NDCC Section 65-05-08(8), the only time the underlying average weekly wage is recalculated is if the injured employee returns to work for 12 consecutive months at a higher wage. The only workers' compensation benefit with a cost-of-living adjustment built in is permanent total disability.

The WSI representative stated the current status of the injured employee's case is she is receiving temporary total disability and it will be necessary to consider whether there are retraining opportunities, after which time her status will be reconsidered.

A representative of WSI indicated the injured employee had done everything asked of her and she is a hard worker who appears to be caught in the middle. The law that applies to the injured employee does not seem to have contemplated this type of situation in which the injured employee has continuously attempted to return back to work but for periods of less than 12 months. Additionally, the committee received testimony that generally WSI denies discograms because they are invasive procedures and there is a concern the diagnostic procedure may do more damage than good.

The executive director of WSI testified WSI has looked into the issue of temporary partial disability benefits that are received over a long period of time, and WSI is trying to address this issue without creating unintended consequences, such as disincentives for an injured employee to return to the workplace. The testimony indicated WSI will strive to come up with an alternative to address this situation before the 2007 legislative session begins.

Comments by Interested Persons

The committee received the testimony of the injured employee's husband that his wife loved her job and wanted nothing more than to return to work. Since her workplace injury, prescription medication is a regular part of her life and impacts her activities of daily living. Additionally, as a result of her injury, she has lost her full-time benefits provided by her employer, such as 401K retirement benefits. The husband testified his wife has done everything WSI has asked of her, including going to the necessary specialists when general practitioners were unable to treat her. It is especially frustrating at this point that WSI is refusing to provide a requested diagnostic procedure. It is not fair that his wife is being caught in the middle.

Committee Discussion

The committee members recognized the similarities between this injured employee and the first case. Both injured employees were very hard workers who repeatedly attempted to return to work. Unfortunately, both of these injured employees would have been better off financially if they had quit working. The committee indicated this is the wrong message to send to injured employees, and the system should not provide disincentives to injured employees who have such strong work ethics. The committee found the issue of long-term temporary partial disability benefits seems like a hard issue for WSI to defend.

Eleventh Case

Case Summary

The following is a chronological list of events of the injured employee's workers' compensation case:

- July 2004 - The injured employee died as a result of a heart attack he experienced while fighting a fire in his capacity as a volunteer firefighter. The injured employee's spouse filed a workers' compensation claim for spousal workers' compensation benefits. Workforce Safety and Insurance issued a notice of decision denying the spouse's application for benefits, finding that the spouse did not prove the injured employee sustained a compensable injury by accident arising out of or in the course of his employment as a volunteer firefighter.
- November 2004 - The spouse requested reconsideration of the decision of denial, claiming the cause of death was adequately work-related. In January 2005, WSI issued a dismissal of claim indicating the evidence did not indicate with reasonable medical certainty that the injured employee's cardiac arrest was caused by his employment. The spouse requested a hearing on the dismissal of the claim.
- October 2005 - Workforce Safety and Insurance adopted the administrative law judge's recommended findings of fact and conclusion of law that the injured employee suffered unusual stress when he fought a fire that was not the typical prairie fire he usually fought, with reasonable medical certainty this unusual stress was the only cause of his heart attack and death, and that as such the injured employee sustained a compensable injury by accident arising out of and in the course of his employment. The result of the ruling was that the dismissal was reversed.
- November 2005 - Workforce Safety and Insurance issued an order indicating the injured employee's average weekly wage was $161 per week, which was calculated by reviewing his 2003 income tax forms. The spouse requested the assistance of the Office of Independent Review and following the review, WSI issued an amended order establishing the average weekly wage was $171 per week. This order was not appealed and became final.

Issues for Review

The spouse received the assistance of her attorney in presenting her workers' compensation issues. The spouse, through her attorney, raised the issues relating to spousal workers' compensation benefits and computation of benefits.

The standard used by WSI for all employees, except paid firefighters, is with reasonable medical certainty was there an increase in stress level over the normal

stress level of 50 percent, when the employee was doing the job at hand; and did this increase in stress cause the heart attack or stroke with reasonable medical certainty. The attorney testified that despite evidence provided by an expert firefighter and expert medical witnesses, WSI took the position that all summer prairie fires had all of the factors listed; thus, there was no increase in stress and since there could be no autopsy, the probable cause of the heart attack could not be ascertained.

The spouse testified the problems she incurred in WSI calculating a weekly benefits amount were very frustrating. It seemed unreasonable to have to wait 15 months to resolve her case. She said she needed the help of an attorney to have the law applied correctly, whereas most people just accept the benefit calculation amount established by WSI.

The attorney testified his position is that the initial denial was not based on competent medical reports and in the second denial there were two competent medical reports in support of finding of stress. Additionally, the initial wage calculation was for a weekly benefit amount of approximately $140. The law provides for three possible calculations but WSI chose a different way. After he objected to the first calculation, WSI calculated the amount of $160 per week, but this was still the incorrect amount. It was only after the Office of Independent Review stepped in that they were able to remedy this error.

The attorney suggested WSI provide a lump sum payment to spouses and dependents of volunteer emergency workers who die in the course of providing services. The bottom line is that not many North Dakota volunteer firefighters die in the course of performing their volunteer work, and the state needs to better support volunteer firefighters and emergency workers.

Workforce Safety and Insurance Response

The committee received the testimony of the WSI representative. Volunteer firefighters are covered under workers' compensation; however, they are not covered under the presumption law. In the case of the injured employee, the facts of the case were not absolutely clear and the administrative law judge could have found either way. Overall, the facts were not conclusive, and there was no autopsy to assist in providing more conclusive facts.

The committee received testimony regarding the circumstances surrounding the multiple miscalculations of the injured employee's average weekly wage. The injured employee was a seasonal worker, and this results in a more complicated calculation formula. The first miscalculation was a result of human error; whereas, the second miscalculation was the result of receiving additional information.

The committee received testimony that under the state's workers' compensation laws, volunteer firefighters do not have the option of opting in to the full-time paid firefighter presumption. There are a number of ways a volunteer firefighter's situation differs from that of a paid firefighter, including that in special situations, a fire chief can deputize citizens to be volunteer firefighters.

Comments by Interested Persons

The committee received the testimony of a volunteer firefighter who was injured in the course of fighting fires. The testimony was the treatment volunteer firefighters receive from WSI does not reflect what the people of North Dakota want.

Committee Discussion

The committee discussion included whether local governments are imposing the maximum levy for volunteer fire departments; whether there are reasonable insurance products available which might be appropriate for volunteer fire departments to purchase to assist volunteer firefighters; whether the workers' compensation system should include a special benefit for volunteers; whether the current proof requirements for heart attacks and strokes are appropriate; and whether it is desirable to provide surviving family members with a lump sum payment to help in the transition resulting from the work-related death of a member of the family.

Committee testimony indicated the issues relating to volunteer firefighters are recurring. Some rural fire districts provide a life insurance-type policy for the volunteers, and some districts are not willing to levy the tax necessary to provide this product. It was the opinion of the committee that because the North Dakota Firefighters Association is very active in North Dakota politics, it can advocate for legislative changes desired.

INFORMATION REQUESTED

Administrative Hearing and Appeal Process

The committee requested from WSI an overview of the administrative hearing and appeal process used for WSI determinations. The committee received an overview of the process, including a flow chart of the process. This overview included review of the period within which a party can appeal a decision, the option of reapplication following a final decision, and the typical timeframe of steps that need to be followed under the process.

As part of the case review process, the committee considered the appeal process and how it applied to each injured employee. Additionally, the committee considered the role of legal counsel in the hearing and appeal process. The committee received testimony from injured employees that although it is very important and valuable to be represented by an attorney, an injured employee is a victim in the system, especially if the legal services are inadequate. As part of this discussion, the committee received testimony regarding the small number of attorneys in the state who are both knowledgeable in workers' compensation law and who are willing to represent injured employees.

The committee considered how the workers' compensation system might be improved if injured employees were better-informed and better-educated in issues of workers' compensation. The committee noted that several of the cases brought to the committee for review related to examples of the medical profession or the legal profession not doing an adequate job. The average injured employee is up against a very complex,

sophisticated system as well as a complex, sophisticated state agency. The committee became aware of the fact that the workers' compensation system is very difficult for an injured employee or any layperson to fully understand.

Workers' Compensation Attorney's Fees

The committee requested and received an overview of how the state's workers' compensation system limits attorney's fees for attorneys representing WSI and attorneys representing injured employees. This overview included information regarding:

- Circumstances under which injured employees retain legal representation and their attorney's fees can be paid by WSI;
- The fee caps for WSI counsel and injured employee counsel; and
- Workforce Safety and Insurance private contract attorneys.

The committee received testimony from an injured employee who questioned why the injured employee's attorney's fees are only paid if the injured employee wins. The injured employee's suggestion was that it would be more fair to treat both WSI's attorneys and injured employees' attorneys the same way. The committee discussed the fact that if WSI appeals a decision, the injured employee's attorney might not get paid.

Fund Balance Status

As part of the study and the consideration of possible changes to the workers' compensation system, the committee considered the possible fiscal impact of changing the existing workers' compensation system. Committee members recognized the importance of being informed of the WSI fund status going into the 2007 legislative session in order to better evaluate the fiscal impact of any considered changes to the workers' compensation system.

The committee received an update of the WSI fund balance and the status and use of the excess funds resulting from the changed fund balance calculation requirements resulting from House Bill No. 1532 (2005). As part of this update, the committee received information regarding the use of surplus funds for the hazard elimination learning program (HELP), the injured employee education loan fund, a continuing appropriation for safety and education, and a dividend credit for premium payers.

Testimony by interested persons pointed out injured employees have had benefits cut over the past 10 years and now that there is a fund balance surplus, the injured employees deserve to be recognized.

Return-to-Work Services

In response to the issues raised in the course of the case reviews, the committee requested and received an overview of the existing and upcoming vocational rehabilitation and other return-to-work services offered through the state's workers' compensation system, including the services provided through independent contractors; access to education, including the scholarship and the educational loan fund; and the preferred worker program.

The overview indicated that ultimately, following training, an injured employee is intended to return to the local or statewide job market. In the case of a lack of local or statewide jobs, an injured employee might receive retraining; however, sometimes there are conflicts between the educational programs offered and those an injured employee seeks. If retraining is not an option for an injured employee, it is then appropriate to move to identifying minimum wage jobs, which is the least sought after option when it comes to returning to work.

The committee received testimony that under the WSI return-to-work program, an employer is given incentives to retain an employee who is injured on the job. Additionally, the committee received information WSI is implementing a job developer program. Under this new program, a WSI employee will work around the state to place disabled workers in specific return-to-work jobs.

Committee members noted that constituents regularly raise concerns regarding rehabilitation services, including:

- In the case of an older employee who performs physical labor, the injured employee often claims that CorVel, a contractor with WSI, sends the injured employee to an unwanted desk job.
- The income test, as it relates to finding postinjury employment, is unfair.
- Injured employees are trained for jobs that are not available in their communities.

As part of the committee's review of rehabilitation services, the committee requested and received an overview of House Bill No. 1171 (2005), which modified case management of workers' compensation claims and which is being implemented by WSI. The bill applies to employees who are injured after December 31, 2005. The committee considered how injured employees who had their case reviewed by the committee might have had different outcomes if House Bill No. 1171 had applied to them. Under this new case management system, there is a two-year maximum period under which an injured employee may receive temporary total disability, which is also known as work replacement. Upon reaching this two-year point, the injured employee basically has four options:

1. Release back to work;
2. Determination of permanent total disability, which requires a minimum of 25 percent permanent partial impairment;
3. Determination of temporary partial disability, which is limited to five years; or
4. Retraining and reeducation, which is limited to two years.

Under the retraining and reeducation option, an injured employee may attempt a trial of up to 20 weeks after which, if not successful, that injured employee may revert over to the temporary partial disability classification and receive up to three and one-half years' benefits. Under this new case management system, a temporary partial disability option is considered the

default. Additionally, within 90 days following injury, vocational rehabilitation is required to become involved in the injured employee's case.

The committee received testimony from interested persons that under this new case management system, the burden is shifted to the claimant and a two-year drop-dead date is introduced to the system. The new system essentially provides timelines under which WSI will be relieved of its obligations.

The committee received testimony that the rehabilitation system has failed the injured employee. The system limits services to the black letter of the law, resulting in the services merely meeting the minimums. Testimony was to the effect that WSI interprets the law very narrowly, in a manner that will limit the liability of WSI. The ultimate goal of rehabilitation services is to return the injured employee to self-sufficiency, and the existing system does not allow WSI to use all the possible tools to get injured employees back to work.

The committee received testimony throughout the case review process that realistically employers are hesitant to hire an injured employee who is trying to get back to work after an injury, especially if that injured employee is on a long list of medications to deal with the work-related injury and has work limitations.

Vehicle Modifications

In response to issues raised in the course of the third case review, the committee considered the issue of vehicle modifications for catastrophically injured employees. The law addressing vehicle modifications is included under NDCC Section 65-05-07(5), which also addresses real estate modifications. The law provides for a $50,000 modification maximum.

In fiscal year 2004, WSI paid out approximately $49,000 for vehicle and real estate modifications and in fiscal year 2003, this amount was approximately $70,000. Testimony indicated there are approximately 66 catastrophically injured employees in the state's workers' compensation system and of these 66 individuals, 44 of the files are noted as being active, which means benefits are being paid in some way.

Under the vehicle modification law, the injured employee is required to provide a vehicle and WSI provides funds for the modification. The representative of WSI testified WSI would face a dilemma if an injured employee did not have an appropriate vehicle to modify. Under the current system, an injured employee's disability payments are meant to cover the day-to-day costs of life and the lump sum permanent partial impairment award is better suited to pay for a vehicle. Between the disability benefits and the permanent partial impairment award, an injured employee is expected to purchase a vehicle and then have WSI pay for the modifications.

The committee considered the problems that arise when an injured employee essentially outlives the usefulness of a modified vehicle. In considering the issue of vehicle modifications, some of the things the committee considered were what would happen if a modified vehicle were sold, whether a replacement schedule should be created to deal with modified vehicles, and what would happen if an injured employee with a modified vehicle went through a divorce and there was a property settlement that addressed the ownership of the vehicle.

Workers' Compensation Benefits

The committee reviewed the current and past laws relating to workers' compensation permanent total disability, supplemental benefits, and retirement. As part of this review, the committee received information regarding the supplemental benefits law under the current benefits structure and under the immediate past benefits structure. The information distinguished between high wage earners and low wage earners and distinguished between the benefits structures of a catastrophically injured employee and a noncatastrophically injured employee.

The committee received information that the fiscal impact of being injured may vary based in part on the age at injury. If an employee is injured early in a working career, the workers' compensation benefits are capped at that point, which may negatively impact employees who have not been in the workforce very long and as a result have not reached a high earning level.

The committee received testimony from an injured employee that in 1919 the state signed an agreement with injured employees to provide workers' compensation benefits and to provide injured employees with sure and certain relief in return for the employees losing the right to bring actions against employers. The testimony was to the effect that, over time, WSI has become an insurance company that works for employers instead of for both sides.

Workers' Compensation Reapplication

The committee requested and received an overview of how the state's workers' compensation laws address "worsening medical conditions" and the associated consideration of loss of wages for purposes of reapplications. North Dakota Century Code Section 65-05-08 addresses reapplication for workers' compensation benefits, creating a two-part test, requiring that an employee has to suffer a significant change in a compensable condition and that the change must cause an actual wage loss. As part of this overview, the committee received reapplication statistics for 2003, 2004, and 2005, over which time the percent of reapplications that were paid by WSI ranged from 89 to 95 percent.

The testimony indicated that the situations leading to a reapplication are varied. If an injured employee is treated conservatively, over a period of time this may ultimately result in a medical condition that worsens and requires additional treatment. It is likely that House Bill No. 1171 will impact reapplication figures because the new system provides incentives to injured employees to return to work and ultimately this may result in increased reapplications later.

The WSI representative testified that if the loss of wages requirement were removed, WSI would lose the leverage it has to get injured employees to participate in retraining and other return-to-work activities. Workforce

Safety and Insurance needs to retain the leverage to get injured employees out of unsafe employment.

Special Investigation Unit

The committee requested and received an overview of the WSI special investigation unit, including the unit's expenditures for investigating employer and injured employee fraud; an overview of the investigative process; and comparative special investigation unit statistics for the years 2004 and 2005 and the first quarter of 2006.

The committee received testimony reviewing what the special investigation unit does and how it receives information upon which it acts. The testimony indicated the most used methods for reporting to the special investigation unit are the hotline, reports from employers, and reports from WSI staff members.

The committee received testimony from a WSI representative that a survey performed in the 1990s indicated that employees are less likely to be defrauding the workers' compensation system than others. An individual can contact WSI to inquire whether the individual was the subject of an investigation. This investigation information is accessible once an investigation is closed.

The committee discussed the fact that it received conflicting statistics, with one set of data indicating WSI puts more emphasis on fraud investigations of injured employees than employers. The committee also questioned whether the special investigation unit spends more resources on some size employers than others. There is a perception that smaller employers are investigated more often than larger employers.

Workers' Compensation Stipulated Settlements

The committee requested and received information regarding stipulated settlements between WSI and injured employees. The testimony of the WSI representative addressed the distinction between settlements and buyouts. A settlement refers to the resolution of a dispute through the use of compromise; whereas, a buyout refers to the payment of a sum that reflects the present value of future benefits. Buyouts are not necessarily precipitated by a dispute. The testimony of the WSI representative indicated WSI is not aggressive in pursuing buyouts. Settlements and buyouts are not usually initiated by WSI; however, WSI may raise the option of a buyout if an injured employee indicates a need.

Independent Medical Examinations

In response to the multiple times injured employees raised the issues relating to independent medical examinations (IMEs), the committee requested information from WSI regarding the steps being taken to address the concerns with IMEs.

The committee received testimony that WSI is in the process of implementing utilization review boards for specialized areas of treatment, such as back injuries. The executive director of WSI testified WSI is doing what it can to have IMEs performed by North Dakota physicians; however, many North Dakota physicians do not want to provide this service.

The committee received testimony that for a typical IME the physician spends time before the examination reviewing the injured employee's records. The executive director of WSI testified WSI recognizes an injured employee may have an expectation that the physician should perform a full physical consultation in the examination room, and WSI is trying to address this expectation.

The committee received testimony from interested persons that IME physicians are biased in favor of WSI. The committee discussed the fact that if proponents for injured employees pursue IME physicians selected by an injured employee, there are going to be claims the physician never rules in favor of WSI.

The committee received testimony of a WSI claims adjuster that from the claims adjuster's standpoint, IMEs are avoided if at all possible. The IMEs are avoided because they may create an adversarial relationship between the injured employees and WSI and because it takes a tremendous amount of work for the claims adjuster to arrange for unbiased examinations. Independent medical examinations are required when there is something missing in the file and compensability is unable to be determined.

The committee encouraged WSI to take steps on its own to improve the IME system and consider the feasibility of implementing a random audit of IMEs.

Workforce Safety and Insurance Legislative Package

The committee received testimony that WSI is in continuous discussion concerning its legislative package. The executive director of WSI testified it is his goal to make the WSI legislative package available for public review as early as possible so people can support or oppose the package and have a meaningful opportunity to be prepared to do so.

In response to the committee's request to review the tentative WSI legislative package for the 2007 session, the committee received the following list of possible legislative items:

- Allow the nondependency death award to be distributed based on the wishes of a will, when applicable, instead of automatically to the closest living relative.
- Limit the filing window for dependency allowance payments.
- Fully exempt WSI from the required use of Information Technology Department services.
- Request 10 additional full-time equivalent positions in the areas of vocational rehabilitation (1), information technology (1), facility management (1), underwriting (1), loss control (2), and loss prevention (4).
- Provide a survivor benefits report to the House Industry, Business and Labor Committee.
- Provide enhancements to the injured employee educational loan program related to fixing the interest rate at a lower percentage and possibly expanding the eligibility criteria.

- Provide funds for the purchase as well as the adaptation of vehicles for those who are catastrophically injured (requested by the interim Workers' Compensation Review Committee).
- Provide benefits for a small window of time in very rare cases in which a false positive test occurs on physicals for firefighters and law enforcement officers under the presumption clause (requested by the committee).
- Work with stakeholders to redraft some form of a drug-testing bill.
- Work with stakeholders to modify the burden-of-proof provision in cases in which those involved in a workplace accident are found to have been under the influence of drugs or alcohol at the time of the accident.
- Seek permission to designate peace officer status for special investigations staff and allow investigators to travel in unmarked State Fleet Services vehicles for official business.
- Replace the existing 75 percent experience rate surcharge cap with an unlimited, actual experience rating cap.
- Clean up language referencing the prior risk management program.
- Remove the optional coverage choice for newspaper delivery personnel.
- Provide clarification language for the designated medical provider program.
- Propose minor cleanup language items from last session which do not materially affect the law in any way.
- Fund, construct, and maintain a permanent employees' memorial on the State Capitol grounds.
- Workforce Safety and Insurance budget.

Although the committee received testimony in support and in opposition to the proposed WSI legislative package, the committee members recognized the committee was not the appropriate forum to address the merits of the proposed legislation.

The committee requested that the executive director of WSI work with the WSI Board of Directors to determine whether the board supports the legislative proposals being recommended by the committee. The executive director testified that for purposes of the following tentative legislative ideas, WSI was willing to partner its efforts with these of the committee:

- Survivor benefit options;
- Enhancement of injured employee loan program;
- Vehicle flexibility for catastrophically injured employees;
- Additional benefits payable modifications;
- Cost-of-living adjustment increases; and
- Dependent survivor benefits for catastrophic claims in which the death is outside the six-year window.

A representative of WSI testified WSI would attempt, before the start of the 2007 legislative session, to provide committee members with an update on those issues WSI will and will not be pursuing during the 2007 legislative session.

COMMITTEE CONSIDERATIONS

Workers' Compensation Benefits

The committee considered a bill draft that addressed issues raised by injured employees during the case review process and issues raised by the committee in the process of the case reviews.

Vehicle Modifications

The committee considered the portion of the bill draft addressing the motor vehicle issue raised by the injured employee in the third case review. The provision amended NDCC Section 65-05-07(5), the law relating to real estate and motor vehicle modifications for catastrophically injured employees.

The provision allowed a catastrophically injured employee to qualify for up to $100,000 for a specially equipped motor vehicle or vehicle adaptations, in addition to the $50,000 allowed for modifications to real estate. The motor vehicle coverage may include vehicle and adaptation replacement purchases. The amended law would apply to all purchases and repairs that take place after July 31, 2007.

The committee considered whether the application of the provision should allow for retroactive coverage or whether the provision should provide for an emergency. The committee received testimony in support of retroactive application and in support of providing for an emergency clause.

Additional Benefits Payable

The committee considered the portion of the bill draft prepared in response to the retirement presumption issues raised by the injured employee in the first case reviewed by the committee. This provision would create a new section to NDCC Chapter 65-05, providing an alternative calculation for additional benefits payable. The testimony indicated in most cases, this alternative calculation would dramatically increase the amount and period of receipt of additional benefits payable. With this proposed legislative change, for this limited group of injured employees, the calculation under NDCC Section 65-05-09.4 would use the injured employee's pre-August 1, 1995, date of injury as the date of first disability.

The WSI representative testified under the alternative calculation created by this bill draft, the injured employee who brought this issue to the committee would go from anticipated additional benefits with a present value of approximately $3,600 over a period of 2.9 years to anticipated additional benefits with a present value of approximately $67,000 over a period of 13.7 years.

This provision of the bill draft addressed issues arising from the transition from the pre-1995 system to the post-1995 system for workers' compensation benefits. The first injured employee represented a class of individuals who got caught in the transition from one system to another and this portion of the bill draft would aid in the transition.

Death Benefits

The committee considered the portion of the bill draft which amended NDCC Section 65-05-16 relating to workers' compensation death benefits. The changes address the situation of a catastrophically injured employee whose death is related to a work-related injury but the death occurs more than six years after the date of injury. Current law requires the death must occur within six years of the injury.

The representative of WSI testified the change in the death benefit provision helps to recognize the sacrifices made by spouses and dependents. In the case of a catastrophically injured employee, the family may make significant sacrifices for a long time.

Committee discussion recognized that catastrophically injured employees are living longer due to improvements in technology, and these changes help address this issue.

Educational Fund

The committee considered the portion of the bill draft which amended NDCC Section 65-05.1-08, the law providing for the WSI educational fund, which was enacted in 2005. The changes expanded the scope of those individuals who may receive an educational loan from the fund to include an injured employee's surviving spouse and dependent child and decreased the interest rate that may be charged on these educational loans.

The WSI representative testified this educational loan fund supplements other WSI programs, such as the guardianship fund and possible federal benefits. The WSI Board of Directors is considering setting interest rates at approximately 2 percent, an amount that would be used to cover the administrative costs of the program.

Supplementary Benefits

The committee considered the portion of the bill draft which amended NDCC Section 65-05.2-01 regarding supplementary benefits. These changes would apply to claims filed after December 31, 2005, so they would not apply to any of the injured employees who had their cases reviewed by the committee.

Under the provision, for those injured employees filing claims after December 31, 2005, the proposed language would provide for a three-year period, after which the injured employee would be eligible for supplementary benefits--a decrease from seven years to three years.

The committee received testimony that this decrease in the period of time an injured employee must wait until receiving supplementary benefits is consistent with the trend that has been occurring. Before 1999 the maximum period of time an injured employee had to wait was in excess of 10 years, in 1999 that period was decreased to 10 years, in 2001 that period was decreased to 7 years, and this provision would decrease that period to 3 years.

Testimony indicated the class of injured employees impacted by this language would be the same class of injured employees who will fall within the parameters of House Bill No. 1171 (2005). Although the language provided the injured employees in the three-year parameter would be receiving a cost-of-living adjustment sooner, these injured employees also are impacted by the retirement presumption. Injured employees who were injured before 1995, such as the injured employee in the third case reviewed by the committee, may have had to wait longer for supplementary benefits but will receive the supplementary benefits for life, whereas a post-1995 injured employee falls under the retirement presumption and does not receive lifelong benefits but instead receives an additional benefit payable payment.

The committee received testimony that the estimated number of injured employees who are covered under the supplementary benefit system in effect before the 1999 legislative changes is approximately 900, approximately 60 to 65 of whom are catastrophically injured. The committee recognized extending the supplementary benefit language to apply to employees injured before January 1, 2006, would result in a significant fiscal impact.

The committee received testimony questioning the validity of the 900 injured employees figure. Testimony indicated the initial figures used to establish a pricetag for the issue of the retirement presumption was too high and WSI later decreased the number. There was concern of WSI overestimating fiscal impacts in order to discourage legislative action.

A representative of CARE testified in support of creation of a fund to help catastrophically injured employees, such as the injured employee in the third case reviewed.

Firefighter Presumption

The committee considered two bill drafts in response to the firefighter presumption issues raised by the injured employee in the second case reviewed.

False Positives

The committee considered two versions of a bill draft amending NDCC Section 65-01-15.1, the law providing for a presumption of compensability for specified conditions of full-time paid firefighters and law enforcement officers. The second version of the bill draft added language providing that if a medical examination produces a false positive result for a condition covered under the presumption, WSI would be required to consider the condition to be a compensable injury. The language further provided the coverage for a false positive was limited to 28 days. The application of the amendment would apply to all false positive tests occurring as of the effective date of the Act.

The committee considered whether the application of this provision should provide for retroactive coverage in order to apply to the injured employee who brought this issue to the committee. Additionally, the committee considered whether 28 days was an appropriate period of time and whether it provided enough time to allow an injured employee enough time to confirm medical results.

Period for Appeal

The committee considered a bill draft amending NDCC Section 65-01-16, the law relating to the

procedures that must be followed in claims for workers' compensation benefits. The bill draft provided that for purposes of a decision issued under the firefighter and law enforcement officer's presumption, a party has 45 rather than 30 days in which to file a written request for reconsideration or rehearing of a notice of decision, administrative order, or notice that the Office of Independent Review assistance is complete.

The WSI representative testified the extension of time from 30 to 45 days applies equally to all parties, including the employer and the employee.

The committee received testimony from firefighters in support of the extension from 30 to 45 days. Testimony indicated firefighters are unique in some respects due to their shift work. Testimony suggested the same extension apply to the period within which a party may request assistance from the Office of Independent Review.

The committee received testimony in opposition to the bill draft, which indicated extending the period of appeal from 30 to 45 days is a step backward and creates a disparate system for different types of claims. Not only does the extension work against all the efforts of WSI and the Legislative Assembly to address the previous problems of backlogs of cases, but the extension could be used as a way for employers to extend the process.

Extension of Committee Activities

The committee considered a bill draft that would have extended the expiration date of the Workers' Compensation Committee from July 31, 2007, to July 31, 2009. The committee discussed whether it was appropriate for a committee to recommend legislation continuing the activities of that same committee. A committee-recommended bill draft extending the activities of the committee could appear to be self-serving, and it may be more appropriate to leave this decision to the legislative body.

The committee discussed the fact that the 11 cases that came before the committee for review were generally "old system" cases in that the laws raising the workers' compensation issues usually had been modified. The committee recognized the new case management system resulting from House Bill No. 1171 (2005) will impact employees injured after December 31, 2005, and there may be value to conduct the case review process in a few years to monitor how the new case management system impacts injured employees.

The committee received testimony in support of and in opposition to the committee's case review system. The testimony in support of the committee's activities included that it was very educational for committee members. The testimony in opposition to the committee's activities included that injured employees needed the committee to provide legal representation to allow the injured employees to present the necessary information and to formulate issues and recommendations. Neutral testimony indicated the true judgment of the value of the committee will come during the 2007 session as the Legislative Assembly acts on the committee's bills and WSI's bills.

RECOMMENDATIONS

The committee recommends House Bill No. 1038 to address workers' compensation benefits by increasing coverage for specially equipped motor vehicles for catastrophically injured employees; creating an alternative calculation of additional benefits payable to address employees who were injured before July 1, 1995, but did not receive a determination of permanent and total disability until after July 1, 1995; increasing death benefits to cover a catastrophically injured employee who dies more than six years after the date of injury; expanding who may qualify for a WSI educational loan and decreasing the interest rates for these loans; and decreasing the period an injured employee is required to wait before receiving supplementary benefits. This bill includes an emergency clause.

The committee recommends Senate Bill No. 2042 to expand the presumption of compensability for full-time paid firefighters and law enforcement officers to provide coverage, not to exceed 56 days, if a medical examination produces a false positive result for a condition covered under the presumption.

The committee recommends Senate Bill No. 2043 that for purposes of claims brought under the presumption of compensability of full-time paid firefighters and law enforcement officers extends from 30 to 45 days the period within which a party to a notice of decision has to request a reconsideration, a party to an administrative order has to request the assistance of the Office of Independent Review, and a party to an administrative order or Office of Independent Review notice of completion has to request a rehearing.

STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE COUNCIL FOR THE 2005-06 INTERIM

The following table identifies the bills and resolutions prioritized by the Legislative Council for study during the 2005-06 interim under authority of North Dakota Century Code (NDCC) Section 54-35-02.

Bill or Resolution No.	Subject Matter
1010 § 11	Study the need for a comprehensive, long-range study of the state's current and future health care needs in order to address issues such as the aging population of the state, the phenomenon of health care cost-shifting to the private sector, the trend of uncompensated health care services, shortages in the number of health care professionals, duplication of technology and facilities, and any other factors that might affect the health care system in North Dakota in the year 2020 (Budget Committee on Health Care)
1010 § 12	Study the appropriate minimum standard of loss ratio for accident and health insurers and whether that loss ratio is more appropriately set by statute or by rule (Industry, Business, and Labor Committee)
1012 § 15	Study the services provided by residential treatment centers and residential child care facilities and the appropriateness of the payments provided by the state for these services (Budget Committee on Human Services)
1013 § 16	Study the state's elementary and secondary education system, including key measurements of student progress, programs that address the state's competitiveness with other states, costs incurred by the state relating to implementing the No Child Left Behind Act, and the most effective means of using taxpayer dollars at the state and local levels to ensure the best possible education for the children of this state (Education Committee)
1015 § 28	Study issues related to state employee compensation, including total state employee compensation, the human resources system, retirement benefits, health insurance benefits, and the feasibility and desirability of implementing equity pay, merit pay, and pay for performance compensation systems (Employee Benefits Programs Committee)
1035 § 1	Establish a government performance and accountability system pilot project involving up to three executive branch agencies during the 2005-06 interim (Budget Committee on Government Services)
1195 § 7	Study the feasibility and desirability of requiring professional employer organizations operating in North Dakota to register with the state, including consideration of how other states address the issue of registration of professional employer organizations (Industry, Business, and Labor Committee)
1198 § 1	Study reemployment processes and costs and an appropriate method for providing a limitation on the total average number of job-attached unemployment insurance claimants (Industry, Business, and Labor Committee)
1260 § 1	Study public improvement contracts and issues relating to use of multiple bids versus single prime bids, construction management, professional liability and indemnification, and design-build delivery systems (Industry, Business, and Labor Committee)
1280 § 6	Study the feasibility and desirability of creating an allied health professions board to regulate the practice of members of allied health professions, including the feasibility and desirability of a North Dakota allied health professions board entering joint professional licensure agreements with neighboring states (Budget Committee on Health Care)
1332 § 3	Study the pharmacy benefits management industry, including

the extent of competition in the marketplace for health insurance and prescription drugs; whether protecting the confidentiality of trade secret or proprietary information has a positive or negative impact on prescription drug prices; the ownership interest or affiliation between insurance companies and pharmacy benefits management companies and whether such relationships are good for the consumer; the impact of disclosure of information regarding relationships between pharmacy benefits management companies and their customers; the use of various cost-containment methods by pharmacy benefits managers, including the extent to which pharmacy benefits managers promote the use of generic drugs; the actual impact of the use of pharmacy benefits management techniques on community pharmacies; the impact of mail service pharmacies on consumers and community pharmacies; the impact of generic and brand name drugs in formulary development, drug switches and mail order operations, as well as spread pricing, data sales, and manufacturers' rebates and discounts; the price consumers actually pay for prescription drugs in North Dakota; and consideration of the legality of imposing statutory restrictions on pharmacy benefits managers (Industry, Business, and Labor Committee)

1370 § 1 — Study the railroad fuel surcharges (Agriculture and Natural Resources Committee)

1434 § 1 — Study the No Child Left Behind Act of 2001, including amendments to the Act, changes to federal regulations implementing the Act, and any policy changes and letters of guidance issued by the United States Secretary of Education (No Child Left Behind Committee)

1459 § 5 — Study the Medicaid medical reimbursement system, including costs of providing services, fee schedules, parity among provider groups, and access (Budget Committee on Human Services)

1473 § 1 — Study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues (Commission on Alternatives to Incarceration)

1523 § 1 — Study workers' compensation claims that are brought to the committee by injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation (Workers' Compensation Review Committee)

1524 § 1 — Study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development (Tribal and State Relations Committee)

2001 § 6 — Study the feasibility and desirability of arranging for the printing of bills and resolutions for the 60th Legislative Assembly by using computers and high-speed printers rather than printing multiple copies of all bills and having copies available in the bill and journal room (Legislative Management Committee)

2001 § 7 — Study the need for additional legislative committee meeting rooms and expend available funds for remodeling legislative meeting rooms if additional meeting rooms are needed (Legislative Management Committee)

2001 § 8 — Study the appropriateness of increasing the daily compensation for chairmen of substantive standing committee divisions established by rule of the House or Senate (Legislative Management Committee)

2003 § 23 — Study higher education funding and accountability, including a review of the progress made in implementing the Higher Education Roundtable recommendations relating to the University System meeting the state's expectations and needs, the funding methodology needed to meet these expectations and needs, and the appropriate accountability and

	reporting system for the University System, and including an independent consultant's evaluation of the roundtable recommendations and goals and objectives of the University System, the long-term financing plan for the University System, and the University System's prioritization of higher education funding - Selection of consultant by Legislative Council (Higher Education Committee)
2004 § 20	Study the costs and benefits of adopting a comprehensive healthy North Dakota and workplace wellness program in collaboration with the State Department of Health, health insurers and other third-party payers, Workforce Safety and Insurance, interested nonprofit health-related agencies, and others who have an interest in establishing accident and disease prevention programs (Budget Committee on Human Services)
2004 § 21	Study the state's public health unit infrastructure and the ability of the public health units to respond to public health issues, including an assessment of the efficiency of operations, given the personnel and financial resources available; the effectiveness of services, given the lines of governmental authority of the current infrastructure; and the efficiency of the food and lodging investigation services provided by the State Department of Health and the public health units, and to develop a plan maximizing efficiencies through a coordinated system and fee structure (Budget Committee on Human Services)
2015 § 12 (amended by HB 1015 § 41)	Develop a legislative strategic plan, including site and facilities' plans, for the Department of Corrections and Rehabilitation's incarceration and correctional facility needs (Budget Committee on Government Services)
2018 § 9	Study the implementation by Job Service North Dakota of a shared work demonstration project (Industry, Business, and Labor Committee)
2032 § 17	Study the state's business climate through a business climate initiative, including receipt of agency reports regarding economic development legislation introduced by the Legislative Council during previous legislative sessions, participation in business climate focus groups across the state, and participation in a Business Congress held before June 1, 2006, and a Business Congress held before June 1, 2008. The Legislative Council is to contract with a third party to provide professional services to plan, facilitate, report on, and coordinate followup for the focus groups and Business Congresses included within the study. (Economic Development Committee)
2032 § 18	Study the issues relating to venture and risk capital and whether and how some of these issues may be negatively impacting business development in the state (Economic Development Committee)
2115 § 1	Study the process to negotiate and quantify reserved water rights (Agriculture and Natural Resources Committee)
2171 § 1	Study the licensure and regulation of acupuncturists practicing in the state, as well as the possibility of multistate joint licensure and regulation programs (Budget Committee on Health Care)
2269 § 2	Study the fiscal impact and the feasibility and desirability of establishing an umbrella licensing organization for a group consisting of counselors, psychologists, marriage and family therapists, and social workers (Budget Committee on Health Care)
2361 § 2	Study the state's marriage laws and methods for strengthening the institution of marriage in the state, including premarital requirements, such as marital education and counseling, waiting periods, and marital blood tests; the availability of marriage counseling and parenting education in the state; and the implementation of predivorce requirements, such as

divorce-effects education (Judiciary Committee)

2372 § 1 — Study the feasibility and desirability of establishing an organization or ombudsman to support and coordinate federal, tribal, state, including institutions of higher education, and local government and private efforts to discourage destructive behavior, including alcohol and drug abuse and tobacco use (Advisory Commission on Intergovernmental Relations)

2404 § 1 — Study enhanced funding for elementary and secondary education and methods, including sales tax, income tax, and tax exemptions, by which the state's reliance on property taxes to fund elementary and secondary education could be reduced (Finance and Taxation Committee)

3005 — Study information identifying state-owned real estate and study the utilization of real estate owned by state agencies and institutions, the best use of state-owned real estate, and whether the state should establish and maintain an inventory of state-owned real estate (Budget Committee on Government Services)

3014 — Study judicial elections and recent federal court decisions affecting the conduct of judicial elections (Judicial Process Committee)

3028 — Study utilization of the state's abundant energy resources to attract energy-intensive economic development projects to the state (Agriculture and Natural Resources Committee)

3036 — Study state agency and institution continuing appropriation authority (Legislative Audit and Fiscal Review Committee)

3040 — Study the unemployment insurance tax rate structure; the structure's impact on the unemployment insurance trust fund, with special focus on the impact of the current unemployment insurance tax structure on new businesses; the historical cyclical risks faced by the industries in which new businesses are beginning to operate; and whether the unemployment insurance tax impact is reasonably favorable to the desired economic development of the state (Industry, Business, and Labor Committee)

3042 — Study the laws of this state and other states as they relate to the unauthorized acquisition, theft, and misuse of personal identifying information belonging to another individual (Judicial Process Committee)

3054 — Study state programs providing services to children with special health care needs to determine whether the programs are effective in meeting these special health care needs, whether there are gaps in the state's system for providing services to children with special health care needs, and whether there are significant unmet special health care needs of children which should be addressed (Budget Committee on Human Services)

4001 — Hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants passed by Congress (Budget Section)

4010 — Study alternatives to the current method of expressing property tax levies in mills per dollar of taxable valuation (Finance and Taxation Committee)

4027 — Study the legal and medical definitions used for dementia-related conditions - Revised by Legislative Council directive (Judicial Process Committee)

4031 — Study the feasibility and desirability of adopting the Uniform Trust Code (Judiciary Committee)

4032 — Study the feasibility and desirability of adopting Revised Article 1 of the Uniform Commercial Code - General Provisions (Judiciary Committee)

NDCC Citation	Subject Matter (Committee)
4-02.1-18	Receive annual audit report from the State Fair Association (Legislative Audit and Fiscal Review Committee)

4-05.1-19(8)	Receive report from the Agricultural Research Board on its annual evaluation of research activities and expenditures (Industry, Business, and Labor Committee)
4-05.1-19(10)	Receive status report from the State Board of Agricultural Research and Education (Budget Section)
4-14.1-07	Receive statement from an ethanol production plant receiving ethanol production incentives indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting ethanol production incentive payments received, effective until July 1, 2005 (Budget Section)
4-14.1-07.1	Receive statement from an ethanol plant in operation before July 1, 1995, and receiving a production incentive from the state indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under the section (Budget Section)
4-19-01.2	Approve use of moneys deposited in the State Forester reserve account (Budget Section)
4-24-10	Determine when agricultural commodity promotion groups must report to the standing Agriculture Committees (Legislative Management Committee)
10-19.1-152	Receive annual audit report from a corporation receiving an ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)
10-32-156	Receive annual audit report from any limited liability company that produces agricultural ethanol alcohol or methanol in this state and which receives a production subsidy from the state (Legislative Audit and Fiscal Review Committee)
11-18-22.1	Receive report from the North Dakota Association of Counties before April 1 of each even-numbered year regarding how each county has used the county's document preservation fund during the preceding two fiscal years, effective until August 1, 2009 (Advisory Commission on Intergovernmental Relations)
15-03-04	Approve any purchase of commercial or residential property by the Board of University and School Lands as sole owner (Budget Section)
15-10-12.1	Authorize the State Board of Higher Education to authorize construction of any building, or campus improvements and building maintenance of more than $385,000, if financed by donations (Budget Section)
15-10-12.3	Receive biennial report from each institution under the control of the State Board of Higher Education undertaking a capital construction project that was approved by the Legislative Assembly and for which local funds are to be used which details the source of all funds used in the project (Budget Section)
15-10-42	Receive report from the State Board of Higher Education before July 1, 2006, regarding implementation of a policy requiring all institutions to assess faculty and teaching assistant English communication skills (Education Committee; Higher Education Committee)
15-39.1-10.11	Receive annual report from the Board of Trustees of the Teachers' Fund for Retirement regarding annual test of actuarial adequacy of statutory contribution rate (Employee Benefits Programs Committee)
15-69-02	Approve, upon receiving a recommendation from the Emergency Commission and in conjunction with the State Board of Higher Education and the North Dakota Economic Development Foundation, designation of a center of excellence recommended by the Centers of Excellence Commission (Budget Section)
15-69-05	Receive annual audits from a center of excellence that is

	awarded funds under Chapter 15-69 on the funds distributed to the center, until completion of four years following the final distribution of funds (Budget Section)
15.1-02-09	Receive annual report from the Superintendent of Public Instruction by the end of February on the financial condition of school districts (Education Committee)
15.1-02-13	Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports (Education Committee)
15.1-02-14	Receive annual report from the Superintendent of Public Instruction regarding any transfer to the state tuition fund by the Superintendent of federal or other moneys received by the Superintendent to pay programmatic administrative expenses for which the Superintendent received a state general fund appropriation (Budget Section)
15.1-06-08	Receive report from the Superintendent of Public Instruction of a request from a school or school district for a waiver of any rule governing the accreditation of schools (Education Committee)
15.1-06-08.1	Receive report from the Superintendent of Public Instruction of a request from a school or school district for a waiver of NDCC Section 15.1-21-03 (Education Committee)
15.1-09-57(4)	Receive report filed by the Education Standards and Practices Board at the conclusion of each school year citing all requests for exceptions to the requirement that individuals be licensed to teach in a particular course area or field, including the board's response to each request and a brief description of the board's rationale (No Child Left Behind Committee)
15.1-21-10	Receive from the Superintendent of Public Instruction the compilation of test scores of a test aligned to the state content standards in reading and mathematics, given annually to students in three grades statewide (Education Committee)
18-11-15	Receive notice from a firefighters relief association concerning service benefits paid under a special schedule (Employee Benefits Programs Committee)
19-03.1-44	Receive report from the Attorney General before July 2 of every even-numbered year on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state (Judicial Process Committee)
20.1-02-05.1	Approve comprehensive statewide land acquisition plan established by the director of the Game and Fish Department and every land acquisition of more than 10 acres or exceeding $10,000 by the Game and Fish Department (Budget Section)
20.1-02-16.1	Authorize the Game and Fish Department to spend moneys in the game and fish fund if the balance would be reduced below $15 million (Budget Section)
25-04-02.2	Authorize the Developmental Center at Westwood Park, Grafton, to provide services under contract with a governmental or nongovernmental person (Budget Section)
25-04-17	Receive report on writeoff of patients' accounts at the Developmental Center at Westwood Park, Grafton (Legislative Audit and Fiscal Review Committee)
26.1-50-05	Receive annual audited financial statement and report from the North Dakota low-risk incentive fund (Legislative Audit and Fiscal Review Committee)
28-32-07	Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)
28-32-10	Establish standard procedures for administrative agency compliance with notice requirements of proposed rulemaking (Administrative Rules Committee)
28-32-10	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)

28-32-18	Determine whether an administrative rule is void (Administrative Rules Committee)
28-32-42	Receive notice of appeal of an administrative agency's rule-making action (Administrative Rules Committee)
36-22-09	Receive audit report of the North Dakota Stockmen's Association (Legislative Audit and Fiscal Review Committee)
40-23-22.1	Approve waiver of exemption of state property in a city from special assessments levied for flood control purposes (Budget Section)
40-63-03	Receive annual reports from the Division of Community Services on renaissance zone progress (Economic Development Committee)
40-63-07	Receive annual report from the Division of Community Services on conclusions of annual audits of renaissance fund organizations (Budget Section)
43-12.1-08.2	Receive annual report from the Board of Nursing on its study, if conducted, of the nursing educational requirements in this state and the nursing shortage in this state and the implications for rural communities, effective through September 30, 2006 (Budget Committee on Health Care)
45-10.1-71	Receive annual audit report from a limited partnership receiving an ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)
46-02-05	Determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws (Legislative Management Committee)
47-30.1-24.1	Receive report from the commissioner of University and School Lands identifying every state agency that has not submitted a claim for property belonging to that agency (Budget Section)
47-30.1-24.1	Approve state agency relinquishment of unclaimed property belonging to that agency (Budget Section)
48-02-20	Approve the change or expansion of, or any additional expenditure for, a state building construction project approved by the Legislative Assembly (Budget Section)
49-21-31	Receive annually a report from the Public Service Commission regarding payments received under the performance assurance plan and expenditures from the performance assurance fund (Budget Section)
49-24-13	Receive written report from the North Dakota Transmission Authority each biennium (Electric Industry Competition Committee)
50-06-05.1	Approve termination of federal food stamp or energy assistance program (Budget Section)
50-06-25	Receive biennial report from the Department of Human Services which provides a five-year historical analysis of the number of persons receiving services under the medical assistance program, the costs for rendering the services by program appropriations, the budget requested, the budget appropriated, and actual expenditures for each of the preceding five years, effective until July 1, 2007 (Budget Committee on Human Services)
50-06.3-08	Receive annual report from the Department of Human Services on writeoff of recipients' or patients' accounts (Legislative Audit and Fiscal Review Committee)
50-29-02	Receive annual report from the Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program state plan (Budget Committee on Health Care)
52-02-17	Receive report from Job Service North Dakota before March 1 of each year on the actual job insurance trust fund balance and the targeted modified average

	high-cost multiplier, as of December 31 of the previous year, and a projected trust fund balance for the next three years (Budget Section)
52-02-18	Receive report of biennial performance audit of the divisions of Job Service North Dakota (Legislative Audit and Fiscal Review Committee)
53-12.1-03	Receive report, as requested, from the director of the North Dakota Lottery regarding the operation of the lottery (Judicial Process Committee)
54-03-20	Establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session (Legislative Management Committee)
54-03-26	Determine the fee payable by legislators for use of personal computers (Legislative Management Committee)
54-03-28	Contract with a private entity, after receiving recommendations from the Insurance Commissioner, to provide a cost-benefit analysis of every legislative measure mandating health insurance coverage of services or payment for specified providers of services, or an amendment that mandates such coverage or payment (Budget Committee on Health Care)
54-06-26	Establish guidelines defining reasonable and appropriate use of state telephones by legislative branch personnel (Legislative Management Committee)
54-06-31	Receive periodic reports from the Central Personnel Division on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions (Employee Benefits Programs Committee)
54-10-01	Approve the State Auditor's hiring of a consultant to assist with conducting a performance audit of a state agency (Legislative Audit and Fiscal Review Committee)
54-10-01	Determine frequency of audits of state agencies (Legislative Audit and Fiscal Review Committee)
54-10-01	Determine necessary performance audits by the State Auditor (Legislative Audit and Fiscal Review Committee)
54-10-13	Determine when the State Auditor is to perform audits of political subdivisions (Legislative Audit and Fiscal Review Committee)
54-10-15	Order the State Auditor to audit or review the accounts of any political subdivision (Legislative Audit and Fiscal Review Committee)
54-10-28	Determine information technology compliance reviews to be conducted by the State Auditor and receive the results of those reviews (Information Technology Committee)
54-14-03.1	Receive reports on fiscal irregularities (Budget Section)
54-16-04	Approve transfers of money or spending authority which would eliminate or make impossible accomplishment of a program or objective funded by the Legislative Assembly (Budget Section)
54-16-04	Approve transfers exceeding $50,000 from one fund or line item to another unless necessary to comply with a court order or to avoid imminent threat to safety or imminent financial loss to the state (Budget Section)
54-16-04.1	Approve Emergency Commission authorization of a state officer's acceptance of federal funds in excess of $50,000 if the acceptance of funds is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)
54-16-04.1	Approve Emergency Commission authorization of a state officer's expenditure of federal funds in excess of $50,000 if acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a

natural disaster or war crisis or an imminent financial loss to the state (Budget Section)

54-16-04.1 Approve, with the Emergency Commission, acceptance of any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent before the next regular legislative session for deposit in a special fund until the Legislative Assembly appropriates the funds (Budget Section)

54-16-04.2 Approve Emergency Commission authorization of a state officer's acceptance of funds in excess of $50,000 if the acceptance of funds is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)

54-16-04.2 Approve Emergency Commission authorization of a state officer's expenditure of funds in excess of $50,000 if acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)

54-16-09 Approve Emergency Commission authorization of transfer of spending authority from the state contingencies appropriation in excess of $50,000 if the transfer is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)

54-23.3-09 Receive report from the director of the Department of Corrections and Rehabilitation on any new program that serves adult or juvenile offenders, including alternatives to conventional incarceration and programs operated on a contract basis, if the program is anticipated to cost in excess of $100,000 during a biennium (Budget Section)

54-27-22 Approve use of the capital improvements planning revolving fund (Budget Section)

54-27-23 Approve use of cash flow financing (Budget Section)

54-27.2-03 Receive report on transfers of funds from the budget stabilization fund to the state general fund to offset projected decrease in general fund revenues (Budget Section)

54-35-02 Review uniform laws recommended by the Commission on Uniform State Laws (Judiciary Committee)

54-35-02 Establish guidelines for use of legislative chambers and displays in Memorial Hall (Legislative Management Committee)

54-35-02 Determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents (Legislative Management Committee)

54-35-02.2 Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review Committee)

54-35-02.4 Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans (Employee Benefits Programs Committee)

54-35-02.6 Study and review administrative rules and related statutes (Administrative Rules Committee)

54-35-02.7 Overview of the Garrison Diversion Project and related matters and any necessary discussions with adjacent states on water-related topics (Agriculture and Natural Resources Committee)

54-35-02.8 As the Legislative Ethics Committee--Consider or prepare a legislative code of ethics (Legislative Management Committee)

54-35-11 Make arrangements for 2007 session (Legislative Management Committee)

54-35-15.2 Review the activities of the Information Technology Department, statewide information technology

	standards, the statewide information technology plan, and major information technology projects; review cost-benefit analyses of major projects; conduct studies; and make recommendations regarding established or proposed information technology programs and information technology acquisition (Information Technology Committee)
54-35-15.4	Determine information technology compliance reviews to be conducted by the State Auditor and receive the results of those reviews (Information Technology Committee)
54-35-18	Study the impact of competition on the generation, transmission, and distribution of electric energy within this state (Electric Industry Competition Committee)
54-35-18.2	Study the impact of competition on the generation, transmission, and distribution of electric energy within this state (Electric Industry Competition Committee)
54-35.2-02	Study local government structure, fiscal and other powers and functions of local governments, relationships between and among local governments and the state or any other government, allocation of state and local resources, and interstate issues involving local governments (Advisory Commission on Intergovernmental Relations)
54-40-01	Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority (Budget Committee on Government Services)
54-44-04	Receive report from the director of the Office of Management and Budget on the status of tobacco settlement funds and related information (Budget Section)
54-44-16	Receive report from the Office of Management and Budget regarding any purchase of oil put options by the State Investment Board to offset reduced state general fund oil and gas tax revenues due to oil and gas prices falling below selected levels (Budget Section)
54-44.1-07	Prescribe form of budget information prepared by the director of the budget (Budget Section)
54-44.1-12.1	Object to any allotment by the director of the budget, any expenditure of a budget unit, or any failure to make an allotment or expenditure if the action or failure to act is contrary to legislative intent (Budget Section)
54-44.1-13.1	Approve reduction of budgets due to initiative or referendum action (Budget Section)
54-52.1-08.2	Approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements (Employee Benefits Programs Committee)
54-56-03	Approve grants, not otherwise specifically approved by the Legislative Assembly, distributed by the Children's Services Coordinating Committee to children's services organizations and programs (Budget Section)
54-59-02.1	Receive from the Chief Information Officer recommendations of the department's advisory committee regarding major software projects for consideration and the drafting of appropriate legislation to implement the recommendations (Information Technology Committee)
54-59-05(4)	Approve execution by the Information Technology Department of proposed agreement to finance the purchase of software, equipment, or implementation of services in excess of $1 million (Budget Section)
54-59-12	Receive report from the Chief Information Officer regarding the coordination of services with political subdivisions, and from the Chief Information Officer and the commissioner of the State Board of Higher Education regarding coordination of information technology between the Information Technology Department and higher education (Information Technology Committee)

54-59-13	Receive report from the Information Technology Department regarding any executive branch state agency or institution that does not agree to conform to its information technology plan or comply with statewide policies and standards (Information Technology Committee)
54-59-19	Receive summary of annual report from the Information Technology Department (Budget Section; Legislative Audit and Fiscal Review Committee)
54-59-19	Receive annual report from the Information Technology Department (Information Technology Committee)
54-60-03	Determine the standing committees that will receive the report from the Commissioner of Commerce on the department's goals and objectives, its long-term goals and objectives, and on commerce benchmarks (Legislative Management Committee)
54-60-10	Approve expenditures exceeding $130,000 a biennium by the Department of Commerce from its operating fund for web site maintenance (Budget Section)
54-60-10	Receive report annually from the Department of Commerce regarding money spent to administer an Internet web site that provides career guidance and job opportunity services (Budget Section)
54-60-11	Receive biennial report from the Commissioner of Commerce on the process used and factors considered by the commissioner in identifying target industries on which economic development efforts are focused and the special focus target industry (Economic Development Committee)
54-60.1-07	Receive the compilation and summary of state grantor reports filed annually by the Department of Commerce beginning in 2007 and the reports of state agencies that award business incentives for the previous calendar year (Economic Development Committee)
54-61-03	Receive annual report from the director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices (Judicial Process Committee)
57-40.6-11	Receive annual report from the Division of State Radio on the operation of and any recommended changes in the emergency 911 telephone system standards and guidelines (Electric Industry Competition Committee)
57-40.6-12	Receive report from the Public Safety Answering Points Coordinating Committee by November 1 of each even-numbered year on city and county fees on telephone exchange access service and wireless service (Electric Industry Competition Committee)
65-02-03.3	Receive annual report from the director of Workforce Safety and Insurance and the chairman of the Workforce Safety and Insurance Board of Directors (Legislative Audit and Fiscal Review Committee)
65-02-05.1	Receive biennial report from Workforce Safety and Insurance on all revenues deposited into and expenditures from the building maintenance account of the workers' compensation fund (Budget Section)
65-02-30	Receive report from the director of Workforce Safety and Insurance, the chairman of the Workforce Safety and Insurance Board of Directors, and the auditor regarding the biennial performance audit of the organization (Legislative Audit and Fiscal Review Committee)
65-04-03.1	Receive periodic reports from Workforce Safety and Insurance and the Risk Management Division of the Office of Management and Budget on the success of a single workers' compensation account for state entities covered by NDCC Chapter 32-12.2 (Budget Section)

65-06.2-09	Review report from Workforce Safety and Insurance on recommendations based on safety audit of Roughrider Industries work programs and performance audit of modified workers' compensation coverage program (Industry, Business, and Labor Committee)

2003 Session Laws Citation	Subject Matter (Committee)
Chapter 3 § 11	Approve obtaining and using funds from any source by the Forest Service to assist in the construction of equipment and supply storage buildings in Towner and Bottineau (Budget Section)
Chapter 36 § 42	Receive report in December of even-numbered years from the director of the Office of Management and Budget on specified commodities and services exempted by the director from the procurement requirements of NDCC Chapter 54-44.4 (Budget Section)

2005 Session Laws Citation	Subject Matter (Committee)
Chapter 12 § 4	Approve, with the Emergency Commission, additional full-time equivalent positions in the Department of Human Services for Medicaid program review of eligibility and payments when it is cost-effective to hire additional positions in lieu of contracts (Budget Section)
Chapter 12 § 6	Receive report from the Department of Human Services after June 30, 2006, regarding any transfers between line items and between subdivisions in excess of $50,000 (Budget Section)
Chapter 12 § 11	Receive report from the Department of Human Services by July 1, 2006, regarding the department's review of its budget, programs, and services to determine the extent to which the department can provide for additional general fund requirements resulting from changes in the federal medical assistance percentage for North Dakota without affecting the level of services provided by the department (Budget Committee on Human Services)
Chapter 12 § 16	Receive report from the Department of Human Services during the 2005-06 interim on the department's plan to transfer appropriate individuals from the Developmental Center to community placements and on the anticipated number of individuals that will be transferred during the 2005-07 biennium (Budget Committee on Human Services)
Chapter 15 § 42	Approve, with the Emergency Commission, up to 21 additional full-time equivalent employee positions at the State Hospital relating to the substance abuse treatment pilot program (Budget Section)
Chapter 16 § 6	Approve, with the Emergency Commission, borrowing up to $900,000 from the Bank of North Dakota by the Department of Emergency Services to migrate the State Radio Communications system from analog to digital (Budget Section)
Chapter 16 § 7	Receive report, as requested, from the Department of Emergency Services detailing the uses of federal homeland security funds at the state and local levels and any discrepancies relating to the local needs assessment completed by the department and purchases made with federal homeland security funds (Budget Section)
Chapter 16 § 10	Receive report from the Department of Emergency Services on its reevaluation of job classifications impacted by the department's reorganization, the positions affected by the reorganization, and a detailed justification of any prior salary increases and a recommendation and analysis of any proposed salary increases or decreases (Budget Section)
Chapter 16 § 10	Approve salary increases to positions affected by the Department of Emergency Services' reorganization after the department's reevaluation of job classifications impacted by the reorganization (Budget Section)

Chapter 29 § 3	Administer appropriation for the purpose of replacing sound system mixers in the House chamber (Legislative Management Committee)
Chapter 29 § 5	Review and adopt project plan for replacement of legislative technology applications and approve deliverables of each completed project phase (Legislative Management Committee)
Chapter 31 § 9	Receive report from a representative of the State Board of Higher Education regarding the allocation of the equity pool provided to address equity at higher education institutions and other campus needs (Budget Section)
Chapter 31 § 17	Receive report from a representative of the State Board of Higher Education periodically during the 2005-06 interim on the status of the board's review of the long-term finance plan (Budget Section; Education Committee; Higher Education Committee)
Chapter 32 § 26	Receive report from the State Department of Health during the 2005-06 interim regarding the department's basic care survey pilot project which includes a recommendation of whether the unannounced survey process should continue for all basic care facilities (Budget Committee on Health Care)
Chapter 40 § 4	Receive report from the Department of Transportation regarding any additional full-time equivalent positions for highway construction and maintenance hired in lieu of contracting for those positions (Budget Section)
Chapter 42 § 6	Approve, with the Emergency Commission, construction of footings for up to three additional floors in a new Bank of North Dakota building (Budget Section)
Chapter 42 § 35	Receive annual report from the manager of the State Mill and Elevator Association concerning the current role and mission of the association and short-term and long-term plans for acquisitions, construction, renovation, equipment upgrading, sales and marketing, personnel, and all financial matters, as well as a description of efforts by the association to inform legislators about the role, mission, and operations of the association (Budget Section)
Chapter 46 § 13	Approve, with the Emergency Commission, borrowing of up to $5,000,000 by the Office of Management and Budget as requested by the Centers of Excellence Commission for the purpose of providing funding to centers of excellence (Budget Section)
Chapter 46 § 21	Receive report from the Department of Commerce after July 1, 2006, on the use of grant funds provided to the Rural Development Council to match federal funds (Budget Section)
Chapter 46 § 25	Receive report from the Department of Commerce after July 1, 2006, on the use of grant funds provided to the Red River Valley Research Corridor to match federal (Budget Section)
Chapter 46 § 26	Receive report from the Department of Commerce after July 1, 2006, on the use of grant funds provided to the North Dakota center for technology program (Budget Section)
Chapter 46 § 27	Receive report from the Department of Commerce after July 1, 2006, on the use of funding for grants in the partners in marketing grant program (Budget Section)
Chapter 46 § 46	Receive report from the Commissioner of Commerce during the 2005-06 interim on the status of the American Indian Business Development Office and the status of the International Trade and Business Office (Economic Development Committee)
Chapter 46 § 47	Receive report from the Commissioner of Commerce during the 2005-06 interim on the status of the certification program through which the Division of Economic Development and Finance provides training services to local economic developers (Economic Development Committee)

Chapter 46 § 48	Receive report from the Commissioner of Commerce during the 2005-06 interim on the status of the image information program (Economic Development Committee)
Chapter 46 § 49	Receive report from the Commissioner of Commerce during the 2005-06 interim on the status of the business hotline program (Economic Development Committee)
Chapter 46 § 50	Receive report from the Commissioner of Commerce during the 2005-06 interim on the status of the Dakota manufacturing initiative (Economic Development Committee)
Chapter 46 § 51	Receive report from the Commissioner of Commerce before July 1, 2006, on the outcome of the Department of Commerce's study of the state's intellectual property laws as they relate to the protection of intellectual property rights (Economic Development Committee)
Chapter 46 § 52	Receive report from the Commissioner of Commerce before July 1, 2006, on the outcome of the Department of Commerce's study of the state's economic development incentives (Economic Development Committee)
Chapter 46 § 53	Receive report from the Commissioner of Commerce annually during the 2005-06 interim regarding North Dakota economic goals and associated benchmarks (Budget Section)
Chapter 52 § 2	Receive report from the Highway Patrol after July 1, 2006, regarding the progress of the training for law enforcement officers and emergency service providers provided under the appropriation provided by Chapter 52 (Budget Section)
Chapter 57 § 4	Determine when the Agriculture Commissioner, Bank of North Dakota, and North Dakota Stockmen's Association must report on the livestock loan guarantee program to the standing Agriculture Committees of the 60th Legislative Assembly (Legislative Management Committee)
Chapter 151 § 19	Receive report from the president of the Bank of North Dakota during the 2005-06 interim on the status of the Bank's investment in alternative and venture capital investments and early-stage capital funds (Economic Development Committee)
Chapter 151 § 20	Receive report from the State Board of Higher Education and the Centers of Excellence Commission during the 2005-06 interim on the status of the centers of excellence program (Economic Development Committee)
Chapter 151 § 21	Receive report from the Insurance Commissioner before July 1, 2006, on the outcome of the commissioner's compilation of existing data regarding the state's liability insurance marketplace (Industry, Business, and Labor Committee)
Chapter 151 § 22	Receive report from the chancellor of the University System before July 1, 2006, on the outcome of the State Board of Higher Education's study of incentives the state could adopt to serve as catalysts for stimulating more efficient commercialization of new technologies (Economic Development Committee)
Chapter 151 § 23	Receive report from the Upper Great Plains Transportation Institute before July 1, 2006, on the outcome of the institute's study of how improvements to the transportation infrastructure of this state might enhance the business climate and the state's competitive position in economic development (Transportation Committee)
Chapter 151 § 24	Receive report from the director of the Office of Management and Budget during the 2005-06 interim on the status of providing procurement information through the Internet and on the outcome of the director's procurement assistance center study (Economic Development Committee)
Chapter 167 § 30	Receive report from the Superintendent of Public Instruction regarding notices received from school boards that vote not to use

	70 percent of new moneys received during the 2005-07 biennium for the purpose of increasing compensation paid to teachers or providing compensation to teachers beginning employment after June 30, 2005 (Education Committee)
Chapter 167 § 31	Receive from the Superintendent of Public Instruction at the conclusion of each school year during the 2005-07 biennium reports the Superintendent compiles covering operations of education associations governed by joint powers agreements (No Child Left Behind Committee)
Chapter 225 § 2	Receive report from the Game and Fish Department before July 1, 2006, regarding the department's findings on its assessment of the status of mountain lions in North Dakota (Agriculture and Natural Resources Committee)
Chapter 412 § 2	Receive periodic reports from the Department of Human Services during the 2005-06 interim regarding the status of the alternatives-to-abortion services funding, the first of which must be made by December 1, 2005 (Judiciary Committee)
Chapter 413 § 3	Receive periodic status reports from the Department of Human Services and the Prescription Drug Monitoring Program Working Group during the 2005-06 interim regarding the activities of the working group and the implementation of the prescription drug monitoring program (Budget Committee on Human Services)
Chapter 413 § 4	Receive report from and provide input to the Department of Human Services during the 2005-06 interim regarding the development of recommendations required with respect to medical assistance program management under NDCC Section 50-24.1-27 (Budget Committee on Human Services)
Chapter 414 § 3	Approve, with the Emergency Commission, receipt and expenditure of additional funds by the Department of Human Services for treatment services under the department's substance abuse treatment pilot program (Budget Section)
Chapter 417 § 5	Receive report from the Department of Human Services during the 2005-06 interim regarding the status of the Medicaid waiver to provide in-home services, the number of applications the department receives for in-home services, and the status of the program's appropriation (Budget Committee on Human Services)
Chapter 428 § 2	Receive report from the Department of Human Services during the 2005-06 interim regarding the department's progress in developing and implementing a plan for implementing the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Budget Committee on Human Services)
Chapter 430 § 2	Receive report from the Department of Human Services before November 1, 2005, regarding the status of the amendment to the Medicaid state plan regarding the disregard of any assets to the extent that payments are made or because an individual has received or is entitled to receive benefits under a long-term care insurance policy (Budget Committee on Human Services)
Chapter 470 § 11	Receive report from the Attorney General regarding any expenditures made or employees hired under the authority to defray additional administrative and other operating costs of the North Dakota lottery in excess of the appropriation (Budget Section)
Chapter 497 § 1	Visit and inspect the veterans' memorial on the Capitol grounds and recommend repairs and updates to Facility Management before September 1, 2005 (Legislative Management Committee)
Chapter 538 § 9	Receive periodic reports from the Commission on Legal Counsel for Indigents during the 2005-06 interim regarding the implementation of the indigent defense

system, with the first report presented before December 1, 2005 (Judicial Process Committee)

Chapter 601 § 37 — Receive report from the Agriculture Commissioner in November 2005 and June 2006 regarding all notifications and requests for assistance by individuals who believe local weed boards have not eradicated or controlled noxious weeds satisfactorily (Agriculture and Natural Resources Committee)

Chapter 667 § 33 — Receive information from the Superintendent of Public Instruction regarding the estimated costs that are likely to be incurred by this state during the ensuing eight years to meet the requirements of the No Child Left Behind Act of 2001 (No Child Left Behind Committee)

LEGISLATIVE COUNCIL ASSIGNMENTS

The following table identifies additional assignments by the Legislative Council or the Legislative Council chairman to interim committees.

Responsibility	Interim Committee
Review and report on budget data prepared by the director of the budget	Budget Section
Monitor status of state agency and institution appropriations	Budget Committee on Government Services
Study issues relating to the appropriate public uses for the power of eminent domain	Judicial Process Committee
Statutory and constitutional revision	Judicial Process Committee
Review legislative rules	Legislative Management Committee
Study federal highway appropriations and state matching requirements	Transportation Committee
Study effectiveness of financial responsibility requirements imposed on individuals convicted of driving without liability insurance	Transportation Committee
Study cost-shifting of medical costs of individuals injured in automobile crashes	Transportation Committee

STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Council for study during the 2005-06 interim under authority of North Dakota Century Code Section 54-35-02. The subject matter of many of these measures is the same or similar to the subject matter of studies that were given priority or of study assignments by the Legislative Council.

Bill or Resolution No.	Subject Matter
1008 § 7	Study the changes in responsibilities and duties of the Public Service Commission since its inception, including an evaluation of what additional duties have been given to the commission and those duties no longer performed
1009 § 14	Study the feasibility and desirability of implementing a license fee for businesses receiving state meat inspection program services and whether the fee would impact the number of businesses that would use the federal meat inspection service rather than the state service
1012 § 12	Study the Department of Human Services system of paying qualified service providers, including a review of the appropriateness of payment levels to various providers
1012 § 14	Study methods of improving the sustainability of funding long-term care services in the state, including a review of case mix and rate equalization, consideration of additional support for facilities providing additional restorative care services, and consideration of options for reducing the number of required reports of facilities providing high-quality care or for seeking waivers to change the survey process
1013 § 15	Study the potential for cooperative field service delivery between North Dakota Vision Services - School for the Blind and the School for the Deaf
1015 § 29	Study employee salaries of the Department of Corrections and Rehabilitation, including a salary comparison of the department's employees to market, salary increases and equity adjustments from 1995 through 2005, salary increases and equity adjustments authorized for the 2005-07 biennium, employee turnover, and salary equity funding requested and provided
1203 § 11	Study the current system under which property taxes levied by school districts are abated for the purpose of furthering economic development and whether this practice of abating property taxes levied by school districts should continue to be a part of economic development efforts in this state

1203 § 12	Study the system of local economic developers to determine whether the existing system provides the most effective and efficient system; whether the system could be improved by providing for increased uniformity in the provision of local economic development services or uniform applications, project investment standards, and economic development services or uniform applications, project investment standards, and economic development authority governance; and whether there are undesirable gaps or duplications in local economic development services, particularly in rural communities
1272 § 2	Study the feasibility and desirability of revising the process for appointing or electing individuals to the North Dakota Wheat Commission
1396 § 1	Study driving under the influence, repeat offenses, prevention, enforcement, and penalties
1453 § 2	Study the feasibility and desirability of creating an emblem for the sole use of the North Dakota Legislative Assembly, members of the Legislative Assembly, and the Legislative Council
1530 § 1	Study North Dakota's oil and gas tax structure, including comparison to the oil and gas tax structure of other producing states and consideration of the feasibility and desirability of simplification of North Dakota's oil and gas tax structure
2004 § 22	Study whether to change guidelines for funding programs as a result of additional tobacco settlement collections that are anticipated to be received and deposited in the community health trust fund from 2008 through 2017
2023 § 5	Study deferred maintenance and infrastructure for all state agencies and institutions and compile a list of all the deferred maintenance and long-term infrastructure needs
2113 § 1	Study issues related to hunting and fishing privileges by nonresidents and nonresidents who are former residents
2160 § 1	Study administration and enforcement of the State Building Code and its relationship to local standards and enforcement
2215 § 1	Study feasibility and desirability of private sector employers securing health insurance for permanent and temporary employees or themselves through a health insurance pool
2257 § 1	Study the feasibility and desirability of creating a diversion program for people who have written bad checks as an alternative to prosecution
2268 § 1	Study issues related to waste rubber recycling, abatement and remediation of waste rubber tire stockpiles, and the recovery of components of petroleum-based products
2272 § 1	Study circumstances in which property should cease to be considered agricultural property for property tax purposes
2272 § 2	Issues related to transferability of income tax credits for installation of geothermal, solar, or wind energy devices
2390 § 1	Study city and county development impact fees
2393 § 1	Study sales, use, and gross receipts tax exemptions and reductions, with emphasis on those that are available for only certain purchasers, including for each exemption or reduction a detailed analysis of the fiscal impact to the state, benefits to the state economy from eliminating the exemption or rate reduction, benefits to the state economy of retaining the exemption or rate reduction, relationship of the exemption or reduction to tax policies of other states and to federal or state laws or regulations, and who are the beneficiaries of each exemption or reduction, including the extent to which the benefits flow to out-of-state concerns
2395 § 4	Study issues relating to Medicaid and other public funding for the extraordinary health care needs of children who live in an institution or who are at risk of institutionalization; the Comprehensive Health Association of North Dakota program provided for under NDCC Chapter 26.1-08, including contracting for a cost-benefit analysis of this program; and the state programs providing services to children with special health care needs to determine whether the programs are effective in meeting these special health care needs, whether there are gaps in the state's system for providing services to children with special health care needs, and whether there are significant unmet special health care needs of children which should be addressed
3001	Study the legal and enforcement issues relating to child support collections on Indian reservations, including state and tribal court jurisdictions, recognition of income withholding orders, and logistics

involved in transferring child support collected to custodial parents

3010 Study the feasibility and desirability of establishing a state Brownfields law; superfund law; other efforts to encourage the remediation and redevelopment of sites on which there has been a release of pollution, contaminants, or petroleum; and measures to encourage property owners to invest in and redevelop these sites

3013 Study the causes of and factors that reduce the severity of motor vehicle crashes

3016 Study the delivery of veterans' services by the state and counties

3022 Study data regarding cervical cancer and human papillomavirus, evaluate current methods of public education and access to regular cervical cancer screening, and consider options for increasing screening accuracy

3025 Study the issues of fairness and equity as they relate to the issuance and enforcement of child visitation orders

3031 Study issues relating to tribal-state relations, including methods for encouraging greater tribal-state cooperation; the promotion of economic development on Indian reservations in the state; the identification and study of health care, child welfare services, social services, environmental protection, education, and law enforcement issues on the reservations; the identification and study of the social and fiscal impact of providing social services in counties within and adjacent to the reservations; and the identification and proposals for the resolution of the water issues affecting the state and the tribes

3038 Study organ and tissue donation and actions that may be taken at the regional, state, local, and private levels to increase organ and tissue donations

3039 Study the appropriate level of state-sponsored tourism marketing

3043 Study the need for supportive housing and services, including emergency shelters, transition housing, and permanent supportive housing for homeless individuals and families with children

3045 Study the feasibility and desirability of authorizing nonprofit organizations to participate in a government liability self-insurance pool

3047 Study sentencing alternatives with an emphasis on the expanded use of rehabilitation over incarceration, the provision of more treatment options, and the adequate funding of treatment programs

4009 Study school district and library funding sources to determine if a method can be found to provide an incentive to reduce school district and library property tax levies

4011 Study assessment and taxation of mobile homes and similar housing alternatives with an emphasis on making assessment and taxation of those housing alternatives equitable in comparison with assessment and taxation of traditional residential housing

4016 Study the feasibility and desirability of adopting a statewide procedure for conducting missing persons investigations

4030 Study the delivery of long-term care services in North Dakota with primary emphasis on the individual's preferred method of care, patient safety, quality of care, potential duplication of service, and the direction of state assistance

4033 Study whether enhancing the quality of child care and increasing access to affordable child care would favorably impact economic development in the state

4037 Study the laws pertaining to fences located outside the corporate limits of the state's cities and the relevancy of those laws in the 21st century

4039 Study state and local taxes and other funding sources that may be used to more equitably spread the responsibility for funding elementary and secondary education, reduce reliance on property taxes, and enhance equity and adequacy of funding for elementary and secondary education

2007 NORTH DAKOTA LEGISLATIVE COUNCIL BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1025 - Reserved Water Rights Negotiations. This bill authorizes the Governor to negotiate reserved water rights of the United States and federally recognized Indian tribes. (Agriculture and Natural Resources Committee)

House Bill No. 1026 - State Penitentiary Renovation and Expansion. This bill provides an appropriation of $38 million to the Department of Corrections and Rehabilitation for the renovation and expansion of the State Penitentiary, including replacement of the east cellhouse. (Budget Committee on Government Services)

House Bill No. 1027 - Business Initiative. This bill addresses a broad range of economic development and business climate issues, such as a rural airport economic development fund, Housing Finance Agency mortgage loan financing programs and housing grant programs, the beginning entrepreneur loan guarantee program, the Biodiesel partnership in assisting community expansion (PACE) program, the PACE (flex PACE) program, a rural community tourism enhancement grant program, the image information program, a visitor information center program, a business and tourism acceleration commission, tax expenditure and state business incentive expenditure reports, seed capital investment tax credits, sales tax exemptions for tourism equipment and wireless service provider equipment, tax credits for recruitment and internship program expenses, a Department of Commerce Division of Innovation and Technology, research and technology tax credits, innovation grants, State Board of Higher Education annual performance and accountability reports, higher education program startup grants, centers of excellence, a job listing web site, Department of Commerce Division of Workforce Development duties, attraction of out-of-state workers, agency studies, and Legislative Council studies. (Economic Development Committee)

House Bill No. 1028 - Energy Development and Transmission Committee. This bill creates an Energy Development and Transmission Committee of the Legislative Council to study each facet of the energy industry. (Electric Industry Competition Committee)

House Bill No. 1029 - Home Rule Sales Tax Transfers to School Districts. This bill limits the authority of counties or cities to transfer home rule sales tax revenues to school districts. (Finance and Taxation Committee)

House Bill No. 1030 - Higher Education Special Funds Continuing Appropriation. This bill continues the continuing appropriation of higher education institutions' special revenue funds, including tuition, through June 30, 2009. (Higher Education Committee)

House Bill No. 1031 - North Dakota University System Budget Request and Appropriation. This bill continues the requirement that the budget request for the North Dakota University System include budget estimates for block grants for a base funding component, an initiative funding component, and an asset funding component, and continues the requirement that the appropriation for the University System include block grants for a base funding appropriation, an initiative funding appropriation, and an asset funding appropriation through June 30, 2009. (Higher Education Committee)

House Bill No. 1032 - North Dakota University System Unspent General Fund Appropriations. This bill continues through June 30, 2009, the North Dakota University System authority to carry over at the end of the biennium unspent general fund appropriations. (Higher Education Committee)

House Bill No. 1033 - Public Improvement Contracts. This bill revises statutory provisions relating to bidding and public improvement contracts and allows state and local governments to use the construction management delivery method. (Industry, Business, and Labor Committee)

House Bill No. 1034 - Uniform Trust Code. This bill provides for the adoption of the Uniform Trust Code. (Judiciary Committee)

House Bill No. 1035 - Uniform Commercial Code Revised Article 1 - General Provisions. This bill provides for the adoption of the Uniform Commercial Code Revised Article 1 - General Provisions. (Judiciary Committee)

House Bill No. 1036 - Administrative Procedure for Driving Without Liability Insurance. This bill replaces the criminal procedure for driving without liability insurance with an administrative procedure. The bill also replaces the 20-day grace period to provide proof of insurance to a law enforcement officer with a defense to the violation by providing proof of insurance before or at the hearing on the violation to the hearing official. The bill provides for a mandatory fee of $150 and clarifies language relating to point reductions for violation-free driving. The bill requires insurers to issue proof of insurance. In addition, the bill requires license plate impoundment for a second offense for driving without liability insurance. (Transportation Committee)

House Bill No. 1037 - Proof of Insurance Procedure. This bill changes the citation procedure for driving without liability insurance by replacing the 20-day grace period to provide proof of insurance with a defense to the charge by providing proof to the appropriate court. The bill requires insurers to issue proof of insurance. In addition, the bill requires license plate impoundment for a second offense for driving without liability insurance. (Transportation Committee)

House Bill No. 1038 - Workers' Compensation Benefits. This bill increases coverage for specially

equipped motor vehicles for catastrophically injured employees; creates an alternative calculation for additional benefits payable to address employees who were injured before July 1, 1995, but did not receive a determination of permanent and total disability until after July 1, 1995; increases death benefits to cover a catastrophically injured employee who dies more than six years after the date of injury; expands who may qualify for a Workforce Safety and Insurance educational loan and decreases the interest rates for these loans; and decreases the period an injured employee is required to wait before receiving supplementary benefits. (Workers' Compensation Review Committee)

House Concurrent Resolution No. 3001 - Block Grant Hearings. This concurrent resolution authorizes the Budget Section to hold legislative hearings required for receipt of federal block grants. (Budget Section)

House Concurrent Resolution No. 3002 - Judicial Elections and Judicial Selection Study. This concurrent resolution directs the Legislative Council to study judicial election and judicial selection issues. The concurrent resolution also provides that the study should include a public information and education program with the State Bar Association of North Dakota which includes public forums around the state regarding judicial selection methodology and the conduct of judicial elections. (Judicial Process Committee)

SENATE

Senate Bill No. 2025 - Nurse Practices Act Exemptions. This bill provides an exemption from nurse licensure requirements for employees providing medication to inmates within a correctional facility and provides for training requirements for correctional facility staff who are authorized to provide medication to inmates of a correctional facility. (Budget Committee on Government Services)

Senate Bill No. 2026 - Allied Health Professions Board. This bill establishes an allied health professions board and requires a new allied health profession that is not regulated by an existing occupational or professional board of the state or by a state agency to submit a petition to the allied health professions board requesting inclusion as a profession regulated by the board. (Budget Committee on Health Care)

Senate Bill No. 2027 - Acupuncturist Regulation. This bill requires individuals practicing acupuncture in this state, excluding those individuals who practice acupuncture under the scope of a profession for which they are licensed, to register with the State Department of Health. (Budget Committee on Health Care)

Senate Bill No. 2028 - Budget Section Duties and Responsibilities. This bill removes the statutory requirement for reports to the Budget Section regarding the use of the State Forester reserve account, duplicative payments and transfers to the state tuition fund, status of the performance assurance fund, the Department of Commerce's Internet web site for career guidance and job opportunities, and the status of the Workforce Safety and Insurance building maintenance account. The bill also removes the statutory requirement for annual reports to the Legislative Audit and Fiscal Review Committee by the Information Technology Department. (Budget Section)

Senate Bill No. 2029 - Electronic Monitoring. This bill provides standards under which the Department of Corrections and Rehabilitation may implement an electronic home detention and global positioning system monitoring program and requires that before entering an order for commitment for electronic home detention or global positioning system monitoring, a court, the Parole Board, or the department must inform a participant and other individuals residing in the residence of the participant of the nature and extent of the approved electronic monitoring devices by securing the written consent of the participant in the program and ensuring that the approved electronic devices be minimally intrusive upon the privacy of the participant and other individuals residing in the residence. (Commission on Alternatives to Incarceration)

Senate Bill No. 2030 - Education Associations Governed by Joint Powers Agreements. This bill addresses the financial operation and board membership of educational associations governed by joint powers agreements and requires the Superintendent of Public Instruction to report on specific benefits resulting from participation in an association. (Education Committee)

Senate Bill No. 2031 - Expedited Rate Adjustment for Transmission Facility Costs. This bill provides for an expedited rate adjustment to recover transmission facility costs and allows for a change in the tariff to allow the rate adjustment. The Public Service Commission is required to approve a rate adjustment unless the rate adjustment does not comply with the tariff or the incurred costs are not reasonable and prudent. (Electric Industry Competition Committee)

Senate Bill No. 2032 - Property Tax Relief Appropriation and Allocation. This bill appropriates approximately $74 million for allocation among school districts. The bill requires a reduction of school district property tax authority to reflect the property tax relief allocation for each school district. (Finance and Taxation Committee)

Senate Bill No. 2033 - Property Tax Statement Information. This bill requires property tax statements to include, or be accompanied by, information showing for each taxing district levying taxes against property the amount of taxes levied in dollars and taxes expressed in dollars per $1,000 of true and full valuation of the property. (Finance and Taxation Committee)

Senate Bill No. 2034 - Return to Employer Fee. This bill establishes a return-to-employer fee for job-attached employees of negative balance employers, provides that 50 percent of any fee collected must be considered as an unemployment contribution, and provides that the remaining 50 percent must be deposited in the federal advance interest repayment fund, to be split evenly between use for reemployment services and for administration. (Industry, Business, and Labor Committee)

Senate Bill No. 2035 - Unemployment Insurance Tax Rate. This bill modifies the unemployment insurance tax rate formula to provide that negative balance employers do not benefit from a reduction in unemployment insurance tax rates when there is a surplus in the unemployment insurance trust fund. (Industry, Business, and Labor Committee)

Senate Bill No. 2036 - Professional Employer Organization Licensing. This bill provides for the licensing of professional employer organizations by the Secretary of State and provides that the Secretary of State may refer complaints against professional employer organizations to the Attorney General for investigation and disposition. The bill also provides requirements for a professional employer organization agreement and the rights and obligations of the parties entering a coemployment relationship. (Industry, Business, and Labor Committee)

Senate Bill No. 2037 - Information Technology Committee and Information Technology Department Powers and Duties, Information Technology Plans, and Information Technology Issues. This bill provides that the Chief Information Officer may require information technology contractors to submit to a criminal history record check; authorizes the Information Technology Committee to receive and review project

startup and project closeout reports for any major information technology project; provides that information technology plans are subject to acceptance by the Information Technology Department; revises the contents of the statewide information technology plan and the Information Technology Department annual report; and provides that only entities approved by the Criminal Justice Information Sharing Board may access the criminal justice system. (Information Technology Committee)

Senate Bill No. 2038 - Information Technology Policies, Standards, and Guidelines and Major Proposed Information Technology Project Prioritization. This bill requires the Information Technology Department to develop policies, standards, and guidelines using a process involving advice from state agencies and institutions. The bill also provides that the State Information Technology Advisory Committee is to review policies, standards, and guidelines developed by the Information Technology Department and prioritize proposed major information technology projects of executive branch state agencies, excluding institutions under the control of the State Board of Higher Education and agencies of the judicial and legislative branches. (Information Technology Committee)

Senate Bill No. 2039 - Eminent Domain. This bill limits the uses of eminent domain. The bill prohibits private property from being taken for use by a private commercial enterprise for economic development or for any other private use without the consent of the owner; defines economic development as any activity to increase tax revenue, tax base, employment, or general economic health; provides that public use does not include the public benefits of economic development, including an increase in the tax base or in tax revenues or an improvement of general economic health; provides that the question of whether a use is a public use must be determined by a court; and provides that a court is required to try the matter de novo. (Judicial Process Committee)

Senate Bill No. 2040 - Consumer Fraud. This bill prohibits third parties from assisting and facilitating consumer fraud upon consumers in North Dakota. (Judicial Process Committee)

Senate Bill No. 2041 - Marriage License Fees. This bill provides for a $25 reduction in the marriage license fee for individuals who complete four hours of premarital counseling. The bill provides that the Department of Human Services is responsible for administering the program by using a voucher system and contains an appropriation of $110,000 from temporary assistance for needy families (TANF) funds for the program. (Judiciary Committee)

Senate Bill No. 2042 - Workers' Compensation Presumption for Firefighters and Law Enforcement Officers. This bill expands the presumption of workers' compensation compensability for full-time paid firefighters and law enforcement officers to provide coverage, not to exceed 56 days, if a medical examination produces a false positive result for a condition covered under the presumption. (Workers' Compensation Review Committee)

Senate Bill No. 2043 - Workers' Compensation Appeal Period for Firefighters and Law Enforcement Officers. This bill provides that for purposes of workers' compensation claims brought under the presumption of compensability of full-time paid firefighters and law enforcement officers, the period to appeal is extended from 30 to 45 days. (Workers' Compensation Review Committee)