

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY A COMMITTEE

Tuesday, September 10, 2002
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Merle Boucher, Duane DeKrey, Bruce Eckre, G. Jane Gunter, Joyce Kingsbury, Lawrence R. Klemin, William E. Kretschmar, John Warner; Senator John T. Traynor

Members absent: Representatives April Fairfield, John Mahoney; Senators Deb Mathern, Carolyn Nelson, Darlene Watne

Others present: See attached appendix

It was moved by Representative Eckre, seconded by Representative Kretschmar, and carried on a voice vote that the minutes of the July 9, 2002, meeting be approved as distributed.

STATUTORY REVISION

At the request of Chairman Boucher, committee counsel presented a bill draft [30140.0200] regarding technical amendments to the North Dakota Century Code. She said the bill draft makes technical corrections, including improper, inaccurate, redundant, missing, or obsolete references.

In response to a question from Representative Eckre, committee counsel said the reference in Section 12 to a former chapter of the North Dakota Century Code is necessary because the law that was in effect at the time the bonds were guaranteed would be the law that would apply to those bonds.

It was moved by Representative Kretschmar, seconded by Representative Eckre, and carried on a voice vote that the technical corrections bill draft be approved and recommended to the Legislative Council. Representatives Boucher, Eckre, Gunter, Kingsbury, Klemin, Kretschmar, and Warner and Senator Traynor voted "aye." No negative votes were cast.

INDIGENT DEFENSE STUDY

At the request of Chairman Boucher, committee counsel presented a bill draft [30173.0100] that would transfer the responsibility of contracting for indigent defense services from the judicial branch to the Office of Administrative Hearings. She said the bill draft requires the Office of Administrative Hearings to establish and implement a process of contracting with

licensed attorneys who are willing to provide legal services to indigent persons. She said the bill draft also provides that of the money deposited in the indigent defense administration fund, 40 percent would be appropriated to the Office of Administrative Hearings for the administration of the indigent defense system and 60 percent would be appropriated to the judicial branch to be used for the collection of those indigent defense costs required to be reimbursed.

Chairman Boucher called on Mr. Allen C. Hoberg, Director, Office of Administrative Hearings, for testimony regarding the bill draft. Mr. Hoberg said if the Legislative Assembly passed the bill draft, the Office of Administrative Hearings would do its best to establish and implement a process of contracting for lawyer services. He said, however, he is puzzled by the proposed legislation because it takes a function arguably belonging in the judicial branch of government and places it with an agency in the executive branch of government. He said although his office functions in a quasi-judicial capacity, it is an executive branch agency. He said under the bill draft, lawyers appointed by a court to represent an indigent person would contract with the Office of Administrative Hearings and be paid by that office rather than by the Supreme Court or the courts for providing those legal services. He said apparently the courts see their current role in the process as a conflict of interest. The Office of Administrative Hearings, he said, would also have the same or a similar conflict of interest problem because at least some of the attorneys with whom the Office of Administrative Hearings would be contracting to provide services will also be appearing before Office of Administrative Hearings administrative law judges as counsel representing clients in administrative agency hearings. He said although the Office of Administrative Hearings has experience in contracting with temporary administrative law judges to provide hearing officers, the office has no experience in administering lawyers under this type of program. He said he is not aware of another central panel like the Office of Administrative Hearings in any other state which administers this type of program. He submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Klemin, committee counsel said under the bill draft the

Office of Administrative Hearings would be responsible for contracting with attorneys. She said the court would continue to make the determination that a person is in need of indigent defense services; however, she said, the Office of Administrative Hearings would have the responsibility of assigning an attorney to the case.

In response to a question from Representative Klemin, Mr. Hoberg said the Office of Administrative Hearings would have conflict of interest issues similar to those experienced by the court under the current system.

Senator Traynor said under the current system the judge contracts with and selects the defense counsel for a case over which the judge will preside. He said the Office of Administrative Hearings would not have the same conflict issues.

In response to a question from Senator Traynor, Mr. Hoberg said the Office of Administrative Hearings has some experience in contracting with attorneys.

In response to a question from Representative Klemin, Representative Boucher said under the bill draft the Office of Administrative Hearings would be responsible for both contracting with the attorneys and for assigning attorneys to those persons the court determines to be in need of indigent defense services.

In response to a question from Representative Warner, Mr. Jim Ganje, State Court Administrator's office, said the current system of contracting with attorneys is not centralized. Mr. Ganje said the current contract system is administered at the local level by the seven presiding judges. He said the funds are paid at the state level, but the administration is done locally. He said because of the local administration of the current system, he does not know if additional personnel would be needed if the process were centralized.

In response to a question from Representative Klemin, Mr. Ganje said the law that requires the person in need of services to pay a \$25 application fee has only been in effect for two years. He said because the law is so new, it is difficult to determine how the money collected under that law should be split between the judiciary and the Office of Administrative Hearings.

In response to a question from Representative Boucher, Mr. Ganje said the presiding judges no longer use a strict bidding process. He said the presiding judges look for attorneys who are interested in the contract. He said some negotiating is involved. He said most states have a regional public defender system rather than a centralized system. He said he did not know if centralizing the system would solve the attorney shortage problem that exists in some areas of the state.

In response to a question from Representative Warner, Mr. Ganje said under the current system the contracts are district-based. He said if the contracts were extended to attorneys outside the district,

reimbursement for travel expenses would have to be considered.

In response to a question from Representative Kretschmar, Mr. Ganje said North Dakota is the only state that relies solely on the contract system for providing indigent defense services.

In response to a question from Senator Traynor, Mr. Ganje said the current system costs about \$4 million per biennium. He said the North Dakota Indigent Defense Commission has researched public defender offices. He said public defender offices in some states experience the same issues facing this state, including inadequate funding and a shortage of attorneys.

It was moved by Representative Klemin, seconded by Representative Kingsbury, and carried on a voice vote that the bill draft be amended on page 4, lines 16 and 19, to provide that the indigent defense administration fund be split 50/50 rather than 40/60.

Representative Warner said the 50/50 split is a starting point that can be adjusted during the session, if necessary.

It was moved by Representative Klemin, seconded by Representative Warner, and carried on a voice vote that the bill draft be amended to provide that the Office of Administrative Hearings is responsible for establishing and implementing a process for contracting with attorneys as well as assigning attorneys to those persons determined by the court to be in need of indigent defense services.

In response to a question from Representative Kingsbury, Mr. Ted Gladden, Acting State Court Administrator, said under the current system the contract is awarded to a specific attorney. He said some districts use a "lead firm" to administer the contracts in the district. He said the details of the assignment process are not needed in the legislation but rather could be worked out by the Office of Administrative Hearings.

It was moved by Representative Klemin and seconded by Representative Kingsbury that the indigent defense contracts bill draft, as amended, be approved and recommended to the Legislative Council.

Representative Eckre said he was not sure if this bill draft would solve anything. He said it does not resolve the problem of inadequate compensation for the contract attorneys.

Representative Klemin said the bill draft would work to solve the conflict of interest problems that currently exist. He said it would be one step in solving the problems of the system.

The motion carried on a roll call vote. Representatives Boucher, Gunter, Kingsbury, Klemin, Kretschmar, and Warner and Senator Traynor voted "aye." Representative Eckre voted "nay."

At the request of Chairman Boucher, committee counsel presented a bill draft [30172.0100] that would require the state to pay indigent defense costs for mental illness commitment proceedings, sexual predator civil commitment proceedings, and guardian ad litem services. She said these indigent defense costs are currently the responsibility of the counties.

Chairman Boucher called on Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, for comments regarding the bill draft. Mr. Traynor said the counties spend an estimated \$200,000 to \$300,000 per biennium on indigent defense services.

In response to a question from Representative Klemin, Mr. Traynor said this bill draft would shift the cost of providing these services from the county to the state. Mr. Gladden said all other indigent defense costs are currently paid by the state. He said not making these remaining indigent defense costs a state responsibility may have been an oversight at the time court unification was implemented.

In response to a question from Representative Warner, Mr. Gladden said the bill draft only shifts the funding responsibility. He said the bill draft does not affect the contracting and the appointment of indigent defense counsel.

In response to a question from Representative Klemin, Mr. Gladden said these three types of indigent defense services are being provided by the attorneys with whom the state has contracted; however, the costs of the services are being paid by the county.

It was moved by Representative Kretschmar, seconded by Representative Warner, and carried on a roll call vote that the bill draft relating to state-paid indigent defense costs be approved and recommended to the Legislative Council. Representatives Boucher, Eckre, Gunter, Kingsbury, Klemin, Kretschmar, and Warner and Senator Traynor voted "aye." No negative votes were cast.

At the request of Chairman Boucher, committee counsel presented a concurrent resolution draft [33015.0100] that would provide for a continued study of indigent defense issues.

Representative Boucher said the issues raised during the interim regarding the costs of providing adequate indigent defense and the shortage of attorneys who are willing to provide those services warrant an ongoing study.

It was moved by Representative Eckre, seconded by Representative Klemin, and carried on a roll call vote that the concurrent resolution draft regarding a study of indigent defense issues be approved and recommended to the Legislative Council. Representatives Boucher, Eckre, Gunter, Kingsbury, Klemin, Kretschmar, and Warner and Senator Traynor voted "aye." No negative votes were cast.

COLLECTION OF RESTITUTION STUDY

At the request of Chairman Boucher, committee counsel presented a bill draft [30171.0100] that would require the court, when ordering restitution in insufficient funds cases, to impose costs in an amount equal to 25 percent of the amount of restitution ordered.

Representative Eckre said he was concerned about adding additional costs to persons who may be least able to afford it.

In response to a question from Representative Warner, committee counsel said the costs are proportional to the amount of the bad check.

Representative Kretschmar said perhaps the bill draft should include a minimum cost to be imposed, such as \$10.

Representative Klemin said it also should be taken into consideration that the small business owner is out the amount of the check if it is not prosecuted and collected.

In response to a question from Representative Warner, Representative Klemin said the intent of the bill draft is to give money to the court to cover the costs of collection. He said the criminal penalty is based on the amount of the check. He said costs are not included in the penalty. He said it is difficult for a merchant to justify the \$80 civil filing fee to collect on a bad check. He said the people creating the costs should pay the costs.

It was moved by Representative Kretschmar and seconded by Representative Klemin that the bill draft be amended on page 2, line 31, to include the words "the greater of the sum of ten dollars or" before the word "costs."

Representative Kretschmar said the amendment would create a minimum amount of costs to be assessed.

In response to a question from Representative Warner, Representative Kretschmar said the assessing of costs would not occur unless there is a conviction.

The motion carried on a voice vote.

Chairman Boucher called on Ms. Janet Froelich, clerk of district court, Barnes County, regarding the bill draft. Ms. Froelich said she has concerns about the additional costs being imposed by this bill draft. She said in Barnes County there is an automatic minimum \$100 fine plus the cost of the check imposed for a bad check. She said this bill draft would take money away from the common schools trust fund.

In response to a question from Representative Klemin, Ms. Froelich said a question to be addressed is whether it is right to assess the defendant costs in addition to the fine.

In response to a question from Representative Kretschmar, Ms. Froelich said the courts in her district impose fines but not costs for bad checks. She said there are many defendants with multiple offenses.

It was moved by Representative Klemin, seconded by Representative Kretschmar, and carried on a roll call vote that the imposition of costs bill draft, as amended, be approved and recommended to the Legislative Council. Representatives Gunter, Kingsbury, Klemin, Kretschmar, and Warner and Senator Traynor voted "aye." Representatives Boucher and Eckre voted "nay."

At the request of Chairman Boucher, committee counsel reviewed the bill draft that would authorize county commissioners to designate either the state's attorney or the county-employed clerk of district court as the office responsible for the collection of restitution.

Chairman Boucher called on Mr. Traynor for comments concerning the bill draft. Mr. Traynor said the language in the bill draft gives the impression that restitution collection is a county responsibility. He said the North Dakota Association of Counties would like to retain the structure that is currently in place.

Chairman Boucher called on Mr. Gladden for comments regarding the bill draft. Mr. Gladden said the original concern of the court regarding the restitution responsibility issue was the need for adequate staffing for this duty in the state employee clerk of court offices and that there be enough money appropriated to compensate the contract counties. He said in Cass, Burleigh, and Grand Forks Counties restitution is collected by the state's attorneys. He said in Ward County felony restitution is collected by the state's attorney. He said there is a concern about who would have the responsibility for this duty if any of those 3.5 counties would decide the counties' state's attorneys would no longer collect restitution. He said he would like to maintain the current structure. He said Section 6 of 2001 Senate Bill No. 2002 provided that the county and state offices performing restitution collection and enforcement activities as of April 1, 2001, were to continue to perform those activities until June 30, 2003. He said codifying that section and removing the sunset provision would preserve the status quo.

It was moved by Representative Warner, seconded by Representative Eckre, and carried on a voice vote that the bill draft regarding the responsibility for restitution collection be amended to provide that county and state offices performing restitution collection and enforcement activities as of April 1, 2001, are to continue to perform those activities.

In response to a question from Representative Boucher, Mr. Ganje said if the state's attorneys decide to no longer collect restitution, the responsibility would not automatically fall to the court.

It was moved by Representative Warner, seconded by Representative Eckre, and carried on a roll call vote that the restitution collection bill draft, as amended, be approved and recommended to the Legislative Council.

Representatives Boucher, DeKrey, Eckre, Gunter, Kingsbury, Klemin, Kretschmar, and Warner and Senator Traynor voted "aye." No negative votes were cast.

Chairman Boucher called on Ms. Elaine Little, Director, Department of Corrections and Rehabilitation, for an update on the Interstate Compact for Adult Offender Supervision. Ms. Little said in 2001 the Legislative Assembly enacted House Bill No. 1270, the Interstate Compact for Adult Offender Supervision. She said the passage of the bill meant that North Dakota was one of 35 states that needed to pass the new compact in order for it to become effective. She said Pennsylvania became the 35th state to adopt the new compact on June 19, 2002. To date, she said, 38 states have passed legislation adopting the new compact. She said the old interstate compact was created in 1937 when there were only a few thousand offenders being supervised outside the state in which they were sentenced. The new compact, she said, contains provisions for an independent national commission to administer it. The national commission, she said, will be composed of a compact commissioner from each state. She said Mr. Warren Emmer will be recommended as North Dakota's commissioner. The new compact, she said, will have mechanisms for staffing, funding, rulemaking, and enforcement. She said the new compact will also require the collection of standardized information by member states. She said 2001 House Bill No. 1270 included a sunset clause. This bill, she said, is only effective until August 1, 2003. Therefore, she said, the 2003 Legislative Assembly will need to repeal the sunset clause in order for North Dakota to remain a member of the new compact. Ms. Little submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Boucher, Ms. Little said the Department of Corrections and Rehabilitation plans to prepare legislation to repeal the sunset clause contained in 2001 House Bill No. 1270.

In response to a question from Representative Kretschmar, Ms. Little said some of the concerns the Legislative Assembly had with the compact included the cost, the rulemaking authority of the national commission, and whether North Dakota needed the compact.

UNIFORM LAWS

Chairman Boucher called on Mr. Jay E. Buringrud, Secretary, North Dakota Commission on Uniform State Laws, for testimony regarding the recommendations of the commission for the enactment of a number of uniform laws. Mr. Buringrud said the North Dakota Commission on Uniform State Laws is established by North Dakota Century Code Section 54-55-01. The commission, he said, consists of a practicing lawyer, Mr. David Hogue, Minot; a full-time

faculty member of the University of North Dakota School of Law, Professor Candace Zierdt, Grand Forks; a law-trained judge of a court of record, District Judge Gail Hagerty, Bismarck; a member of the House of Representatives, Representative Lawrence Klemin; a member of the Senate, Senator Tom Trenbeath; a member of the Legislative Council staff, Mr. Jay Buringrud; life members of the conference, Frank Jestrab, Owen Anderson, and Mike Unhjem; and residents with five-years' prior service, Representative William Kretschmar. He said the commissioners are required to attend the annual meeting of the National Conference of Commissioners on Uniform State Laws. The major duties of the commission, he said, are to promote uniformity in state laws on those subjects when uniformity may be deemed desirable and practicable and to promote uniform judicial application and construction of all uniform state laws.

Revised Uniform Arbitration Act

Mr. Buringrud said the Revised Uniform Arbitration Act was recommended by the national conference in 2000. He said the revised Act replaced the Uniform Arbitration Act, which North Dakota adopted in 1987. He said the revised Act has been adopted in four states and has been introduced in 14 jurisdictions, including Minnesota. He said the primary purpose of the Act is to advance arbitration as a desirable alternative to litigation. A revision, he said, is necessary at this time in light of the ever-increasing use of arbitration and the developments of the law in this area.

Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

Mr. Buringrud said the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, which was recommended by the national conference in 2000, was introduced in the North Dakota House of Representatives in 2001. The bill, however, he said, failed to pass the Senate. He said the Act has been adopted in six states, including Montana, and has been introduced in eight jurisdictions, including Minnesota and South Dakota. This Act, he said, establishes uniform procedures that will enable courts to recognize and enforce valid domestic protection orders issued in other jurisdictions. Uniformity, he said, will enable courts around the country to treat such cases consistently, thereby better serving the needs of victims of domestic violence.

Chairman Boucher called on Ms. Bonnie Palecek, Executive Director, North Dakota Council on Abused Women's Services, for testimony regarding the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. Ms. Palecek said a number of the issues of concern with the bill introduced in 2001 have been resolved; however, she said three major concerns still remain. She said she would prefer that the Act reflect the broader definition of protection

orders contained in the federal Violence Against Women Act. She said the broader definition would then encompass both disorderly conduct orders and peace bonds, both of which are also used as protection orders in North Dakota. The second concern, she said, has to do with custody provisions in protection orders. Adequate custody provisions, she said, are key to the protection of battered women. She said the concern could be remedied by added language referring to the Parental Kidnapping Protection Act, or, she said, as the council would prefer, adding language to the existing statute relating to custody. The third concern, she said, deals with immunity contained in Section 6 of the Act. She said the existing North Dakota statute is more appropriate because immunity is only extended to acts done in good faith for enforcement and does not cover the failure to act. She said the North Dakota Council on Abused Women's Services is fully supportive of all efforts to enhance the enforcement of laws such as full faith and credit and efforts to make our procedures coincide with those in other states. She said the council would prefer to keep our existing statute and to adopt the provisions of the uniform Act which would strengthen our statute rather than weaken it. Ms. Palecek submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Boucher, Ms. Palecek said if the uniform Act is introduced, the North Dakota Council on Abused Women's Services would want an opportunity to amend the bill draft.

Representative Kretschmar said Judge Hagerty would be contacting Ms. Palecek to work on resolving Ms. Palecek's concerns with the uniform Act.

In response to a question from Senator Traynor, Ms. Palecek said the current law is working well. She said, however, North Dakota, as well as other states, has struggled with tribal issues.

It was moved by Representative Boucher, seconded by Representative Warner, and carried on a voice vote that the Judiciary A Committee endorse the efforts of Ms. Palecek and the North Dakota Council on Abused Women's Services regarding the interstate enforcement of domestic violence protection orders.

Uniform Foreign Money-Judgments Recognition Act

Mr. Buringrud said the Uniform Foreign Money-Judgments Recognition Act, which was recommended by the national conference in 1962, was introduced in the North Dakota House of Representatives in 2001. He said, however, the bill failed to pass the Senate. He said the Act has been adopted in 32 jurisdictions, including Maine, New York, Michigan, Minnesota, Montana, Idaho, and Washington. He said the Act provides that a judgment entitled to recognition will be enforceable in the same manner as

the judgment of a court of a sister state which is entitled to full faith and credit. He said the Act simplifies international business by recognizing money judgments obtained in other nations.

In response to a question from Senator Traynor, Mr. Buringrud said the primary objection to the bill in the 2001 legislative session was whether the law was needed in North Dakota.

Revised Uniform Limited Partnership Act

Mr. Buringrud said the revision of the Uniform Limited Partnership Act (1976) with 1985 amendments was adopted by the national conference in 2001. He said North Dakota adopted the Uniform Limited Partnership Act in 1985 and the 1985 amendments in 1987. The Act, he said, is intended to provide a more flexible and stable basis for the organization of limited partnerships and to help states stimulate new limited partnership business ventures. He said the 2001 revision recognizes modern-day uses of limited partnerships, including family limited partnerships for estate planning purposes.

Chairman Boucher called on Mr. Alvin A. Jaeger, Secretary of State, for testimony regarding the Uniform Limited Partnership Act. Mr. Jaeger said since 1993 the Legislative Assembly, the State Bar Association of North Dakota, and the Secretary of State's office have cooperated in drafting bills for the Legislative Assembly's consideration which have improved and enhanced the laws regulating the various business entities that now exist in the state. He said the cooperative effort has resulted in the adoption of legislation that has passed with little or no opposition. He said the beneficiaries of this legislation have been the citizens and businesses of the state. He said on behalf of the State Bar Association and the Secretary of State's office, he would request that the committee not introduce the Uniform Limited Partnership Act for consideration by the 2003 Legislative Assembly. He said the 1999 and 2001 Legislative Assemblies passed bills that updated North Dakota's limited partnership laws and allowed for the creation of limited liability partnerships and limited liability limited partnerships. He said North Dakota law currently designates separate chapters for these three entities. The new uniform Act, he said, would consolidate all three entities into one chapter. He said delaying the introduction of the new revision until the 2005 or 2007 legislative session would allow the interested parties the necessary time to review the Act and to monitor whether it has been adopted by many other states. He said the introduction and adoption of the Uniform Limited Partnership Act, in its present form, would result in the North Dakota Century Code containing laws that would undo the efforts of the past five legislative sessions. He said the laws passed over the past five sessions have resulted in the clarity, consistent processes, and efficiency that now exist among the various business entities. Mr. Jaeger

submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Jaeger said there may be a need for some fine-tuning of the partnership law but not a major revision. He said the new law does not contain any provisions that require immediate enactment.

Uniform Commercial Code Article 1 - General Provisions

Mr. Buringrud said the revision of the Uniform Commercial Code (UCC) Article 1 - General Provisions was adopted by the national conference in 2001. He said North Dakota adopted UCC Article 1 in 1965. He said revised Article 1 has been adopted in one jurisdiction and has been introduced in four states. The revision, he said, updates the General Provisions section of the UCC to harmonize with ongoing UCC projects and recent revisions.

Uniform Commercial Code Article 2 - Sales

Mr. Buringrud said the revision of the Uniform Commercial Code Article 2 - Sales was recommended by the national conference in 2002. He said North Dakota adopted UCC Article 2 in 1965.

Uniform Commercial Code Article 2A - Leases

Mr. Buringrud said the revision of the Uniform Commercial Code Article 2A - Leases was recommended by the national conference in 2002. Article 2A, he said, was originally recommended by the national conference in 1987 and amendments were recommended in 1990. He said North Dakota adopted UCC Article 2A, with 1990 amendments, in 1991. He said one state, South Dakota, adopted the 1987 Act. Forty-seven jurisdictions, including Minnesota and Montana, he said, adopted it with 1990 amendments. He said the Act provides a legal framework for any transaction that creates a lease, regardless of form.

Uniform Commercial Code Articles 3 and 4 - Negotiable Instruments and Bank Deposits and Collections

Mr. Buringrud said the revisions of the Uniform Commercial Code Articles 3 and 4 - Negotiable Instruments and Bank Deposits and Collections were recommended by the national conference in 2002. He said these articles are considered companion articles. Article 3, he said, concerns all negotiable instruments, including checks and certificates of deposit. Article 4, he said, concerns bank deposits and collection, which involve checks, certificates of deposit, and other types of business instruments. He said North Dakota adopted UCC Articles 3 and 4 in 1965 and revised Articles 3 and 4 in 1991. He said revised

Articles 3 and 4 have been adopted in 50 jurisdictions. Revised Article 3, he said, updates the provision of the UCC dealing with payment by checks and other paper instrument to provide essential rules of the new technologies and practices in payment systems. Revised Article 4, he said, takes care of the immediate problems that have developed over the time that Article 4 has been in effect and updates the law pertaining to certain banking practices. He said in the amendments to Article 4, for example, banks are given the opportunity to utilize the best technology in processing checks.

In response to a question from Representative Warner, Mr. Buringrud said he was not aware of any research being conducted on whether Indian reservations are adopting the UCC. He said a bill dealing with electronic signatures, the Uniform Electronic Transactions Act, was passed in 2001.

**Amendments to Uniform Commercial Code
Sections 9-102(a)(5), 9-102(a)(46), 9-304(b),
and 9-309**

Mr. Buringrud said the amendments to UCC Article 9, which are considered to be technical amendments, were approved by the Executive Committee of the national conference in November 2001.

**Amendments to the Uniform
Disclaimer of Property Interests Act**

Mr. Buringrud said the amendments to the Uniform Disclaimer of Property Interests Act were recommended by the national conference in 2002. He said North Dakota adopted the Uniform Disclaimer of Property Interests Act in 1993 and the 1999 version of the Act in 2001.

In response to a question from Senator Traynor, Mr. Buringrud said by removing the nine-month period to disclaim a property interest, a person is not limited by estate tax considerations that may arise later, provided that property has not already passed.

Chairman Boucher said the committee would not make a recommendation regarding any other of the uniform Acts.

It was moved by Representative Eckre, seconded by Representative Kingsbury, and carried on a roll call vote that the chairman and the staff of the Legislative Council be requested to prepare a final report and to present the report to the Legislative Council. Representatives Boucher, Eckre, Gunter, Kingsbury, Klemin, Kretschmar, and Warner and Senator Traynor voted "aye." No negative votes were cast.

Chairman Boucher adjourned the meeting sine die at 3:10 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:1