

## JOURNAL OF THE HOUSE

## Fifty-second Legislative Assembly

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Bismarck, January 8, 1991

The House convened at 12:30 p.m., with Speaker R. Anderson presiding.

The prayer was offered by Chaplain Burnie Kunz, Medcenter One, Bismarck.

The roll was called and all members were present except Representative Nowatzki.

A quorum was declared by the Speaker.

CORRECTION and REVISION of the JOURNAL (Rep. Schmidt, Chairman)  
MR. SPEAKER: Your Committee on Correction and Revision of the Journal has carefully examined the Journal of the First Day and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 33, line 12, after the name "Jacobson" add the words "who was excused"

Page 67, line 4, after the word "Kloubec" add the words "to such committee"

Page 67, line 17, delete the word "Miller" and insert in lieu thereof the word "Milas"

REP. TRAUTMAN MOVED that the report be adopted, which motion prevailed.

## SPECIAL ORDER OF BUSINESS

REP. TOLLEFSON MOVED that a committee of two be appointed to escort Ila Lohnes, Tribal Chairwoman, Devils Lake Sioux Tribe, Fort Totten Reservation to the rostrum, which motion prevailed.

SPEAKER R. ANDERSON APPOINTED Reps. Kunkel and G. Berg to such committee and Ms. Lohnes was escorted to the rostrum. Emanuel Cooley, Justin Elgo, Erich Walker, and Russell Gillette from the United Tribes Technical College in Bismarck were also escorted to the rostrum and presented the Flag Song.

## THE STATE OF THE RELATIONSHIP; A TRIBAL PERSPECTIVE

Ila Lohnes, Tribal Chairwoman  
Devils Lake Sioux Tribe

Mitakuyepi CantemaWaste Napeiyuzapi

All my friends and relatives, with a good heart I greet you.

I am Ila Lohnes (HintunkasanWastewin), elected leader of the Devils Lake Sioux Tribe.

It is an honor and a privilege to represent the Indian people of the state of North Dakota.

It is, indeed, an honor to serve as spokeswoman for the tribal leaders of the state of North Dakota.

My fellow tribal leaders honor me by allowing my words to speak for them, for they have served longer than I.

Those tribal leaders include: Twila Martin-Kekahbah of the Turtle Mountain Band of Chippewas; Charlie Murphy of the Standing Rock Sioux Tribe; Wilbur Wilkinson of the Fort Berthold Three Affiliated Tribes - Mandan, Hidatsa, and Arikara; and Russell Hawkins of the Sisseton-Wahpeton Sioux Tribe.

We waited one hundred years for an apology for the massacre of men, women, and children at Wounded Knee.

Hearing none, we wiped away the tears in our own sacred way just ten days ago and set the spirits of our ancestors free so that we could rebuild the spirit of the Indian people.

Today we are here to speak about the state of the relationship between the tribes of North Dakota and the state of North Dakota.

When I think about the state of the relationship it is hard for me to address that issue when so much understanding needs to take place before one can begin.

Part of that understanding points to the fact that we were here in the yesterdays before your ancestors forced us onto reservations.

We are here today as survivors of a relationship fraught with broken promises, misguided policies, poverty, disease, assimilation, relocation, aculturation, and termination.

And we will be here for all the tomorrows that are yet to come, long after you, your children, and your children's children are drawn from this great state by the lure of a life not tied to the land.

We are tied to this land. We were always tied to this land. We always will be tied to this land. We are going nowhere. It is your people who are leaving.

So it is imperative that any action by this legislative body speak to the needs of this state's indigenous population - the Indian people of North Dakota.

We are living in a time when the minorities of America, when combined, are the majority.

People of color represent the future of America. And the Indian people represent the future of North Dakota.

While non-Indians are leaving this state for a future elsewhere, and while the immigrant population's birth rate declines, the Indian population is returning to the land and the Indian birth rate is rising.

Indeed, we are here to stay

And we are here to grow.

We are here to rebuild.

And on December 29, 1990, in the terror of the same type of prairie blizzard that threatened Big Foot and his band before the revenge-seeking Seventh Cavalry murdered them, we wiped away the tears and honored the Indian people who will become a significant force in the rebuilding of our spirit.

And we will do it with or without your help. But we would welcome your hand in that rebuilding. That hand could represent the beginning of a relationship. But before we touch hands, we must begin to understand.

We must begin to understand the realities in which the Indian people of this state live. They remain harsh.

But increasingly you, your children, and your children's children also feel the harshness of alcoholism, drug dependency, poverty, inadequate health care, inadequate health insurance, the lack of affordable and adequate housing, the high cost of education, and government overregulation.

While the Indian people continue to seek the basics for survival, your people - with their once-comfortable lifestyles threatened by economic forces and the misguided policies of both federal and state governments - now also are faced with the struggle for the basics of survival.

We find ourselves - Indian and non-Indian - walking the same survival road.

We are at the same juncture, and it makes sense to begin a constructive relationship based on needs of human beings no matter what has brought us to this point.

I wish that one hundred years of understanding had brought us to this point, for then the state of the relationship would be good. Unfortunately for Indian and non-Indian alike, that has not been the case.

We now have the opportunity to write the history of the next one hundred years. We can write it hand in hand. Or we can continue to go our separate ways - the Indian people rebuilding on the land of North Dakota, the non-Indian people retreating from the land of North Dakota.

Often the best relationships are those formed during times of adversity. They are formed with understanding and equality.

These are times of adversity.

We need understanding and equality if we are to meet the relationship test - the test of doing things together constructively for North Dakotans - Indian and non-Indian North Dakotans.

If we come to understand each other, then we will have equal access to the resources of this state and come to view each other as equals - as human beings willing to work together to build a future for ourselves and our children - all of our children - all of our Indian children and all of our non-Indian children.

North Dakota is a sovereign state, as are the individual tribes I speak for today.

We need to do our business government to government with equal respect for one another.

That respect is tarnished when, as a sovereignty, we embrace the responsibility for our governmental actions but are denied the authority to implement them without being subjected to state approval.

The duality of that undermines the equality of any meaningful relationship.

On one hand we are responsible - sovereign government to sovereign government. And the next moment we are denied authority, in fact, subjugated - a colony of the state.

Furthermore, no matter what equality is intended in the relationship formed here today or in succeeding years, the history of North Dakota shows that it rarely translates into equality in the communities beyond these walls and halls.

In fact, historically, the translation has been continued racism - so much so, in fact, that racism is the state of the relationship. Understanding and equality, not legislation, eliminates racism.

So today, let us begin to understand.

Let us understand so that the children of the Seventh Generation after the wiping of the tears at Wounded Knee last month remember a one hundred year-old relationship that helped human beings rather than a century where the Indian people cried over the loss of their grandfathers and grandmothers and for the future of their children.

We are beginning to find our way.

And you may be losing yours.

We could help each other. There is a way.

But there is no way to understanding because understanding is the way.

Let me share some things that may help us, Indian and non-Indian, understand each other.

First of all let us understand that alcoholism is not a disease that is prevalent only among Indians. It is a disease that is universal. However, treatment modalities cannot be universal.

Alcoholism is a disease of your culture and it is a disease of my culture, yet in North Dakota the treatment available is only of your culture.

Over the years tribal leaders have expressed the need for Indian people to work with Indian people in conquering this disease amongst our people.

Today, the Indian Health Service, which provides funding for alcohol and drug treatment, counseling, and education is mandating that those Indian people who currently staff the alcohol programs on reservations be certified counselors.

This is an initiative that tribes collectively have been pursuing.

The state of North Dakota has the most difficult curriculum for certification in the country. We have asked the state to recognize certification under the Northern Plains Indian Addiction Counseling Program. And the state has refused, despite the fact that neighboring states recognize that certification.

I have seen treatment and counseling programs in other states that are run by Indian people for Indian people. And those programs are successful. I would like to see the same for the Indian people of North Dakota.

Inhalant abuse is a problem both on and off the reservations throughout North Dakota. Our youths are destroying their minds every day. And yet in this state there are no treatment facilities to effectively handle inhalant abuse cases.

When we address alcoholism we also must address codependency. In a population where the alcoholism rate is over fifty percent, we know that the rate of codependency is double that. Codependency is a learned dysfunction that can be as incapacitating as chemical dependency itself.

I know that all the tribes I represent here today have a critical need for codependency counselors.

And I am certain the non-Indian community also needs an accelerated effort in this area. This Legislature has human services responsibility to address this issue as an integral part of drug and alcoholism prevention and treatment.

On a related matter, it is clear that the high rates of unemployment on reservations lead to the high rate of alcoholism/codependency.

People without jobs are people unable to provide for themselves and their families. People unable to provide for themselves and their families are people in despair.

Jobs represent hope and hope eliminates despair. With employment opportunities comes a sense of hope and the reality of self-sufficiency.

Yet, in this state Indian unemployment remains an invisible statistic to the non-Indian communities because Job Service North Dakota does not collect or record data on reservation employment or joblessness.

Indian people have a strong sense of pride and do not wish to depend upon government handouts for their sustenance.

In the days of old, Indian people provided for all of their own needs. When the buffalo economy was destroyed, Indian self-sufficiency was lost.

In rebuilding it is very important to rebuild individual as well as tribal self-sufficiency.

Economic development is the road to self-sufficiency for Indian and non-Indian alike. It is perhaps the most critical factor in self-sufficiency for the tribes of North Dakota.

And the successes are apparent. For instance, Sioux Manufacturing Corporation on my own reservation at Fort Totten remains the largest industrial employer in the state.

And the reservation dollar not only helps the Indian community, but also contributes significantly to the economic lifeblood of reservation border towns and the state of North Dakota.

Those dollars leave the reservation and build the coffers of local non-Indian border towns. We continually see border towns growing at the expense of our own economic development. We see the non-Indian border town benefiting from our dollar as well as the state of North Dakota.

However, when the Indian community needs a loan for more economic development, the non-Indian banking community denies the application.

This is happening at a time when there are fewer federal dollars available for economic development.

Governor George Sinner's plan to reorganize the North Dakota Indian Affairs Commission and to place a minority desk in a restructured department of economic development, as well as his proposal to reservations, is a step in the right direction.

In addition, gaming has become a force for economic self-sufficiency for the Indian communities.

It not only returns some of the dollars that leave North Dakota reservations, but also has been providing funds to support programs that would be lost as federal funding continues to decline.

On my own reservation, gaming funds are dedicated to assist programs for the elderly and the handicapped. Gaming proceeds support the St. Jude's Home for the Elderly at Fort Totten. We look forward to a continued understanding that gaming is vital to the reservation economy.

North Dakota's assistance in developing tribal motor vehicle licensing programs on Turtle Mountain and Devils Lake reservations also has provided needed funds and a sense of tribal identity. It is our hope that we can continue along this vein to develop tribal drivers' license programs.

However, the state Public Service Commission's continued insistence in supporting inequities in utility rates charged to reservation customers - both individual and business - undermines economic stability and growth on North Dakota's reservations.

The Legislature has a responsibility to consumers - Indian and non-Indian - to reexamine regulatory policy outlined in the state Constitution and Century Codes of North Dakota.

There is a serious question of constitutionality with regard to utility regulation in this state that's been ignored by this legislative body for decades. In fact, that the Public Service Commission responsibly oversees the regulation of utilities is little more than a myth in Indian Country.

As lawmakers, you also have a responsibility to examine some of the other myths that become obstacles to understanding reservation life.

For instance, two of those myths could be health care and criminal justice.

It should not be taken that Indian Health Service is a provide-all for health care needs. Indian Health Service is so fraught with regulation that it provides only health care to those individuals who qualify under what is termed "Category 1" - or life threatening health problems.

Take heart, though. That's one example of some progress made in the state of the relationship. We can now say: "The only good Indian is an ALMOST DEAD Indian."

Often Indian people are denied health care in North Dakota because they do not meet the red tape of regulation requirements.

Wisconsin has solved the problem by working with the Indian Health Service and the state's health care delivery system. The result is that Indian people are issued medical identification cards that give them access to any hospital within the state.

North Dakota's Indian people not only face denial of access to hospital facilities, but also are denied access to the criminal justice system.

Indian people accused of a crime almost never face a jury of their peers. In fact, they rarely see an Indian on a jury.

There is no justice in a system that allows a jury of non-Indians to determine the fate of an accused Indian, particularly when the members of that jury are selected from a dominant culture that refuses to understand who we are or how we must survive.

So, we come back to understanding. I have been forced to understand your culture in order to survive. You have been free to ignore mine.

There will be no relationship unless you take seriously the responsibility you have to understand all North Dakotans - non-Indian and Indian, alike.

Do you understand?

(Wana gha pi?)

#### MOTIONS

REP. KLOUBEC MOVED that the remarks of Ms. Ila Lohnes be printed in the Journal, which motion prevailed.

REP. TOLLEFSON MOVED that a committee of two be appointed to escort Ms. Lohnes from the rostrum, which motion prevailed.

SPEAKER R. ANDERSON APPOINTED Reps. Kunkel and G. Berg to such committee and Ms. Lohnes was escorted from the rostrum.

#### SPECIAL ORDER OF BUSINESS

REP. TOLLEFSON MOVED that a committee of two be appointed to escort Betty Mills, Chairperson of the Legislative Compensation Commission to the rostrum, which motion prevailed.

SPEAKER R. ANDERSON APPOINTED Reps. Oban and Mutzenberger to such committee and Betty Mills was escorted to the rostrum.

## REPORT OF LEGISLATIVE COMPENSATION COMMISSION

The Legislative Compensation Commission was established by the 1969 Legislative Assembly. Consisting of five members appointed by the Governor, the primary duty of the commission was to determine appropriate rates of expense allowance and compensation to be paid members of the North Dakota Legislative Assembly. After 10 years of existence, the original Legislative Compensation Commission law was repealed in 1979.

After the constitutional provision relating to legislative compensation was amended in 1982, the Legislative Compensation Commission was recreated by passage of 1983 Senate Bill No. 2360. The bill, codified as North Dakota Century Code Sections 54-03-19.1 and 54-03-19.2, directs the Legislative Compensation Commission to determine appropriate rates of expense allowance and compensation for members of the Legislative Assembly, including per diem paid for service on interim committees and during legislative sessions.

Commission members are Betty Mills, Chairman; Frank Wenstrom; Ellen Austin; and Rosie Black. Prior to his death on March 29, 1990, Nicholas Schmit was also a member of the commission. The commission held meetings on May 16 and October 3, 1990.

## COMPENSATION, PER DIEM, AND EXPENSE REIMBURSEMENT RATES

As originally adopted in 1889, the Constitution of North Dakota provided that each member of the Legislative Assembly was entitled to receive compensation of \$5 per day during each legislative session and 10 cents per mile for expenses of traveling to and from the Capitol. Because of rising expenses of serving in the Legislative Assembly, expense reimbursements were gradually increased until 1981, when expense reimbursements were set at \$85 per calendar day during the session and \$180 per month for uncompensated expenses. From 1889 through 1981 legislative compensation remained at \$5 per day during sessions.

The following is a schedule of legislator compensation and expense reimbursements from 1969 through 1989:

Year	Compensation for Each Calendar Day During a Session	Expense Reimbursement for Each Calendar Day During a Session	Reimbursement/ Compensation for Each Month for Interim Expenses
1969	\$ 5	\$35	\$ 35
1971	5	40	50
1973	5	50	50
1975	5	60	75
1977	5	60	150
1979	5	70	150
1981	5	85	180
1983	40 *	50 *	180
1985	90	**	180 ***
1987	90	**	180 ***
1989	90	**	180 ***

\* Bismarck legislators received \$90 per day as compensation and did not receive any amount for daily expense reimbursement.

\*\* Legislators not from the Bismarck area receive reimbursement for lodging at the rate of \$35 per night to a maximum of \$600 per month.

\*\*\* The 1985 Legislative Assembly changed the \$180 monthly reimbursement from uncompensated expense reimbursement to compensation.

At the primary election in 1982 the voters of the state approved a measure that repealed the 1889 constitutional provision and substituted a provision that compensation for elected members and officials of each branch of government would be set by law and payment for expenses could not exceed those allowed for other state employees. The 1982 constitutional amendment also removed the \$5-per-day compensation limit and gave the Legislative

Assembly authority to set compensation levels. The requirement that legislators' expenses not exceed those of other state employees prohibited continuation of unvouchered expense reimbursements at the level in effect at the time.

The 1983 Legislative Assembly provided that each legislator whose tax home was in Bismarck was to receive \$90 per day as compensation. A member of the Legislative Assembly whose tax home was not in Bismarck received \$40 compensation plus \$50 per day reimbursement for expenses. The 1983 Legislative Assembly also provided that legislators were entitled to reimbursement for travel for one round trip per week between their residences and the Capitol at the rate provided for state employees. The expense reimbursement remained at \$180 per month during the interim. Legislation passed by the 1983 Legislative Assembly expired June 30, 1985, and legislative compensation was to revert to 1981 levels absent action in the 1985 legislative session.

The 1985 Legislative Assembly provided that each legislator receive \$90 for each calendar day during a session and that lodging reimbursement be at the rate of \$35 for each calendar day with a maximum of \$600 per calendar month. Legislators who do not receive reimbursement for lodging and who do not live in a legislative district completely or partially within the city of Bismarck are entitled to reimbursement for necessary travel for one round trip per day between their residences and the Capitol providing that the reimbursement does not exceed \$600 per month. The 1985 Legislative Assembly also increased legislative leadership compensation from \$5 to \$10 per calendar day during a session and increased from \$3 to \$5 the amount that chairmen of the standing committees receive for each calendar day during a session. The 1985 Legislative Assembly also changed the \$180 monthly payment that legislators receive from uncompensated expense reimbursement to compensation.

The only change that the 1987 Legislative Assembly made to the legislative compensation, expense reimbursement, or per diem rates was providing that the reimbursement rate for legislators traveling during a legislative session is the same rate provided for state employees traveling by motor vehicle, regardless of the method of travel.

The 1989 Legislative Assembly amended North Dakota Century Code Section 54-03-10, effective January 1, 1989, to provide that the assistant majority and minority leaders in the House and Senate are entitled to an additional \$5 per calendar day over the \$90 per diem rate. In addition, North Dakota Century Code Section 54-03-20 was amended limiting reimbursement for travel by common carrier to and from the meeting of the Legislative Assembly when in session to 35 cents per air mile.

The following schedule is the salary and reimbursement amounts that legislators receive under the provisions of current law:

During any regular, special, or organizational session:

Salary	\$ 90/calendar day
Additional compensation for:	
Speaker of the House	\$ 10/calendar day
House Majority Leader	10/calendar day
Senate Majority Leader	10/calendar day
House Minority Leader	10/calendar day
Senate Minority Leader	10/calendar day
Chairmen of substantive standing committees	\$5/calendar day
House Assistant Majority Leader	5/calendar day
Senate Assistant Majority Leader	5/calendar day
House Assistant Minority Leader	5/calendar day
Senate Assistant Minority Leader	5/calendar day

Reimbursement for lodging expenses:



To a maximum of \$600/month for legislators who reside outside Bismarck-Mandan \$35/calendar day

Mileage: 20 cents per mile for one round trip by automobile each calendar week going to and from the meeting of the Legislative Assembly during a regular session and one trip going to and from the organizational session. If travel is by common carrier, reimbursement may not exceed 35 cents per air mile. Legislators who live in districts outside Bismarck and who do not receive lodging reimbursement are allowed daily round trip reimbursement not exceeding \$600/month.

Other:

Monthly compensation paid every six months \$180/month

During the interim:

Compensation for attendance at meetings of the Legislative Council and its committees \$62.50/day

Additional compensation for:

Council chairman \$5/day  
Committee chairmen \$5/day

Reimbursement for meals, lodging, and mileage at the following statutory rates:

Meals - Not to exceed \$17 per day in state  
1st quarter - \$ 3.50  
2nd quarter - 5 00  
3rd quarter - 8 50  
Not to exceed \$30 per day out of state  
1st quarter - \$ 6.00  
2nd quarter - 9 00  
3rd quarter - 15 00

Lodging - Actual expenses not to exceed \$35 per day in state; actual expenses out of state

Mileage - 20 cents per mile by motor vehicle; 18 cents per mile by motor vehicle 150 miles beyond state border; 35 cents per mile by private airplane

FINDINGS

In its 1989 report, the commission supported a Legislative Council study to consider a retirement plan for legislators. The 1989 Legislative Assembly passed House Bill No. 1586 creating a retirement plan within the Public Employees Retirement System for legislators. The measure was referred and defeated by the voters on December 5, 1989. The commission again considered establishing a retirement plan for state legislators. Since the state provides retirement benefits to state employees and other elected officials, since 42 states and the District of Columbia currently provide retirement benefits for legislators, and since a retirement program would encourage legislative service and reduce the financial burden of serving, members of the commission believe a retirement plan is desirable. Based upon commission member contacts with local legislators, however, the commission was discouraged from introducing legislation to the 1991 Legislative Assembly to either study or establish a plan.

The commission's survey of legislative leaders resulted in the following suggestions relating to compensation and expense reimbursement:

- Increase the per diem compensation amount for attendance at Legislative Council interim meetings (currently \$62.50) to \$73 (the \$90 session per diem rate less the \$17 interim meal allowance).
- Increase the monthly compensation from \$180 to \$200.
- Increase the \$35 per night in-state lodging rate to \$40 per night.
- Increase the in-state and out-of-state meals reimbursement (currently \$17 per day and \$30 per day) to \$20 per day and \$40 per day, respectively.
- Increase the leadership compensation for the Speaker of the House and majority and minority leaders (currently \$10 per calendar day) and for the Council chairman, chairmen of standing committees and interim committees, and assistant majority and minority leaders (currently \$5 per calendar day) to \$15 per calendar day and \$10 per calendar day, respectively.
- Increase the 20-cent-per-mile mileage reimbursement rate to reflect increased motor fuel prices (during the early 1980s, when motor fuel prices were inflated, the mileage reimbursement rate was 25 cents per mile).

The commission learned that although oil, sales, and income taxes are higher than estimated, 1991-93 state revenues will be limited mainly because of the December 5, 1989, referral of sales and income tax increases. Early 1991-93 revenue estimates in the commission's judgment leave little room for new or expanded programs including major legislator compensation adjustments during the 1991-93 biennium.

#### CONCLUSIONS AND RECOMMENDATIONS

The commission supports the eventual establishment of a retirement plan for state legislators, but believes that in light of the December 5, 1989, successful referral of the legislator retirement plan, the introduction in the 1991 session of legislation to study the need for and the appropriate design of a plan would be strongly opposed and would further delay establishment of a retirement program.

Even though spending levels for the 1991-93 biennium are limited because of the tax referral, and are uncertain because of fluctuations in oil and crop prices as well as weather conditions, the commission members believe legislator compensation and expense reimbursement should both be adjusted for inflation. The commission specifically recommends the mileage reimbursement rate (currently 20 cents per mile) be increased to reflect higher fuel prices and increased automobile depreciation, and that the 1991-92 interim per diem rate (currently \$62.50 per calendar day) be increased to \$73 per calendar day (the \$90 session per diem rate less the \$17 interim meals allowance).

#### MOTIONS

REP. KLOUBEC MOVED that the remarks of Betty Mills, Chairperson of the Legislative Compensation Commission be printed in the Journal, which motion prevailed.

REP. TOLLEFSON MOVED that a committee of two be appointed to escort Betty Mills, Chairperson of the Legislative Compensation Commission from the rostrum, which motion prevailed.

SPEAKER R. ANDERSON APPOINTED Reps. Oban and Mutzenberger to such committee and Betty Mills was escorted from the rostrum.

#### MOTION

REP. KLOUBEC MOVED that the House stand in recess until 2:00 p.m. to receive the Senate for Joint Session, which motion prevailed.

THE HOUSE RECONVENED pursuant to recess taken, with Speaker R. Anderson presiding.

#### JOINT SESSION

The Joint Session was called to order at 2:00 p.m. with Speaker R. Anderson presiding.

REP. TOLLEFSON MOVED that a committee of two be appointed to escort Lt. Governor Omdahl to the rostrum, which motion prevailed. Speaker R. Anderson appointed Reps. Rydell and Hokana to such committee and Lt. Governor Omdahl was escorted to the rostrum.

SPEAKER R. ANDERSON INTRODUCED Lt. Governor Omdahl to the Assembly and turned the gavel over to him.

SEN. KINNOIN MOVED that a committee of two be appointed to escort Chief Justice Ralph J. Erickstad to the rostrum, which motion prevailed. The Chair appointed Sen. Lindaas and Rep. Henegar to such committee and Chief Justice Ralph J. Erickstad was escorted to the rostrum.

SEN. NALEWAJA MOVED that a committee of four be appointed to escort the Associate Justices of the North Dakota Supreme Court and other elected state officials to the rostrum, which motion prevailed. The Chair appointed Sens. Stenehjem and Holmberg and Reps. Carlson and Stofferahn to such committee and the Associate Justices of the North Dakota Supreme Court and other elected state officials were escorted to the rostrum.

REP. TOLLEFSON MOVED that a committee of four be appointed to escort the district judges and surrogate judges to their seating at the front of the Chambers. The Chair appointed Sens. E. Hanson and Tomac and Reps. Brown and Bernstein to such committee and the district judges and surrogate judges were escorted to their seats at the front of the Chambers.

The Chair introduced county judges, members of the Board of Governors of the State Bar Association of North Dakota, other members of the Judicial Conference, members of the State Bar Board, and chairmen of the key committees of the Supreme Court.

LT. GOVERNOR OMDAHL INTRODUCED Chief Justice Ralph J. Erickstad to the Assembly.

#### THE STATE OF THE JUDICIARY

Message by Ralph J. Erickstad, Chief Justice

Good afternoon: I thank you Lieutenant Governor Lloyd Omdahl, Speaker Ronald A. Anderson, Governor George Sinner.

I am very pleased and honored to be invited to speak to this Joint Session of the Fifty-second Legislative Assembly.

I appreciate that among those who are present today are my colleagues on the Supreme Court, leaders of the Republican and Democrat caucuses of the House and Senate, committee chairs, other members and staff of the Fifty-second Legislative Assembly, officers, chairpersons and members of the North Dakota Judicial Conference, Chief Presiding Judge and members of the Council of Presiding Judges, chairpersons of the Supreme Court advisory committees, officers, members, and Executive Director of the Board of Governors of the State Bar Association, chairs of the District and the County Judges Associations, President and members of the State Bar Board, state officials and other distinguished guests, as well as other citizens of North Dakota including members of some of our families. I thank you all for your presence and interest in the judiciary.

As this is the ninth time that I have been privileged to address a joint session of the Legislature on the State of the Judiciary, I realize that some of you may think some of the things I say today are repetitious of what I have said before, but I hope that you will bear with me with the realization

that a significant number of you are serving as legislators for the first time.

On December 31, 1992, the Lord willing, I will complete my third, ten-year term as a member of the Supreme Court of our state and my fourth term as Chief Justice. When you convene in joint session in January of 1993 I will not be here to speak to you in this capacity, nor will I likely be a member of the Supreme Court. I may, if I am appointed, function as a surrogate judge on occasion in 1993 and for some time thereafter.

It behooves me, therefore, to speak as honestly, forthrightly, clearly, convincingly, and wisely as I can if I am to convince you to do what I believe to be in the best interests of all the people of our state.

The interim between last session and this session of the Legislature has been difficult for most of us. With some parts of the state having suffered three years of drought, with the decreased oil production and the referral of the three major tax measures, it became necessary for the Director of the Office of Management and Budget to reduce the funds available to the three branches of government by 9.1 percent. This amounted to a reduction in the budget for the judiciary of our state of approximately two million dollars. Recently, because of the improvement in the economy resulting from some good rains in June, some increased oil activity from horizontal drilling and from the Persian Gulf crisis, the director was able to restore to our judicial budget 2 percent of that 9.1 percent.

I am pleased to report, through some very serious belt tightening, which included serious restrictions in travel within the state and even more restrictions in travel outside of the state for most of our personnel, restrictions on expenditures for training until the latter part of this biennium, curtailment of most equipment purchases until the latter part of this biennium, severe restrictions in face-to-face meetings of judicial committees until the latter part of this biennium, and the filling of only the most crucial vacancies in employee positions for a significant period of time, both at the district and the supreme court level, we have been able to continue to perform judicial services. Unless we have some expenses such as could occur through lengthy and costly jury trials, we expect to reach the end of the biennium with all of our bills paid and with a respectable, positive balance.

On July 1, 1990, there were 10 positions (10 of 115 positions - 9% of staff positions) within the districts not filled, and six positions (6 of 42 positions - 14% of staff positions) within the Supreme Court not filled.

I am pleased to report that we have recently filled the vacancy created by Larry Spears' resignation. Please see pages three and four of my printed remarks.

Although our trial courts are in good health, the judiciary has been subject to criticism as a result of suggestions by some judges and others that there are too many trial court judges in North Dakota. That may be true at the moment because of the downturn in the economy, but it was only a few years ago that people from both the east and the west and I might even say from the central, sought our support for more district judges in their areas.

I would be much more concerned if we had too few judges and if our citizens were languishing in overcrowded jails awaiting trial or sentencing, or if our civil courts were so backlogged that our people had to wait five or more years just to get to court to have their civil cases decided and then had to wait long periods of time thereafter to have their appeals decided as is the case in some parts of our country. Witness the statement of Chief Justice Malcolm Lucas of California in his first address to the legislature in which he said: "In Los Angeles, the time for a civil case to get to a courtroom is down to three and one-half years from almost five years -- a sizeable improvement for just two short years of effort."

Our people wait nowhere near that amount of time for a case to be heard and to be decided.

Our docket currency standards contained in Administrative Rule 12, particularly parts (a) and (b) of Section 2, and Sections 2A, 3A, and 4A are pertinent. I will not take your time to discuss them, but you will find them at pages five and six of my printed message.

Our presiding judges are careful not to waive the time limits unless justification exists, and I, as Chief Justice, have never waived any of the docket currency time limits without the concurrence of a majority of our court.

Our system of keeping track of trial court cases is working, and with computerization of the system, in the future we will be even better informed of the health of our judiciary.

Now let me get back to the issue of the number of district judges. Basically, because of demand from our people, the number of district judges has been increased from 16 originally to 27 since I became a justice in 1963. With an upturn in the economy, the need for judges would increase again.

We need a measure of historical perspective and a realistic view of the future in evaluating suggestions for any sudden and severe changes in the number of trial court judges.

If too many full-time, law-trained judges is a problem, it is from a judicial standpoint, a problem most states would like to have.

To illustrate, if we were to strive to reach the national average in the judge per person ratio, our reward would be a serious downgrading in the quality of the delivery of judicial services in our state, especially in the rural parts of our state. With that as a consequence, I doubt that there would be many in this room who would seek that objective.

As a present, practical matter, what we need, to be able to make necessary adjustments, is authority within the judiciary to decide whether or not vacancies in trial court judgeships should be filled, and the authority to decide where the vacant judgeships should be located if filled, based upon shifting and changing needs. The Judicial Conference Ad Hoc Commission on Unification and the interim Budget Committee on Government Administration have recommended such legislation relative to the district courts. Please see Section 2 of Senate Bill 2027 [Appendix II]. I urge your support of this legislation.

Now let me speak briefly as to the numbers of county courts. Prior to H.B. 1060 which was passed in 1981, we had 17 County Courts With Increased Jurisdiction with judges who were law-trained and full-time, approximately 36 county courts without increased jurisdiction with judges who did not need to be law-trained but who were full-time and functioned basically as probate judges, and approximately 36 county justices who were, for the most part, law-trained but only part-time.

In 1978, the Legislative Committee of the Supreme Court, chaired by Harry Pearce of Bismarck (who is today general counsel of General Motors), recommended to an interim committee of the Legislature a proposal, after much study, discussion, and seven redrafts, which became H.B. 1066 in the 1979 Session of the Legislature. House Bill 1066 contained two alternatives. One alternative called for the creation of 29 associate district judgeships in lieu of the then existing three-leveled county court system with its many and varied judgeships, and the other alternative called for the creation of 29 additional district judgeships in lieu of the then existing three-leveled county court system. Those judgeships would have been assigned to districts whose boundaries would have been determined by the Supreme Court on the basis of workload and other needs. This bill passed the House with a very slim margin and was killed in the Senate, by persons from rural counties, one of whom said we do not need nor want an Ayatollah Khomeini in North Dakota.

In the interim between 1979 and 1981, Representative Dean Winkjer of Williston chaired a Legislative Council committee which worked out a compromise which satisfied the county commissioners and was encompassed in H.B. 1060 which is law today with slight amendments over time.

H.B. 1060 created a single level county court system, which today includes 26 full-time, law-trained judges. The number of judges and the areas in which they serve, and within limits the salaries they are paid, are determined by the county commissioners in each county judge district.

Sometime following the close of the last legislative session, the chair of the Judicial Conference appointed an Ad Hoc Commission on Unification which was chaired by Judge Lawrence A. Leclerc of Fargo, which commission has been expanded from time to time to broaden its membership. Please see Appendix III for the membership.

This commission has reported periodically to the interim Budget Committee on Government Administration of the North Dakota Legislative Council, chaired by Representative Richard Kloubec of Fargo, and its recommendations have been included in Senate Bill 2026 of the Legislative Council. Please see Appendix IV for the pertinent parts of that bill.

But now I am ahead of myself. Let me take you back in time to a meeting of the judges of the Supreme Court, the Presiding District Judges, a representative of the chair of the Judicial Conference, the chair of the District Judges Association, and the chair of the County Judges Association, which was held in Medora October 4-5, 1990. At that meeting, after the features of the Ad Hoc Commission's proposal for consolidating the trial courts were considered and discussed, it was concluded that there was not sufficient agreement within the judiciary for the successful passage of the proposal on consolidation in the 1991 Session of the Legislature. Accordingly, action was taken to encourage the Ad Hoc Commission to request of the interim Budget Committee on Administration of the Legislative Council that it not introduce legislation providing for consolidation of the trial courts until the 1993 Session of the Legislature. It was hoped that in the interim, through further study and compromise, a bill could be prepared that would receive the support of a greater number of county judges, district judges, practicing bar, county commissioners, general public, and of course, ultimately, you members of the Legislature, as well as the Governor of this state.

Senate Bill 2026, in ultimately making all trial court judges district judges, would gradually reduce the number of judges, which now number 53 in total, to 42 by January 1999. On January 1, 1995, all judges of county courts would become interim district judges and the office of county court judge would be abolished. Each former county judge would serve in the capacity of interim district judge until December 31, 1998, or until elected a judge of the district court, whichever occurred first. See especially Section 90 of the bill. It would initially revise the current seven judicial districts in the state into eight judicial districts with four of the districts centering around Grand Forks, Fargo, Bismarck, and Minot. It would provide no assurance to either the district or the county judges that they could continue to perform duties consistent only with their current responsibilities. See Appendix IV for pertinent parts of the bill.

Notwithstanding the past lack of consensus on the part of members of the judiciary, I was encouraged that there now might be a possibility that a consensus could be reached that could resolve some of the issues, as the Judicial Conference, at its recent meeting in Bismarck on the 20th of November, passed a resolution establishing a court consolidation coordinating committee to attempt to work out a compromise. Please see Appendix V. This committee was designed to incorporate the diverse preferences and views of all the persons and interests most involved and affected by the Ad Hoc Commission's proposal. With this umbrella committee functioning as a mechanism somewhat similar to your conference committees within the legislative branch, I hoped we could reach an accord that would not only be progressive and beneficial to all concerned, but would be fair to those who

have sacrificed their law practices and dedicated their lives to the judiciary for the benefit of the people in their counties and districts. Please see Appendix VI for amendments to S.B. 2026 the county judges hope to incorporate.

Incidentally, since my written remarks went to the printer, the Coordinating Committee has met twice and Judge William Neumann, as co-chair of that committee, has drafted proposed amendments to Chapter 27-07.1, N.D.C.C., relating to county courts and other provisions of the Century Code. This morning, after considerable debate, the Judicial Conference voted in favor, by a divided vote, of the Legislative package submitted by the Coordinating Committee, as a first step toward eventual consolidation of the trial courts. I might say parenthetically that unless the judiciary unites behind that package there is probably slight chance that we will see any changes in the system that the Judiciary is now functioning under. So when you realize it passed by less than 10 votes, 21-29, it means that unless the judiciary gets behind that package there will likely be no legislation because judicial people know legislators and they are from all over the state. I will not attempt to summarize that package at this time, but it will be made available to you as soon as possible.

Another recent development in this now fast-breaking scenario is the report entitled, "A Basis for Consensus on a Single Trial Court of General Jurisdiction in North Dakota", a service of the North Dakota Consensus Council, Inc., dated December 27, 1990, with a proposed bill draft and commentary. This could be valuable as resource material and pertinent for any discussion, but particularly for the future.

Irrespective of what action you take relative to the consolidation of the trial courts, which action is likely to require the expiration of some period of time, there are some things that need to be done now in fairness to the county judges: (1) In accord with the resolution of the Association of County Commissioners, the minimum salary of all county judges should be set at \$56,000 per year as of January 1, 1992, and \$57,500 per year as of January 1, 1993. (2) In addition, the salaries of county judges should be increased the same percentage as district judges' salaries are increased beyond the base salary increase just referred to. (3) County judges should be provided medical, hospital, and retirement benefits by the counties at the level provided state employees with the cost to be borne by the counties.

If you incorporate these recommendations into state law during this session of the Legislature, some of the current inequities which fester in the system will be eliminated and the end result will be improved judicial services throughout the state. I sincerely urge your support for these objectives.

The Salary and Retirement Committee of the Judicial Conference, chaired by Justice VandeWalle, has recommended, and the Judicial Conference has approved, a request of the Legislature that district and supreme court salaries of judges and justices be increased by the same percentage each year of the coming biennium as requested by the Board of Higher Education for the faculty of the University of North Dakota and North Dakota State University.

While I am speaking of judges' and justices' salaries, it is appropriate that I urge you to support salary increases for our employees, both at the district and supreme court level. We urge you to provided salary increases at least equivalent to the salary increases that have been recommended by the Governor for employees within the Executive Branch, which I understand to be 4 percent for the biennium with a minimum of \$50 per month. In light of the increase in the cost of living of almost 10 percent according to the consumer price indexes since the last session of the Legislature, this requested increase cannot be considered other than justifiable.

The North Dakota Supreme Court continues its heavy caseload. Pages 13 and 14 of my printed message contain the details.

In summary, in 1989, each justice prepared over 4 1/2 opinions per month every month, in addition to special concurring opinions, dissenting opinions,

and administrative tasks, while sharing responsibility for approximately 18 other opinions per month. This opinion production compares favorably with the other highest appellate courts in this country.

Pages 14 and 15 of my printed message describe committee efforts in conjunction with appellate court docket currency standards.

From January 1, 1990, to November 29, 1990, the average time that elapsed in our Supreme Court from oral argument to the signing of a written opinion (combining the civil and criminal cases) was 63 days. This compares favorably with the time recommended for such an interval by the standards relating to appellate courts of the American Bar Association which cite (for both civil and criminal cases) a target of 60 to 90 days, depending on the complexity of the case, for writing an opinion, plus 30 additional days for dissents and special concurrences, for a total of 90 to 120 days. Much of the time involved in an appeal is the time required by the court reporters in preparing the transcripts of the testimony, and the time required by the lawyers in preparing the written briefs prior to oral arguments in the appellate court.

Notwithstanding that all seem to agree that we have a good record in disposing of cases in our court promptly and thoughtfully, we have decided to monitor our appellate court caseload for a period of time to determine whether or not our court could benefit from the adoption of appellate court docket currency standards.

There are many other things about which I could speak in which the judiciary has been involved since my last report to you but it would take too much of your valuable time for me to orally report upon those activities. I do hope, however, that you will find the material contained in the addendum at the end of this message helpful to you in conjunction with your services as legislators.

If you take the time, which I know is scarce, to read this material, I think you will become as convinced as I am that we have made progress in our continuing efforts to improve the judicial system. Progress has been made that could not have been made without the cooperation of countless people, both within the judicial system and outside of it. We especially appreciate the fine support we have received from you in the past and we look forward to working with you in the future.

Just as freedom and justice are not free, justice is not easily attainable, nor is it enduring without continuous effort and personal dedication on the part of those who serve the justice system and those who would uphold and preserve it.

We extend to you our best wishes for success in this legislative session, and, in conclusion, we invite you to join our people who are waiting to visit with you and to serve you coffee and cookies down the hall just outside of the Supreme Court courtroom in the Judicial Wing immediately following my remarks. As always, we look forward to meeting with you in person. We hope that your presiding officer will graciously grant you a recess for that purpose.

I thank you very much.

#### MOTIONS

REP. KLOUBEC MOVED that the remarks of Chief Justice Ralph J. Erickstad be printed in the Journal, which motion prevailed.

REP. KLOUBEC MOVED that the Joint Session be dissolved, which motion prevailed.

REP. KLOUBEC MOVED that the absent member be excused, which motion prevailed.



REP. KLOUBEC MOVED that the House be on the Ninth order of business, and at the conclusion of the Ninth order, the House stand adjourned until 12:45 p.m., Wednesday, January 9, 1991, which motion prevailed.

#### FIRST READING OF HOUSE BILL

Reps. A. Olson, Myrdal and Sen. Vosper introduced:

HB 1249: A BILL for an Act to amend and reenact sections 15-47-26 and 15-47-38 of the North Dakota Century Code, relating to the definition of teacher and discharge of teachers; and to repeal sections 15-47-27.1 and 15-47-38.1 of the North Dakota Century Code, relating to evaluation and renewal of first year teachers and superintendents.

Was read the first time and referred to the Committee on Education.

The House stood adjourned pursuant to Representative Kloubec's motion.

ROY GILBREATH, Chief Clerk