

**REPORT**  
**OF THE**  
**NORTH DAKOTA LEGISLATIVE COUNCIL**

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



**FIFTY-FIFTH LEGISLATIVE ASSEMBLY**  
**1997**

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# SUMMARY

## BRIEFLY ---- THIS REPORT SAYS

### ADMINISTRATIVE RULES COMMITTEE

The Council reviewed all state administrative agency rulemaking actions from November 1994 through October 1996. The Council approved extensions of time for seven administrative agencies to adopt rules and withdrew an objection filed in 1991. The Council objected to rules of the Board of Cosmetology regarding cosmetology services for homebound persons. The Council objected to nursing home ratesetting rules of the Department of Human Services and employment classification rules of the Workers Compensation Bureau but removed the objections after amendments to the rules in question. The Council approved motions to void rules of the Commissioner of Insurance relating to annual audited financial reports and diskette filing, and the Department of Human Services relating to child abuse and neglect, but withdrew the motions after amendments were made to the rules in question. The Council voided early childhood services rules of the Department of Human Services after the department announced that it had decided to reopen the rules for public hearings and comment. The Council voided home-based instruction rules of the Superintendent of Public Instruction and this matter was pending at the time of preparation of this report.

The Council recommends House Bill No. 1030 to allow the Administrative Rules Committee to carry consideration of whether to void or suspend an administrative rule to a subsequent meeting if the rule is initially considered by the committee within 90 days after the date of the Administrative Code supplement in which the rule appears. A rule held for consideration could not be held beyond the first committee meeting after the next regular legislative session. The Council recommends House Bill No. 1031 to delay the effective date of nonemergency rules until after the rules have been reviewed by the Administrative Rules Committee and the committee has no further authority to void or object to the rules.

### ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations studied mandates, the feasibility and desirability of requiring fiscal notes for all legislation that may affect local governments, and the impact of administrative rulemaking on local governments; trends facing local governments; compilation of cooperative agreements between local governments and between local governments and the state; and consolidation of tax levies and statutorily imposed limits on the tax levies of cities and counties.

The Council recommends House Bill No. 1032 to amend the multiple prime bid requirement to

provide that multiple prime bids must be obtained when any individual general, electrical, or mechanical portion of a public building contract is in excess of \$100,000 rather than the current \$50,000. The Council recommends House Bill No. 1033 to require the governing body of a state entity or political subdivision to procure plans, drawings, and specifications for a public improvement project from a licensed architect or registered professional engineer when the estimated cost of the project is in excess of \$100,000 rather than the current \$50,000. The Council recommends an amendment to Joint Rule 502 to require the Legislative Council to request a fiscal analysis from appropriate representatives of counties, cities, and school districts if no state agency has primary responsibility for compiling the information necessary for the proper preparation of a fiscal note. The Council recommends Senate Bill No. 2021 to eliminate several special mill levies for cities, counties, and park districts, and allow those entities to include levies for those specific purposes within their general mill levy and to allow a growth factor through which the maximum number of mills that may be levied by cities, counties, and park districts is tied to the consumer price index. The Council recommends Senate Bill No. 2022 to eliminate all mill levy limitations for a period of two years for cities, counties, and park districts effective for the first two taxable years beginning after December 31, 1996.

### BUDGET SECTION

The Council received reports from the Office of Management and Budget on the status of the state general fund and the estimated June 30, 1997, general fund balance. The Council also received reports from the Office of Management and Budget on state fiscal irregularities, budget office statutory duties, budgeting for the payment of accrued annual leave and sick leave, and program-based performance budgeting. Regarding program-based performance budgeting, the Council supports the program-based performance budgeting pilot project and requested that the Office of Management and Budget continue to work with the seven agencies that received program appropriations for the 1995-97 biennium to develop program-based agency budget requests and executive recommendations for the 1997-99 biennium. The Council also requested that the appropriation bill for each of those agencies include a separate section to identify the amounts included for each agency for salaries and wages, equipment, and grants. The Council recommends that the 1997 Legislative Assembly review the program-based performance budgeting pilot project and determine if the project should continue.

The Council approved nonresident tuition rates for higher education institutions and received reports on a liability relating to the health professions and nursing student loan programs and on internal service funds at higher education institutions. The Council requests the Office of Management and Budget to include in the executive budget, appropriation bills, and budget requests presented to the 1997 Legislative Assembly information on local and other funds collected by higher education institutions.

The Council also received reports on ethanol plants receiving production incentives from the state, the new jobs training program, the state 911 system, the Veterans Cemetery, and federal funds received by state agencies.

The Council recommends Senate Bill No. 2023 to eliminate certain Budget Section duties.

#### **BUDGET COMMITTEE ON AGRICULTURE AND INFORMATION SERVICES**

The Council studied the operation and services provided by the Information Services Division, the use and proliferation of personal computers throughout state government, and the feasibility and desirability of contracting for data processing services. The Council recommends House Bill No. 1034 to require state agencies to prepare information technology strategic plans and to comply with statewide information technology policies and standards, to provide that the Information Services Division and the Board of Higher Education plan and coordinate their information technology systems and services, to provide for information technology management and system reviews, and to update terminology in the North Dakota Century Code (NDCC) relating to information technology.

The Council studied the services provided by the NDSU Extension Service and the Agricultural Experiment Station, the degree of duplication, the costs and effectiveness, the necessity for their continued existence, and options for consolidation. The Council recommends Senate Bill No. 2024 to change the name of "county agent" to "extension agent," to extend the time allowed for an extension agent to file a report with the county auditor from monthly to at least annually, and to remove legislative intent language related to area resource centers.

The Council recommends Senate Bill No. 2025 to change the names of the Main Research Station, Dickinson Research Center, Carrington Research Center, and the North Central Research Center to the Main Research Center, Dickinson Research Extension Center, Carrington Research Extension Center, and North Central Research Extension Center; to remove the authority of the Williston Research Center to accept grant funds; to remove statutory reference to the Board of Visitors of the North Central Research Center; and to remove the provision that the Agricultural Experiment Station director is under the direction of the president of North Dakota State University.

The Council received the Board of Animal

Health report relating to its merger with the Agriculture Department and other services provided by the board pursuant to NDCC Section 36-01-08.3.

#### **BUDGET COMMITTEE ON GOVERNMENT FINANCE**

The Council studied the state's investment process and the investment of state funds. The Council recommends House Concurrent Resolution No. 3002 for a Legislative Council study of the state's investment process as it relates to the state bonding fund and the fire and tornado fund and to monitor the performance of investments maintained by the State Investment Board and the Board of University and School Lands.

The Council studied the unified court system with emphasis on the distribution of court revenues and the allocation of the costs of the system between the counties and the state. The Council recommends House Concurrent Resolution No. 3001 for a Legislative Council study of the feasibility and desirability of funding the offices of the clerk of district court through the unified judicial system. The Council also supports legislation to be introduced during the 1997 legislative session which would bring the clerks of district courts into the unified judicial system and which would provide additional revenues to counties to help provide for adequate court facilities.

The Council reviewed the status of major state agency and institution appropriations. The review focused on revenues and expenditures of higher education and charitable and penal institutions. In addition, the Council monitored agency compliance with legislative intent included in the 1995-97 appropriations.

#### **BUDGET COMMITTEE ON GOVERNMENT SERVICES**

The Council monitored the continued development of a continuum of services for the mentally ill and chemically dependent, changes in the role of the State Hospital, and expanded community services, including psychosocial rehabilitation centers and clubhouse projects. The Council recommends Senate Concurrent Resolution No. 4001 for the Legislative Council to monitor mental health services, including changes in the role of the State Hospital and psychosocial rehabilitation centers and clubhouse projects. The Council supports the services of the psychosocial rehabilitation centers and clubhouse projects and encourages the Legislative Assembly to consider further expansion of these programs.

The Council studied services to severely emotionally disturbed children and how out-of-home mental health services to severely emotionally disturbed children may be delivered throughout the state. The Council recommends House Bill No. 1036 to require the Department of Human Services to establish a statewide program to provide out-of-home treatment services for a child with a serious emotional disorder without

requiring the parents to relinquish custody of the child.

The Council recommends Senate Concurrent Resolution No. 4001 for the Legislative Council to monitor foster care services, including methods used to place children in residential child care facilities and residential treatment centers and methods of setting levels of reimbursements for residential child care facilities and residential treatment centers.

The Council studied the North Dakota library system, including the role and mission of the State Library, cooperative library ventures, and research and information systems. The Council recommends House Bill No. 1035 to establish a North Dakota Library Coordinating Council; to change the powers and duties relating to the State Library by focusing the library's collection and expanding its services relating to a statewide data base of library records, arranging for continuing education and training programs for library personnel, and providing technical assistance to library personnel; to provide for regional library cooperatives, including multitype library authorities; to repeal sections relating to the Statewide Library Planning Committee and printing costs of the State Library; and to provide an appropriation of \$125,000 from the general fund for the 1997-99 biennium for Internet access grants for libraries of \$30,000 and for interconnection of library data bases of \$95,000.

The Council studied the feasibility and adaptability of a long-term funding initiative to make available housing for families who are low income, homeless, or disabled, or who require transitional housing to assist them toward independent living. The Council recommends Senate Bill No. 2026 to provide that a city, township, or county may not prohibit the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home.

#### **BUDGET COMMITTEE ON HOME AND COMMUNITY CARE**

The Council studied the quantity, distribution, and use of the state's resources and services in addressing the needs of the elderly residents and the continuum of care for North Dakotans with Alzheimer's and related dementias. The Council recommends House Bill No. 1037 to make permanent the moratorium on basic care and long-term care beds and establish pilot projects to meet the service needs of Alzheimer's and related dementia population; House Bill No. 1038 to define case management and require the Department of Human Services to establish a project for an expanded case management system for long-term care services; House Bill No. 1039 to allow the Department of Human Services to waive the imputed minimum occupancy level requirements for nursing homes providing significant home and community-based services; and House Bill No. 1040 to require the Department of Human Services to provide inflationary increases for nursing home care based on the average of the DRI

nursing home index and the consumer price index for all urban wage earners and clerical workers. The Council also recommends House Concurrent Resolution No. 3004 for a Legislative Council study of home and community-based services for the elderly and disabled; House Concurrent Resolution No. 3003 for the Legislative Council to monitor the implementation of projects relating to Alzheimer's and related dementia persons and an expanded case management system; House Concurrent Resolution No. 3005 for a Legislative Council study of American Indian long-term care needs; and House Concurrent Resolution No. 3006 for a Legislative Council study of long-term care financing issues.

The Council recognizes the effort, the coordination of elderly services, and the cooperation among service providers and the potential for financial savings related to the elderly services delivery system developed in the south central adult services area; and recommends counties contract with an administrative agency for the consolidated administration of elderly services and the agency develop procedures that may result in efficiencies and provide for the referral of elderly residents to necessary and appropriate services.

The Council studied the licensing of home health care providers and recommends Senate Bill No. 2027 to establish a registry system of home health care providers to be administered by the Department of Human Services.

#### **BUDGET COMMITTEE ON HUMAN SERVICES**

The Council studied the human services delivery system. The Council recommends House Bill No. 1041 to require counties to assume the financial responsibility for the cost of administering certain economic assistance programs and to require the state to assume financial responsibility for the grant costs of medical assistance and basic care and contribute additional financial support for the administrative costs of counties with Indian land.

The Council studied issues and concerns relating to fetal alcohol syndrome. The Council recommends Senate Bill No. 2028 to define fetal alcohol syndrome and designates the Fetal Alcohol Syndrome Center at the Department of Neuroscience at the University of North Dakota School of Medicine as the lead agency for coordinating fetal alcohol syndrome and fetal alcohol effect-related activities.

The Council studied refugee resettlements in the state, including the fiscal effects of refugees and other limited English proficient or language minority students on school districts and providers of social services. The Council recommends Senate Bill No. 2029 to provide payments to school districts for refugee students with difficulty speaking, reading, writing, and understanding English.

#### **COMMERCE COMMITTEE**

The Council studied the feasibility and desirability of the Workers Compensation Bureau

establishing a system through which injured workers 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. The Council makes no recommendations other than the Legislative Assembly consider proposals brought before it during the 1997 session with regard to workers' compensation benefits for retired injured employees.

The Council studied international trade agreements and their effect on this state. The Council recommends the Legislative Assembly request a coordinated strategic plan for international trade.

The Council received a report from the Department of Economic Development and Finance on loan performance and performance of the department.

### **CRIMINAL JUSTICE COMMITTEE**

The Council studied administrative hearings for driving while under the influence and double jeopardy issues. The Council recommends House Bill No. 1042 to allow local prosecutors to assist in the administrative hearings for driving while under the influence which occur in their jurisdiction, and House Bill No. 1043 to require an alcohol evaluation before the return of an operator's license when the license is suspended or revoked through an administrative hearing for driving while under the influence.

The Council studied the treatment, disposition, and registration of sex offenders. The Council recommends that the 55th Legislative Assembly approve funding for administration of the sex offender registration and notification law as requested by the Bureau of Criminal Investigation. The Council recommends House Bill No. 1044 to require individuals convicted of a relevant offense in municipal court to register as if convicted in district court; House Bill No. 1045 to clarify district court jurisdiction over a person at least 20 years of age who committed an offense while under 18 years of age; House Bill No. 1046 to require a risk assessment as part of the presentence investigation for individuals charged with gross sexual imposition; House Bill No. 1047 to provide for the involuntary civil commitment of sexually dangerous individuals; House Bill No. 1048 to require sexually violent predators to register for at least 10 years and until a court determines the offender is no longer a sexually violent predator and to require relevant and necessary information on offenders to be released by law enforcement; and Senate Bill No. 2030 to provide for data collection on certain juvenile offenders.

The Council studied judicial protection of child victims and witnesses. The Council recommends House Bill No. 1049 to require the court to protect a child victim or witness from repeated or lengthy interrogation, testimony, or discovery proceedings.

### **EDUCATION FINANCE COMMITTEE**

The Council studied the financing of elementary

and secondary education and the availability of state support for school construction, formulas used to equalize state aid in the areas of transportation and special education, alternatives to property taxes, and the continuation of supplemental payments to high school districts. The Council recommends Senate Bill No. 2031 to allow a school district that contracted for transportation services to determine its actual costs for the first year it provides its own transportation services by using either the higher of its transportation operating expenditures or the statewide average cost of transportation during that first year and House Bill No. 1050 to set the equalization factor at 16 mills and include income in the equalization factor for the foundation aid program.

The Council reviewed the performance audit of the Department of Public Instruction. The Council recommends Senate Bill No. 2032 to require the State Fire Marshal to inspect each elementary and secondary school in the state at least once every three years, prepare an inspection report noting deficiencies, and take appropriate action to remedy the deficiencies. The Council also recommends Senate Concurrent Resolution No. 4002 for a Legislative Council study of those provisions of NDCC Title 15 which relate to elementary and secondary education.

The Council reviewed a computer programming error that resulted in the underpayment of school districts having alternative high school students. The Council recommends House Bill No. 1051 to provide for the reimbursement of school districts having alternative high schools in amounts equal to the payment shortages incurred by the districts during the 1993-95 biennium.

The Council reviewed the use of any funds remaining in the grants - foundation aid and transportation program at the end of the biennium for a separate and contingent per student payment. The Council recommends House Bill No. 1052 to provide for contingent per student payments from any funds remaining in the grants - foundation aid and transportation program at the end of the biennium.

### **EDUCATION SERVICES COMMITTEE**

The Council studied the equitable provision of services to students who are gifted and talented, the equitable funding of those services, and whether those services should be funded independently of, or together with, services provided to students who are disabled. The Council recommends House Bill No. 1053 to appropriate \$400,000 to the Superintendent of Public Instruction for the provision of educational services to gifted and talented elementary and secondary students.

The Council studied the feasibility and desirability of utilizing institutions of higher education to provide educational options and opportunities for North Dakota high school students. The Council recommends Senate Bill No. 2033 to allow the enrollment of 11th and 12th

grade students in courses at postsecondary institutions and to obtain both high school and postsecondary credit for their efforts.

The Council studied the delivery and effectiveness of, and costs associated with, professional growth and development programs for teachers. The Council recommends House Bill No. 1054 to appropriate \$640,000 to the Superintendent of Public Instruction for the purpose of funding teacher learning centers.

The Council reviewed compensatory time for teachers participating in parent-teacher conferences outside regular school hours. The Council recommends House Bill No. 1055 to allow teachers to subtract compensatory time for parent-teacher conferences held outside normal school hours from the 180-day minimum school term.

### **EMPLOYEE BENEFITS PROGRAMS COMMITTEE**

The Council solicited and reviewed various proposals affecting retirement programs of public employees and health and retiree health plans of public employees. The Council obtained actuarial and fiscal information on each of these proposals and reported this information to each proponent. The Council received a report of the results of a study by the State Investment Board, Teachers' Fund for Retirement Board, and Public Employees Retirement System Board of methods to reorganize the Public Employees Retirement System and the Retirement and Investment Office to achieve cost reductions in the administration of the programs under the control of the respective boards.

The Council studied state government employee assistance programs and recommends Senate Bill No. 2034 to require the Public Employees Retirement System Board to establish an employee assistance program available to persons in the uniform group insurance medical and hospital benefits coverage group.

### **GARRISON DIVERSION OVERVIEW COMMITTEE**

The Council received briefings on the progress of litigation surrounding the Garrison Diversion Unit Project; project updates from representatives of the Garrison Diversion Conservancy District, State Water Commission, and the United States Bureau of Reclamation; a draft of the proposed Garrison Diversion Project Completion Act; the North Dakota water priorities plan; the Devils Lake emergency outlet plan; and updates concerning the flooding at Devils Lake.

### **GOVERNMENT ORGANIZATION COMMITTEE**

The Council studied the membership, duties, and responsibilities of all boards, councils, committees, and commissions of state government. The Council recommends House Bill No. 1056 to abolish the Wetlands Mediation Advisory Board; House Bill No. 1057 to abolish the State Outdoor Recreation Interagency Council; House Bill

No. 1058 to replace the Water Pollution Control Board and the Air Pollution Control Advisory Council with an Environmental Advisory Board to advise the Department of Health on issues relating to water pollution control and air pollution control; House Bill No. 1059 to abolish the Poultry Advisory Board; and House Bill No. 1060 to transfer responsibilities from the Banking Board and the Credit Union Board to the Banking Commissioner and to remove the requirement that the Governor make appointments to the Credit Union Board based upon recommendations from the North Dakota Credit Union League.

The Council studied the services provided by the Public Service Commission, their cost and effectiveness, and the need for continuing services as a result of regulatory changes at both the state and federal level. The Council recommends Senate Bill No. 2035 to abolish the Reclamation Research Advisory Committee; Senate Bill No. 2036 to provide that the Public Service Commission may regulate railroads within the state to the extent the railroad constitutes intrastate commerce and to provide that the commission may represent the state's shipping interest in direct negotiations with rail carriers and in proceedings before Congress, federal agencies, and courts; Senate Bill No. 2037 to repeal various statutes relating to the regulation of railroads to remove references to authority of the Public Service Commission in areas in which the commission is no longer authorized to regulate due to federal preemption; Senate Bill No. 2038 to repeal the requirement that public storage warehouses be licensed by the Public Service Commission; and Senate Bill No. 2039 to require the Public Service Commission to charge a fee equal to the cost of operating a motor vehicle used in conducting a special test that is required in addition to the regularly scheduled annual test of a weighing or measuring device and to establish an \$8 fee for the test of a hanging scale of 50-pound capacity or less.

### **INSURANCE AND HEALTH CARE COMMITTEE**

The Council studied the feasibility and desirability of requiring that mental health services and alcohol and drug addiction related services be included as health insurance covered services. The Council recommends Senate Bill No. 2042 to require that group mental health policy coverage includes residential treatment, and Senate Bill No. 2041 to require group health substance abuse policy coverage include licensed addiction treatment programs and to provide that medically necessary treatment services provided under partial hospitalization no longer must be provided under the supervision of a licensed physician.

The Council studied the feasibility and desirability of implementing recommendations by the North Dakota Health Task Force for improving the health status of North Dakotans, the rate of health care cost increases, the impact of newly enacted programs to improve the health status of North Dakotans, and the unmet medical needs in

rural areas. The Council urges the State Health Council to continue studying the implementation of the Health Task Force recommendations for improving the health status of North Dakotans.

The Council studied the availability, coverage, and regulation of long-term care insurance. The Council recommends House Bill No. 1061 to extend medical assistance spousal impoverishment to include individuals who access home and community-based services; Senate Bill No. 2042 to require insurance companies providing long-term care coverage for home and community-based services pay providers meeting qualified service provider standards, to allow for an income tax credit on short-form income tax forms, and to allow an employer who provides long-term care insurance to its employees to claim a tax credit; and House Bill No. 1062 to provide that transfers made or obligations incurred are fraudulent as to medical creditors if the transfer is made without receiving equivalent value and the debtor was receiving or contemplated receiving medical care for which the assets of the debtor were unreasonably small in relation to the cost of the medical care.

The Council studied the certificate of need process. The Council makes no recommendation regarding certificate of need legislation.

The Council received reports from the Commissioner of Insurance relating to basic health insurance coverage and to the progress of the partnership for long-term care program.

The Council recommends Senate Bill No. 2043 to require health insurance policies and health service contracts provide maternity benefit coverage for 48 hours of inpatient care for normal vaginal deliveries and at least 96 hours of inpatient care following a Caesarean section.

#### **JUDICIARY COMMITTEE**

The Council studied the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction, with an emphasis on a review of venue statutes. The Council recommends House Bill No. 1063 to authorize a court to change the place of a pretrial hearing or proceeding from the location in which the matter was originally to be heard and to change the location of civil and criminal trials unless one of the parties objects to the change of location; and House Bill No. 1064 to authorize a court to select a jury pool from one or more counties in the judicial district if the population of the county is under 10,000 persons and the court determines that the number of prospective jurors within the county of venue is inadequate to obtain a fair and impartial jury.

The Council studied the feasibility and desirability of legislation governing the future negotiation, amendment, and renewal of tribal-state gaming compacts. The Council recommends that before the expiration of the first of the tribal-state gaming compacts in 2002, the Legislative Assembly enact a statute that specifically provides authority to negotiate gaming

compacts. The Council urges the Legislative Assembly, in lieu of additional studies on compulsive gambling, to provide funding for the actual treatment and counseling services.

The Council studied the impact of the North Dakota Supreme Court decision abolishing the doctrine of sovereign immunity. The Council makes no recommendation regarding the impact of the abolishment of sovereign immunity.

The Council reviewed uniform Acts and proposed amendments to uniform Acts recommended by the North Dakota Commission on Uniform State Laws. The Council recommends adoption of Uniform Commercial Code Revised Article 5 (Letters of Credit); Uniform Commercial Code Revised Article 8 (Investment Securities); the Uniform Prudent Investor Act; amendments to the Uniform Interstate Family Support Act; and technical amendments to Uniform Probate Code Article VI.

The Council make four recommendations as a result of its constitutional and statutory revision responsibilities. The Council recommends Senate Bill No. 2044 to provide that initiative and referendum petitions may be submitted to the Secretary of State until midnight on the day designated as the deadline for submission; House Bill No. 1065 to exclude Saturday as a business day as it applies to the review period for referendum or initiative petitions and provide that when acts are to be performed on a particular day that falls upon a Saturday or a holiday, the act may be performed on the next business day; Senate Bill No. 2045 to permit the Governor to create a Pardon Advisory Board; and Senate Bill No. 2046 to make technical corrections to the North Dakota Century Code.

#### **LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE**

The Council accepted 192 audit reports prepared by the State Auditor's office and independent accounting firms. The Council received performance audits on the Protection and Advocacy Project, the North Dakota Agricultural Mediation Service, and the Department of Public Instruction. The Council also received status reports on the recommendations contained in the statewide leasing performance audit, the motor pool services performance audit, the Medicaid drug rebate performance audit, the child support enforcement program performance audit, and the Protection and Advocacy Project performance audit.

The Council received the state's Comprehensive Annual Financial Report for the year ended June 30, 1994, and for the year ended June 30, 1995. The Council recommends that a departmental statement of assets, liabilities, and fund equity and a departmental statement of revenues and expenditures, for each agency, be included in the Comprehensive Annual Financial Report. The Council also recommends that individual agency financial reports include a schedule of revenues and expenditures, a schedule of appropriations, and notes to the financial statements.

The Council recommends House Bill No. 1066 to change the authority for the audit of the Bank of North Dakota and its related entities from the Industrial Commission to the State Auditor. The Council recommends Senate Bill No. 2047 to add regional planning councils to the list of political subdivisions the State Auditor's office is responsible for auditing.

The Council recommends that the State Auditor proceed with performance audits of the state's procurement practices, including the procurement of services and materials through contracts and leases and a performance audit of the state's employee classification system and the structure of the Central Personnel Division. The Council also recommends that the State Auditor conduct a risk analysis of the programs within the Department of Human Services. The Council supports a performance audit of the Workers Compensation Bureau.

#### **LEGISLATIVE MANAGEMENT COMMITTEE**

The Council reviewed legislative rules and makes a number of recommendations intended to clarify the rules and expedite the legislative process. Among major rules changes are (1) provide for rereferral of bills of the other house to the Appropriations Committee by the 47th legislative day; (2) provide for transmittal of measures on the 33rd and after the 49th legislative days at the end of the day unless action is pending due to a motion to reconsider or unless the majority or minority leader has given notice of intention to move reconsideration of that measure; (3) establish a House Committee on Committees; (4) repeal the Photography Committees and provide for photographs to be taken during the organizational session; (5) repeal the Joint Constitutional Revision Committee; and (6) provide for the notation on executive budget bills that the bills are introduced at the request of the Governor.

The Council recommends joint rules to declare a legislative ethics policy, urge members to maintain ethical standards, urge members to apprise themselves of laws prohibiting certain conduct, and require the Legislative Council to conduct classes during the organizational session on legislative ethics and laws governing the conduct of public officials.

The Council recommends distribution of 75 notebook-style personal computers to legislators and before a legislator receives a computer the legislator must accept a policy on computer use.

The Council recommends fees for subscriptions to sets of legislative documents and recommends the "privatization" of the bill and journal room during the 1997 session.

The Council makes several recommendations concerning the arrangements for the legislative session, including scheduling time during the organizational session for taking legislators' photographs and providing computer training to legislators, beginning session employee orientation and training on December 9, and reducing the number of Legislative Assembly employees to 42 Senate employees and 50 House employees.

The Council recommends improvements in the facilities, including data transmission and electrical wiring in rooms used by the Appropriations Committees and in the legislative chambers.

The Council recommends revised guidelines on the use of the chambers and Memorial Hall when the Legislative Assembly is not in session.

#### **NORTH DAKOTA/SOUTH DAKOTA COMMISSION**

The Council met with South Dakota legislators and studied ways that North Dakota and South Dakota can collaborate to provide government services more efficiently. The Council recommends Senate Concurrent Resolution No. 4003 to encourage the North Dakota State Board of Higher Education to continue to pursue collaborative efforts with the South Dakota Board of Regents; Senate Bill No. 2048 to allow a state agency to enter an agreement with South Dakota to form a bistate authority to jointly exercise any function that the entity is authorized to perform; Senate Bill No. 2049 to adopt an interstate mutual aid compact for emergency or disaster assistance; and Senate Concurrent Resolution No. 4004 for a commission to study methods through which North Dakota and South Dakota can collaborate to deliver government services more efficiently.

#### **REGULATORY REFORM REVIEW COMMISSION**

The Council studied this state's telecommunications law and the effect of federal legislation on this state's law. The Council recommends House Bill No. 1067 to implement the federal Telecommunications Act of 1996.

#### **TAXATION COMMITTEE**

The Council studied the need for tax reform for the telecommunications industry in the state. The Council recommends House Bill No. 1068 to restructure taxation of the telecommunications industry.

The committee studied the property tax assessment system and recommends House Bill No. 1069 to extend the years of production data used in the agricultural property valuation formula from six years to 10 years. The Council studied property tax valuations for irrigated agricultural land. The Council recommends House Bill No. 1070 to make permanent the changes enacted by 1995 Senate Bill No. 2524. The bill eliminates 50 percent of annual gross income from irrigated land from consideration in computing average agricultural value per acre for cropland for the county as determined by the North Dakota State University Department of Agricultural Economics.

The Council studied tax preferences and impacts of large economic development projects and the property tax exemption for farm buildings but makes no recommendation concerning these studies.

#### **WATER RESOURCES COMMITTEE**

The Council studied the state's water laws

concerning their effect on the efficient use of water and their effect on the holders of senior water rights. The Council makes no recommendation concerning this study.

The Council studied the financing and funding needs for development and completion of the state's water resources infrastructure and methods for development of a program to provide financing and funding of water supply facilities in this state. The Council recommends House Bill No. 1071 to

provide for a statewide water development program funded by a \$41,669,450 general fund appropriation; House Bill No. 1072 to provide a contingent plan for construction of an outlet from Devils Lake to the Sheyenne River; Senate Bill No. 2050 to create the Devils Lake Basin Water Authority; and House Bill No. 1073 to establish a water supply for eastern North Dakota as a critical priority.

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# North Dakota Legislative Council

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January 6, 1997

Honorable Edward T. Schafer  
Governor of North Dakota

Members, 55th Legislative  
Assembly of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations of 21 interim committees, the Advisory Commission on Intergovernmental Relations, and the Regulatory Reform Review Commission.

Major recommendations include proposals for welfare reform, a permanent moratorium on the construction of long-term care beds, Alzheimer's demonstration projects, improvements for the state's information technology program, group health insurance benefit coverage for mental disorders and substance abuse, the incorporation of income in the equalization factor for the foundation program for schools, the abolition or consolidation of several state boards and commissions, joint powers agreements with South Dakota, establishment of an employee assistance program by the Public Employees Retirement System, a statewide water development program, a contingent plan for construction of an outlet from Devils Lake, and the restructuring of the taxation of the telecommunications industry.

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,

Senator Gary J. Nelson  
Chairman, North Dakota  
Legislative Council

GJN/TS

# HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

## I. HISTORY OF THE LEGISLATIVE COUNCIL

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

After the hiring of a research director, the first LRC held monthly meetings prior to the 1947 legislative session and recommended a number of bills to that session. Even though the legislation creating the LRC permitted the appointment of subcommittees, all of the interim work was performed by the 11 statutory members until the 1953-54 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.

## II. THE NEED FOR A LEGISLATIVE SERVICE AGENCY

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

Legislative 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 the last half of the 20th century while remaining a part-time citizen legislature that meets for a limited number of days every other year.

## III. COMPOSITION OF THE COUNCIL

The Legislative Council by statute consists of 15 legislators, including the majority and minority leaders of both houses and the Speaker of the House. The Speaker appoints five other representatives, two from the majority and three from the minority as recommended by the majority and minority leaders, respectively. The Lieutenant Governor, as President of the Senate, appoints three 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 eight majority party members and seven minority party members (depending upon which political party has a majority in the Senate), and is served by a staff of attorneys, accountants, researchers, and auxiliary personnel who are hired and who serve on a strictly nonpartisan basis.

## IV. FUNCTIONS AND METHODS OF OPERATION OF THE COUNCIL

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

Regardless of the source of authority of interim committees, the Council appoints the members with the exception of a few ex officio members named by statute. Nearly all committees consist entirely of legislators, although a few citizen members are 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 has on its staff the Legislative Budget Analyst and Auditor and assistants who provide technical assistance to Council committees and legislators and who review audit reports for the Legislative Audit and Fiscal Review Committee. The Council provides computer services to the legislative branch, including research and bill drafting capabilities. The Council also maintains a wide variety of materials and reference documents, many of which are not available from other sources.

## **V. MAJOR PAST PROJECTS OF THE COUNCIL**

Nearly every facet of state government and statutes 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, centralized state government computer and microfilm services, and organization of the state's charitable and penal institutions, as well as studies of the feasibility of consolidating

functions in state government. Unification of the state's judicial system and the establishment of a public venture capital corporation were subjects of recent studies.

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

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 and regulations. Other subjects that have been regularly studied include school finance, health care, property taxes, and legislative rules.

# ADMINISTRATIVE RULES COMMITTEE

The Administrative Rules Committee is a statutory committee deriving its authority from North Dakota Century Code (NDCC) Sections 54-35-02.5, 54-35-02.6, and 28-32-03.3. 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. A 1995 amendment to NDCC Section 28-32-03.3 allows the committee to find a rule void or to agree with an agency to amend an administrative rule to address committee concerns, without requiring the agency to begin a new rulemaking proceeding.

Fee schedules for medical and hospital services proposed for adoption as administrative rules by the Workers Compensation Bureau must be approved by the committee under NDCC Section 65-02-08.

The Legislative Council delegated to the committee its authority under NDCC Section 28-32-02 to distribute administrative agency notices of proposed rulemaking and to approve extensions of time for administrative agencies to adopt rules and its responsibility under NDCC Section 28-32-15 to receive notice of appeal of an administrative agency's rulemaking action.

Committee members were Representatives Tom D. Freier (Chairman), Ole Aarsvold, LeRoy G. Bernstein, Al Carlson, Steve Gorman, Mick Grosz, Keith Kempenich, Kim Koppelman, Marv Mutzenberger, Bill Oban, Bob Skarphol, and Rich Wardner and Senators Larry J. Robinson, Bob Stenehjem, and Jens Tennesfos.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th 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). By statute, 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. A copy of 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 (NDAC).

Until 1995, the chairman of the Legislative Council assigned administrative rules to the Administrative Rules Committee for review under NDCC Section 54-35-02.6. The section was amended in 1995 to provide that it is the standing duty of the committee to review administrative rules adopted under NDCC Chapter 28-32. This allows continuation of the rules review process initiated in 1979.

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

1. Whether the rules resulted from statutory changes made by the most recent regular session of the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation.
3. The rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has filed any complaint with the agency concerning the rules.
5. Whether a written request for a regulatory analysis was filed by the Governor or an agency, whether the rule is expected to have an impact on the regulated community in excess of \$50,000, and whether a regulatory analysis was issued.
6. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost of staff time used in developing the rules.
7. The subject matter of the rules and the reasons for adopting the rules.
8. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-02.5.

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 2,762 rule sections that were changed from November 1994 through October 1996. Table A shows the number of rules amended, created, superseded, repealed, reserved, or redesignated for each administrative agency that appeared before the committee.

For more than a decade, committee members have expressed concern about the volume of administrative rulemaking. The trend of increased rulemaking activity was reversed in the most recent biennial period.

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 NDAC sections amended, repealed, created, superseded, reserved,

or redesignated during each designated time period:

Time Period	Number of Sections
July 1979 - October 1980	1,440
November 1980 - August 1982	916
September 1982 - November 1984	1,856
December 1984 - October 1986	1,280
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

For committee review of rules, the Legislative Council staff prepares an administrative rules supplement containing all rules changes submitted since the previous committee meeting. The supplement is prepared in a style similar to bill drafts, e.g., changes are indicated by overstrike and underscore. The administrative rules supplements for the period November 1994 through October 1996 consisted of 3,140 pages of rules changes. This is a reduction from the 3,809 pages of rules changes considered by the committee during the previous biennial period.

Many rules changes are mandated by changes to federal laws or rules. Most rules changes result from recent statutory changes made by the Legislative Assembly. Any rule change made to implement a statutory change must be adopted within nine months after the effective date of the statutory change unless an extension is granted. The committee considered and granted requests from seven agencies for extensions of time to adopt rules relating to various topics. Extensions were approved for the Tax Commissioner for rules relating to oil extraction tax exemptions for certain wells, the Secretary of State for boxing rules, the Water Commission for wetlands drainage rules, the Superintendent of Public Instruction for home-based instruction rules, the Gaming Commission for a rewrite of charitable gaming rules, the State Personnel Board and Central Personnel Division of the Office of Management and Budget for Central Personnel System rules, and the Oil and Gas Division of the Industrial Commission for oil and gas regulation rules.

### Objections

The committee may file an objection to any portion of a rule the committee determines to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency. The objection must contain a concise statement of the committee's reasons for its action. Within 14 days after the filing, the adopting agency is to respond to the objection. After receiving the response, the committee may withdraw or modify its objection. An objection shifts the burden of persuasion to the agency in any judicial action regarding the rule to establish that the rule objected to is within the statutory authority delegated to the agency. If the

agency fails to meet this burden, the court must declare the portion of the rule objected to invalid and judgment against the agency must include court costs.

### Department of Human Services - Child Support Guidelines

The Department of Human Services requested the committee to remove an objection to NDAC Chapter 75-02-04.1 filed by the committee on July 25, 1991. The rules in question are child support guidelines adopted by the department effective February 1, 1991. The objection was based on the rules using an "obligor" model and committee members believed that an "income shares" model is more equitable. The objection is described in detail in the 1993 *Report of the North Dakota Legislative Council*.

The committee reviewed the background of the child support guidelines rules in federal law and North Dakota statutes and rules. The most significant development since the filing of this objection was the September 1995 decision of the North Dakota Supreme Court in *Eklund v. Eklund*, 538 N.W.2d 182. In this decision, the Supreme Court considered an issue regarding the effect of the objection of the Administrative Rules Committee to the child support guidelines. The appellant in the case argued that the Department of Human Services had not demonstrated in the court action that the guidelines were within its delegated authority. The Supreme Court concluded that the department has clear statutory authority to establish child support guidelines and the law does not preclude child support guidelines based upon the obligor model. The court observed that legislation that would have established an income shares model was defeated in 1993, after the filing of the committee objection. The court's ruling means that the burden imposed on the department by the objection has been met by the department and the objection is no longer of any legal significance. After reviewing the Supreme Court decision, the committee approved a motion to remove the objection to the child support guidelines adopted by the Department of Human Services.

### Board of Cosmetology - Services for Homebound Persons

The Board of Cosmetology adopted a rule effective February 1, 1996, to require any person desiring to provide cosmetology services to homebound persons to obtain a license from the board and meet several requirements. Among the requirements were registration of all clients with the board office, providing a doctor's certificate that the client is homebound, possession of a manager-operator license, and an initial fee of \$75 and a renewal fee of \$25 per year.

Committee members pointed out several concerns with the rule, including that the rule contradicted 1995 legislation allowing volunteers to provide cosmetology services in a licensed hospital or nursing home (NDCC Section 43-11-02). A

representative of the board said the rule was intended to apply only to a person otherwise licensed to practice cosmetology and should not have been drafted to apply to every person desiring to provide cosmetology services to the homebound. Committee members were also concerned that the rule required all clients to be registered with the board office, required a doctor's certificate, and set a relatively high fee for the special license. These requirements were viewed as making compliance unnecessarily difficult and discouraging people from providing cosmetology services for homebound persons. A representative of the board said the rule resulted from complaints from cosmetology salon owners that they lose business to a cosmetologist who goes into private homes to provide services. Committee members viewed the purpose of the rule as protecting the profession rather than protecting the public and requested the board to return to the next committee meeting with suggested changes to the rule.

The Board of Cosmetology failed to have a representative in attendance at the next committee meeting but provided a written suggestion for an amendment to apply the rule only to persons otherwise licensed to practice cosmetology and to reduce the initial licensure fee from \$75 to \$50. The committee approved the rule change proposed by the Board of Cosmetology because it removed some of the objectionable matters from the rule. However, the committee approved a motion to file an objection with regard to the rule as amended because the rule still required registering all clients with the board office, providing a certificate from a health official that the client is homebound, and paying a fee of \$50 per year for a homebound license. Committee members said these requirements do very little to assure quality cosmetology services and are intended to discourage individuals from obtaining a license to provide cosmetology services for homebound persons. Committee members indicated the rule appears intended to force people to get cosmetology services at salons and this is impossible for many nursing home residents and homebound persons. The objection was filed in the Legislative Council office on May 29, 1996, and the objection was published with the rule (NDAC Section 32-03-01-12).

A representative of the board appeared at the following committee meeting and proposed additional changes to the rule. The additional changes included elimination of the requirement of a certificate from a health official that the client is homebound and reduction of the annual fee from \$50 per year to \$25 per year. The committee approved the proposed amendments but left its objection in place. Committee members indicated the proposed amendments improved the rule but the rule still contained provisions intended to discourage persons from seeking licensing to provide services for homebound persons.

#### **Department of Human Services - Nursing Home Ratesetting**

The Department of Human Services adopted

rules effective January 1, 1996, amending NDAC Chapter 75-02-06 to implement 1995 legislative changes regarding the effect on nursing home reimbursement rates of depreciation and interest costs, basis in depreciable assets, and property acquisition costs.

Representatives of a nursing home urged the committee to find these rules void on the grounds that the rules are contrary to the intent of the Legislative Assembly, which they suggested was to simplify the sale of nursing homes. In the transaction in question, three stockholders of a nursing home transferred 100 percent of the corporate stock to an unrelated purchaser. The rules in question would not have recognized the transfer as a "bona fide sale" because it involved a stock purchase. As a result, a step up in basis for the facility would not be recognized and reimbursement rates for the facility under new ownership would not be adjusted to recognize the purchase price.

Because of complicated issues involved, the committee approved a motion to object to the rules and to lay the motion on the table for further consideration. The committee requested representatives of the department and the nursing home owners to attempt to reach a mutually agreeable recommendation.

At the subsequent committee meeting, the Department of Human Services proposed additional amendments to the rules to recognize a stock sale transfer under conditions providing assurance that the corporate parties to the transfer are not related and the acquired corporation is irrevocably dissolved. The sellers and buyers of the nursing home and a representative of the Long Term Care Association supported the proposed amendments. The amendments were adopted by agreement of the committee and the department and the motion to object to the rules was withdrawn.

#### **Workers Compensation Bureau - Employment Classification**

The Workers Compensation Bureau adopted rules effective January 1, 1996, adopting by reference the rates and classifications in the 1995 edition of the *Workers Compensation Bureau Rates and Classifications Manual*.

A representative of the North Dakota Petroleum Marketers Association said Workers Compensation Bureau classification No. 8350 (Bulk Delivery) is the class in which petroleum oil jobbers have traditionally been classified and some of the members of the association were reclassified by the manual into classification No. 7215 (Trucking and Hauling Operations). Transferring jobbers to the new classification would increase their premiums approximately 150 percent.

The committee approved a motion to object to application of the two classifications and to lay the motion on the table for further consideration. The committee asked the bureau and association representatives to attempt to reach a mutually agreeable recommendation.

At a subsequent committee meeting, representatives of the bureau and the association reported that they had reached a mutually agreeable administrative interpretation of the application of the classifications in question and that no change to the administrative rules would be necessary. The committee withdrew its motion to file an objection.

### **Informal Objections**

#### **Board of Nursing - Disciplinary Rules**

The Board of Nursing adopted rules effective December 1, 1995, relating to grounds for discipline of licensed nurses. One of the grounds for discipline included a failure to provide nursing care because of client diagnosis, age, sex, race, religion, creed, color, or lifestyle. Committee members asked why the term "lifestyle" was included in the rule.

At a subsequent meeting, a board representative said the board's intent in using the term "lifestyle" was to allow the board to discipline a nurse for refusing to care for a patient because of factors such as the patient's sexual orientation, criminal history, or economic status; but if there were a concern, the word "lifestyle" could be removed from the rule. The committee agreed to the suggested amendment.

#### **Voiding of Rules**

Under NDCC Section 28-32-03.3 as amended in 1995, the Administrative Rules Committee may void all or part of a rule within 90 days after the date of the Administrative Code supplement in which the rule change appears or at the first committee meeting after a regular legislative session, for rules appearing in the Administrative Code supplement from November 1 through May 1 encompassing a regular legislative session. 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 its consideration of written and oral submissions respecting the rule under NDCC Section 28-32-02(3).

Within three business days after the committee finds a rule void, the office of the Legislative Council must 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.

#### **Commissioner of Insurance**

The Commissioner of Insurance adopted rules to comply with accreditation requirements of the National Association of Insurance Commissioners (NAIC). Committee members expressed concern that a national organization could dictate the content of rules adopted by states. Representatives of the Commissioner of Insurance described the NAIC as being established to assure financial security of insurance companies and to forestall federal legislation that would intrude into insurance regulation, which has historically been the province of the states. Because of criticism from state legislators, the NAIC has agreed on a moratorium on requests for state law and rule changes. Committee members also expressed concern over requirements for annual audited financial reports and filing of reports on computer diskette which could impose undue burdens on small insurance companies in the state. The Commissioner of Insurance reported no insurance company expressed any complaint about these rules during the hearing process.

The committee approved a motion to void NDAC Chapter 45-03-20, relating to annual audited financial reports, and NDAC Section 45-03-15-03, relating to filing reports on computer diskette, because of an absence of statutory authority to adopt these rules. The Commissioner of Insurance petitioned the chairman of the Legislative Council for review of the committee decision. Within 60 days after filing of the petition, the committee met with representatives of the commissioner and reviewed amendments proposed by the commissioner which would allow the commissioner to grant an exemption from diskette filing and annual audited financial report requirements for small insurers. A representative of several insurance companies stated support for the rules in general and for the amendments proposed by the commissioner. The committee suggested a further amendment to exempt companies doing business only within North Dakota from the annual audited financial report rule. The commissioner agreed to this further amendment and the committee withdrew its motion to void the rules and approved the amendments.

#### **Department of Human Services - Child Abuse and Neglect Rules**

The Department of Human Services adopted rules to implement 1995 legislation on child abuse and neglect assessments. Committee members expressed several concerns with the content of these rules, including that the rules allow appeal of the result of an assessment only if there is a decision that services are required, shift the burden of proof to the subject of a report, require appointing a guardian ad litem for any child called

as a hearing witness, attempt to amend the North Dakota Rules of Evidence adopted by the North Dakota Supreme Court, and eliminate statutory confidentiality protection for certain professionals. Committee members suggested these rules exceeded or conflicted with statutory provisions and the department should introduce the rules as proposed legislation. The committee approved a motion to void the amendments to NDAC Sections 75-03-18-02, 75-03-18-04, 75-03-18-17, 75-03-18-07.1, 75-03-18-11, 75-03-19-01, and 75-03-19-03 on the grounds that the rules failed to comply with express legislative intent, conflicted with state law, and were arbitrary and capricious. The department filed a petition with the chairman of the Legislative Council for review of the committee decision.

Within 60 days after filing of the petition, the committee met with department representatives, who conceded that the rules were too broad in some respects and the department may have misread legislative intent in others. The department proposed amendments to satisfy committee concerns. The committee approved a motion to withdraw its motion to void the rules and to approve the amendments proposed by the department with some agreed changes.

#### **Department of Human Services - Early Childhood Services Rules**

The Department of Human Services adopted early childhood services rules. When the committee reviewed the rules, the department announced that comments and concerns of providers had convinced the department to reopen the rules for public hearings and comment. Representatives of child care providers described their concerns with the rules as adopted. Committee members agreed that the department was pursuing the appropriate course in reopening the rulemaking proceeding.

The question arose of how to remove the rules from the Administrative Code after they had been adopted by the department and published. An amendment agreed to by the department and the committee is required by statute to be considered at a subsequent committee meeting, which would have kept those rules in force for 60 to 90 days. After consideration of alternatives, it was determined that the fastest way to remove the unwanted rules from the Administrative Code is through a motion to void those rules. The committee approved a motion to void the early childhood services rules. The department did not file a petition with the chairman of the Legislative Council for review of this decision and the rules became void on the 15th day after notice to the department of the committee's action. Hearings on revised rules were scheduled for eight locations in North Dakota on October 8, 1996.

#### **Superintendent of Public Instruction - Home-Based Instruction**

The Superintendent of Public Instruction adopted rules to implement statutory provisions on

home-based instruction. The rules went through seven drafts during and after the hearing process before final adoption. Representatives of the Home School Association participated in the hearing process and reviewed the various drafts of rules as they were considered but testified before the committee that the rules deviate from statutory authority in several respects. The primary concerns of the association appeared to be with high school diploma standards for home-based instruction students being based on local school district standards and requiring a parent providing home-based instruction to file with the Superintendent of Public Instruction a statement from a licensed professional relating to remedial programming to meet learning disabilities of the child.

The committee approved a motion to void the home-based instruction rules adopted by the Superintendent of Public Instruction on the grounds that there is an absence of statutory authority or conflict with state law. The Superintendent of Public Instruction filed a petition with the chairman of the Legislative Council for review of the committee action. It is anticipated that the committee will meet with the Superintendent of Public Instruction in December 1996 to further consider the home-based instruction rules.

#### **Committee Considerations**

The committee had several discussions regarding the appropriate exercise of authority to void rules. Committee members indicated the Legislative Assembly must become more cognizant of the need for precise expression of legislative intent in delegating rulemaking authority and drafting legislation. Committee members indicated judicious use of committee authority can encourage a state agency to work with affected groups to develop mutually satisfactory rules. Committee members expressed gratification in seeing cooperative efforts resolve controversies that otherwise would have to be resolved by the Legislative Assembly.

Because the committee must exercise its authority to void an administrative rule within 90 days after the effective date of the rule, the committee has only one meeting at which to consider whether to void the rule. Committee members expressed the need for more time for deliberation to allow greater opportunity to ascertain necessary facts. The committee considered a bill draft requiring that a decision to void a rule must be carried to at least one subsequent meeting after initial consideration. It was pointed out that there are occasions in which it is desirable to remove affected rules from the Administrative Code as soon as possible.

Administrative rules become effective before they are considered by the committee. Rules may have been in effect for some time before a committee objection, and agreement is reached by the committee and the adopting agency, or a rule is voided by the committee. Problems can be created

if rules are in effect for a short time and then changed or eliminated.

**Recommendations**

The committee recommends House Bill No. 1030 to allow the Administrative Rules Committee to carry consideration of whether to void or suspend an administrative rule to a subsequent meeting if the rule is initially considered by the committee within 90 days after the date of the Administrative

Code supplement in which the rule appears. A rule held for consideration could not be held beyond the first committee meeting after the next regular legislative session.

The committee recommends House Bill No. 1031 to delay the effective date of nonemergency rules until after the rules have been reviewed by the Administrative Rules Committee and the committee has no further authority to void or object to the rules.

TABLE A

STATISTICAL SUMMARY OF RULEMAKING						
AGENCY	AMEND	CREATE	SUPERSEDE	REPEAL	SPECIAL	RESERVE
Abstracters' Board of Examiners		5				
Accountancy, Board of	48			13		
Addiction Counselor Examiners, Board of	21	2				
Agriculture Commissioner		8				
Animal Health, Board of	1			1		
Attorney General (Gaming)		131		214		
Banking and Financial Institutions	46	14		15	7	
Cosmetology, Board of	1	3			134	
Counselor Examiners, Board of	3	6				
Credit Review Board	4					
Dental Examiners, Board of	9					
Education Standards and Practices Board	31					
Electrical Board	24	1				
Game and Fish Department	15	8				
Health, Department of	109	117	40	94	1	
Hearing Instrument Dispensers, North Dakota Board of		20				
Human Services, Department of	303	500	2	55	43	2
Industrial Commission	29	8		8		
Insurance, Commissioner of	19	50		5	6	
Management and Budget, Office of	39	31		22		
Medical Examiners, Board of	11			2		
Milk Marketing Board	27	7				
Nursing, Board of	25	22		13		
Nursing Home Administrators	10			1		
Optometry, Board of	6	2		1		
Personnel Board, State				2		
Pesticide Control Board	4					
Pharmacy, Board of	5	3				
Physical Therapists, Examiners Committee for	2	6				
Plumbing, Board of	26	8				
Psychologist Examiners, Board of		7				
Public Instruction, Superintendent of	6					
Public Service Commission	28	9		95		
Real Estate Appraiser Qualifica- tions and Ethics Board	4	14				
Real Estate Commission	1	1				
Respiratory Care, State Board of		12				
Retirement Board	35	32		4		
Tax Commissioner	18	9		8		
Water Commission		3				
Workers Compensation Bureau	15	9		1		
Sections Affected	925	1,048	42	554	191	2
Grand Total All Sections	2,762					

# ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

North Dakota Century Code (NDCC) Chapter 54-35.2 establishes the Advisory Commission on Intergovernmental Relations. The commission is directed by law to 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. The commission also is directed by law to administer grants to political subdivisions for projects to improve efficiency of local governments. The commission is required to report its findings and recommendations to the Legislative Council in the same manner as interim Legislative Council committees.

North Dakota Century Code Section 54-35.2-01 establishes the membership of the commission as four members of the Legislative Assembly appointed by the Legislative Council, two citizen members appointed by the North Dakota League of Cities, two citizen members appointed by the North Dakota Association of Counties, one citizen member appointed by the North Dakota Township Officers Association, one citizen member appointed by the North Dakota Recreation and Park Association, and the Governor or the Governor's designee. The Legislative Council designates the chairman of the commission. All members of the commission serve a term of two years beginning July 1 of each odd-numbered year. Members whose terms began July 1, 1995, are Representatives Eliot Glassheim (Chairman) and F. Bruce Walker; Senators John M. Andrist and Bob Stenehjem; League of Cities representatives Jeff Fuchs and Bill Sorensen; Association of Counties representatives Pat Candrian and Bob Indvik; Township Officers Association representative Ken Yantes; Recreation and Park Association representative Randy Bina; and Governor's designee Vern Wagner.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## BACKGROUND

At its first meeting this interim, the commission identified several areas of potential study for the interim. The commission decided to focus on these areas:

1. Study mandates, the feasibility and desirability of requiring fiscal notes for all legislation that may affect local governments, and the impact of administrative rulemaking on local governments.
2. Review trends facing local governments

including changing population, unfunded mandates, and taxes.

3. Compile a list of cooperative agreements between local governments and between local governments and the state.
4. Study consolidation of tax levies and statutorily imposed limits on the tax levies of cities and counties.

## MANDATES AND FISCAL NOTES

### Testimony and Commission Considerations

The commission received testimony from representatives of local governments regarding various state statutes and administrative rules that impose burdens on local governments. In particular, complaints were expressed concerning the bid requirements for public improvement projects, the designation of historical properties by the State Historical Society, and the ineffectiveness of fiscal note requirements for legislation affecting local governments.

### Bidding Requirements

The commission reviewed statutory provisions regarding the multiple prime bid requirement. North Dakota Century Code Section 48-01.1-06 requires the governing body of a state entity or political subdivision to seek multiple prime bids for the general, electrical, and mechanical portions of a public building project when any individual general, electrical, or mechanical contract is in excess of \$50,000.

The commission considered a bill draft that would have repealed the multiple prime bid requirement. Proponents of the bill draft testified that the requirement is a burden on governmental entities because of the lack of coordination among the contractors on a project. It was argued that the multiple prime bid requirement often resulted in higher project costs.

Opponents of the bill draft testified that it took many years before the various groups of contractors were successful in getting the multiple prime bid requirement enacted. It was argued that the current statute resulted from a compromise among the parties involved, and the requirement should not be repealed.

Although commission members generally agreed that the multiple prime bid requirement placed unnecessary burdens on local governments and should be revised, they determined that the requirement should not be repealed in light of the consensus among the various contractor groups.

The commission received testimony relating to the requirement that the governing body of a state entity or political subdivision must procure plans, drawings, and specifications for the construction of a public improvement project from a licensed

architect or registered professional engineer when the estimated cost of the project is in excess of \$50,000. Representatives of cities testified that the requirement is not necessary for all projects over the \$50,000 threshold and adds to the cost of projects.

The commission reviewed a bill draft that increased the \$50,000 threshold. Proponents of the bill draft contended that the change would relieve government of unnecessary cost requirements for public improvement projects. It was argued that governing bodies should have the discretion to decide whether a project is of a nature that would require the use of plans, drawings, and specifications developed by a licensed architect or registered professional engineer.

Opponents of the bill draft testified that increasing the \$50,000 threshold could result in poorly constructed public buildings that would endanger the public. In addition, it was argued that because of their expertise, architects and engineers often save public bodies money when developing plans and specifications for public buildings.

### **Historic Property Designation**

The commission received testimony from local government officials regarding the designation of historical properties by the State Historical Society. Those officials described instances in which the Historical Society designated properties as historical sites contrary to recommendations from local historical groups. The officials expressed frustration with the Historical Society due to its failure to give credence to the recommendations of local historical groups.

The commission also received testimony from a representative of the Historical Society. It was pointed out that the Historical Society often is bound by federal rules when reviewing certain properties for historical significance. The commission was given assurances that the Historical Society would make additional efforts to work with local officials when reviewing properties for historical significance.

### **Fiscal Notes**

Since 1983, Joint Rule 502 has provided, in part:

[B]ills and resolutions introduced into either house of the Legislative Assembly which mandate changes in the revenues, expenditures, or fiscal liability of counties or cities must have a fiscal note attached reflecting the statewide impact of the bill or resolution on counties or cities.

The rule further provides that if no state agency has primary responsibility for compiling the information necessary to prepare the fiscal note, a statement to that effect must be attached to the bill or resolution. That statement would then satisfy the fiscal note requirement.

Representatives of local governments testified that Joint Rule 502 was ineffective because state

agencies rarely had the information necessary to prepare a fiscal note and representatives of local governments were not contacted for information for fiscal notes. They contended that legislation similar to 1995 House Bill No. 1123, which failed to pass the House of Representatives, was the best method through which legislators could become informed regarding the fiscal impact of proposed legislation on local governments. House Bill No. 1123 would have required the Legislative Council to refer proposed legislation to representatives of cities, counties, or school districts when no state agency was able to determine the fiscal impact of the proposed legislation. Representatives of those entities would have been required to file a fiscal analysis of the proposed legislation. If the fiscal impact could not have been determined, the representatives of the entities would have had to indicate whether the proposed legislation appeared to have a fiscal impact of over \$100,000 on cities, counties, or school districts. If the fiscal impact of the bill could not be decided and the bill had an estimated negative fiscal impact of \$100,000 or more, neither house of the Legislative Assembly could consider the proposed legislation for final passage unless the fiscal note requirement was waived by a majority vote of the members of that house.

The commission reviewed information from other states regarding fiscal note requirements and found that various methods are used to prepare fiscal notes; however, it appeared that most states had similar problems with respect to obtaining accurate and timely information regarding the fiscal impact proposed legislation would have on local governments. Commission members generally agreed that an amendment to Joint Rule 502 would be preferable to a statutory or constitutional fiscal note requirement because of the opposition to those approaches during the 1995 legislative session.

The commission considered a proposed amendment to Joint Rule 502. The proposal would require the Legislative Council to request a fiscal analysis from appropriate representatives of counties, cities, or school districts if no state agency has primary responsibility for compiling the information necessary for the proper preparation of a fiscal note. The proposed rule amendment would allow representatives of each of those entities to file a fiscal analysis of the proposed legislation within three days after the request is made. If the fiscal impact of the proposed legislation cannot be determined on the basis of available information, the representatives of those entities would be required to notify the Legislative Council of that fact and a statement to that effect would be attached to the proposed legislation.

Proponents of the amendment to Joint Rule 502 argued that although the amendment would not solve the problem of proposed legislation being considered without an adequate analysis of the fiscal impact on local governments, the amended rule would be an improvement over the current rule. Although some supporters of the amendment

argued that the amendment should require a fiscal analysis before the bill could be considered, commission members generally agreed that additional requirements would jeopardize the possibility of the amendment being adopted.

The commission discussed the concept of requiring the state to hire an employee to be responsible for matters affecting local governments, e.g., the preparation of fiscal notes. Although commission members generally agreed with the concept, the members were unable to reach a consensus regarding which agency the employee should be located and from which source funding for the position should come.

### **Recommendations**

The commission recommends House Bill No. 1032 to amend the multiple prime bid requirement to provide that multiple prime bids must be obtained when any individual general, electrical, or mechanical portion of a public building contract is in excess of \$100,000 rather than the current \$50,000 amount. The commission determined that increasing the amount from \$50,000 to \$100,000 would provide governing bodies some relief from the burdens imposed by the requirement for multiple prime bids while not repealing the compromise reached by the various groups of contractors.

The commission recommends House Bill No. 1033 to require the governing body of a state entity or political subdivision to procure plans, drawings, and specifications for a public improvement project from a licensed architect or registered professional engineer when the estimated cost of the project is in excess of \$100,000 rather than the current \$50,000 amount. Although the commission considered increasing the amount to \$500,000, commission members determined that \$100,000 would be more appropriate in that it would provide additional discretion to governing bodies and assure that large public improvement projects are designed by a licensed architect or registered professional engineer.

The commission recommends an amendment to Joint Rule 502 to require the Legislative Council to request a fiscal analysis from appropriate representatives of counties, cities, and school districts if no state agency has primary responsibility for compiling the information necessary for the proper preparation of a fiscal note. The proposed amendment would allow representatives of each of those entities to file a fiscal analysis of the proposed legislation within three days after the request is made. If the fiscal impact of the proposed legislation cannot be determined on the basis of available information, the representatives of those entities would be required to notify the Legislative Council of that fact and a statement to that effect would be attached to the proposed legislation.

The commission makes no recommendation with respect to its review of the designation of historical sites by the State Historical Society.

## **TRENDS FACING LOCAL GOVERNMENTS**

The commission hosted a panel discussion regarding demographic and economic trends facing local governments. The commission received testimony indicating the demographic trend of the rural population moving toward more urban areas is having a substantial impact on the tax base of rural areas. In addition, because the average age of North Dakota residents is increasing, greater burdens are being placed on state and local governments.

Panelists discussed the need for urban areas and rural communities to engage in regional marketing. Although the panelists disagreed regarding the method through which economic development funds should be used, they agreed that the ultimate success of the rural and urban economies is dependent upon the success of each other.

The testimony also indicated that the state has a well-educated work force, but vocational and skills training are needed to supply the manufacturing jobs necessary to further diversify the state's economy. The panelists generally agreed that state aid is necessary to help develop infrastructure and to help keep people from moving from the state.

### **COOPERATIVE AGREEMENTS**

North Dakota Century Code Section 54-40.3-03 provides that a political subdivision entering into a joint powers agreement is encouraged to file one copy of the agreement and explanatory material with the commission to assist the commission in providing information for other political subdivisions exploring cooperative arrangements. The commission discussed the feasibility and desirability of creating and publishing a directory of cooperative agreements. Although commission members generally agreed that such a directory would be of assistance to local governments, the members also agreed that such a project is not feasible.

### **LOCAL GOVERNMENT TAX LEVY CONSOLIDATION AND LIMITS**

Between 1981 and 1993, each Legislative Assembly has enacted legislation allowing political subdivisions to increase levy authority in dollars by a specified percentage. This optional levy increase authority was established in 1981 when the property tax system was restructured to avoid substantial increases or decreases in property tax bases which would have occurred when property was reassessed.

The 1995 Legislative Assembly enacted Senate Bill No. 2081, which allowed a taxing district to levy up to two percent more in 1995 and up to two percent more in 1996 than was levied in its base year. The bill defined "base year" as the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year. The bill does not allow optional levy

increases for taxable years after 1996 and allows taxing districts to levy only up to the amount levied in the base year after 1996.

The commission received testimony from representatives of local governments urging the commission to attempt to provide local governments more discretion and flexibility in levying property taxes. Various local officials testified that 1995 Senate Bill No. 2081 will tie the hands of local governments, particularly in political subdivisions that are losing taxable property. In addition, they contended that the mill levy limitations imposed by state law create inefficiencies and confusion because of the large number of dedicated funds. Officials from home rule cities testified that consolidation of mill levies pursuant to home rule charters has helped reduce the increases in taxes levied.

The commission considered a bill draft to eliminate several special levies for cities, counties, and park districts and allow those entities to include levies for those specific purposes with their general mill levy. The bill draft also would allow growth in mills based upon the consumer price index and establish a maximum number of mills that may be levied by cities, counties, and park districts.

Proponents of the bill draft contended that the consolidation of the levies would give local officials needed flexibility. They argued that local officials would not abuse the discretion granted to them because they would still be responsible to the voters who elected them. Those supporting the bill draft also contended that the consumer price index growth factor was the most fair method through which growth could be allowed.

The commission also considered a bill draft to suspend for two taxable years all statutory mill levy limitations that affect the amount that may be levied by cities, counties, and park districts. The suspension would be effective for the first two taxable years beginning after December 31, 1996.

Proponents of the bill draft argued that the suspension of mill levy limitations would be the best method through which local officials could be given the flexibility needed to make local taxing decisions. They contended that the two-year suspension could be used as a trial period during which local officials and the Legislative Assembly could determine the effectiveness of the suspension.

### **Recommendations**

The commission recommends Senate Bill No. 2021 to eliminate several special mill levies for cities, counties, and park districts and allow those entities to include levies for those specific purposes within their general mill levy. The bill provides a growth factor through which the maximum number of mills that may be levied by cities, counties, and park districts is tied to the consumer price index.

The commission recommends Senate Bill No. 2022 to eliminate all mill levy limitations for a period of two years for cities, counties, and park

districts. The suspension would be effective for the first two taxable years beginning after December 31, 1996.

### **LOCAL GOVERNMENT EFFICIENCY PLANNING GRANTS**

The 1991 Legislative Assembly adopted legislation that provided for local government efficiency planning grants to be administered by the commission. The grants were funded by an appropriation of \$250,000 from the state aid distribution fund. The legislation created NDCC Section 54-35.2-02.1, requiring the commission to administer the program by making up to \$25,000 per grant to any county or city government upon approval of plans intended to increase the efficiency of local governments through restructuring county or city governments, changing county boundaries including consolidation of counties, or consolidating county and city services. The law requires a county or city seeking a planning grant to submit a preliminary plan for consideration by the commission. In approving a planning grant, the commission could impose any conditions it deemed appropriate including requiring periodic reports or furnishing of matching funds.

During the 1991-92 interim, the commission adopted guidelines to govern its deliberations on planning grant applications and to provide grant applicants notice of the standards that would be applied in evaluating grant applications. During that interim, the commission awarded local government efficiency planning grants to 15 applicants. The total amount awarded in grants was \$198,558.34. Final reports were received for two of the grant projects.

The 1993 Legislative Assembly appropriated \$51,400 (basically the amount remaining from the 1991-93 appropriation) to the commission for local government efficiency planning grants. The 1993 Legislative Assembly also provided that the commission be permitted to directly expend appropriated funds for research and studies of statewide significance. In addition, the 1993 Legislative Assembly adopted legislation providing that unexpended planning grant funds are to be returned to the state aid distribution fund.

Of the 13 grant projects pending at the end of the 1991-92 interim, 11 delivered final reports to the commission during the 1993-94 interim. One of the 13 grants went unclaimed. The other grant project was still in progress at the end of the 1993-94 interim. The recipient of that grant provided a final report to the commission in February 1996 and returned to the commission \$1,462.24 in unexpended grant funds and interest earned on those funds.

At the end of the 1993-94 interim, the commission awarded grants in the amount of \$24,999 to the North Dakota League of Cities and the North Dakota Association of Counties. The grant to the North Dakota League of Cities was for a project to establish a computer network among cities and the North Dakota League of Cities. The

grant to the North Dakota Association of Counties was to establish a task force to examine automation of the process for reporting statements of full consideration and property transactions, electronic exchange of information between the state and counties to enhance the property tax data base, and the feasibility of electronic mail and other file transfers among the State Tax

Commissioner, counties, and cities.

During this interim, the commission received periodic reports from each of those entities regarding the status of the grants. The commission requested the North Dakota League of Cities and the North Dakota Association of Counties to file final reports by February 1, 1997.

# BUDGET SECTION

The Legislative Council's Budget Section is referred to in numerous statutes in the North Dakota Century Code 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, the Speaker of the House, and the Lieutenant Governor (who is designated a member of the Budget Section by statute).

Budget Section members were Representatives Jack Dalrymple (Chairman), Rocky Bateman, LeRoy G. Bernstein, Rex R. Byerly, Ron Carlisle, Rick Clayburgh, Loren DeWitz, John Dorso, Tom D. Freier, Gereld F. Gerntholz, Steve Gorman, Roy Hausauer, John M. Howard, Robert Huether, Lee Kaldor, Joe Kroeber, Richard Kunkel, Bruce Laughlin, Clarence Martin, Bob Martinson, Bill Oban, Doug Payne, Ben Tollefson, Francis J. Wald, Janet Wentz, and Gerry L. Wilkie; Senators William G. Goetz, Ray Holmberg, Elroy N. Lindaas, Evan E. Lips, Tim Mathern, Corliss Mushik, Pete Naaden, Donna Nalewaja, Gary J. Nelson, David E. Nething, Rolland W. Redlin, Larry J. Robinson, Ken Solberg, Rod St. Aubyn, Bryce Streibel, Harvey D. Tallackson, and Dan Wogsland; and Lt. Governor Rosemarie Myrdal.

The Budget Section submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

One of the responsibilities of the Budget Section is to review the executive budget presented to the Legislative Assembly during the 1996 organizational session. In addition, the following duties, assigned to the Budget Section by statute or Legislative Council directive, were acted on by the Budget Section during the 1995-97 biennium:

1. **Campus improvements and building construction** - North Dakota Century Code (NDCC) Section 15-10-12.1 requires the Budget Section to review and act upon Board of Higher Education requests for authority to construct buildings or campus improvements on land under the board's control when the construction is financed by donations, gifts, grants, or bequests, and to act upon requests from the board for authority to sell any property or buildings which an institution of higher education has received by gift or bequest.
2. **Nonresident tuition** - North Dakota Century Code Section 15-10-18 requires institutions of higher education to charge nonresident students tuition as determined by the Board of Higher Education, with the

approval of the Budget Section.

3. **Actions of the Westwood Park Assets Management Committee** - North Dakota Century Code Section 25-04-20 allows the Westwood Park Assets Management Committee to take action, subject to prior Budget Section approval, to sell, lease, and otherwise manage the property of Westwood Park.
4. **Office of the Budget statutory duties** - North Dakota Century Code Section 54-14-01.1 requires the Budget Section to periodically review the actions of the Office of the Budget (a division of the Office of Management and Budget) regarding duties established in NDCC Chapter 54-14.
5. **Irregularities in the fiscal practices of the state** - North Dakota Century Code Section 54-14-03.1 requires the Office of the Budget to submit a written report to the Budget Section documenting any irregularity discovered during the preaudit of claims and areas where more uniform and improved fiscal practices are desirable.
6. **Transfers exceeding \$50,000** - North Dakota Century Code Section 54-16-04 requires Budget Section approval of transfers from one fund or line item to another if the transfer exceeds \$50,000.
7. **Authorization to spend federal funds not appropriated** - North Dakota Century Code Section 54-16-04.1 allows the Emergency Commission, with the approval of the Budget Section, to authorize the expenditure of federal funds which have not been appropriated by the Legislative Assembly and which the Legislative Assembly has not indicated an intent to reject.
8. **Authorization to receive other funds not appropriated** - North Dakota Century Code Section 54-16-04.2 allows the Emergency Commission, with the approval of the Budget Section, to authorize a state officer to receive moneys from gifts, grants, donations, or other sources, which have not been appropriated by the Legislative Assembly and which the Legislative Assembly has not indicated an intent to reject.
9. **Report from the Advisory Commission on Intergovernmental Relations** - North Dakota Century Code Section 54-35.2-02.1(3) requires the Advisory Commission on Intergovernmental Relations to report annually to the Budget Section on planning grants distributed to counties and cities.
10. **Form of budget data** - North Dakota Century Code Section 54-44.1-07 provides that the Legislative Council is to prescribe the form that budget data prepared by the

- director of the budget is presented to the Legislative Assembly. The Legislative Council assigned this responsibility to the Budget Section.
11. **Workers Compensation Bureau report on reinsurance contracts** - North Dakota Century Code Section 65-02-13.1 requires the Workers Compensation Bureau to report annually to the Budget Section regarding any reinsurance contracts negotiated by the bureau.
  12. **New jobs training program** - House Bill No. 1518 (1993 S.L., ch. 493) requires the Tax Commissioner, the executive director of Job Service North Dakota, and the director of the Department of Economic Development and Finance to report to the Budget Section at least once each calendar year on the new jobs training program.
  13. **Transfer for State Board for Vocational and Technical Education deputy director position** - House Bill No. 1022 (1995 S.L., ch. 22) authorizes the transfer, subject to Budget Section approval, of up to \$130,981 of appropriation authority from the various line items contained in House Bill No. 1022 to the salaries and wages line item to provide funding for the deputy director position.
  14. **State trauma program** - House Bill No. 1318 (1995 S.L., ch. 250) requires that the state trauma program coordinator report to the Budget Section by October 1, 1996, on the implementation and effectiveness of the state trauma program.
  15. **Deficiency appropriation to reimburse state bonding fund** - Senate Bill No. 2003 (1995 S.L., ch. 25) requires the Attorney General to report to the Budget Section on any deficiency appropriation to be introduced to the 1997 Legislative Assembly to reimburse the state bonding fund for the costs of providing defense services to eligible state employees.
  16. **Soil Conservation Committee consolidation** - Senate Bill No. 2009 (1995 S.L., ch. 31) requires the executive secretary of the Soil Conservation Committee to present to the Budget Section by April 1, 1996, a report containing proposals to integrate the functions of the Soil Conservation Committee with another state agency.
  17. **Special education regional coordinator positions** - Senate Bill No. 2013 (1995 S.L., ch. 35) requires the Superintendent of Public Instruction to report to the Budget Section no later than October 31, 1996, on the department's progress in locating special education regional coordinator positions in the eight regions of the state.
  18. **Program-based performance budgeting pilot project** - Senate Bill No. 2015 (1995 S.L., ch. 37) requires the Office of Management and Budget to provide periodic reports to the Budget Section on actual to planned expenditures by program and comparisons of actual to planned outcome, output, and efficiency measures for program-based performance budgeting pilot agencies and requires the Budget Section to make a recommendation to the 1997 Legislative Assembly regarding the continuance or expansion of program-based performance budgeting.
  19. **Alternatives for operation of 911 system** - Senate Bill No. 2015 (1995 S.L., ch. 37) requires the Budget Section to receive a report from the Adjutant General by August 1996 on alternative plans for the operation of the 911 system.
  20. **Information Services Division mainframe computer enhancements** - Senate Bill No. 2015 (1995 S.L., ch. 37) requires Budget Section approval for any upgrade or enhancement to the Information Services Division mainframe computer when the upgrade or enhancement will cost more than \$50,000.
  21. **Budgeting for the compensation of accrued annual leave and sick leave** - Senate Bill No. 2015 (1995 S.L., ch. 37) requires the Office of Management and Budget to report to the Budget Section on alternative methods of budgeting for the compensation of accrued annual leave and sick leave and requires the Budget Section to determine the method to be used for the preparation of the 1997-99 executive budget.
  22. **Analysis of internal service, revolving, and other funds** - Senate Bill No. 2015 (1995 S.L., ch. 37) requires the State Auditor to conduct an analysis of internal service, revolving, and other funds at each college or university for fiscal years ending June 30, 1994 and 1995, and present a report on this analysis to the Budget Section.
  23. **Expenditures or transfers from internal service and revolving funds** - Senate Bill No. 2015 (1995 S.L., ch. 37) requires Budget Section approval of expenditures or transfers greater than \$50,000 from college or university internal service funds, revolving funds, and other related funds, except for:
    - a. Mandatory transfers for servicing related debt.
    - b. Routine operating expenditures associated with the fund.
  24. **Veterans Cemetery** - Senate Bill No. 2017 (1995 S.L., ch. 39) requires the Adjutant General to report to the Budget Section during the 1995-97 biennium on funds received and spent for the Veterans Cemetery.
  25. **Historical Society storage space needs** - Senate Bill No. 2022 (1995 S.L.,

ch. 44) provides that the Historical Society may use only the ground floor of the building located at 6117 East Main in Bismarck for storage, unless the Budget Section determines that additional space in the building may also be used.

26. **Space utilization study** - Senate Bill No. 2022 (1995 S.L., ch. 44) requires the Office of Management and Budget to conduct a space utilization study to provide recommendations to the Budget Section on the most efficient use of the second floor of the building located at 6117 East Main in Bismarck and requires the Budget Section to make a determination regarding the use of the second floor of the building.
27. **Ethanol plants receiving production incentives** - Senate Bill No. 2026 (1995 S.L., ch. 48) requires any North Dakota ethanol plant receiving production incentives from the state to file with the Budget Section a statement, certified by a certified public accountant, indicating whether the plant produced a profit in the preceding fiscal year after deducting payments received under the incentive program.
28. **Workers Compensation Bureau critical salary adjustments** - Senate Bill No. 2027 (1995 S.L., ch. 49) requires the Workers Compensation Bureau to report to the Budget Section on the expenditure of the \$350,000 appropriation by the 1995 Legislative Assembly for critical salary adjustments.
29. **Welfare reform demonstration project** - Senate Bill No. 2035 (1995 S.L., ch. 459) requires the Department of Human Services to report to the Budget Section on the implementation status of the welfare reform demonstration project.
30. **Committee on Protection and Advocacy** - Senate Bill No. 2506 (1995 S.L., ch. 267) requires the Committee on Protection and Advocacy to report upon request to the Budget Section on the committee's progress in addressing the concerns raised in the 1995 performance audit report of the Protection and Advocacy Project and the report of the panel of special masters.

The Budget Section did not receive requests or reports:

1. From the State Forester for approval to spend moneys in the State Forester reserve account (NDCC Section 4-19-01.2).
2. From the Game and Fish Department for approval of land acquisitions of more than 10 acres or exceeding \$10,000 (NDCC Section 20.1-02-05.1).
3. From the Developmental Center to provideservices under contract with a governmental or nongovernmental person (NDCC Section 25-04-02.2).
4. From the Department of Human Services for approval to terminate the food stamp

program or energy assistance program as a result of a decrease in the rate of federal financial participation (NDCC Section 50-06-05.1).

5. From the Department of Human Services for approval to spend moneys available in the traumatic brain injury fund (NDCC Section 50-06.4-04).
6. From the Department of Human Services to spend civil penalties paid by nursing facilities (NDCC Section 50-24.1-01.3).
7. From Job Service North Dakota on the balance of the job insurance trust fund (NDCC Section 52-02-17).
8. To transfer money or spending authority which would eliminate or make impossible the accomplishment of a program or objective funded by the Legislative Assembly (NDCC Section 54-16-04).
9. From the Emergency Commission for approval of transfers from the state contingencies appropriation, once the aggregate amount transferred during the biennium has exceeded \$500,000 (NDCC Section 54-16-04).
10. From state agencies or institutions for money from the capital improvements preliminary planning revolving fund (NDCC Section 54-27-22).
11. To approve cash flow financing to offset projected state financial deficits (NDCC Section 54-27-23).
12. From the director of the budget on a transfer of funds from the budget stabilization fund to the general fund due to a decrease in general fund revenues (NDCC Section 54-27.2-03).
13. From the director of the budget to reduce state agency and institution budgets by a percentage sufficient to cover estimated losses caused by initiative or referendum action (NDCC Section 54-44.1-13.1).
14. From the Tax Commissioner on the auditing enhancement program or the settlements of tax assessments (NDCC Section 57-01-11.1).
15. From the Workers Compensation Bureau for approval to establish a casualty insurance organization to provide extraterritorial workers' compensation insurance (NDCC Section 65-08.1-02).
16. From the University of North Dakota to expend funds available for the expansion of the Oxford House (1989 S.L., ch. 63).
17. From the Board of Higher Education for approval to convey property to Ramsey County (1993 S.L., ch. 22).
18. From agencies involved in the program-based performance budgeting pilot project to transfer more than 10 percent of a given line item (1995 S.L., chapters 13, 14, 15, 18, 26, 37, and 45).
19. From the Department of Corrections and Rehabilitation to transfer appropriation authority between the various divisions of

- the department (1995 S.L., ch. 18).
20. From the Department of Human Services on a plan to fund the costs of additional inflationary adjustments for nursing homes, if the inflation adjustments included in the 1995-97 biennium appropriation are not sufficient (1995 S.L., ch. 34).
  21. From the Office of Management and Budget to approve the expenditure of income in excess of \$50,000 more than the amount appropriated (1995 S.L., ch. 37).
  22. To terminate a program for which federal funding has been terminated or to make programmatic reductions because of federal fund reductions through the implementation of block grants (1995 S.L., ch. 37).

During the 1995-97 biennium, the Budget Section was not required to hold public block grant hearings, as required under the Omnibus Budget Reconciliation Act of 1981.

During the 1995-97 biennium, the Budget Section did not object to an allotment by the director of the budget, an expenditure of a budget unit, or a failure to make an allotment or expenditure, as provided in NDCC Section 54-44.1-12.1.

House Bill No. 1016 (1995 S.L., ch. 16) required the State Auditor to conduct a performance review of the Children's Services Coordinating Committee during the period beginning July 1, 1995, and ending September 30, 1996. The State Auditor's findings and recommendations will be presented to the Budget Section at the December 1996 meeting.

## OFFICE OF MANAGEMENT AND BUDGET

### Status of the State 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 biennium.

The following is a summary of the status of the state general fund, based on actual revenue collections through September 30, 1996:

Unobligated general fund balance - June 30, 1995 (\$4,234,192 more than the legislative estimate of \$26,917,086)	\$ 31,151,278
Add:	
Actual general fund collections through September 30, 1996	827,597,589
Remaining forecasted general fund revenue for the 1995-97 biennium, based on the July 1996 forecast	539,355,007 <sup>1</sup>
<b>Total available for the 1995-97 biennium (\$39,943,872 more than the legislative estimate of \$1,358,160,002)</b>	<b>\$1,398,103,874</b>
Less:	
1995-97 general fund appropriations	<u>1,344,718,538<sup>2</sup></u>
<b>Estimated general fund balance - June 30, 1997 (\$42,169,594 more than the legislative estimate of \$11,215,742)</b>	<b>\$ 53,385,336</b>

<sup>1</sup>This amount does not include \$4 million of profits from the Bank of North Dakota which, pursuant to 1995 House Bill No. 1017, will not be transferred if by April 1, 1997, the director of the Office of Management and Budget determines that the July 1, 1997, general fund balance will be at least \$10 million.

<sup>2</sup>1995-97 biennium legislative appropriations of \$1,346,944,260 less \$2,225,722 for risk management which was paid in the 1993-95 biennium instead of the 1995-97 biennium as appropriated.

Actual revenue collections through September 30, 1996, were \$31.4 million more than the original legislative estimate. The comparison of actual collections through September 30, 1996, to the original legislative forecast is as follows:

Revenue Type	Original Legislative Forecast	Actual Collections Through September 1996	Variance	Percentage Variance (Variance/Original Legislative Forecast)
Sales and use taxes	\$315,135,000	\$318,345,736	\$ 3,210,736	1.0%
Motor vehicle excise tax	52,921,000	54,239,435	1,318,435	2.5%
Individual income tax	178,069,000	186,700,362	8,631,362	4.8%
Corporate income tax	56,313,000	60,961,046	4,648,046	8.3%
Insurance premium tax	17,125,000	19,991,561	2,866,561	16.7%
Oil and gas production tax	10,467,000	17,622,681	7,155,681	68.4%
Gaming tax	13,768,250	14,559,849	791,599	5.7%
Oil extraction tax	11,340,000	13,187,767	1,847,767	16.3%
Cigarette and tobacco tax	28,594,000	28,857,390	263,390	.9%
Coal severance tax	13,599,000	13,931,633	332,633	2.4%
Coal conversion tax	14,521,000	15,219,922	698,922	4.8%
Bank of North Dakota profits transfer	25,000,000	25,000,000		0%
Other	<u>59,335,474</u>	<u>58,980,207</u>	<u>(355,267)</u>	<u>-6%</u>
<b>Total</b>	<b>\$796,187,724</b>	<b>\$827,597,589</b>	<b>\$31,409,865</b>	<b>3.9%</b>

**Review of Budget Office Statutory Duties**  
Pursuant to NDCC Section 54-14-01.1, the Budget Section received a report from the Office of

Management and Budget regarding statutory duties of the budget office that require periodic review by the Budget Section. The statutory duties

requiring review relate to the following:

1. Processing claims against state institutions (NDCC Section 54-14-03.2);
2. Payment of claims against the state (NDCC Section 54-14-04);
3. Departmental payroll procedures (NDCC Section 54-14-04.1);
4. The use of standardized voucher forms (NDCC Section 54-14-07); and
5. Withholding from state employee compensation (NDCC Section 54-14-08).

The report indicated that no changes had been implemented in the procedures relating to the processing or payment of claims against the state or the procedures relating to the use of standardized voucher forms. The report also indicated that the Office of Management and Budget withholds from state employees' compensation only approved voluntary deductions, amounts required by federal and state law, and amounts required by court order.

### **Fiscal Irregularities**

Pursuant to NDCC Section 54-14-03.1, the Budget Section received reports from the Office of Management and Budget on irregularities discovered during the preaudit of claims and areas in which more uniform and improved fiscal practices are desirable. The reports indicated that as of December 31, 1994, three agencies, the Veterans Home, State Radio Communications, and the Council on the Arts, were in violation of NDCC Section 54-27-10, which provides that no more than 75 percent of a line item may be spent during the first 18 months of a biennium. The report indicated that those agencies completed the 1993-95 biennium without exceeding their biennial appropriation authority.

Section 54-14-03.1 defines fiscal irregularities to include the use of state funds to provide bonuses, cash incentive awards, and temporary salary adjustments for state employees. The reports presented by the Office of Management and Budget indicated that the Parks and Recreation Department, Milk Marketing Board, and Department of Tourism provided one-time salary adjustments during the 1993-95 biennium.

The Budget Section expressed opposition to the practice of making irregular salary payments as identified in Section 54-14-03.1, rather than making salary payments on the basis of entitlement and merit, and requested that this position be communicated to state agencies and institutions.

### **Program-Based Performance Budgeting**

Pursuant to 1995 Senate Bill No. 2015, the Budget Section received reports on the program-based performance budgeting pilot project. The bill required that for agencies involved in the pilot project, the Office of Management and Budget present periodic reports of actual to planned expenditures by program and comparisons of actual to planned outcome, output, efficiency, and effectiveness measures. The Budget Section was required to make a recommendation to

the 1997 Legislative Assembly regarding program-based performance budgeting.

The Budget Section received reports from the Office of Management and Budget and several of the agencies involved in the program-based performance budgeting pilot project on actual to planned expenditures by program and comparisons of actual to planned outcome, output, efficiency, and effectiveness measures for the agencies involved in the pilot project. The following seven agencies were involved in the pilot project and received program appropriations for the 1995-97 biennium:

- Office of Management and Budget.
- State Auditor.
- Land Department.
- Highway Patrol.
- Department of Corrections and Rehabilitation Parole and Probation Division.
- Department of Parks and Recreation.
- Department of Transportation.

For the 1995-97 biennium, the performance budgeting pilot project also included the following five agencies which had established performance measures, but received traditional line item appropriations:

- Department of Human Services Aging Services Division and Vocational Rehabilitation Division.
- Insurance Commissioner.
- Securities Commissioner.
- Department of Economic Development and Finance.
- Department of Tourism.

The Budget Section requested that the Office of Management and Budget continue to work with only the seven agencies that received program appropriations for the 1995-97 biennium to develop agency budget requests and executive recommendations for the 1997-99 biennium on a program basis and that those agencies be subject to program reviews.

North Dakota Century Code Section 54-44.1-07 provides that the Legislative Council is to prescribe the form that budget data prepared by the director of the budget is presented to the Legislative Assembly. The Legislative Council has assigned this responsibility to the Budget Section. Pursuant to Section 54-44.1-07, the Budget Section requested that the appropriation bills prepared for the 1997 Legislative Assembly, for the agencies involved in the program-based performance budgeting pilot project, include a separate section that identifies the amounts for salaries and wages, equipment, and grants for each agency.

The Budget Section also requested that the Office of Management and Budget provide a report on elements of program-based performance budgeting which could be implemented to improve the current budget process, if program-based performance budgeting was not fully implemented. The Office of Management and Budget did not present the requested report, but recommended that the 1997 Legislative Assembly evaluate the program-based performance budgeting pilot project and do one of the following:

1. End the pilot project.
2. Continue the program-based performance budgeting project in accordance with a legislatively developed plan.
3. Establish a legislative committee to work with the Office of Management and Budget and the agencies involved in the program-based performance budgeting project to make decisions during the interim regarding the project.

The Budget Section recommended that the 1997 Legislative Assembly review the program-based performance budgeting pilot project and determine if the project should continue.

#### **Budgeting for the Payment of Accrued Annual Leave and Sick Leave**

Pursuant to 1995 Senate Bill No. 2015, the Budget Section received reports on alternative methods of budgeting for the compensation of accrued annual leave and sick leave. The Budget Section was required to determine the method to be used for the preparation of the 1997-99 biennium executive budget. When state employees

leave state government employment, they are paid for unused annual leave and, if they have been in state employment for more than 10 years, they are also paid 10 percent of the value of their unused sick leave. In the past, these expenses have not been included in agency budgets. In order to pay these costs, agencies frequently leave positions vacant to realize savings in the salaries and wages line item.

As reported in the Comprehensive Annual Financial Report for the state of North Dakota for the fiscal year ended June 30, 1995, the total liability for accrued annual leave and sick leave for all state agencies and institutions was approximately \$33 million. The report provided by the Office of Management and Budget indicated that most of the accrued liability for annual leave and sick leave is paid out as employees take annual leave and sick leave throughout the biennium, rather than as a lump sum when employees leave state government employment.

The Office of Management and Budget presented the following information relating to the payment of accrued annual leave and sick leave:

	1991-93 Biennium		1993-95 Biennium	
	Number of Employees Compensated	Amount Paid	Number of Employees Compensated	Amount Paid
Accrued annual leave paid	1,011	\$1,100,000	1,021	\$1,400,000
Accrued sick leave paid	237	\$ 377,000	277	\$ 512,000

The Budget Section requested that the Office of Management and Budget include in the budget data presented to the 1997 Legislative Assembly the following information:

1. Accrued annual leave and sick leave amounts paid out and the number of employees who received compensation for accrued annual leave and sick leave in previous bienniums.
2. Annual leave and sick leave accrued, paid out, and used by state employees during the preceding calendar year.
3. A summary of average annual leave and sick leave days accrued and used by state employees during previous years.

#### **Information Services Division**

Pursuant to 1995 Senate Bill No. 2015, the Budget Section approved a request from the Information Services Division to install a new IBM 9672-R32 processor using CMOS memory technology. The purchase price of the new equipment was estimated to be approximately \$955,000. The request indicated that utilization of the Information Services Division's current processor has exceeded growth rate projections and during high use periods users experience slow response times.

#### **Space Utilization Study**

Pursuant to 1995 Senate Bill No. 2022, the Budget Section received a report on a space

utilization study conducted by the Facility Management Division of the Office of Management and Budget. The study was conducted to determine the most efficient use of the second floor of the building located at 6117 East Main in Bismarck, which was purchased by the Historical Society for \$128,000. The Historical Society estimated that \$94,000 would be required to remodel the building to make it suitable for heated storage space. A total of \$148,000 was appropriated by the 1995 Legislative Assembly for the purchase and renovation of the building. The report indicated that significant improvements would be required for the building to be used as office space. The Facility Management Division recommended that the building be used to provide heated storage space for the Historical Society.

The Budget Section encouraged the Historical Society to use the first and second floors of the building for heated storage space and to use the \$148,000 appropriation, along with any other funds available, to complete the purchase and renovation of the building.

#### **Form of Budget Data**

Pursuant to NDCC Section 54-44.1-07, the Budget Section received a report from the Office of Management and Budget on the form in which data prepared by the director of the budget will be presented to the Legislative Assembly. The report indicated that although the Office of Management and Budget proposed no changes to the form of the

budget data to be presented to the 1997 Legislative Assembly, the new statewide integrated budget and reporting (SIBR) computer system, implemented by the Office of Management and Budget, will change the way the budget data is prepared and accessed. The report indicated that the system includes the following features:

- The ability to perform salary calculations for all state agencies, including institutions of higher education.
- The flexibility to adjust the salary calculation for programs phased in or out during the biennium.
- The flexibility to calculate numerous salary increase options.
- The flexibility to prepare multiple budget scenarios.

Pursuant to Section 54-44.1-07, the Budget Section requested that the Office of Management and Budget include in the executive budget presented to the 1997 Legislative Assembly money to be used for the preliminary planning revolving loan fund which is established by NDCC Section 54-27-22. The fund was originally established by the 1975 Legislative Assembly to be used for the prepayment of consultant and planning fees for capital improvement projects. The purpose of the fund was to assist agencies in preparing more accurate cost estimates for proposed capital projects. The fund has not been used since 1989, when the balance was transferred to the general fund.

## HIGHER EDUCATION

### Tuition Rates

Pursuant to NDCC Section 15-10-18, the Budget Section approved the nonresident tuition rates proposed by the Board of Higher Education for the 1995-96 school year. The nonresident tuition rates approved by the Budget Section did not include tuition rates for students from Minnesota and other surrounding states and provinces, which are governed by reciprocity agreements with those states and provinces. The nonresident tuition rates approved by the Budget Section, which were unchanged from the rates in effect for the 1994-95 school year, were two and two-thirds times the resident tuition rates at each North Dakota institution. The approved nonresident tuition rates are as follows:

	1994-95 and 1995-96 Approved Nonresident Tuition Rates
University of North Dakota and North Dakota State University	
Undergraduate	\$ 5,634
Graduate	\$ 6,194
Other	
Law School	\$ 6,756
Medical School	\$22,588

	1994-95 and 1995-96 Approved Nonresident Tuition Rates
Minot State University	
Undergraduate	\$ 4,754
Graduate	\$ 6,210
Dickinson State University, Mayville State University, and Valley City State University	
Undergraduate	\$ 4,486
Two-Year Colleges	
Undergraduate	\$ 4,144

### Internal Service Funds

Senate Bill No. 2015 (1995) required the State Auditor's office to analyze the financial status, transfers of moneys, and other activity of internal service, revolving, and other related funds at each state college and university for fiscal years ended June 30, 1994 and 1995, and present a report to the Budget Section on this analysis. The Budget Section approved the following definitions established by the State Auditor's office for the completion of its analysis:

1. **Internal service funds** are those funds that provide goods or services to other funds or departments of the institution. Internal service funds do not include auxiliary funds, such as dormitories, student unions, and bookstores which are self-supporting and exist primarily to serve students, faculty, and staff.
2. **Revolving funds** are synonymous with internal service funds.
3. **Other related funds** are those funds that have advanced or transferred money to internal service funds or that have had money advanced or transferred to them from internal service funds.

Senate Bill No. 2015 also required colleges and universities to receive approval from the Budget Section to expend or transfer amounts greater than \$50,000 from the accumulated moneys in these funds, except for:

1. Mandatory transfers for servicing related debt.
2. Routine operating expenditures associated with the funds.

The Budget Section approved the following assumptions used by the State Auditor's office in order to determine if colleges or universities received the necessary approval:

1. The \$50,000 amount is for each individual transaction, not cumulative.
2. Approval is necessary only for expenditures or transfers made out of internal service funds.
3. Routine operating expenditures are expenditures that are related to the nature of the internal service fund, such as salaries, capital equipment purchases, and supplies.

As required by Senate Bill No. 2015, the Budget

Section received a report from the State Auditor's office on an analysis of internal service, revolving, and other related funds at all state colleges and universities for fiscal years 1994 and 1995. At all state colleges and universities, 154 funds were identified as internal service or related funds. The university system implemented a new policy on internal service funds in July 1996. The State Auditor's report identified the following five areas of concern which were not addressed in the North Dakota university system policy:

1. When moneys were transferred out of internal service and related funds, it was not always possible to identify which funds the moneys were deposited in.
2. Fixed asset items used in internal service fund activities were not specifically identified, making it difficult to allocate depreciation to internal service funds.
3. A potential liability for internal service or related funds if the balance in those funds includes federal moneys and moneys in the fund have been transferred to other funds.
4. No internal restrictions were in place to limit transfers into or out of internal service funds.
5. Certain institutions had several internal service funds for the same activity.

The Budget Section received a report from the University System office on the following policies which were implemented in August 1996, based on recommendations of the State Auditor:

1. Transfers will only be permitted for items related to the core activity of the internal service fund, except for mandatory transfers for servicing related debt and routine operating expenditures associated with the fund.
2. Internal service funds will be classified as current unrestricted funds for financial statement purposes.
3. Institutions will include a fixed asset inventory tag number on each depreciable internal service fund asset.
4. Funded depreciation must be spent on items related to internal service fund activity. In addition, the rate charged by each internal service fund will be reviewed on a scheduled basis and, depending upon the accumulated balance of the fund, the rate will be adjusted either up or down.
5. Multiple funds for one activity will be discouraged but not prohibited.

The report also indicated that the university system will review annually those internal service funds with the highest dollar activity. Other internal service funds will be reviewed on a regular cycle of two or three years.

The Budget Section approved a request by the University of North Dakota to use \$490,959 of internal service fund (University of North Dakota telecommunications fund) moneys for the following three projects:

- Remodeling the basement of the old Carnegie Library to relocate the telecommunications

department at a cost of \$128,959.

- Installing cable from Merrifield Hall to the rural technology center at a cost of \$212,000.
- Installing cable in the Johnstone/Fulton residence halls at a cost of \$150,000.

#### **1997-99 Biennium Executive Recommendation - Local and Other Funds**

The Budget Section requested that, pursuant to NDCC Chapter 54-44.1, the Office of Management and Budget:

- Include in the executive budget presented to the 1997 Legislative Assembly an appropriation of local funds collected by the institutions of higher education.
- Include in the appropriation bills prepared for the 1997 Legislative Assembly an appropriation of local funds collected by the institutions of higher education.
- Include in the budget request for each institution of higher education a schedule of estimated grant and contract income and other funds estimated to be received by the institution during the 1997-99 biennium.

#### **Capital Construction Projects**

The Budget Section received a report on the following capital construction projects at North Dakota State University:

1. Potential lease and development of property located at 19th Avenue North.
2. Construction of a baseball stadium in cooperation with the city of Fargo.
3. Renovation of the North Dakota State University president's residence at a cost of approximately \$115,750 and the construction of an all-seasons sunroom at an estimated cost of approximately \$30,000.
4. Improvements to the campus power plant at an estimated cost of \$2,145,000.

Pursuant to NDCC Section 15-10-12.1, the Budget Section approved a request by the University of North Dakota to use up to \$1.2 million of private contributions to construct a walkway from the Center for Aerospace Science building to Clifford Hall.

#### **Health Professions and Nursing Student Loan Programs**

The Budget Section received reports from the North Dakota University System on a possible liability for past interest earnings related to the health professions and nursing student loan programs. In the late 1960s, North Dakota State University, the University of North Dakota, and Minot State University began participating in federal loan programs relating to health professions. The institutions processed loan applications, disbursed funds, and collected loan repayments that were deposited into a revolving loan fund. The federal government provided 89 percent of the funding for the programs while the institutions were required to provide the remaining 11 percent. The loan program collections were deposited at the Bank of North Dakota and until

1986 the Bank did not pay interest on the funds. A federal audit by the Department of Health and Human Services determined that the institutions were liable for all interest earnings relating to the loan program funds from the inception of the program, even though the institutions did not receive interest earnings prior to 1986.

The Budget Section requested that the Legislative Council staff and the North Dakota University System communicate with the North Dakota Congressional Delegation to request their assistance to resolve the issue of possible liability for past interest earnings relating to the health professions and nursing student loan programs. The Budget Section also requested that the University System office take all necessary action to limit the possible liability and determine the following:

- Possible statute of limitations on the federal government's ability to require repayment of interest earnings.
- The authority of the federal government to charge interest or assess a penalty on any unpaid amount that the institutions may be determined to be liable for.
- The date that the payment of past interest earnings will be required, if a liability is determined to exist.
- What agency, institution, or fund received interest earnings, if any, on the moneys relating to these loan programs.

The Budget Section received a report from the University System office which indicated that in most cases no statute of limitations applies to actions of the federal government unless a specific provision applies a statute of limitations. The report indicated that the federal regulations establishing the programs and the original contracts with the institutions provided a legal basis for the federal government's ability to charge interest on the liability amount. The University System office also reported that the federal agency requested that an \$80,000 balance in the pharmacy loan program at North Dakota State University be transferred to the federal agency by August 31, 1996, and that the remaining balance relating to North Dakota State University be paid in three installments in February 1997, August 1997, and February 1998. The report also indicated that the Bank of North Dakota did not pay interest on these loan program funds held on deposit until 1986. After 1986, it was reported, interest was paid on these accounts and the interest earnings were properly credited to the loan accounts.

The Budget Section requested that the Bank of North Dakota participate in negotiations, if the Bank determined negotiations to be necessary, with the federal Department of Health and Human Services to reduce the liability amount relating to the health professions and nursing student loan programs.

The Bank of North Dakota reported that the Bank was working with the University System office and the Attorney General's office to negotiate a settlement with the federal Department of

Health and Human Services. The Attorney General determined that an appropriation by the 1997 Legislative Assembly would be required to allow the Bank to pay the liability. The report from the Bank of North Dakota indicated that legislation had been drafted for submission to the 1997 Legislative Assembly to appropriate money from the undivided profits of the Bank for payment of the claim relating to the health professions and nursing student loan programs. The amount of the settlement was estimated to be:

North Dakota State University	\$257,485
University of North Dakota	117,290 <sup>1</sup>
Minot State University	<u>42,887</u>
Total negotiated settlement	\$417,662
Less credit allowed by the Department of Health and Human Services	121,657
	<hr/>
Net negotiated settlement	<u>\$296,005</u>

<sup>1</sup>At the time of the report, the University of North Dakota was continuing negotiations with the federal Department of Health and Human Services to reduce this amount.

The report indicated that approximately \$109,000 of the net negotiated settlement will be paid directly to the federal agency and the remainder will be paid to the institutions to maintain their loan programs.

#### Other Action and Reports

The Budget Section accepted a report by the University of North Dakota on the purchase of the United Campus Ministry building by the UND Foundation. The report indicated that the UND Foundation negotiated to purchase the United Campus Ministry building for \$350,000 and will use the facility for its own operations in the immediate future, but anticipates that the university will eventually purchase the facility.

At its October 1996 meeting, the Budget Section requested that the university system prepare information relating to The Robinson Group (TRG) computer project and present that information to the Budget Section at its December 1996 meeting. The university system joined with 16 other higher education systems from throughout the United States in a partnership with TRG to develop a fully integrated administrative computer system for higher education institutions. In September 1996, the university system was informed that TRG was defaulting on the contract.

#### ETHANOL PLANTS

As required by 1995 Senate Bill No. 2026, the Budget Section received reports from ethanol plants receiving production incentives from the state. The bill required that a statement, certified by a certified public accountant, be filed with the Budget Section indicating whether each plant produced a profit in the preceding year after deducting payments received under the incentive

program. Reports were received from the Alchem, Ltd. plant and the Archer Daniels Midland Company plant for years ending December 31, 1994 and 1995. The reports indicated that neither plant produced a profit for 1994 or 1995, after deducting payments received under the incentive program.

### **NEW JOBS TRAINING PROGRAM**

As required by 1993 House Bill No. 1518, the Budget Section received reports from Job Service North Dakota and the office of the Tax Commissioner on the new jobs training program. The new jobs training program provides a state income tax withholding credit equal to the amount of state income tax withholding generated from new jobs created by an employer. The state income tax withholding credits are used to pay the interest and principal on loans obtained by the employer to cover the costs of training associated with the new jobs. Positions eligible to be included in the program must be full time and pay a minimum of \$7.50 per hour, plus benefits, within the first year of employment.

A report received by Job Service North Dakota indicated that 14 new jobs training projects were in effect, which involved over 1,500 new jobs.

A report received by the office of the Tax Commissioner indicated that income tax withholding for employees involved in the new jobs training program is transferred by the Tax Department to the State Treasurer. The State Treasurer places the transferred moneys in a special fund, which is used to pay the loan the business obtained to pay for the cost of training under the program. The Tax Department reported that since the beginning of the program through June 30, 1996, the department has transferred \$120,952 to the State Treasurer under the program.

### **WORKERS COMPENSATION BUREAU**

Pursuant to NDCC Section 65-02-13.1, the Budget Section received a report from the Workers Compensation Bureau on reinsurance contracts negotiated by the bureau. Reinsurance is a transaction in which the Workers Compensation Bureau would be insured by another insurance company for a given level of loss. The report indicated that the bureau had not negotiated a contract for reinsurance and did not plan to do so.

Pursuant to 1995 Senate Bill No. 2027, the Budget Section received a report from the Workers Compensation Bureau on the expenditure of the 1995-97 biennium appropriation of \$350,000 for critical salary adjustments. The report indicated that \$72,000 of the appropriation was used to establish a pay for performance program, which rewards employees with exceptional performance at a greater rate than those employees with marginal performance. The remaining \$278,000 was allocated to all divisions of the bureau for critical salary adjustments.

## **REVIEW OF BUDGET SECTION DUTIES AND RESPONSIBILITIES**

### **Background**

For the 1995-97 biennium, 57 duties and responsibilities were assigned to the Budget Section by statute or Legislative Council directive. The Budget Section requested the Legislative Council staff to review and report on these duties so that the committee could take action to eliminate any unnecessary duties and responsibilities. The committee received a Legislative Council staff report on Budget Section duties and responsibilities, including the year each duty was enacted and committee action that had taken place since the enactment of each duty.

### **Recommendation**

The Budget Section approved and recommended Senate Bill No. 2023 to:

1. Amend NDCC Section 54-14-01.1 to eliminate the requirement that the Budget Section periodically review the actions of the Office of the Budget.
2. Amend NDCC Section 57-01-11.1 to eliminate the requirement that the Tax Commissioner submit requested reports on the progress made in collecting additional tax revenues under the auditing enhancement program and on the settlement of tax assessments.
3. Amend 1993 House Bill No. 1518 to eliminate the requirement that the Tax Commissioner, the executive director of Job Service North Dakota, and the director of the Department of Economic Development and Finance report to the Budget Section once each calendar year on the new jobs training program.
4. Amend NDCC Section 50-06.4-04 to eliminate the requirement that the Budget Section approve the expenditure of moneys that become available in the traumatic brain injury fund.
5. Amend NDCC Section 54-16-04 to eliminate the requirement that the Budget Section approve transfers from the state contingencies appropriation, once the aggregate amount transferred from that appropriation during the biennium has exceeded \$500,000.
6. Amend 1989 Senate Bill No. 2405 to eliminate the requirement that the Budget Section approve the expenditure of funds that become available to the University of North Dakota to expand the Oxford House.
7. Amend 1993 House Bill No. 1519 to eliminate the requirement that the Budget Section approve the conveyance of property by the Board of Higher Education to Ramsey County.
8. Amend NDCC Section 50-24.1-01.3 to remove the requirement that the Budget Section

approve the expenditure by the Department of Human Services of civil penalties paid by nursing facilities.

### **WESTWOOD PARK ASSETS MANAGEMENT COMMITTEE**

Pursuant to NDCC Section 25-04-20, the Budget Section received reports and a request from the Westwood Park Assets Management Committee. The Westwood Park Assets Management Committee approved a letter of understanding, which was negotiated between the committee and the Retirement Housing Foundation. The Retirement Housing Foundation negotiated with the Westwood Park Assets Management Committee to lease or purchase property at Westwood Park to be renovated into senior housing facilities.

The letter of understanding provided the Retirement Housing Foundation an option to lease or purchase on or before November 30, 1996, the buildings known as the North A, North B, the Refectory, and the Annex at the Developmental Center at Westwood Park. The letter of understanding also provided that the Retirement Housing Foundation and the Department of Human Services could negotiate the price for shared services, which could include laundry, housekeeping, food services, maintenance, and utilities.

Pursuant to Section 25-04-20, the Budget Section approved the letter of understanding negotiated between the Westwood Park Assets Management Committee and the Retirement Housing Foundation and authorized the committee to negotiate a lease/purchase agreement with the Retirement Housing Foundation, within the parameters of the letter of understanding.

### **911 STUDY COMMITTEE**

Senate Bill No. 2015 (1995) established a committee, under the direction of the Adjutant General, to study alternatives for the operation of the 911 system and to determine which state agency should administer State Radio Communications. The bill required the study committee to submit a report to the Budget Section by August 1996.

The Budget Section received a report from the Adjutant General which contained the following recommendations which were arrived at by consensus of the members of the 911 study committee:

1. Professional and affordable 911 services should be available to all North Dakota citizens.
2. State Radio Communications should continue to provide 911 services.
3. State Radio Communications should remain under the control of the Office of Management and Budget.
4. An advisory committee is needed to maintain coordination of 911 services.
5. A statewide communications plan is necessary to ensure compatibility with all users as the 911 delivery system evolves and

adapts to new technology.

### **VETERANS CEMETERY**

Pursuant to 1995 Senate Bill No. 2017, the Budget Section received a report from the Adjutant General on money received and spent for the Veterans Cemetery. The report indicated there were 550 interments at the Veterans Cemetery and total state and federal funds and private donations received by the Veterans Cemetery exceeded \$2 million.

### **FEDERAL FUNDS**

The Budget Section received a report from the Legislative Council staff on federal funds to be received by state agencies and institutions during the 1995-97 and 1997-99 bienniums. For the 1995-97 biennium, approximately \$1.35 billion of federal funds were appropriated and approximately \$1.38 billion was estimated to be received, approximately \$35.8 million more than was originally appropriated. For the 1997-99 biennium, state agencies and institutions estimated that approximately \$1.39 billion of federal funds will be received.

### **DEPARTMENT OF HUMAN SERVICES**

House Bill No. 1002 (1993) allowed the Department of Human Services to begin alternative programs at the State Hospital, subject to Budget Section approval. The Budget Section approved a request from the Department of Human Services to establish the James River Residential Treatment Center as an alternative program at the State Hospital. The James River Residential Treatment Center is an eight-bed, hospital-based residential treatment facility for very difficult to manage adolescents between the ages of 14 and 17. It was reported that when fully operational, the facility will employ 18 full-time equivalent staff and have a biennial budget of \$1.1 million.

Pursuant to 1995 Senate Bill No. 2035, the Budget Section received a report from the Department of Human Services on the status of the welfare reform demonstration project. Applications for federal waivers for the training, education, employment, and management (TEEM) project were submitted to the federal government in September 1994 and approval for the project was received in September 1995. The department's report indicated that although several waiver requests were denied, the basic concept for the TEEM project remained unchanged. Participants in the TEEM project receive payments based on the federal poverty level.

The Budget Section also received a report on the status of federal block grants. The Department of Human Services reported that the Personal Responsibility and Work Opportunity Act of 1996 established a block grant for temporary assistance for needy families (TANF), which consolidated funding for aid to families with dependent children (AFDC), emergency assistance, AFDC administration, and the job opportunities and basic skills

(JOBS) programs. No reduction in federal funding was anticipated as a result of the TANF block grant.

The Budget Section also received a report from the Department of Human Services on the reforming and enhancing services for the people of North Dakota (RESPOND) automation project. The total cost of the RESPOND project was estimated to be \$25.3 million, \$16.3 million from the state general fund.

The Budget Section also acted on several Department of Human Services requests for line item transfers or additional spending authority which were authorized by the Emergency Commission and forwarded to the Budget Section, pursuant to NDCC Sections 54-16-04, 54-16-04.1, and 54-16-04.2. For more information on these requests see the **Agency Requests Authorized by the Emergency Commission** section of this report and the attached appendix.

### **STATE EMPLOYEE DEFENSE COSTS**

Senate Bill No. 2003 (1995) provided an appropriation of \$250,000 from the state bonding fund to the Attorney General's office for state employee defense costs. The bill requires that the state bonding fund be reimbursed for state employee defense expenditures through a deficiency appropriation and that the Attorney General report to the Budget Section on the estimated amount of the deficiency appropriation. The report indicated that to reimburse the state bonding fund for state employee defense expenses incurred during the 1995-97 biennium, a deficiency appropriation of \$148,700 is anticipated to be required.

### **SPECIAL EDUCATION REGIONAL COORDINATOR POSITIONS**

Senate Bill No. 2013 (1995) required the Department of Public Instruction to locate no fewer than four special education regional coordinator positions within the corresponding regions of the state by June 30, 1997, not including the regional coordinator located in Bismarck. The bill also required the department to report to the Budget Section by October 31, 1996, on the department's progress locating the special education regional coordinators in the regions of the state.

The Budget Section received a report from the Department of Public Instruction that two new staff people were hired for regional positions and two staff people were moved from Bismarck to special education regions. At the time of the report, special education regional coordinators were located in Devils Lake, Grand Forks, Fargo, and Towner (to serve the Minot region). The department reported that one more special education regional coordinator would probably be located in a special education region prior to June 30, 1997.

### **AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION**

Pursuant to NDCC Sections 54-16-04,

54-16-04.1, and 54-16-04.2, the Budget Section considered agency requests that had been considered by the Emergency Commission and forwarded to the Budget Section. Section 54-16-04 requires Budget Section approval of transfers exceeding \$50,000 from one fund or line item to another, unless the transfer is necessary to comply with a court order or to avoid imminent threat to the safety of people or property due to a natural disaster or war crisis, or to avoid imminent financial loss to the state. Section 54-16-04.1 requires Budget Section approval to authorize the expenditure of federal funds that have not been appropriated by the Legislative Assembly and which the Legislative Assembly has not indicated an intent to reject. Section 54-16-04.2 requires Budget Section approval to authorize the receipt of moneys from gifts, grants, donations, or other sources which have not been appropriated by the Legislative Assembly and which the Legislative Assembly has not indicated an intent to reject.

From June 30, 1995, through October 9, 1996, the Budget Section considered 83 requests, all of which were approved. However, one request relating to the Attorney General was amended by the committee before approval.

See the attached appendix for a description of each agency request considered by the Budget Section from June 30, 1995, through the October 9, 1996, meeting.

### **BUDGET TOUR REPORTS**

Budget Section members, along with the Budget Committee on Agriculture and Information Services, the Budget Committee on Government Finance, the Budget Committee on Government Services, the Budget Committee on Human Services, and the Budget Committee on Home and Community Care, conducted budget tours during the 1995-97 biennium.

The memorandums summarizing the visitations of the budget committees are available in the Legislative Council office and will be submitted to the Appropriations Committees during the 1997 legislative session.

The Budget Committee on Agriculture and Information Services, Senator Larry J. Robinson, Chairman, visited the Agronomy Seed Farm, Northern Crops Institute, North Dakota State University Main Research Station, Land Reclamation Research Center, Hettinger Research Center, Central Grasslands Research Center, and Carrington Research Center.

The Budget Committee on Government Finance, Representative Lyle L. Hanson, Chairman, visited the Penitentiary, Missouri River Correctional Center, Roughrider Industries, Youth Correctional Center, and Bismarck State College.

The Budget Committee on Government Services, Representative Clarence Martin, Chairman, visited the Northeast Human Service Center and related projects, State Hospital, South Central Human Service Center, West Central Human Service Center, North Central Human Service Center and related projects, Dickinson

State University, Dickinson Research Center, the Home on the Range, and Badlands Human Service Center and related projects.

The Budget Committee on Human Services, Senator Jerome Kelsh, Chairman, visited the Veterans Home, UND-Williston, Williston Research Center, and Northwest Human Service Center.

The Budget Committee on Home and Community Care, Senator Corliss Mushik, Chairman, visited Valley City State University.

The Budget Section's North Central Tour Group, Senator Bryce Streibel, Chairman, visited Camp Grafton, UND-Lake Region, School for the Deaf, Lake Region Human Service Center, Minot State University-Bottineau, State Forest Service, Strawberry Lake Recreation Area, International Peace Garden, State Fair Association, Minot State University, and North Central Research Center.

The Budget Section's Eastern Tour Group, Senator William G. Goetz, Chairman, visited the Division of Independent Study, North Dakota State University, State College of Science, Southeast Human Service Center, Mayville State University, School for the Blind, Mill and Elevator, University of North Dakota, and State Developmental Center.

### OTHER ACTION

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

1. An analysis of the 1995 Legislative Assembly changes to the recommended appropriations in the executive budget.
2. Statistical information on the 1995-97 biennium appropriations and historical appropriations statistics.
3. Appropriations and estimated revenues for the 1995-97 biennium.

The Budget Section received a report, pursuant to 1993 Senate Bill No. 2014, on the Department of Transportation's progress in matching federal highway construction funds and on the department's plan to complete a four-lane highway system throughout the state. The report indicated that the department anticipated receiving less federal funds in 1996 than in 1995 and the Highway 2 railroad overpass project in Ray was in the design stage and was scheduled for completion in 1997.

The Budget Section received reports from the Bank of North Dakota, the Lignite Research Council, and the Dakota Gasification Company on bond issues for lignite research and marketing projects. The report indicated that \$4.2 million from the lignite research fund and approximately \$8 million of proceeds from bonds issued by the Industrial Commission would be used for the Great Plains Synfuels Plant anhydrous ammonia project.

The Budget Section received a report, pursuant to 1995 Senate Bill No. 2506, on the status of the Protection and Advocacy Project. The report indicated that due to reductions in state funding, 10 employees of the agency were affected by a reduction in force, including the executive director, three advocates, and six support staff.

The Budget Section received a report from the Soil Conservation Committee, pursuant to Senate Bill No. 2009, on proposals to consolidate the Soil Conservation Committee with another state agency. The bill required that the report include proposals to consolidate the agency with the Water Commission and the NDSU Extension Service. Based on the report from the Soil Conservation Committee, the Budget Section requested a bill draft to consolidate the Soil Conservation Committee with the NDSU Extension Service. However, the bill draft was tabled by the committee and was not recommended.

The Budget Section received reports from the Department of Health and the Board for Vocational and Technical Education on possible federal block grants.

Pursuant to 1995 House Bill No. 1318, the Budget Section received a report on the state trauma program. The report indicated that the 1995 Legislative Assembly authorized a position within the Department of Health for the state trauma program coordinator, but did not provide funding for the position. The report from the Department of Health indicated that funding for the position had become available, but the position had not been filled at the time of the report.

Pursuant to NDCC Section 54-35.2-02.1, the Budget Section received a report from the Advisory Commission on Intergovernmental Relations on planning grants distributed to counties and cities. For more information, please refer to the report for the Advisory Commission on Intergovernmental Relations.

The Budget Section received a report from the Attorney General on potential litigation costs to the state which could result from the passage of initiated constitutional measure Nos. 5 and 6 on the November 1996 ballot. Initiated constitutional measure No. 5 contains a proposed amendment to the United States Constitution relating to term limits for members of the United States House of Representatives and Senate. The measure also instructs the North Dakota Congressional Delegation to work for the passage of the congressional term limit amendment and requires the Secretary of State to display information on the ballot for incumbent and nonincumbent candidates for Congress based upon their actions or inactions on term limit measures or willingness to take a pledge to support term limits. Initiated constitutional measure No. 6 provides that the people of North Dakota are acting as the Legislative Assembly to apply to the United States Congress to call a constitutional convention to consider an amendment to the United States Constitution relating to term limits.

At its October 1996 meeting, the Budget Section requested that the Department of Transportation present a report at the December 1996 Budget Section meeting on the department's contract for computer services relating to the vehicle registration system. Also at the October 1996 meeting, the Budget Section requested that the Legislative Council staff present a report at the

December 1996 Budget Section meeting on legislation enacted and other methods used by other states to control state agency expenditures for technology-related projects and long-term contracts entered into by state agencies for technology-related projects.

This report presents Budget Section activities through October 1996. 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 a later date.

## APPENDIX

Pursuant to North Dakota Century Code Sections 54-16-04, 54-16-04.1, and 54-16-04.2, the Budget Section considered 83 agency requests that were authorized by the Emergency Commission. All requests considered were approved by the Budget Section; however, one request as reflected in this appendix was amended by the committee before approval. The following is a list of agency requests approved through October 1996:

### 1. Office of Administrative Hearings

- October 25, 1995 - Increased other funds authority by \$402,100 (\$396,691 for operating expenses and \$5,409 for equipment) to conduct hearings for the Workers Compensation Bureau.
- October 9, 1996 - Increased other funds authority and the operating expenses line item by \$220,001 to conduct hearings for the Workers Compensation Bureau.

### 2. Attorney General

- October 25, 1995 - Authorized the use of four of the agency's current FTE positions and three additional FTE positions for the criminal history improvement project (the request was for authority to add seven FTE positions).

### 3. Office of Management and Budget

- June 12, 1996 - Increased federal funds authority and the intergovernmental assistance line item by \$10,305,500.
- October 9, 1996 - Increased other funds authority and the Facility Management line item by \$209,335.

### 4. State College of Science

- October 9, 1996 - Increased other funds authority by \$427,000 of excess tuition income for salaries and wages (\$256,000) and operating expenses (\$171,000).

### 5. School for the Deaf

- June 12, 1996 - Increased other funds authority by \$15,800 for lighting projects.
- October 9, 1996 - Increased other funds authority and the capital improvements line item by \$87,442 of funds available from the settlement of an asbestos damage lawsuit.

### 6. Mayville State University

- October 9, 1996 - Increased other funds authority by \$75,000 of excess tuition income for operating expenses (\$60,000) and salaries and wages (\$15,000).

### 7. Department of Public Instruction

- June 12, 1996 - Increased federal funds authority and the operating expenses line item by \$680,000.
- June 12, 1996 - Increased other funds authority and the SENDIT line item by \$120,000.
- June 12, 1996 - Increased other funds authority by \$558,563 for salaries and wages (\$166,701), operating expenses

(\$361,862), and equipment (\$30,000).

### 8. University System

- October 9, 1996 - Increased other funds authority and the state grant program line item by \$119,948 of additional income relating to the reciprocity agreement with Minnesota.

### 9. UND-Williston

- June 12, 1996 - Increased other funds authority and the capital improvements line item by \$102,000 of excess tuition income.

### 10. State Board for Vocational and Technical Education

- January 24, 1996 - Transferred general fund authority of \$154,553 from grants to salaries and wages (\$131,000) and operating expenses (\$23,553) for the deputy director position.
- January 24, 1996 - Transferred federal funds authority of \$65,000 from grants to operating expenses (\$50,000) and equipment (\$15,000).

### 11. Children's Services Coordinating Committee

- October 9, 1996 - Increased other funds authority by \$5 million for grants (\$4,965,000) and operating expenses (\$35,000) and transferred general fund authority of \$5,300 from operating expenses to salaries and wages.

### 12. Department of Health

- June 12, 1996 - Increased federal funds authority by \$2,414,628 for grants (\$2,071,048) and equipment (\$343,580) and transferred \$60,000 of other funds authority from operating expenses to equipment.

### 13. Department of Human Services

- January 24, 1996 - Transferred \$2,058,205 (\$874,550 from operating expenses and \$1,183,655 from grants) to salaries and wages (\$1,263,155) and equipment (\$795,050).
- January 24, 1996 - Increased other funds authority by \$43,092 for salaries and wages (\$13,932) and operating expenses (\$29,160).
- January 24, 1996 - Transferred general fund authority among the subdivisions of the Department of Human Services to make funding available for system automation projects related to the welfare reform demonstration project as follows:
  - Increased general fund authority, reduced other funds authority for management and councils - \$1,794,866.
  - Reduced general fund authority, increased other funds authority for economic assistance (\$458,000), program and policy (\$90,307), human service centers (\$757,771), State Hospital (\$405,307), and the

- Developmental Center (\$82,681).
- June 12, 1996 - Transferred general fund authority of \$1,950,000 to the management and councils subdivision from the Developmental Center (\$815,000) and human service centers (\$1,135,000) and transferred federal funds authority of \$215,000 from human service centers to the Developmental Center.
  - June 12, 1996 - Increased other funds authority and the operating expenses line item by \$30,000.
  - June 12, 1996 - Increased federal funds authority by \$30,160,660 (\$58,050 for operating expenses, \$75,000 for equipment, and \$30,027,610 for grants).
  - June 12, 1996 - Transferred federal funds authority of \$231,514 from grants to salaries and wages (\$164,064), operating expenses (\$64,450), and equipment (\$3,000); transferred general fund authority of \$121,611 from human service centers to the economic assistance subdivision; and transferred federal funds authority of \$121,611 from the economic assistance subdivision to human service centers.
  - October 9, 1996 - Transferred \$928,900 from salaries and wages (\$830,900) and grants (\$98,000).
  - October 9, 1996 - Increased other funds authority and the capital improvements line item by \$69,814 of funds available from the settlement of an asbestos damage lawsuit involving the State Hospital.
14. Department of Veterans Affairs
- January 24, 1996 - Increased other funds authority by \$117,030 of interest earnings from the veterans' postwar trust fund.
15. Veterans Home
- October 9, 1996 - Increased other funds authority by \$106,764 (\$85,000 from the veterans' postwar trust fund and \$21,764 from federal funds).\*
  - October 9, 1996 - Transferred spending authority of \$282,785 from savings realized in major building repairs to various line items.\*
- \* The motion to approve the Veterans Home requests included a request by the Budget Section that the commandant of the Veterans Home present information to the October 15, 1996, meeting of the Legislative Audit and Fiscal Review Committee on changes made or planned at the Veterans Home to address possible deficiencies in the agency's accounting system.
16. Industrial Commission
- October 25, 1995 - Increased federal funds authority and the salaries and wages line item by \$15,000.
17. Job Service North Dakota
- June 12, 1996 - Transferred general and other funds authority of \$80,612 to salaries and wages from operating expenses (\$10,612 special funds), equipment (\$3,000 special funds), and bond payments (\$67,000 general fund).
  - June 12, 1996 - Increased federal funds authority by \$8,150 for salaries and wages (\$8,000) and operating expenses (\$150).
  - June 12, 1996 - Increased federal funds authority by \$5,310 for salaries and wages (\$3,160) and operating expenses (\$2,150).
  - October 9, 1996 - Increased federal funds authority and the salaries and wages line item by \$15,000.
  - October 25, 1995 - Increased other funds authority by \$82,200 for salaries and wages (\$58,500), operating expenses (\$16,200), and equipment (\$7,500).
  - October 25, 1995 - Increased other funds authority by \$4,000 for salaries and wages (\$2,575) and operating expenses (\$1,425).
  - October 25, 1995 - Increased other funds authority by \$9,280.
  - October 25, 1995 - Increased other funds authority by \$22,500 for salaries and wages (\$16,600) and operating expenses (\$5,900).
  - October 25, 1995 - Increased other funds authority and the operating expenses line item by \$24,164.
  - October 25, 1995 - Increased other funds authority by \$51,500 for salaries and wages (\$45,000) and operating expenses (\$6,500).
  - January 24, 1996 - Increased other funds authority by \$50,000 for salaries and wages (\$4,360), operating expenses (\$640), and grants (\$45,000).
  - January 24, 1996 - Increased federal funds authority by \$3,587,959 for salaries and wages (\$230,300), operating expenses (\$52,860), and grants (\$3,304,799).
  - January 24, 1996 - Increased federal funds authority and the equipment line item by \$50,574.
  - January 24, 1996 - Increased federal funds authority and the equipment line item by \$11,331.
  - January 24, 1996 - Increased federal funds authority and the equipment line item by \$21,000.
18. Mill and Elevator
- June 12, 1996 - Increased other funds authority by \$1,214,500 for salaries and wages (\$320,000) and operating expenses (\$894,500) and added six FTE positions.
19. Workers Compensation Bureau

- October 25, 1995 - Transferred other funds authority of \$690,044 from operating expenses to salaries and wages.
20. Adjutant General
- January 24, 1996 - Increased other funds authority and the capital improvements line item by \$336,000.
  - October 9, 1996 - Transferred federal funds authority of \$500,000 from the Air Guard contracts line item to the Army Guard contracts line item and increased federal funds authority and the Army Guard contracts line item by \$2 million.
21. Department of Corrections and Rehabilitation - Youth Correctional Center
- October 25, 1995 - Increased federal funds authority by \$57,600 for child psychiatric services.
  - January 24, 1996 - Increased federal funds authority by \$25,500 for operating expenses (\$7,500) and equipment (\$18,000).
  - October 9, 1996 - Increased federal funds authority by \$158,000 for equipment (\$28,000) and capital improvements (\$130,000).
22. Department of Corrections and Rehabilitation - Penitentiary
- October 9, 1996 - Increased federal funds authority by \$111,080 for salaries and wages (\$96,080) and operating expenses (\$15,000) and added 2.5 FTE positions.
23. Division of Emergency Management
- June 12, 1996 - Increased federal and other funds authority by \$14,168,410 for salaries and wages (\$108,910), operating expenses (\$14,500), equipment (\$20,000), and grants (\$14,025,000); added two FTE positions; and authorized the agency to borrow up to \$2,300,000 from the Bank of North Dakota for administration and matching funds for federal disaster assistance.
  - October 9, 1996 - Increased federal funds authority and the equipment line item by \$45,000.
  - October 9, 1996 - Transferred federal funds authority of \$200,000 from grants to operating expenses.
24. Highway Patrol
- June 12, 1996 - Increased federal funds authority and the field operations line item by \$436,000.
25. Department of Agriculture
- October 25, 1995 - Increased federal funds authority by \$15,000 for the waste pesticide collection program.
  - October 25, 1995 - Increased federal and other funds authority by \$265,000 for salaries and wages (\$70,000) and operating expenses (\$195,000).
  - January 24, 1996 - Increased other funds authority and the agriculture mediation line item by \$100,000.
- June 12, 1996 - Increased federal funds authority by \$32,640 for operating expenses (\$22,440) and equipment (\$10,200).
  - June 12, 1996 - Increased other funds authority by \$38,130 for equipment (\$36,280) and operating expenses (\$1,850).
  - October 9, 1996 - Increased federal funds authority by \$135,000 for salaries and wages (\$35,500), operating expenses (\$93,500), and equipment (\$6,000).
26. Department of Economic Development and Finance
- October 25, 1995 - Increased federal funds authority by \$210,301 for salaries and wages (\$137,151), operating expenses (\$66,050), and equipment (\$7,100).
27. Seed Department
- October 9, 1996 - Authorized the use of \$225,000 of 1995-97 biennium appropriation authority (which was provided for construction of a greenhouse addition) to expand and remodel the Seed Department building for seed storage and a diagnostic laboratory.
28. Game and Fish Department
- October 25, 1995 - Increased federal funds authority by \$125,000 for the construction of a breakwater at Lake Sakakawea State Park.
  - October 25, 1995 - Increased federal funds authority by \$105,000 for the private land habitat and deer depredation program.
  - June 12, 1996 - Transferred other funds authority of \$205,000 from the capital improvements line item to the grants line item.
  - June 12, 1996 - Increased other funds authority and the salaries and wages line item by \$48,000.
  - June 12, 1996 - Increased federal funds authority by \$223,641 for salaries and wages (\$30,000), operating expenses (\$51,446), equipment (\$20,000), and land habitat and deer depredation (\$122,195).
  - October 9, 1996 - Increased federal funds authority and the Lonetree Reservoir line item by \$265,000.
29. Historical Society
- October 25, 1995 - Increased federal funds authority by \$18,142 for salaries and wages (\$2,400) and operating expenses (\$15,742).
30. Parks and Recreation
- June 12, 1996 - Increased other funds authority and the administration line item by \$100,000.
  - October 9, 1996 - Increased other funds authority and the planning and development line item by \$260,000.
  - October 9, 1996 - Increased other funds

- authority and the planning and development line item by \$77,054.
- October 9, 1996 - Transferred other funds authority of \$57,400 and one FTE position from the parks program to the planning and development program.
31. Soil Conservation Committee
- October 9, 1996 - Increased federal funds authority by \$15,000 for livestock waste management demonstration facilities.
32. Water Commission
- January 24, 1996 - Transferred other funds authority of \$243,800 from grants to equipment.
  - October 9, 1996 - Transferred \$175,000
- from the state contingencies appropriation for raising a levee for the city of Devils Lake.
- October 9, 1996 - Increased other funds authority by \$2,350,000 of additional income from the resources trust fund for capital improvements (\$1,064,000) and grants (\$1,286,000).
  - October 9, 1996 - Increased federal funds authority and the operating expenses line item by \$62,300.
33. Department of Transportation
- June 12, 1996 - Increased federal funds authority and the highway program line item by \$24,000,000.

# BUDGET COMMITTEE ON AGRICULTURE AND INFORMATION SERVICES

The Budget Committee on Agriculture and Information Services was assigned two studies. Senate Concurrent Resolution No. 4027 directed the Legislative Council to study the operation of and the services provided by the Information Services Division, the use and proliferation of personal computers throughout state government, and the feasibility and desirability of contracting for data processing services. Section 11 of House Bill No. 1005 directed the Legislative Council to study the services provided by the North Dakota State University (NDSU) Extension Service and the Agricultural Experiment Station, the degree of duplication, the costs and effectiveness, the necessity for their continued existence, and options for consolidation. The committee was also assigned the responsibility to receive the annual report from the Board of Animal Health.

Committee members were Senators Larry J. Robinson (Chairman), Bill L. Bowman, Ray Holmberg, Meyer Kinnoin, and Carolyn Nelson and Representatives Rocky Bateman, Rex R. Byerly, Jack Dalrymple, William E. Gorder, Robert Huether, Clarence Martin, Eugene J. Nicholas, Ronald Nichols, Earl Rennerfeldt, Don Shide, Mark Sitz, Lynn J. Thompson, and Gerry L. Wilkie. Representative Andy Hagle was also a member of the committee until his death in March 1996.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## STATE INFORMATION SERVICES

Senate Concurrent Resolution No. 4027 directed the Legislative Council to study the operation of and services provided by the Information Services Division, the use and proliferation of personal computers throughout state government, and the feasibility and desirability of contracting for data processing services.

### Background

The mission of the Information Services Division (ISD) is to provide leadership and assist its customers in achieving their missions through the innovative use of information technology. The division's primary objective is to provide and support information technology in a timely and cost-effective manner. The following are the types of services provided by ISD and the 1995-97 appropriation provided for each type:

Type of Service	1995-97 Appropriation
Data processing development services	\$ 6,951,966
Data processing operational services	16,062,885
Telephone systems and services	10,720,781

Type of Service	1995-97 Appropriation
Communications, networking, and support services	\$ 5,563,766
1995-97 compensation package	403,358
Liability insurance premiums - Senate Bill No. 2080	44,206
<b>Total</b>	<b>\$39,746,962</b>

Data processing development services include analyzing and designing systems and writing computer programs. Data processing operational services include the operation of the mainframe computer equipment, installing and maintaining the operating system and system software, records management, central microfilm, forms management, and technical support services and training. Telephone systems and services include designing, installing, and maintaining telephone systems of state agencies. Communications, networking, and support services include support for the state government communications network with consulting, design, installation, and technical support.

The 1995-97 appropriation by line item for ISD is:

Salaries and wages - 146 FTE	\$11,637,012
Operating expenses	22,877,550
Equipment	4,800,000
Communications-impaired	432,400
<b>Total</b>	<b>\$39,746,962</b>

The Information Services Division's estimated collections for the 1995-97 biennium are estimated at \$42.6 million. Major users of ISD services and estimated 1995-97 ISD collections from each are:

Secretary of State	\$ 1,027,500
Office of Management and Budget	1,446,337
Tax Department	1,185,643
University of North Dakota	1,928,045
North Dakota State University	1,213,379
Department of Human Services	14,958,437
Bank of North Dakota	5,418,654
State Radio	1,121,956
Department of Transportation	4,722,499
Other agencies and users	9,590,416
<b>Total</b>	<b>\$42,612,866</b>

### Information Technology Coordination

The committee learned that state statute exempts the institutions under the Board of Higher Education, Job Service, and the National Guard from the supervision and oversight by ISD of their information technology systems. As a result, the

committee reviewed information technology systems and services of these agencies and heard presentations from ISD, the university system, Job Service, and the National Guard on cooperative information technology projects, shared computer equipment and services, areas where systems overlap, and possible changes that could result in a more effective and efficient computer environment for state government. Information presented to the committee included:

1. Information Services Division provides network consulting services for the National Guard.
2. Information Services Division provides wide area network services that connect the various Job Service offices located across the state to its central computer.
3. Information Services Division and the university system have jointly developed strategic plans for network services in state government.
4. Information Services Division and the university system generally do not share computer equipment because in most cases, the university system gets a substantial educational discount that is restricted to educational use.
5. Major cooperative projects of the university system and ISD include:
  - a. The North Dakota Information Network - An organization that operates, administers, and coordinates telecommunications technology in state government.
  - b. NW Net - Provides Internet access and services to the university system and state government users.
  - c. SENDIT - The elementary and secondary education computer telecommunications network that provides the Internet and support services for North Dakota schools.
  - d. North Dakota School Net - Offers elementary and secondary schools computer networking services in their districts.
  - e. Legislative bill tracking system - Provides a legislative bill tracking system to the universities, state agencies, and external subscribers.
  - f. Other initiatives and ventures including cooperative grant applications.

6. Cooperative projects of ISD and Job Service include:
  - a. Transferring the majority of Job Service's data communications network to the North Dakota Information Network.
  - b. A pilot project with Job Service, Cass County, and the Department of Human Services to access each other's information.
  - c. A combined reporting form for information collected from employers by the Workers Compensation Bureau and Job Service.
7. Job Service shares ISD's computer equipment and services including:
  - a. The state's Internet e-mail server.
  - b. The state's Web server.
  - c. Access by other state agencies to Job Service information.
  - d. Information transfer between Job Service, higher education, and the Department of Human Services.
8. Overlap may exist by having mainframe systems operated by both the state and Job Service; however, the systems are sized to avoid excess capacity. Therefore, having separate systems may not be inefficient.
9. Potential overlap exists by state agencies maintaining different data bases of information with duplicative data such as the Tax Department, Job Service, and Workers Compensation Bureau data bases all including employers' names, addresses, and identification numbers.
10. Joint information technology planning among state agencies to create systems that have the capability to easily interact and exchange information with other state and federal agencies will improve information technology of state government.

#### Information Technology Projects

The committee reviewed major information technology projects of state agencies. The committee learned that the cost of current state agency information technology projects, through the 2001-03 biennium, totals \$76.5 million. The following schedule lists the agency, project, and costs by biennium for major information technology projects being conducted during the 1995-97 biennium:

Dept. No.	Agency/Project	Project Cost					Total
		Actual 1993-95 Biennium	Estimated				
			1995-97 Biennium	1997-99 Biennium	1999-2001 Biennium		
110	<b>Office of Management and Budget</b> Statewide integrated budget and reporting system	\$ 145,000	\$ 625,000				\$ 770,000
150	<b>Legislative Assembly</b> Mainframe to client/server conversion	\$ 446,000	\$ 550,000				\$ 996,000
160	<b>Legislative Council</b>						

Dept. No.	Agency/Project	Project Cost					Total
		Actual 1993-95 Biennium	Estimated				
			1995-97 Biennium	1997-99 Biennium	1999-2001 Biennium	2001-03 Biennium	
	Mainframe to client/server conversion	\$ 235,000	\$ 214,000				\$ 449,000
<b>215</b>	<b>North Dakota university system</b>						
	Help desk project		\$ 200,400				\$ 200,400
	Campus networking		240,948 <sup>1</sup>	\$ 2,606,909	\$ 6,525,506	\$ 6,525,505	15,898,868
	Replacement of administrative systems <sup>2</sup>	\$ 454,027	928,681	1,598,957	471,235		3,452,900
	Total North Dakota university system	\$ 454,027	\$ 1,370,029	\$ 4,205,866	\$ 6,996,741	\$ 6,525,505	\$19,552,168
<b>301</b>	<b>Department of Health</b>						
	Health care data base project		\$ 362,600	\$ 384,792			\$ 747,392
<b>325</b>	<b>Department of Human Services</b>						
	Reforming and enhancing services for the people of North Dakota (RESPOND) project	\$ 690,000	\$2,508,965	\$ 5,272,853	\$ 1,775,635	\$ 243,599	\$10,491,052
	Training, education, employment, and management (TEEM) project	1,891,000	2,524,039	6,479,924	3,549,368	521,685	14,966,016
	Achieving support system integration through services and technology (ASSIST) project	1,101,218	1,134,215	61,539			2,296,972
	Other RESPOND-related development projects	126,285	143,767	5,577,109	446,109	173,160	6,466,430
	Total RESPOND project	<u>\$3,808,503</u>	<u>\$6,310,986</u>	<u>\$17,391,425</u>	<u>\$ 5,771,112</u>	<u>\$ 938,444</u>	<u>\$34,220,470</u>
	Fully automated child support enforcement system (FACSES) project	\$ 762,239	\$ 432,800	\$ 2,302,900			\$ 3,497,939
	Comprehensive child welfare information and payment system (CCWIPS) project		1,034,118	1,976,044			3,010,162
	Total Department of Human Services	<u>\$4,570,742</u>	<u>\$ 7,777,904</u>	<u>\$21,670,369</u>	<u>\$ 5,771,112</u>	<u>\$ 938,444</u>	<u>\$40,728,571</u>
<b>401</b>	<b>Insurance Commissioner</b>						
	Mini mainframe to client/server conversion project		\$ 367,563	\$ 131,434			\$ 498,997
<b>471</b>	<b>Bank of North Dakota</b>						
	Alternative records management storage and retrieval		\$ 342,876				\$ 342,876
<b>480</b>	<b>Job Service</b>						
	Job placement and job training programs reengineering and rewrite and development of a client case management system	\$ 536,426	\$ 686,124				\$ 1,222,550
	Unemployment insurance automated system programming		257,600				257,600
	Total Job Service	<u>\$ 536,426</u>	<u>\$ 943,724</u>				<u>\$ 1,480,150</u>
<b>485</b>	<b>Workers Compensation Bureau</b>						
	Claims/benefits system project		\$ 720,000				\$ 720,000
<b>504</b>	<b>Highway Patrol</b>						
	Information systems redevelopment		\$ 210,000				\$ 210,000
<b>506</b>	<b>State Radio</b>						
	Message switch replacement	\$ 281,623	\$ 180,000				\$ 461,623
<b>801</b>	<b>Department of Transportation</b>						
	Digitized driver's license system		\$ 674,000	\$ 674,000	\$ 674,000	\$ 337,000	\$ 2,359,000
	Computer-aided design and drafting (CADD) system		716,969	235,222	235,222	235,222	1,422,635

Dept. No.	Agency/Project	Project Cost					Total
		Actual 1993-95 Biennium	Estimated			Total	
			1995-97 Biennium	1997-99 Biennium	1999-2001 Biennium		
	Roadway information management system (RIMS)		\$ 376,279	\$ 211,447			\$ 587,726
	Geographic information system (GIS)		713,500	600,000			1,313,500
	Year 2000 changes			300,000	\$ 200,000		500,000
	Vehicle registration and titling system		601,000	919,925	919,925	\$ 919,925	3,360,775
	Total Department of Transportation		\$ 3,081,748	\$ 2,940,594	\$ 2,029,147	\$1,492,147	\$ 9,543,636
	Total	\$6,668,818	\$16,745,444	\$29,333,055	\$14,797,000	\$8,956,096	\$76,500,413

<sup>1</sup> This amount was specifically identified by the campuses as networking projects. Other campus networking projects may have been completed during the biennium as a component of a larger renovation project; however, these costs were not identified separately as networking projects.

<sup>2</sup> These amounts relate to The Robinson Group (TRG) project. The Robinson Group has defaulted on the contract to develop the system; therefore, the university system is pursuing alternative development possibilities.

### Other Information Technology Studies

The university system also conducted an information technology study of its information services systems during the 1995-96 interim. The committee received status reports from the University System office on its study. The committee learned that the university system contracted with GFA Consulting, Inc., to conduct its study and develop a strategic plan for the Higher Education Computer Network. The prioritized projects of the plan include:

1. Improving communications with Higher Education Computer Network constituencies.
2. Improving the network.
3. Improving off-campus dial-in network access.
4. Increasing e-mail access and useability.
5. Developing comprehensive training plans.
6. Implementing comprehensive help desk services.
7. Providing leadership for updating the computing environment.
8. Providing information access services.
9. Providing leadership in the use of technology for instruction.
10. Within the governance and working relationships, establishing systems to coordinate, review, plan, and receive input.

The committee learned that additional funding needed by the university system to begin implementing this strategic plan during the 1997-99 biennium totals \$808,000.

The committee also learned that the university system was in the process of reengineering its administrative system because:

1. Higher education's current administrative systems are 15 to 20 years old.
2. Major technological changes have occurred in the computer industry.
3. Administrative processes may be streamlined.
4. The organizational structure of higher education may be improved.

### 5. Access to information may be improved.

The committee learned that the university system contracted with TRG to rewrite these systems and the committee received status reports from the university system on this project. The committee learned that the university system joined with 16 other higher education institutions from throughout the United States in a partnership with TRG to develop a fully integrated administrative computer system for higher education institutions. In September 1996 the university system was informed that TRG was defaulting on the contract; therefore, the university system and the other partners involved in the contract have entered into contract settlement discussions and are pursuing other developmental alternatives for the project. The committee learned that, excluding the cost of time spent on the project by higher education employees, direct project expenses incurred by the university system on the project through September 1996 totaled \$610,000.

### Consultant Services

The committee contracted with Wolfe and Associates, Inc., to assist it in its study of information services in North Dakota. The consultant focused on the following major information technology issues:

1. A comparison of the cost effectiveness of the state's mainframe-based computer system to client/server-based systems.
2. A review of ISD's duties and responsibilities.
3. A review of ISD's role relating to:
  - a. The extent to which ISD should provide operational services.
  - b. The development of technology standards for state agencies and others.
  - c. The relationship of ISD with vendors.
4. A review of the organizational structure and staffing of ISD and the types of services ISD should support throughout state government.

5. A review of methods of funding ISD.
6. A review of methods of providing state government information to the public.
7. A review of the fees ISD charges for services.
8. An analysis of the feasibility and desirability of contracting for data processing services and computer systems support services.

The consultant gathered information and statistics on information technology services of state government through interviews with state agency personnel and a survey of all state agencies.

### Consultant Findings

The consultant's findings regarding North Dakota information technology based on interview and survey responses were reported to the committee. Major findings include:

1. State agencies estimate 1995-97 biennium total information technology expenditures will be \$73.9 million, \$29.2 million or 40 percent of which relates to expenditures with ISD, \$20.6 million or 28 percent to expenditures with contractors, and \$24 million or 32 percent to expenditures within agencies.
2. Agencies report that 323 FTE positions spend at least one-half of their time with information technology responsibilities. Of these positions, 144 are within ISD (45 percent) and 179 are within state agencies (55 percent).
3. Regarding information technology planning, 83 percent of state agencies do not have an information technology strategic plan, 8.5 percent are developing a plan, and 8.5 percent have a plan.
4. Information technology is rapidly becoming an integral part of the way agencies conduct business.
5. Information technology personnel and expenditures are increasing.
6. Agencies recognize the need for information technology standards and guidelines.
7. Agencies are exchanging increasing amounts of data among themselves, but much of the data is in hard copy rather than in automated form.
8. Coordination of agency information technology activities is informal and occurs inconsistently, with the exception of ISD and the university data centers.
9. Agencies are moving toward client/server architecture but are not abandoning the mainframe.
10. Agencies are generally satisfied with how ISD provides services.
11. Agencies want ISD to provide additional services, including more proactive consulting services, client/server development and support, local area network support, and training.

12. Agencies are increasing their use of external information technology providers.
13. Changes are necessary in the information technology purchasing process if services are to be improved or expanded.

### Other Reports and Findings

#### Information Technology Trends

The committee received information from ISD and Wolfe and Associates, Inc., on new and emerging computer technologies and current trends in information technology. The committee learned that the capability of computer technology has increased substantially resulting in faster computing speeds and more storage capacity at a lower cost. Organizations are moving from mainframe computer architecture to local and wide area network architecture. New systems provide better user interface, cheaper processing, and rapid application development; however, the systems are immature and security, reliability, consistency, and performance are issues that still need to be addressed. The committee learned that the cost of client/server architecture to mainframe architecture varies by size of application. For small local applications or office systems, client/server architecture appears to be less expensive than mainframe architecture. For medium-size applications, client/server costs range from 70 percent to 120 percent of mainframe costs and for large applications, sufficient information to determine cost comparisons is still unavailable.

The relatively low cost of hardware relating to client/server and personal computer equipment purchases is deceiving. The committee learned that generally the cost of purchasing a personal computer is one-fourth to one-third of the total cost of the personal computer once training, upgrades, maintenance, and support costs are considered.

Private industry is establishing a variety of information technology management structures. In general, however, organizations are maintaining some centralized functions and decentralizing others. Representatives of the industry generally agree with the following in order to successfully implement information technology in an organization:

1. More highly skilled information technology personnel will be required.
2. Staff will require more information technology training.
3. Management of information technology is important.
4. An organization will use both internal and external sources to accomplish its tasks.

#### Information Technology Strategic Plans

The committee received reports from ISD and Wolfe and Associates, Inc., on the development of information technology strategic plans for three pilot agencies. The committee learned that ISD chose the Department of Transportation, the Secretary of State, and the Aeronautics Commission to prepare these plans.

The committee learned that the strategic plans will identify all ongoing current information technology projects as well as proposed information technology projects for upcoming bienniums and estimated costs.

Although the plans were not completed by the final committee meeting, the plans will be available during the legislative session for review and input regarding content and information that should be included in the strategic plans for state agencies. Wolfe and Associates, Inc., estimated the amount of time required by state agencies to develop their plans as follows:

<b>Consulting services</b>	
Department of Transportation	480 hours
Secretary of State	300 hours
Aeronautics Commission	48 hours
<b>Agency staff time</b>	
Department of Transportation	1,200 hours
Secretary of State	270 hours
Aeronautics Commission	48 hours

The committee learned that the development of an original strategic plan takes much more time than updating the plan once completed.

#### **Interactive Video Network**

The committee received information on the costs and benefits of the Interactive Video Network, including information on the users of the system. The committee learned that Interactive Video Network expenditures for fiscal year 1995 totaled \$674,000. The base fee for users of the system is \$80 per hour plus \$10 per hour per site. Higher education uses the system 96 percent of the time, state government two percent of the time, and nongovernment users two percent of the time. Based on an analysis prepared by ISD, the committee learned that the cost of a meeting is less using the Interactive Video Network than having all participants present at a meeting site.

#### **Local Internet Access**

The committee received information from representatives of Souris River Telecommunications Cooperative, BEK Communications Cooperative, and U S West Communications regarding providing local Internet access to North Dakota citizens. The committee learned that 11 of the 27 local telephone companies in the North Dakota Telephone Association provide local Internet access to their customers and that U S West currently provides Internet access in Minneapolis, Minnesota, and Omaha, Nebraska.

The committee heard other presentations from ISD on its information technology programs and services and also toured ISD's facilities.

#### **Other Testimony**

The committee received testimony from state agency representatives, industry representatives, and other interested persons. Major state government information technology issues,

concerns, needs, and suggestions include:

1. Information should be easily transferable between state agencies to improve the coordination, facilitation, and collaboration between state agencies.
2. Information Services Division needs to assist agencies in the development of agency information technology plans.
3. Agencies should be involved in developing and implementing information technology standards for state government.
4. There is concern that the current ISD rate structure does not allow for volume discounts; therefore, if large users of processing time purchased their own central processing units, their costs would be less.
5. Training employees in the use of computer equipment and software is important.
6. Information Services Division needs to continue providing training in new technologies.
7. There is concern regarding ISD selling Internet gateways to private companies which causes unfair competition.
8. The development of standards because of the differing needs of large and small agencies needs to be carefully reviewed.
9. There is support for the utilization of higher education institution personnel to provide training for state employees in the use of information technology.

#### **Committee and Consultant Recommendations**

The listing below presents the committee recommendations including the recommendations of the consultant. The statutory recommendations were incorporated into the bill draft referred to later in this report. Consultant recommendations that differ from the committee recommendation are shown in brackets following the committee's recommendation:

#### **Statutory Recommendations**

##### **Terms and Organizational Responsibilities**

1. Information technology terms and definitions in the statutes should be updated to reflect current technology.
2. North Dakota Century Code Chapter 54-44.2 relating to ISD should be amended to:
  - a. Regulate information management.
  - b. Continue to authorize the existence of ISD as the organization primarily responsible for the coordination of information technology.
  - c. Update the duties and responsibilities of ISD to reflect the recommendations in the Wolfe and Associates, Inc., report.
  - d. Reflect the decentralization of information technology by expanding agency responsibilities to include the appointment of data processing coordinators

and other recommendations included in this report.

- e. Remove sections relating to communications advisory committees and accounting and records maintenance grant programs.
  - f. Expand telephone responsibilities to include all telephone services including cellular.
  - g. Use "information technology" in place of "data processing" and "word processing" and replace "word processing equipment" with "information processing" and "information processing equipment."
3. Information Services Division should perform planning, auditing, research and development, and standards-setting functions relating to information technology of state government. A separate staff should be established for these functions including three [five] additional permanent staff with appropriate training for these areas.
  4. The ISD director position should be a classified rather than an unclassified position.
  5. Information Services Division should continue to be the centralized information technology resource pool.

#### **Planning**

6. An information technology strategic planning process should be implemented on an ongoing basis to formalize information technology asset management and for improved communication between agency information technology personnel and management and between agencies and funding bodies.
7. Each agency should develop its own biennial strategic information technology plan with interim updates if major changes occur.
8. Information Services Division should review each agency plan to ensure it is technically reasonable and thorough.
9. Information Services Division should resolve any conflicting directions among agency plans by making a reasonable attempt to mediate an agreement with each relevant agency; however, if agreement cannot be reached, ISD should determine the most appropriate course of action guided by statewide standards and policies.
10. Information Services Division should develop its own strategic information technology plan.
11. Information Services Division should develop a statewide information technology plan that will provide the general direction for information technology within the state and have specific intentions and projects regarding statewide information technology components.

12. The strategic planning process should be completed in a timeframe that complements the budgeting process; however, the strategic plan should extend for at least five years.
13. The Board of Higher Education and ISD should meet to plan and coordinate their information technology systems and services, to consider areas in which joint or coordinated information technology systems and services may result in more efficient and effective state government operations, and that they report their findings and recommendations to the Legislative Council. [This recommendation was not included in the consultant's recommendations.]

#### **Standards**

14. Information Services Division should be responsible for the process to set statewide policies, standards, and guidelines by:
  - a. Coordinating and supervising the efforts of agencies involved in providing input for this process.
  - b. Making the final determination of standards and guidelines.
  - c. Monitoring agency compliance with standards and guidelines through planning and auditing processes.
15. Agency personnel should actively participate on committees and work with ISD to develop statewide policies, standards, and guidelines and actively support and adhere to the resulting decisions.
16. Methods of providing exceptions to the standards-setting process should be developed by ISD.

#### **Auditing**

17. Conduct the following information technology reviews [audits]:
  - a. Information technology management reviews [performance audits] should be conducted by ISD regularly to evaluate planning effectiveness, conformance to standards, asset quality, training methods, and operational efficiency of agencies. If ISD finds recurring issues of noncompliance by state agencies, it should report the issue to the Legislative Audit and Fiscal Review Committee.
  - b. Information Services Division should request information on or review information technology systems or application development projects of state agencies. [Control audits should be conducted by ISD or by the State Auditor if the application is being developed or supported by ISD. These audits should be done during the design, development, and implementation of information system projects,

- including major enhancement projects.]
- c. The State Auditor should conduct information technology system or application audits of state agencies and authorize ISD to request information on or review information technology systems or applications of state agencies. [Information systems audits should be conducted by ISD or the State Auditor if the application is supported by ISD, after implementation of new computer systems.]
  - d. Information Services Division should conduct periodic contract management reviews [audits].

## **Budgetary Recommendations**

### **Information Services Division Staff**

1. A separate staff of three [five] permanent FTE positions with appropriate training should be established within ISD to perform planning, auditing, research and development, and standards-setting functions relating to information technology of state government.
2. Expand ISD's client/server development group based on demand for services.
3. Expand the local area network staff within ISD's information resource center to provide services to agencies based on demand and provide appropriate training for these positions.
4. Add four [five] FTE positions for telecommunications services to improve the management of the wide area network.
5. Additional FTE positions, as needed to meet demand, should be requested by ISD for approval either by the Emergency Commission for immediate needs or by the Legislative Assembly for ongoing services. Information Services Division should contract for services if the services will be needed only for a short time.

### **Agency Staff**

6. An agency should employ adequate staff to perform its information technology tasks.
7. An agency should be allowed to obtain resources from ISD or external sources to perform its information technology activities.
8. An agency should hire permanent positions if the agency has an ongoing information technology need and contract with ISD or external sources for temporary information technology needs.

### **Mainframe**

9. Information Services Division should purchase an IBM CMOS processor and transfer some applications currently running on the IBM mainframe to this processor. The existing mainframe processor should be replaced by an

additional CMOS processor within the next two years.

10. Information Services Division should retain exclusive responsibility for software development and maintenance of applications residing on the mainframe; however, agencies should maintain budgets and make resource decisions about mainframe applications support.
11. Agencies should maintain budgets for and make resource decisions about their mainframe applications support, including analyzing development versus replacement of systems, comparing alternatives, considering all costs in comparisons, and ensuring adequate user training.

### **Information Services Division Rate Structure**

12. Information Services Division's overhead rate should be increased to fund the statewide functions of planning, auditing, standards setting, research and development, and records management.
13. The records management section should become more self-supporting, rather than being funded through the overhead rate.
14. Forms management services should be charged on a fee-for-service basis that would encourage agencies to request only necessary form changes.
15. The information resource center of ISD should be removed from the mainframe rate because the emphasis of these services is now on personal computer training rather than mainframe training. Information resource center services should be charged for on a usage basis and the remainder of the unit's cost should be included in the overhead rate.

### **Standards**

16. Funding entities should recognize that standards compliance will require careful consideration of the tradeoffs involved in purchasing decisions such as acquisition cost being higher but overall cost to the state will be lower throughout the product's life cycle.

## **Administrative Recommendations**

### **Management**

1. Information Services Division should function as the state's internal information technology consultant and take a proactive rather than reactive role in providing these services. Information Services Division should compete with external sources to provide services to agencies.
2. Information Services Division should establish temporary committees to:
  - a. Recommend formats and acceptance criteria for agencies' information technology plans.
  - b. Recommend statewide information

- technology standards.
- c. Recommend information technology audit criteria and frequency.
  - d. Coordinate the use of specific information technologies.
  - e. Coordinate joint research and development efforts.

#### **Computing Environments**

3. Each computer application should be "right sized" and reside on an appropriate platform to optimize its performance while meeting all processing needs in an effective and cost-efficient manner. This may require a variety of computer platforms, including mainframe, midrange processors, local area networks, and personal computers.
4. Applications should be converted to client/server only when a thorough evaluation indicates that it is the preferred platform alternative and conversion is justified based on a functional, operational, or cost basis.
5. Information Services Division should update its mainframe capacity requirement forecast as major development projects are identified.
6. Agencies that share information should use common data formats to the extent feasible and compliance should be determined during control audits.

#### **Networking**

7. Information Services Division should provide proactive network management by:
  - a. Continuing to work to obtain a backup northern loop to prevent complete loss of communications between the eastern and western parts of the state if the current connection between Bismarck and Fargo is inoperable.
  - b. Obtaining fault-tolerant network components and software as equipment is replaced.
  - c. Developing more proactive network management, using specialized software.
  - d. Periodically updating network capacity requirement forecasts and after implementation of projects, refining capacity projections as actual processing impact is determined.
  - e. Continually upgrading line speeds with priority placed on agencies with large transmission volumes.
8. Information Services Division should continue to share responsibility for the wide area network with the university system.

#### **Training**

9. Information Services Division should provide or arrange for user training for agency personnel from external sources

and, if possible, involve the university system in providing information technology training for state employees.

10. Information Services Division should work with the university system to coordinate the provision of information technology training for state employees.

#### **Agency Systems Support**

11. Agencies should manage applications software run on agency processors, including determining which applications should be developed, quality of the applications, budgeting for application support, assigning resources as required, providing adequate user training, and the application development and support processes.
12. Agencies should be responsible for the management and support of local area network equipment including maintenance; hardware and software upgrades; software licenses; local area network installation, specifications, and support; conformity to state standards; personnel training; and physical and data security.
13. Agencies should be allowed to contract with external sources, utilize ISD, or hire agency personnel, if justified, based on an ongoing need for services to conduct their information technology functions.

#### **External Sourcing**

14. The state should consider the following regarding external sourcing:
  - a. Information Services Division should develop sourcing partnerships to augment its applications development staff.
  - b. Information Services Division should develop a master contract list of qualified information technology auditing firms that could be retained to perform specific audits.
  - c. Agencies, including ISD, should consider external sourcing or continue external sourcing of personal computer software support, personal computer maintenance, local area network and wide area network maintenance, local area network support, development of large applications, support of existing applications, and training.
15. The state should develop an appropriate methodology for agencies to utilize in evaluating whether a service should be contracted for externally or provided internally.
16. Evaluation criteria for external sourcing should be developed and provided for agency use in selecting external sourcing vendors.
17. Contracts for external sourcing should be carefully developed and sufficiently detailed.

### **Planning**

18. Format of strategic plans should be developed by a joint working group of ISD and agency personnel. The format and content should be flexible enough to support diverse agencies and activities.
19. Minimally, a strategic plan should include:
  - a. A brief description of agency operational goals.
  - b. Inventory of information technology assets.
  - c. Planned expenditures.
  - d. Project plans for major expenditures.
  - e. Information technology personnel requirements.
20. Criteria for plan approval should be defined by a joint working group of ISD and agency personnel.

### **Research and Development**

21. Research and development information accumulated by agencies should be shared with other agencies interested in the same technologies.
22. Information Services Division should continue to cooperate with the university system and other agencies regarding research and development relating to information technologies.
23. Research and development activities conducted by agencies should be coordinated to prevent duplication.

### **Standards**

24. Information Services Division should coordinate the formation of special committees composed of personnel from agencies involved in reviewing similar applications or technologies to minimize duplication of effort and to provide recommendations to ISD regarding possible standards if standards are necessary. Information Services Division should provide technical services to the committees when appropriate and necessary and should make the final determination on whether standards should be established and what the standards should be.
25. Standards or guidelines should be developed in the following areas:
  - a. Standards and guidelines for computer hardware.
  - b. Standards for communications and network protocols.
  - c. Standards or guidelines for application development tools.
  - d. Standards or guidelines for operating system tools and utilities.
  - e. Guidelines for office automation systems.
  - f. Guidelines for monitoring, evaluating, and auditing information technology contract management systems.
  - g. Guidelines for project management.

### **Auditing**

26. Rates charged by ISD should be subject to a formal review conducted annually by the State Auditor.
27. The State Auditor should continue to conduct standard agency audits of ISD and include verification of ISD's rate structure.
28. The records management section of ISD should continue to audit agency records.
29. Information Services Division should work with agency personnel and the State Auditor to define specific audit criteria and auditing frequency.
30. The State Auditor and ISD should develop a master contract list of qualified information technology auditing firms that may be retained to perform specific audits.

### **Public Access**

31. Information Services Division and other state agencies should provide strong support for public access to state information through use of the state network or the Internet. The information should be provided either at no cost to the public for individual use or at the same rates that would be charged for paper copies of the information.
32. Standard, user friendly formats should be developed to allow the public ready access to a variety of information.
33. Agencies should be encouraged to put information of interest into web server pages and publicize their Internet addresses.
34. Information Services Division should continue to provide Internet access to state and local government agencies.
35. Information Services Division should announce that it will terminate all direct provision of private access to the Internet within three years or less, both to individuals and resellers.
36. In areas where demand is insufficient to attract resellers, local government entities should provide direct Internet access to individuals if the local entity believes such services are necessary and appropriate. Information Services Division should support these efforts by providing technical support and line access on a recharge basis to the local entity. The local government should seek funding for these access services from local, state, or federal sources or by charging individual users.
37. Information Services Division and the university system should implement network firewalls or ensure that all agency applications, except those residing on a stand-alone personal computer, include adequate application firewalls.

### **Purchasing**

38. The state should annually prequalify five to 10 suppliers on the basis of product

- lines, local support, service performance, consistent presence in the state, geographical coverage, and price discounts.
39. The state should set up direct order arrangements with one or two major vendors.
  40. Purchase agreements should be set up with one or more software warehouses for software purchases.
  41. Statewide licensing of additional software should be evaluated.
  42. Agreements should be negotiated that may be used by local governments, county governments, and schools in addition to state agencies.
  43. State Purchasing should track supplier performance to ensure that suppliers are meeting conditions of agreements.

### Statutory Recommendations

The committee recommends House Bill No. 1034 to implement the statutory recommendations made by the committee, including the consultant's recommendations as amended and approved by the committee. The bill:

1. Authorizes the State Auditor to perform or provide for information systems audits of information technology systems or applications determined necessary by the State Auditor.
2. Provides that ISD develop statewide information technology policies, standards, and guidelines and that unless an exception is granted by ISD, each executive branch agency, except institutions under the control of the Board of Higher Education, must comply with the policies and standards.
3. Requires each executive branch agency, except higher education institutions, to prepare an information technology strategic plan, subject to approval by ISD. Based on the agencies' strategic plans, ISD will prepare a statewide information technology strategic plan.
4. Provides that ISD and the Board of Higher Education meet to plan and coordinate their information technology systems and services, to consider areas in which joint or

- coordinated information technology systems and services may result in more efficient and effective state government operations, and that they report to the Legislative Council regarding their findings and recommendations.
5. Allows ISD to conduct information technology management reviews of state agencies except higher education institutions. These reviews will evaluate the organization's planning effectiveness, conformance to its strategic plan, compliance with statewide policies and standards, asset quality, training methods, and the organization's contract management system for those agencies that contract for information technology services. If ISD finds a department to be out of compliance with statewide policies and standards and if the agency does not agree to come into compliance, ISD could report the issue to the Legislative Audit and Fiscal Review Committee; however, if ISD finds recurring issues of noncompliance, ISD would be required to report the issue to the Legislative Audit and Fiscal Review Committee.
  6. Provides that the ISD director position be a classified position.
  7. Provides that prior to the purchase by state agencies, except for higher education institutions, of certain information technology equipment or services, they must receive approval from ISD.
  8. Allows ISD to request information on or review information technology systems, applications, system development projects, and application development projects of state agencies.
  9. Updates terminology in the ISD statutes and makes other changes recommended by the consultant, including removing sections relating to communications advisory committees and accounting and records maintenance grant programs.

The estimated cost of implementing the bill based on estimates provided by ISD and the State Auditor's office totals \$1,491,294. The estimated costs for these agencies are listed below:

Agency	FTE	General Fund	Special Funds	Total
Information Services Division	12		\$1,294,055	\$1,294,055 <sup>1</sup>
State Auditor	3	\$197,239		197,239
Total	15	\$197,239	\$1,294,055	\$1,491,294 <sup>1</sup>

<sup>1</sup> Approximately \$815,000 of this amount is estimated to be provided from ISD charges that would be paid from the general fund.

### Other Committee Action

The committee asked that the Legislative Council staff include the report on major information technology projects in its initial reporting presentation to the Appropriations Committees and that the Office of Management

and Budget be informed that it and other state agencies will be expected to respond to questions by Appropriations Committee members during the legislative session relating to information technology projects that continue beyond one biennium.

## NDSU EXTENSION SERVICE AND AGRICULTURAL EXPERIMENT STATION

Section 11 of House Bill No. 1005 directed the Legislative Council to study the services provided by the NDSU Extension Service and the Agricultural Experiment Station, the degree of duplication, the costs and effectiveness, the necessity for their continued existence, and options for consolidation.

### Background

#### Establishment of Extension Service

The Smith-Lever Act of 1914 is the primary federal legislation governing the organization and programs of the extension service. This legislation permits the appropriation of federal funds to states and counties in support of state and local programs oriented to agriculture, home economics, and related program areas. The 1915 Legislative Assembly approved legislation accepting the Smith-Lever Act funding and delegating to North Dakota State University the responsibility for overall administration of the extension service and designating the boards of county commissioners as the local sponsoring groups. By local election, each of the counties in the state authorize the establishment of a county extension program and authorize the board of county commissioners to support the county programs through an appropriation of county funds. The extension service represents the educational arm of the United States Department of Agriculture and land grant colleges.

#### Establishment of Agricultural Experiment Station

Two federal laws provide for the establishment of experiment stations. The Morrill Act of 1862 provided grants of federal land to each state and provided that these lands and income from the lands provide a permanent endowment fund for public institutions of higher learning where the objective would be, without excluding other scientific and classical studies, to teach branches of learning relating to agriculture and the mechanical arts. In 1887 the Hatch Act was enacted which provided for state agricultural experiment stations in connection with the colleges established in several states under the Morrill Act. In 1955 Congress consolidated a number of laws relating to agricultural research into the Hatch Act as amended. The Hatch Act serves as the principal federal authorization for annual appropriations made by Congress to agricultural experiment stations.

In 1890 the Legislative Assembly established the North Dakota Agricultural Experiment Station in connection with North Dakota State University. The branch research centers were established as follows: Dickinson, 1905; Williston, 1907; Langdon, 1908; Hettinger, 1909; North Central, 1945; Agronomy Seed Farm, 1950; Carrington, 1957; Central Grasslands, 1981.

#### Funding

The following schedules present the legislative appropriations and the authorized FTE positions for the NDSU Extension Service and the Agricultural Experiment Station for the 1991-93, 1993-95, and the 1995-97 bienniums:

	1991-93 Legislative Appropriation	1993-95 Legislative Appropriation	1995-97 Legislative Appropriation
<b>NDSU Extension Service</b>			
General fund	\$10,760,034	\$10,048,672	\$10,270,382
Special funds	<u>11,839,305</u>	<u>11,889,529</u>	<u>12,508,867</u>
Total funds	<u>\$22,599,339</u>	<u>\$21,938,201</u>	<u>\$22,779,249</u>
FTE positions	240	230	226

	1991-93 Legislative Appropriation	1993-95 Legislative Appropriation	1995-97 Legislative Appropriation
<b>Main Research Station</b>			
General fund	\$22,012,655	\$20,924,268	\$22,336,522
Special funds	<u>16,303,910</u>	<u>16,493,699</u>	<u>16,990,550</u>
Total funds	<u>\$38,316,565</u>	<u>\$37,417,967</u>	<u>\$39,327,072</u>
FTE positions	353.52	338.27	337.97
<b>Dickinson Research Center</b>			
General fund	\$ 1,049,338	\$ 1,009,192	\$ 1,135,090
Special funds	<u>391,676</u>	<u>431,676</u>	<u>531,676</u>
Total funds	<u>\$ 1,441,014</u>	<u>\$ 1,440,868</u>	<u>\$ 1,666,766</u>
FTE positions	12.25	12.75	12.75
<b>Central Grasslands Research Center</b>			
General fund	\$ 540,535	\$ 523,525	\$ 550,820

	1991-93 Legislative Appropriation	1993-95 Legislative Appropriation	1995-97 Legislative Appropriation
Special funds	\$ 384,900	\$ 347,900	\$ 451,400
Total funds	\$ 925,435	\$ 871,425	\$ 1,002,220
FTE positions	5	5	5
<b>Hettinger Research Center</b>			
General fund	\$ 525,202	\$ 511,324	\$ 574,654
Special funds	256,434	233,486	301,068
Total funds	\$ 781,636	\$ 744,810	\$ 875,722
FTE positions	7.5	7.25	8
<b>Langdon Research Center</b>			
General fund	\$ 600,420	\$ 582,330	\$ 605,436
Special funds	208,150	172,630	174,560
Total funds	\$ 808,570	\$ 754,960	\$ 779,996
FTE positions	7	6.75	7
<b>North Central Research Center</b>			
General fund	\$ 390,955	\$ 381,689	\$ 784,666
Special funds	369,100	329,100	629,100
Total funds	\$ 760,055	\$ 710,789	\$ 1,413,766
FTE positions	6	6	6
<b>Williston Research Center</b>			
General fund	\$ 515,348	\$ 531,601	\$ 680,968
Special funds	342,000	312,775	349,825
Total funds	\$ 857,348	\$ 844,376	\$ 1,030,793
FTE positions	8	8	9.5
<b>Carrington Research Center</b>			
General fund	\$ 927,222	\$ 897,598	\$ 950,063
Special funds	985,885	955,723	1,068,661
Total funds	\$ 1,913,107	\$ 1,853,321	\$ 2,018,724
FTE positions	15	14.5	14.5
<b>Agronomy Seed Farm</b>			
General fund	\$ 0	\$ 0	\$ 0
Special funds	816,421	810,140	1,067,455
Total funds	\$ 816,421	\$ 810,140	\$ 1,067,455
FTE positions	3	3	3
<b>Land Reclamation Research Center</b>			
General fund	\$ 0	\$ 289,822	\$ 0
Special funds	1,446,033	1,134,245	1,074,298
Total funds	\$ 1,446,033	\$ 1,424,067	\$ 1,074,298
FTE positions	22.5	20.75	9.75
<b>Total Agricultural Experiment Station</b>			
General fund	\$26,561,675	\$25,651,349	\$27,618,219
Special funds	21,504,509	21,221,374	22,638,593
Total funds	\$48,066,184	\$46,872,723	\$50,256,812
FTE positions	439.77	422.27	413.47

## Programs

The committee received reports on research programs of the experiment station and cooperative efforts between the extension service and experiment station.

The committee learned that the primary responsibility of the experiment station is discovery, which is pursued through research in a number of areas and on many topics including traditional and molecular genetics, conventional breeding and biotechnology, weather's relationship to pest and crop development, marketing trends and new markets, quality of food and feed, and new uses for agricultural products. The primary responsibility of the extension service is delivery, which includes providing information on the advantages and disadvantages of individual varieties, cultural practices for optimum production, pest management guidelines, pesticide use education, storage and conditioning practices, and fertility and harvest guidelines. Implementation is a team effort involving the extension service and experiment station and the public and private sectors which results in field demonstrations; field days at research and extension sites; and tours, clinics, and surveys. The committee received other reports on cooperative efforts of the experiment station and extension service relating to the livestock industry and value-added projects in North Dakota.

### NDSU Extension Service

The committee reviewed the programs of the NDSU Extension Service. The following schedule presents the estimated percentage expenditures by program of the NDSU Extension Service for the 1995-97 biennium:

	Percentage of Program Expenditures
Building family and individual strengths	5.0
Community, economic, leadership, and volunteer development	4.0
Competitiveness and profitability of animal production	19.6
Competitiveness and profitability of crop production	31.8
Farm and family economics	7.9
4-H youth development	19.1
Home and commercial horticulture	3.1
Natural resources, environmental management, and sustainable agriculture	3.2
Nutrition, food safety, and health	6.3
Total	100

The committee learned that for the 1995-97 biennium, 45 percent of extension service revenue is provided from the general fund, 34 percent from federal funds, 13 percent from county funds, and eight percent from other funds.

The committee reviewed methods used by the NDSU Extension Service to operate efficiently. The committee learned that the extension service uses the following methods to maintain efficiencies:

1. Program planning teams to develop extension programs.
2. Multicounty programming - Involves county agents specializing in certain areas to serve more than just one county.
3. The use of volunteers.
4. Training for professionals.
5. Expanded use of technology.
6. Integration of programs with the Agricultural Experiment Station and other colleges at NDSU.
7. Partnerships and collaboration with other organizations.
8. Sharing information among states.
9. Expanded use of information within the state.

The committee learned that the extension service keeps its programs flexible to meet needs as they develop in the state and that its programs are constantly changing to meet the needs.

The committee reviewed cooperative and similar programs of the NDSU Extension Service and the Department of Human Services and the NDSU Extension Service and the Agriculture Department. The committee learned that the extension service pursues cooperative and collaborative efforts between its organization and other state agencies in order to provide more efficient and effective services. The following are examples of cooperative and collaborative efforts between the Department of Human Services and the NDSU Extension Service:

1. The Department of Human Services contracts with the extension service to provide staffing for a three-county pilot project entitled "Prevention Education Model for Family-Life Education," which provides support for families and youth by addressing personal, family, and community concerns.
2. The preparation and distribution of a 12-month parent newsletter entitled *Parenting the First Year*, which also involves the Department of Health.
3. A cooperative program providing school-age child care services.
4. A program providing education on proper nutrition habits to food stamp households.

The following are examples of cooperative programs between the NDSU Extension Service and the Agriculture Department:

1. One of the Agriculture Department's Plant Protection Division positions is housed on the NDSU campus and works closely with extension service staff.
2. The Noxious Weed Division of the Agriculture Department works closely with the extension service relating to chemical application rates and in the management of weed-eating insects.
3. A cooperative program also involving the adult farm management program, which provides a "farm management for profit" financial and production management training course.

4. In the past four years, the Agriculture Department has provided \$40,000 per year of federal funds to the extension service to conduct education programs relating to ground water protection as part of the special initiatives of the pesticides program.
5. The Agriculture Department and the extension service cooperate to collect unusable pesticides through Project Safe Send.
6. The Agriculture Department and the NDSU Extension Service cooperate in providing agriculture mediation services to farmers experiencing financial difficulties.

#### **Area Resource Centers, Multicounty Units, and Area Specialists**

The committee reviewed the status of area resource centers, multicounty units, and area specialists of the extension service. The committee learned that in 1989 the NDSU Extension Service developed a plan to create area resource centers across the state. The extension service began to implement these centers in 1990 and 1991; however, due to decreasing state funding and opposition to eliminating state funding for county agent positions, the extension service discontinued the development of these centers and began a system of providing extension services through multicounty units. In the multicounty unit system, extension agents specialize in specific program areas and provide services to other counties in their units. Currently, there are 10 multicounty units operating in the state. The extension service has located area specialists across the state, including area specialists in Bismarck, Bowman, Carrington, Devils Lake, Dickinson, Minot, and Valley City.

The committee reviewed services provided by area specialists. The committee learned that area specialists:

1. Complement the services and expertise of extension agents.
2. Reduce state staff travel time from Fargo.
3. Serve large geographic areas in specialized subject areas.

#### **Other Extension Studies and Information**

The committee received reports on a study conducted by the NDSU Extension Service to determine the current impressions in the state of the NDSU Extension Service, to assess future needs, and to determine the role that the NDSU Extension Service should play in meeting identified needs. Through this external assessment study, the extension service identified the following themes:

1. The extension service should be "closer" to citizens.
2. There is a need for local extension agents across the state.
3. More effective marketing efforts are a high priority.
4. The extension service should strive to avoid

duplication of services and eliminate services no longer needed.

5. The NDSU Extension Service needs to stay current with technology.
6. Youth programs are important and needed.
7. If the organization provides quality, packaged information, people will pay for it.

The committee received a report on the fee structure of the NDSU Extension Service. The committee learned that the extension service charges fees for videos, computer software, enhanced publications, indepth workshops, some county and multicounty functions, children of divorce program, pesticide certification program, and 4-H literature.

The committee reviewed other states' extension service systems. The committee learned that all extension service systems are county-based and many states, including Minnesota, are now developing multicounty systems. In addition, the committee learned that many states are making college appointments in schools other than agriculture and human development to expand the services of the extension service. Primarily, the other college appointments are in the areas of business and law. The committee learned that all states' funding mechanisms are a combination of federal, state, and county funds.

The committee received a report on a study commissioned by the Cass County Extension Service to review funding, staffing, organizational structure, and other components of the extension service system. Major recommendations resulting from the study include:

1. The NDSU Extension Service administration should develop a funding structure that defines county fiscal responsibility for local services and allows enhanced funding based on area needs and demographics. All counties should have equal access to state-funded positions, such as area specialists.
2. The NDSU Extension Service administration should support a uniform policy that allows a fee structure to generate funds for extension services but provides access to programs and services on a nondiscriminatory basis.
3. The NDSU Extension Service administration should develop a policy that encourages increased revenue sources such as grants for use at the county level.
4. The North Dakota Legislative Assembly should review and update provisions of the North Dakota Century Code relative to extension services.
5. Implementation of multicounty program units should be continued. New approaches to extension funding and administration are required. Local programming should be identified for each county. County government should control local services. Area services should be identified for county and multicounty

program units. The administration of area services should be done by those counties whose demographics are most appropriate.

6. An integration plan to coordinate extension functions with other related county agencies should be developed.

The committee received reports from other counties, including Adams, Barnes, Bowman, Foster, Golden Valley, Hettinger, Slope, and Wells, regarding the recommendations included in the Cass County report. Major comments include:

1. The need to continue developing the multicounty units which allow the sharing of expertise among a number of counties.
2. The importance of integrating and coordinating extension functions with other related county agencies.
3. The need for the NDSU Extension Service to improve its marketing methods.
4. The importance of maintaining county agents and offices in each county.
5. The importance of youth programs in the state.
6. The need for additional state funding for extension programs.
7. The importance of livestock and range research to the economy of western North Dakota.
8. The importance of technology in maintaining a viable rural economy.

#### Agricultural Experiment Station Programs

The committee reviewed the functions of the Main Research Station and branch research centers. The committee learned that the functions of each are as follows:

- Main Research Station - Conducts fundamental research in all basic sciences and develops the foundation for research field testing.
- Dickinson Research Center - Involved in crop production/improvement research, livestock breeding, feed management, and disease control.
- Langdon Research Center - Involved in crop variety evaluation, crop cultural practices, and seed production.
- Williston Research Center - Involved in dryland crop production, improvement, utilization, and soil management.
- Hettinger Research Center - Involved in crop production and sheep production research.
- North Central Research Center - Involved in crop variety evaluation, seed production, and weed research.
- Carrington Research Center - Involved in dryland and irrigated crop production, cow/calf production, aquaculture, and seed increase.
- Central Grasslands Research Center - Involved in range grazing/ecosystems effects on cow/calf production.
- Agronomy Seed Farm - Involved in foundation seed production.
- Land Reclamation Research Center - Involved

in reclaiming land disturbed by strip mining, oil drilling, or other land disturbances.

The committee received information on the following research priorities of the Agricultural Experiment Station for fiscal year 1996:

1. Cereal disease.
2. Potato breeding.
3. Swine nutrition.
4. Durum quality.
5. Weather systems.
6. Dry edible bean.
7. Food safety and quality.

The following schedule lists the types of projects and related funding conducted by the experiment station in fiscal year 1994:

Commodity	Number of Projects	Funding
Barley, oats, and rye	36	\$2,541,748
Beef	22	\$2,508,709
Biological systems of plants and animals	22	\$1,080,299
Corn	16	\$ 561,298
Oilseeds	44	\$2,386,714
Dairy	9	\$ 765,923
Dry edible beans	15	\$1,629,419
Food, housing, people, and farms	14	\$ 934,181
Miscellaneous and new crops	17	\$ 417,144
New crops	9	\$ 396,939
Potatoes	12	\$1,101,567
Range, forages, and pasture	24	\$2,036,512
Sheep and wool	16	\$1,099,460
Social, economics, and marketing	13	\$1,436,369
Soil, water, land, and climate	26	\$2,760,500
Soybeans	10	\$ 576,259
Sugar	5	\$ 273,263
Swine	11	\$ 915,247
Vegetables	21	\$1,712,057
Weeds	8	\$ 676,009
Wheat	44	\$3,855,380

The committee reviewed the methods used by the Agricultural Experiment Station to develop research project priorities. The committee learned that the Agricultural Experiment Station conducts state, regional, and national research projects.

The system used to develop a research project involves extension and outreach personnel, advisory boards, industry representatives, regional cooperative arrangements, and the United States Department of Agriculture.

The committee learned that 25 percent of the federal funds that the Agricultural Experiment Station receives must be spent on regional research projects.

The committee reviewed the services, programs, equipment inventory, and cropping plans of the branch research centers. The committee learned that the success of new and advancing technologies, including biological research technologies, are very dependent on geographic location. The branch research center system, with locations across the state, allows these technologies to be tested under varying conditions. The roles of

branch research centers include:

1. Conducting final testing and scale up of new agricultural and reclamation production technology.
2. Producing and distributing foundation seed.
3. Educating.
4. Receiving public concerns.

The committee reviewed other states' experiment station systems. The committee learned that the national experiment station system includes 59 stations in four regions. North Dakota is in the 12-state central region. The

national trend in experiment station systems is to integrate further with extension service systems.

### Federal Fund Projections

The committee received information on projected federal fund collections for the extension service and experiment station. The following schedules present the estimated federal cooperative state research education and extension service funds that will be provided to the NDSU Extension Service and North Dakota Agricultural Experiment Station through 2001:

NDSU Extension Service			
Federal Fiscal Year	Estimated Collections Cooperative State Research, Education, and Extension Service (CSREES)	Funding Change From Previous Year	Percentage Change From Previous Year
1995	\$4,405,000	\$(601,404)	(12.0)
1996	\$4,059,000	\$(346,000)	(7.9)
1997	\$3,703,000	\$(356,000)	(8.8)
1998	\$3,555,000	\$(148,000)	(4.0)
1999	\$3,416,000	\$(139,000)	(3.9)
2000	\$3,297,000	\$(119,000)	(3.5)
2001	\$3,183,000	\$(114,000)	(3.5)

North Dakota Agricultural Experiment Station			
Federal Fiscal Year	Estimated Collections Cooperative State Research, Education, and Extension Service (CSREES)	Funding Change From Previous Year	Percentage Change From Previous Year
1995	\$5,542,000	\$ 449,794	8.8
1996	\$5,008,000	\$(534,000)	(9.6)
1997	\$4,395,000	\$(613,000)	(12.2)
1998	\$3,788,000	\$(607,000)	(13.8)
1999	\$3,187,000	\$(601,000)	(15.9)
2000	\$2,850,000	\$(337,000)	(10.6)
2001	\$2,767,000	\$( 83,000)	(2.9)

### Land Reclamation Research Center

The committee received information on Land Reclamation Research Center programs and funding. The committee learned that the Land Reclamation Research Center began operations in 1981 and is collocated with the United States Department of Agriculture's Agriculture Research Service Northern Great Plains Laboratory near Mandan. The center conducts research to determine the best way to return mined land to productive uses.

The following schedule presents Land Reclamation Research Center appropriations from state sources since the 1989-91 biennium:

1989-91	\$827,000 from the lignite research fund
1991-93	\$590,000; \$210,193 from the lignite research fund and \$379,807 from the general fund
1993-95	\$290,000 from the general fund
1995-97	\$290,000 from the lignite research fund

The committee learned that because the Lignite Research Council no longer views the Land Reclamation Research Center's services as a priority in its research efforts, it will not support lignite research fund moneys being utilized for the Land Reclamation Research Center beyond the 1995-97 biennium. The Agricultural Experiment Station believes the Land Reclamation Research Center has served its mission and reported to the committee that it ceased operations of the Land Reclamation Research Center on September 30, 1996.

### Tours

The committee conducted tours of the Main Research Station, the Northern Crops Institute, the Agronomy Seed Farm, Land Reclamation Research Center, Hettinger Research Extension Center, Central Grasslands Research Center, and Carrington Research Extension Center.

## 1997-99 Budget Request

### NDSU Extension Service

The committee received reports on the 1997-99 budget request of the NDSU Extension Service. The committee learned that the 1997-99 general fund budget request for the NDSU Extension Service totals \$13.1 million, \$1.9 million more than the 1995-97 general fund appropriation of \$11.2 million. Major increases relate to the university system salary initiative of \$719,000 and programmatic enhancements relating to crop production systems, youth programs, value-added agriculture, and rangeland management of \$638,000. Budgetary concerns of the extension service include:

1. The level of federal and county funding that will be available to the extension service during the next biennium.
2. Low salary levels that make it difficult to attract and retain qualified workers.
3. The high cost of technology relating to equipment purchases and employee training.

### Agricultural Experiment Station

The committee received reports on the 1997-99 budget request for the Agricultural Experiment Station. The committee learned that the 1997-99 general fund budget request for the Agricultural Experiment Station totals \$31 million, \$3.5 million more than the 1995-97 general fund appropriation of \$27.5 million. Major increases in the 1997-99 budget request include a university system salary initiative of \$1.4 million and programmatic enhancements relating to crop and production systems, value-added agriculture, youth programs, and rangeland management of \$1,362,000.

Budgetary concerns of the Agricultural Experiment Station include:

1. The maintenance of a balanced research program.
2. External pressure placed on the research agenda.
3. Maintenance of the infrastructure.
4. Faculty and staff support.
5. Increasing demand for accountability.

The committee received reports on the proposed animal research facility on the North Dakota State University campus. The committee learned that the federal government has committed 50 percent of the \$10 million project and that the Agricultural Experiment Station is attempting to raise approximately \$500,000 from the community and agricultural groups in the state to reduce the \$5 million general fund match needed for the project. The committee learned that federal fiscal year 1997, which ends September 30, 1997, is the last year the federal funds for the project will be available.

### Other Reports and Testimony

The committee received a report on North Dakota farms and farm families. The committee learned that the number of farms in North Dakota

has declined from 80,000 farms in 1935 to 32,000 in 1992, while the average number of acres per farm has increased from 400 acres in 1935 to 1,300 in 1992. The average age of farm operators is 50 while the average age of the state population is 32.

The committee received a report on county budgets for extension services and the amount of funding a one-mill levy increase would generate by county. The committee learned that county expenditures for extension services for fiscal year 1996 total \$3,049,000 and that the average mill rate of counties based on 1996 county budgets is 2.9 mills. The committee learned that a one-mill levy increase would generate \$1,034,000 statewide.

The committee received other reports and testimony. Major issues, comments, concerns, and suggestions made in the reports and testimony include:

1. The need for branch research centers to address new technology.
2. The importance of the branch research centers to agriculture in North Dakota.
3. The need for counties to have more flexibility to utilize their mill levy collections at their discretion to address individual county needs.
4. The need for branch research centers to maintain adequate reserve funds to address contingencies, low grain and cattle prices, and other needs.
5. The importance of agricultural research to keep North Dakota farmers competitive and current in the international marketplace.

### Recommendations

The committee recommends Senate Bill No. 2024 relating to the NDSU Extension Service which:

1. Changes the name of "county agent" to "extension agent" and "county agent work" to "extension work."
2. Allows flexibility in the requirement that an extension agent file with the county auditor a monthly report regarding the agent's work by allowing either a monthly report or a report within a mutually agreed upon timeframe not to exceed one year.
3. Repeals Section 9 of Chapter 34 of the 1989 Session Laws which provides legislative intent regarding area resource centers to be established by the NDSU Extension Service. Because the extension service is no longer developing the area resource center concept but is now organizing multicounty units to provide extension services in the state, the intent section is no longer applicable.

The committee recommends Senate Bill No. 2025 relating to the Agricultural Experiment Station which:

1. Changes the name of the Main Research Station to the Main Research Center, the Dickinson Research Center to the Dickinson Research Extension Center, the

Carrington Research Center to the Carrington Research Extension Center, and the North Central Research Center to the North Central Research Extension Center.

2. Removes the provision under each branch center relating to keeping detailed records and publishing information that will be of value to the residents of North Dakota and includes the provision in only one section that applies to all centers.
3. Removes the provision authorizing the Williston Research Center to accept grant funds. Authority is included in the center's biennial appropriation.
4. Removes statutory reference to the Board of Visitors of the North Central Research Center.
5. Removes the provision that the Agricultural Experiment Station director is under the direction of the president of North Dakota State University.

The committee considered but did not recommend a bill draft relating to the Agricultural Experiment Station which would have:

1. Removed specific references to the types of research to be conducted at the Williston, Langdon, Central Grasslands, Carrington, Hettinger, and North Central research centers.
2. Provided general language regarding the types of research programs to be conducted by the Agricultural Experiment Station.
3. Removed provisions relating to the administrative structure of the Agricultural Experiment Station.
4. Removed other requirements including requiring final reports by branch research centers and the Agricultural Experiment Station.

#### **BOARD OF ANIMAL HEALTH REPORT**

The Legislative Council assigned the committee the responsibility of receiving the annual report of the Board of Animal Health, pursuant to North Dakota Century Code Section 36-01-08.3. The Board of Animal Health submitted its report relating to its merger with the Agriculture Department and other services provided by the board to the Legislative Council office.

# BUDGET COMMITTEE ON GOVERNMENT FINANCE

The Budget Committee on Government Finance was assigned two studies. Senate Concurrent Resolution No. 4008 directed a study of the state's investment process and the investment of state funds. Section 5 of House Bill No. 1002 directed a study of the unified court system with emphasis on the distribution of court revenues and the allocation of the costs of the system between the counties and the state. The committee was also assigned the responsibility of monitoring the status of state agency appropriations.

Committee members were Representatives Lyle L. Hanson (Chairman), Ron Carlisle, Gereld F. Gerntholz, Roy Hausauer, John M. Howard, Matthew M. Klein, William E. Kretschmar, Andrew G. Maragos, Stacey Mickelson, Jim Poolman, and Al Soukup and Senators Pete Naaden, Larry J. Robinson, and Wayne Stenehjem.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## INVESTMENT OF STATE FUNDS

### Background

Senate Concurrent Resolution No. 4008 directed a study of the state's investment process and the investment of state funds. The resolution directing the study was recommended by the 1993-94 interim Employee Benefits Programs Committee, based upon the need to maximize investment returns on the funds administered by the State Investment Board, which totaled over \$1.5 billion at that time.

The committee reviewed the various funds administered by the State Investment Board, Job Service North Dakota, the State Treasurer's office, and the Board of University and School Lands. The review included looking at fund balances, the performance of investments maintained by the funds, objectives of each fund, and the money managers used by the various state agencies responsible for investing state funds.

The committee received a report on state funds on deposit at the Bank of North Dakota and the interest rates paid by the Bank to state agencies. The committee also received a report on state agency funds on deposit at the Bank, through the State Treasurer's office, and the types of investments used by the State Treasurer's office for these funds. In addition, the committee received information on the types of funds invested on a long-term basis by the institutions of higher education.

### Findings

Upon request of the committee, the Legislative Council staff conducted a survey of neighboring

states regarding investment practices in those states. The survey results indicated that all seven (Michigan, Minnesota, Montana, North Dakota, South Dakota, Washington, and Wyoming) of the states surveyed had written investment policies. The survey also indicated that one state (Michigan) had no limits on the types of investments allowed, three states (Minnesota, South Dakota, and Washington) had a prudent person standard for types of investments allowed, one state (Montana) had a prudent expert standard for types of investments allowed, one state (North Dakota) had a prudent investor standard for types of investments allowed, and one state (Wyoming) had a legal list for types of investments allowed. In addition, some states such as Minnesota and South Dakota also had legal and constitutional lists of allowable investments. The survey also indicated that all the states surveyed used outside money managers to some extent. The use of external money managers ranged from .5 percent of funds being managed externally in Montana to 100 percent of funds being managed externally in North Dakota.

Upon request of the committee, the Legislative Council staff conducted a survey of state agencies and institutions regarding funds maintained and administered by state agencies and institutions. The survey included a request for recommendations relating to the types of investments available for the funds and on requirements as to where the funds are deposited. Of the 98 surveys sent out and returned, 15 contained suggested changes. The total number of suggested changes was 19. The suggestions by major topic are:

Suggested Change	Number of Responses
Allow for additional investment options	8
Change the responsibility for the investing of the fund	4
Be allowed to keep more or all of the earnings on the fund instead of the earnings going to the general fund	3
Increase the interest rates at the Bank of North Dakota	2
Maintain fund separately from the state	1
Change the Bank of North Dakota to a Treasury Department and eliminate the Tax Commissioner and the State Treasurer	1

In response to the suggested changes, the committee reviewed information on the interest rates paid by the Bank of North Dakota on state deposits. The committee determined that as of

September 1, 1996, the Bank's rates were slightly above or very close to the average North Dakota financial institution, depending on the length of the investment. It was also determined that the Bank's rates were only slightly below the United

States Treasury rates. The following table provides a comparison, as of September 1, 1996, of the average North Dakota financial institution investment rates, United States Treasury rates, and the Bank of North Dakota rates:

Length of Investment	Average North Dakota Financial Institution	Bank of North Dakota	United States Treasury Rates
90-day	3.80%	4.13%	5.15%
180-day	5.10%	4.26%	5.31%
One-year	5.34%	5.35%	5.64%
Two-year	5.71%	5.70%	6.00%
Three-year	5.72%	5.70%	6.18%
Four-year	5.97%	5.90%	6.28%
Five-year	6.00%	6.00%	6.38%

The committee received a staff report on State Treasurer cash pool balances as of June 30, 1995, and a report on state agency account balances at the Bank of North Dakota as of that date. The report on the State Treasurer indicated that as of June 30, 1995, the State Treasurer had \$178 million invested in certificates of deposit bearing interest rates ranging from 4.44 percent to 4.46 percent and \$7.3 million in a money market demand account earning 4.02 percent interest. The report on state agency balances at the Bank of North Dakota indicated there was a total of \$339,940,340 on deposit at the Bank of North Dakota by various state agencies and institutions as of June 30, 1995. That total represents all sources of funds including auxiliary services at the higher education institutions.

The State Investment Board was established by the 1963 Legislative Assembly, following a Legislative Council study of the investment of state funds. The State Investment Board consists of the Governor, State Treasurer, commissioner of the Board of University and School Lands, director of the Workers Compensation Bureau, Commissioner of Insurance, three members of the Teachers' Fund for Retirement Board or the board's designees, and three of the elected members of the Public Employees Retirement System Board as selected by that board. The board is required to approve general types of securities for investment by the funds invested under the board's authority. The board is statutorily required to invest the following funds as enumerated in North Dakota Century Code Section 21-10-06:

1. State bonding fund.
2. Teachers' Fund for Retirement.
3. State fire and tornado fund.
4. Workers' compensation fund.
5. Veterans Home improvement fund.
6. National Guard tuition trust fund.
7. Public Employees Retirement System.
8. Insurance regulatory trust fund.
9. State risk management fund.

The Retirement and Investment Office was created by the 1989 Legislative Assembly to coordinate the activities of the State Investment Board and Teachers' Fund for Retirement. The State Investment Board is responsible for overseeing and operating the Retirement and Investment Office.

The committee reviewed the investment processes and procedures of the Retirement and Investment Office. The committee also reviewed the performance of funds administered by the Retirement and Investment Office and the performance of money managers used by the Retirement and Investment Office. The committee determined that the Retirement and Investment Office had adequate procedures and processes in place regarding the investment of state funds. In addition, the committee determined that the proper processes were in place to provide for the monitoring, evaluation, and termination, if necessary, of money managers. The following table of funds administered by the Retirement and Investment Office shows the market value of the funds as of June 30, 1996, and the annual returns for the fiscal years ended June 30, 1995, and June 30, 1996:

Fund	June 30, 1996, Market Value	Fiscal Year 1995 Returns	Fiscal Year 1996 Returns
Statutory funds:			
Teachers' Fund for Retirement	\$ 839,829,000	13.70%	15.63%
Public Employees Retirement System	744,707,000	14.30%	16.09%
Workers' compensation	417,794,000	13.30%	9.50%
State fire and tornado	16,129,000	9.10%	6.45%
State bonding	3,740,000	8.40%	6.98%
Petroleum tank release compensation	2,169,000	12.90%	8.18%
Insurance regulatory trust	5,073,000	10.00%	9.05%
National Guard tuition waiver	344,000	5.00%	5.63%
Veterans Home improvement	422,000	5.40%	5.66%

Fund	June 30, 1996, Market Value	Fiscal Year 1995 Returns	Fiscal Year 1996 Returns
Total statutory funds	\$2,030,207,000		
Contracted funds:			
City of Bismarck employee pension	\$ 13,848,000	15.00%	14.50%
City of Bismarck police pension	6,686,000	15.00%	14.45%
Job Service North Dakota pension	16,010,000	18.60%	24.70%
PERS prefunded health	13,142,000	20.40%	16.45%
Total contracted funds	\$ 49,686,000		
Total all funds	\$2,079,893,000		

The committee reviewed the investment processes and procedures of the Land Department. The committee also reviewed the asset allocation plan of the Land Department and the performance of money managers used by the Land Department. The committee determined that the Land Department had adequate procedures and processes in place regarding the investment of state funds. In addition, the committee determined that the proper processes were in place to provide

for the monitoring, evaluation, and termination, if necessary, of money managers. The committee determined that the Land Department asset allocation appeared to be appropriate for the future of the funds administered by the Land Department. The following table shows the June 30, 1996, allocation of the investments of the permanent funds administered by the Land Department, the value of the investments, and the income yield of the investments:

Asset Class	Investment Percentage	June 30, 1996, Value	Income Yield (Based on May 31, 1996, Trust Reports)
Fixed income	63.70%	\$248,182,000	7.78%
Cash equivalents	1.00%	3,890,000	5.68%
Convertible securities	7.50%	28,976,000	4.65%
Small/mid capital equities	7.50%	28,976,000	2.00%
Large capital equities	12.80%	50,000,000	3.50%
International securities	7.50%	28,976,000	2.00%
Total	100.00%	\$389,000,000	

The committee also reviewed the investment processes and procedures of the State Treasurer and determined that adequate procedures and processes were in place regarding the investment of state funds. In addition, the committee received information from Job Service North Dakota and the North Dakota University System on the investment of funds by each of those agencies.

#### Recommendation

The committee recommends House Concurrent Resolution No. 3002 to study the state's investment process as it relates to the state bonding fund and the fire and tornado fund and to monitor the performance of investments maintained by the State Investment Board and the Board of University and School Lands. It was the committee's opinion that there is potential to generate larger returns on the state bonding fund and the state fire and tornado fund and that further study is needed on those two specific funds.

### COURT REVENUE AND COST ALLOCATION STUDY

#### Background

Section 5 of 1995 House Bill No. 1002 directed a

study of the unified court system with emphasis on the distribution of court revenues and the allocation of the costs of the system between the counties and the state. The study was to include consideration of the allocation of costs and revenues that existed under the existing statutes as well as changes needed to more equitably handle the funding of the unified court system. House Bill No. 1002 also increased filing fees and allocated the increased filing fee revenues between the counties and the state.

The 1995 Legislative Assembly also passed House Bill No. 1131, which increased the allowable court administration fee in a criminal case upon a plea or finding of guilt from 25 percent to 30 percent of the maximum allowable fine. The bill also changed the deposit of forfeited bail from the county general fund to the state general fund and the deposit of bond forfeitures in cases originated by the Attorney General from the state school fund to the general fund.

#### Findings

The committee received information on the number of judges in the unified court system. At the time of court unification there were 26 county court judges and 27 district court judges for a total

	Legislative Estimate for 1995-96	Actual Payments and Student Units for 1995-96	Legislative Estimate for 1996-97	Current Estimate for 1996-97
Per student payments	\$1,757	\$1,757	\$1,862	\$1,862
Tuition fund payments	190	207	190	190
Total payments	<u>\$1,947</u>	<u>\$1,964</u>	<u>\$2,052</u>	<u>\$2,052</u>
Weighted units	125,918	125,630	125,723	124,984

- Total expenditures at the charitable and penal institutions for the first year of the 1995-97 biennium were \$66.6 million, \$3 million less than the estimated expenditures of \$69.6 million. Total revenues for the same period were \$32.2, \$.2 million less than the estimated revenues of \$32.4 million. In total, the possible state general fund fiscal impact is a positive \$2.9 million.
- For the first year of the 1995-97 biennium the average monthly student, resident, and inmate population at the charitable and penal institutions averaged 1,844.84, 13.16 fewer than the estimated population of 1,858. The average monthly full-time equivalent (FTE) positions for the same institutions totaled 1,527.59, 68.56 FTE fewer than the authorized total of 1,596.15.
- Total expenditures at the institutions of higher education for the first year of the 1995-97 biennium were \$196.4 million, \$5.2 million less than the estimated expenditures of \$201.6 million. Total revenues for the same period were \$73.2 million, \$.6 million less than the estimated revenues of \$73.8 million. In total, the possible state general fund fiscal impact is a positive \$4.6 million.
- For the first year of the 1995-97 biennium the average monthly enrollment at the institutions of higher education averaged 34,016, 24 fewer than the estimated enrollment of 34,040.

#### Status of the State General Fund

The committee and the Budget Section heard reports by the Office of Management and Budget regarding the status of the state general fund. At the committee's last meeting, the projected June 30, 1997, general fund balance was \$54.9 million, \$43.7 million more than the June 30, 1997, ending general fund balance of \$11.2 million estimated by the 1995 Legislative Assembly. (As of September 30, 1996, the projected June 30, 1997, general fund balance was \$53.4 million, \$42.2

million more than the June 30, 1997, ending general fund balance of \$11.2 million estimated by the 1995 Legislative Assembly.) The Budget Section report contains a summary of the Office of Management and Budget reports.

#### Agency Compliance with Legislative Intent

The Legislative Council staff prepared a report on state agency compliance with legislative intent for the 1995-97 biennium. The report is based on staff analysis including visitations with agency administrators regarding compliance with legislative intent included in the agencies' 1995-97 appropriation bills. The report also includes changes made to agency operations since the beginning of the 1995-97 biennium, budget concerns, staffing changes, the status of selected special funds, higher education enrollments, and possible deficiency appropriation requests.

#### BUDGET TOURS

The committee conducted budget tours of the State Penitentiary, Missouri River Correctional Center, Roughrider Industries, Youth Correctional Center, and Bismarck State College. On the tours, the committee heard of institutional needs for capital improvements and any problems the institutions may be encountering during the interim. The Budget Section report contains a summary of all the budget tours conducted by the budget tour groups and other committees.

#### OTHER ACTION

The committee received memorandums on oil tax revenues, oil production, and oil market prices. For fiscal year 1996, oil and gas production tax collections were \$13.3 million, \$4.8 million more than the estimated collections of \$8.5 million. Oil extraction tax collections for fiscal year 1996 were \$10.4 million, \$1.3 million more than the estimated collections of \$9.2 million. Production for the period beginning June 1995 through July 1996 was 35,649,357 barrels, 6,042,063 barrels more than the estimated production of 29,607,294. The following table summarizes the quarterly oil prices:

	July - September 1995	October - December 1995	January - March 1996	April - June 1996	July - September 1996
Legislative estimate (WEFA March 1995 estimate)	\$15.92	\$15.47	\$15.06	\$15.28	\$16.29
Actual average posted prices	<u>15.37</u>	<u>15.78</u>	<u>17.23</u>	<u>19.27</u>	<u>19.56</u>
Over (under)	\$(0.55)	\$ 0.31	\$ 2.17	\$ 3.99	\$ 3.27

# BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Budget Committee on Government Services was assigned four studies. House Concurrent Resolution No. 3002 directed the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent, changes in the role of the State Hospital, and expanded community services, including psychosocial rehabilitation centers and clubhouse projects. Senate Concurrent Resolution No. 4058 directed the Legislative Council to determine how out-of-home mental health services to severely emotionally disturbed children may be delivered throughout the state without requiring the relinquishment of custody by parents. Section 10 of Senate Bill No. 2013 directed the Legislative Council to study the library system in North Dakota, including the role and mission of the State Library, cooperative library ventures, and research and information systems. Senate Concurrent Resolution No. 4003 directed the Legislative Council to study the feasibility and adaptability of a long-term funding initiative to make available housing for families who are low income, homeless, or disabled, or who require transitional housing to assist them toward independent living.

Committee members were Representatives

Clarence Martin (Chairman), Rocky Bateman, Lyle L. Hanson, James Kerzman, Joe Kroeber, Allan Stenehjem, Ken Svedjan, Gerald O. Sveen, and Janet Wentz and Senators Judy L. DeMers, Corliss Mushik, David E. Nething, Rod St. Aubyn, Bob Stenehjem, and Jim Yockim.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## MONITORING SERVICES FOR THE MENTALLY ILL AND CHEMICALLY DEPENDENT

House Concurrent Resolution No. 3002 directed the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent, changes in the role of the State Hospital, and expanded community services, including psychosocial rehabilitation centers and clubhouse projects.

### Background

The following schedule presents a historical comparison of funding provided for mental health services of the Department of Human Services, including the Mental Health Division, the State Hospital, and human service centers:

	1989-91 Biennium	1991-93 Biennium	1993-95 Biennium	1995-97 Biennium
Mental Health Division	\$ 739,000	\$ 3,760,322	\$ 2,437,473	\$13,997,736 <sup>1</sup>
State Hospital	50,404,873	53,976,393	50,838,353	52,697,738
Human service centers	<u>15,027,949</u>	<u>17,068,938</u>	<u>23,427,699</u>	<u>20,686,405<sup>1</sup></u>
Total all funds	\$66,171,822	\$74,805,653	\$76,703,525	\$87,381,879
Less estimated income	<u>18,261,517</u>	<u>23,388,992</u>	<u>28,104,086</u>	<u>38,718,328</u>
General fund	\$47,910,305	\$51,416,661	\$48,599,439	\$48,663,551

<sup>1</sup> These amounts reflect action by the 1995 Legislative Assembly, which transferred funding of \$3,298,563 for partial care (\$1,448,939), work activity (\$502,394), and psychosocial rehabilitation centers including clubhouse programs (\$1,347,230) from the human service centers to the Mental Health Division for the 1995-97 biennium. During the second year of the biennium, the department returned funding for the psychosocial rehabilitation centers to the human service centers.

The following schedule presents a historical comparison of the number of persons with serious

mental illness served at the regional human service centers:

Regional Human Service Center	1989-91	1991-93	1993-95	Estimated 1995-97
Northwest	312	317	324	356
North Central	448	400	441	485
Lake Region	200	184	210	231
Northeast	551	529	702	774
Southeast	932	800	913	1,006
South Central	656	488	518	570
West Central	537	459	520	571
Badlands	<u>275</u>	<u>246</u>	<u>311</u>	<u>342</u>
Total	3,911	3,423	3,939	4,335

### Restructuring of Mental Health Division

Section 15 of 1995 Senate Bill No. 2012 provides that the Department of Human Services is to administratively restructure the Mental Health Division to require the division to develop and revise, when necessary, the state mental health plan. The section also provides the Mental Health Division the authority to implement and supervise a unified mental health delivery system and to assure that mental health services provided by the human service centers, the State Hospital, and contracted services are in accordance with the state plan.

The committee heard reports from the Department of Human Services on the status of the restructuring. The Mental Health Division presented its draft plan of services for mentally ill persons that are to be available in each region of the state as follows:

1. Regional intervention service - Provides crisis intervention and immediate access to a range of housing, medical, and counseling services within the community.
2. Medical services - Includes medication monitoring, medication administration, psychiatric evaluations, and psychotherapy/treatment by a licensed psychiatrist.
3. Psychological services - Provides psychological evaluations, psychotherapy, and case and program consultation.
4. Acute treatment - Provides therapy that can be delivered by social workers, psychologists, case managers, or other mental health professionals.
5. Extended care services - Includes case management aftercare, community residential services, partial care/day treatment services, psychosocial rehabilitation center services, supported employment, and community supportive care programs.
6. Children and family treatment services - Includes case management, crisis stabilization, day treatment, family-focused services, long-term intensive in-home services, short-term intensive in-home services, residential treatment facility services, respite and parent support services, therapeutic foster care, and wraparound services.

The Mental Health Division reported that through its review of partial care, work activity, and psychosocial rehabilitation center and clubhouse project services, some duplicative services were found between the human service centers' partial care programs and the psychosocial rehabilitation center services; however, the psychosocial rehabilitation centers and the human service centers are cooperating with the division to eliminate any duplication of services.

The committee learned that the department included funds for the psychosocial rehabilitation centers in the Mental Health Division's budget in fiscal year 1996; however, the department returned the psychosocial rehabilitation center funding to the human service center budgets in fiscal year 1997.

The committee learned that the Department of Human Services merged the Mental Health Division with the Alcoholism and Drug Abuse Division of the department and does not plan to fill the Mental Health Division director position that became vacant during the 1995-97 biennium.

### State Hospital Review

The 1995 Legislative Assembly appropriated \$52.7 million to the State Hospital for the 1995-97 biennium, \$36.4 million of which is from the general fund. The State Hospital is authorized 630.1 full-time equivalent (FTE) positions, 29.1 fewer FTE positions than the 659.2 FTE positions authorized for the 1993-95 biennium. The State Hospital is licensed for 336 beds. The following schedule presents a historical comparison of State Hospital admissions:

Fiscal Year	Admissions
1990	2,304
1991	1,791
1992	1,677
1993	1,614
1994	1,610
1995	1,620
1996	1,679

Representatives of the State Hospital presented information to the committee on State Hospital populations, restructuring, concerns, and needs as follows:

1. Based on action of the 1995 Legislative Assembly, the State Hospital's management structure has been reduced from five senior management positions to three. The three positions are superintendent, medical director, and clinical director.
2. The adult psychiatric services unit, consisting of 180 beds, had an average occupancy during fiscal year 1995 of 82 percent and an average daily population of 148 patients.
3. The chemical dependency services unit, consisting of 56 beds, had an average occupancy during fiscal year 1995 of 91 percent and an average daily population of 51 patients. The average length of stay in the chemical dependency services unit in fiscal year 1995 was 24.8 days.
4. The State Hospital began operation of the James River Residential Treatment Center in July 1995. The center provides long-term psychosocial development services in an eight-bed residential treatment unit for 14- to 17-year-olds with serious emotional problems.
5. The child and adolescent unit, consisting of 24 beds, had an average occupancy during fiscal year 1995 of 70 percent and an average daily population of 17. The average length of stay for each child in fiscal year 1995 was 39.1 days.
6. The State Hospital's 1995-97 revenue is estimated to be \$1.3 million less than

originally projected primarily due to the elimination of the anticipated contract with the federal Indian Health Service to provide psychiatric and chemical dependency services for Native Americans. Because the State Hospital was unable to secure the contract with the federal government for these services for the 1995-97 biennium, approximately \$1.1 million will not be collected. In order to reduce expenditures to make up for the revenue shortfall, the State Hospital is planning to leave certain vacant positions unfilled.

The committee reviewed statutory provisions in North Dakota Century Code Chapter 25-03.1 relating to commitment procedures for seriously mentally ill and chemically dependent individuals.

The committee learned that the State Hospital's Governing Board studied the State Hospital's criteria for admissions, continued and extended stays, and discharge. The State Hospital averages 1,600 admissions per year while other western state hospital admissions average 501 per year. Representatives of the State Hospital presented the following suggestions relating to North Dakota's commitment law resulting from its study:

1. Require all initial commitments to be made to the human service centers. Only those individuals that a human service center determines require State Hospital admission should be forwarded to the State Hospital.
2. Require all emergency commitments to have a cosignature by a mental health clinician.
3. Require that commitments include an order to take prescribed medication so treatment could begin sooner.

The committee learned that the State Hospital's Governing Board will review the suggestions resulting from the study and consider preparing legislation for introduction to the 1997 Legislative Assembly to implement the recommendations.

### Community Services

The Department of Human Services and regional human service center directors and staff presented reports to the committee regarding the implementation of community services for the mentally ill and chemically dependent. Major comments and concerns expressed include:

1. Less resources may be available to meet the needs of clients of the human service centers if federal funds are provided in the form of block grants.
2. There is a need for increased funding for additional local inpatient hospitalizations and more residential treatment options in the community for individuals with serious mental illness.
3. Hospitalizing an individual in the community is not only more cost-effective but provides better treatment results because the individual is not away from family and friends.
4. There is a need for more residential services for chemically dependent individuals.
5. There is a need for more foster care homes, including therapeutic foster care homes for children being released from residential treatment centers.
6. Additional funding is needed for community services to address the downsizing of the State Hospital.

The Department of Human Services presented a report on the status of the children and adolescents at-risk (CAAR) teams in each regional human service center. The committee learned that each CAAR team consists of a psychologist, social worker, addiction counselor, and secretary. Each of these positions is filled at all human service centers.

The committee received the following list of additional programs or enhancements to existing programs identified by regional human service center personnel which in their opinion are needed in order to provide a comprehensive system of services to seriously mentally ill (SMI) and chemically dependent (CD) individuals in need of services in each human service region:

<b>Northwest Human Service Center</b>					
<b>New Program or Program Enhancement</b>	<b>1997-99 Biennium Estimated Costs</b>				
	<b>FTE</b>	<b>General Fund</b>	<b>Federal Funds</b>	<b>Other Funds</b>	<b>Total Funds</b>
<b>Seriously mentally ill programs:</b>					
Social worker III for family therapy/adult mentally ill	1	\$ 21,545	\$ 47,955		\$ 69,500
Psychiatric services (includes medication and contracting of additional psychiatric time)		80,000	100,000	\$ 20,000	200,000
Case management for seriously mentally ill	2	40,145	89,355		129,500
Therapist for partial care	1	19,995	44,505		64,500
Registered nurse - Nursing services especially for emotionally disturbed and mentally ill children	2	41,540	92,460		134,000

New Program or Program Enhancement	1997-99 Biennium Estimated Costs				
	FTE	General Fund	Federal Funds	Other Funds	Total Funds
Residence for eight borderline personality disorder women - Will provide intensive therapies on a daily basis to decrease hospital admissions	9	\$ 378,090	\$ 95,910		\$ 474,000
Contract for occupational therapist to expand the continuum of care to clients		16,000			16,000
Contract hours at transitional living facility to better manage coverage of facility		3,000	6,900		9,900
Additional funding for psychosocial center due to Americans with Disabilities Act requirements. Program money is used for physical changes reducing the quality of services.		100,000			100,000
Chemical dependency programs:					
Long-term residential group home for chronically chemically dependent persons	9	470,500		\$ 10,000	480,500
Expanded funding for men at risk (MAR) program		25,000			25,000
<b>Total Northwest Human Service Center</b>	<b>24</b>	<b>\$1,195,815</b>	<b>\$ 477,085</b>	<b>\$ 30,000</b>	<b>\$1,702,900</b>

**North Central Human Service Center**

Dual diagnosed (SMI/CD):					
Addiction counselor II	2	\$ 128,436			\$ 128,436
Mental health care addiction technician	2	86,286			86,286
Operating expenses for the above FTEs		24,864			24,864
Equipment		8,000			8,000
Semi-independent living - Room and board		24,000			24,000
Semi-independent living - Therapeutic		68,640			68,640
Geriatric psychiatric - Outreach:					
Registered nurse II	1	61,612			61,612
Addiction counselor II	1	64,218			64,218
Operating expenses for above FTEs		12,432			12,432
Equipment		4,000			4,000
Crisis residential - Rent		12,000			12,000
Equipment for crisis residential		2,500			2,500
Regional intervention services (RIS):					
12-hour week children's psychiatric services (contract)		160,992			160,992
Inpatient psychiatric services for children (hospital)		42,300			42,300
Psychiatric cost for children's inpatient (psychiatrist)		7,500			7,500
Medical workup for children's inpatient		2,000			2,000
Additional inpatient psychiatric services for adults (hospital)		8,460			8,460
Additional psychiatric cost for adult inpatient (psychiatrist)		1,500			1,500
Additional medical workup for adult inpatient		400			400
Additional inpatient medical detoxification		11,376			11,376
Additional physician cost for medical detoxification		1,500			1,500

New Program or Program Enhancement	1997-99 Biennium Estimated Costs				
	FTE	General Fund	Federal Funds	Other Funds	Total Funds
Purchase additional medication		\$ 5,000			\$ 5,000
SMI community support - Rhinelander enhancement		20,000			20,000
Adolescent intensive outpatient program:					
Addiction counselor II	1	64,218			64,218
Operating expense for above FTE		6,216			6,216
Equipment		2,000			2,000
Fetal alcohol syndrome (FAS) issues:					
Contractual services with a research team to perform followup outcome studies on women and children at Riverbend (a residential treatment program for addicted women with children and addicted pregnant women)		30,000			30,000
<b>Total North Central Human Service Center</b>	<u>7</u>	<u>\$ 860,450</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 860,450</u>
<b>Lake Region Human Service Center</b>					
Seriously mentally ill/chemical dependency:					
Psychological services (Rolla)		\$ 17,550	\$ 17,550		\$ 35,100
Seriously mentally ill:					
Residential services (6 to 8 semi-independent apartments)	1	350,000		\$ 50,000	400,000
Staff for crisis residential unit (Rolla)	1	38,000	38,000		76,000
Chemical dependency/seriously mentally ill halfway house (Rolla)	1				
Medications for clients (excluding clozaril)		10,000			10,000
Chemical dependency:					
Intensive evening program	1.5	89,500	17,000	24,000	130,500
Case manager aide	1	60,000			60,000
Residential halfway house	.5	350,000			350,000
<b>Total Lake Region Human Service Center</b>	<u>6</u>	<u>\$ 915,050</u>	<u>\$ 72,550</u>	<u>\$ 74,000</u>	<u>\$1,061,600</u>
<b>Northeast Human Service Center</b>					
Establishing alcohol and drug treatment for developmentally disabled and SMI populations	.5	\$ 26,646	\$ 14,348		\$ 40,994
Psychosocial club - Increased funding to reflect higher costs of providing service		10,000			10,000
Short- and long-term psychiatric hospitalization - As a local alternative to State Hospital placement		80,000			80,000
SMI residential services - Increased funding to provide scattered site-supported housing to 30 additional individuals with mental illness		260,304	331,296		591,600
SMI staff services - Two SMI case managers and one registered nurse II to meet projected expansion of caseload	3	114,043	91,272	\$ 12,000	217,315

New Program or Program Enhancement	1997-99 Biennium Estimated Costs				
	FTE	General Fund	Federal Funds	Other Funds	Total Funds
Dual-diagnosis program (SMI/MR):					
Request four FTEs to convert temporaries to permanent staff. Costs reflect increased benefit package.	4	\$ 11,136	\$ 10,699		\$ 21,835
To meet growth in the caseload of dual-diagnosis program as a result of continued deinstitutionalization of individuals from the Developmental Center at Westwood Park	.5	21,449	20,607		42,056
To fill an existing gap in services for individuals who are of borderline intelligence and who have a mental illness	1.5	48,321	46,426		94,747
Additional staffing for transitional living group home - During the 1995-97 biennium it is anticipated that the existing group home will move to a different facility and increase capacity from eight to 12 residents	1	23,167	16,038	\$ 5,346	44,551
Request three FTEs to convert temporaries to permanent staff. Cost reflects increase in benefits.	3	15,910	11,015	3,672	30,597
Ruth Meiers Adolescent Treatment Center - Request to convert three FTEs from temporary to permanent employees. Cost reflects increase in benefits.	3	19,964	14,113	344	34,421
Case management for children with severe emotional disturbances - Request to convert three FTEs from temporary to permanent employees. Cost reflects increase in benefits.	3		40,161		40,161
<b>Total Northeast Human Service Center</b>	<b>19.5</b>	<b>\$ 630,940</b>	<b>\$ 595,975</b>	<b>\$ 21,362</b>	<b>\$1,248,277</b>

**Southeast Human Service Center**

<b>SMI - Case management:*</b>					
Case manager II	2	\$ 33,593	\$ 78,383		\$ 111,976
Mental health care associate	2	83,782			83,782
<b>SMI - Residential:</b>					
Mental health care associate to assist with in-home client services	2	83,782			83,782
<b>SMI - CD:</b>					
Case manager II	1	16,796	39,192		55,988
Mental health care associate	1	41,981			41,981
Addiction counselor I	1	49,288	5,200	\$ 1,500	55,988
Adult and adolescent addiction counselor (outreach within region)	2	122,120		5,000	127,120
Addiction counselor/family therapy	2	122,120		5,000	127,120
Four adolescent crisis beds		180,000			180,000
Addiction counselor developmentally disabled population	1	61,060		2,500	63,560
<b>SMI - Children's services:</b>					

New Program or Program Enhancement	1997-99 Biennium Estimated Costs				
	FTE	General Fund	Federal Funds	Other Funds	Total Funds
Case manager	5	\$ 229,940	\$ 50,000	\$ 12,500	\$ 292,440
Emergency services (RIS)	1	61,060	2,500		63,560
Wraparound funds		42,000			42,000
Psychiatrist - Child	1	265,000	25,000	20,000	310,000
Therapeutic foster care		113,400	66,600		180,000
Intensive in-home		208,000			208,000
School SED day treatment programs		350,000			350,000
<b>Total Southeast Human Service Center</b>	<b>21</b>	<b>\$2,063,922</b>	<b>\$ 266,875</b>	<b>\$ 46,500</b>	<b>\$2,377,297</b>
* Assuming continuation of a federal grant. If grant is not received, there would be an immediate need for one additional case manager II and contract services for representative payeeship.					
<b>South Central Human Service Center</b>					
Expand Valley City supported living project for the SMI (5 clients)		\$ 80,000	\$ 120,000		\$ 200,000
Part-time psychiatrist	.5	140,000			140,000
Corporate guardianship program for SMI and elderly (estimate 24 clients x \$97 per month)		56,000			56,000
<b>Total South Central Human Service Center</b>	<b>.5</b>	<b>\$ 276,000</b>	<b>\$ 120,000</b>	<b>\$ 0</b>	<b>\$ 396,000</b>
<b>West Central Human Service Center</b>					
Counselor aide to assist addiction clients who have special needs (e.g., brain trauma, organic brain syndrome, chronic addiction, etc.)	1	\$ 40,000			\$ 40,000
Residential services (6 beds) for emotionally disturbed late adolescents/young adults		280,000		\$ 90,500	370,500
Additional money management services		20,000			20,000
<b>Total West Central Human Service Center</b>	<b>1</b>	<b>\$ 340,000</b>	<b>\$ 0</b>	<b>\$ 90,500</b>	<b>\$ 430,500</b>
<b>Badlands Human Service Center</b>					
SMI long-term care facility	2	\$ 132,000	\$ 70,000	\$ 24,000	\$ 226,000
<b>Total - All human service centers</b>	<b>81</b>	<b>\$6,414,177</b>	<b>\$1,602,485</b>	<b>\$286,362</b>	<b>\$8,303,024</b>

### Psychosocial Rehabilitation Centers and Clubhouse Projects

Each regional human service center operates a psychosocial rehabilitation center through contracts with private, nonprofit organizations. The purpose of the psychosocial rehabilitation centers is to provide companionship and offer recreational activities for individuals with serious mental illness. Clubhouse projects provide individuals with serious mental illness the opportunity to work in an accepting and supporting atmosphere to rebuild self-confidence, work, and social skills. The individual selects a work unit in which the person will work with other members and staff. Potential work units of clubhouse projects are the maintenance unit, clerical unit, resource unit, business unit, restaurant/snack bar unit, and others. The clubhouse project began in North Dakota during

the 1991-93 biennium. The 1991 Legislative Assembly appropriated \$150,000 from the general fund to begin a clubhouse demonstration project in Minot on October 1, 1991. The clubhouse project in Minot was developed as a program of the Harmony Center (the north central psychosocial rehabilitation center) and provides prevocational skills training for seriously mentally ill individuals. The 1993 Legislative Assembly appropriated \$150,000 from the general fund to continue the clubhouse project for the 1993-95 biennium in Minot and appropriated \$75,000 from the general fund to begin a clubhouse project in Grand Forks during the second year of the 1993-95 biennium. The Grand Forks clubhouse project has been developed as a program of Mountainbrooke, the psychosocial rehabilitation center in Grand Forks. For the 1995-97 biennium, the Legislative Assembly appropriated \$150,000 from the general

fund for the north central region clubhouse project and \$150,000 from the general fund for the northeast region clubhouse project.

The following schedule presents a comparison of funding provided for psychosocial rehabilitation centers, including clubhouse projects, for the 1993-95 and 1995-97 bienniums:

Region	Funding	
	1993-95 Biennium	1995-97 Biennium
Northwest	\$ 115,000	\$ 119,598
North Central	275,000 <sup>1</sup>	275,000 <sup>1</sup>
Lake Region	115,000	115,000
Northeast	200,000 <sup>1</sup>	275,000 <sup>1</sup>
Southeast	125,000	123,945
South Central	151,249	143,687
West Central	145,000	145,000
Badlands	<u>125,000</u>	<u>150,000</u>
Total	\$1,251,249	\$1,347,230

<sup>1</sup>Includes funding for clubhouse projects.

The committee heard presentations from representatives of the psychosocial rehabilitation centers in Minot, Grand Forks, Fargo, Jamestown, Bismarck, and Dickinson. In addition, the committee visited the psychosocial rehabilitation centers in Minot, Grand Forks, Jamestown, Bismarck, and Dickinson. Comments and concerns presented to and discussed by the committee include:

1. Concern that employees of the psychosocial rehabilitation centers are paid less than employees of human service centers.
2. That the method of providing preemployment services to individuals with serious mental illness be allowed to vary between regions provided the regions are experiencing favorable outcomes.
3. Consideration of increasing funding for psychosocial rehabilitation centers to enable the centers to provide salaries at the same level as employees of human service centers.

### Quality Assurance

The committee reviewed methods used by the Department of Human Services to assure that quality services are provided to individuals with serious mental illness or who are chemically dependent. The Department of Human Services licenses each regional human service center on a biennial basis and as a part of the licensure process reviews each human service center's quality assurance program. In addition, periodic informal reviews are conducted of seriously mentally ill and chemically dependent services provided by each human service center. The department also reviews client satisfaction at each center by compiling and distributing the results of client satisfaction surveys every six months. The department does not, however, formally review seriously mentally ill and chemically dependent services provided by contract with private providers, report and evaluate the recidivism of

clients at each center, review client outcomes for each center, or conduct analyses of the correlation between client outcomes and services the client has received.

All regional human service centers have a quality assurance program. All human service centers review employee qualifications and credentials and employees of each human service center are evaluated on an annual basis. All regional human service centers report and evaluate employee caseloads and account for and monitor employee time spent on direct client services and conduct client satisfaction surveys. The human service centers vary on the extent to which they review client outcomes, conduct analyses of the correlation between client outcomes and employee involvement in the case, reporting and evaluating client hospitalizations, and recidivism of clients.

Regarding programs provided by contract with private providers, the human service centers review and evaluate the majority of these programs to determine the level of client satisfaction with the program and the number of client hospitalizations.

The committee reviewed methods and standards of contracting for mental health services in North Dakota and other states, including contracting procedures and contract monitoring methods. Although North Dakota conducts client satisfaction surveys and maintains contact with private providers and clients regarding client hospitalizations, other states also require private providers to submit quarterly and annual reports on the services provided and accomplishments obtained and conduct site visits to review the services being provided by the private provider.

The committee received information on private providers of services to seriously mentally and chemically dependent individuals in North Dakota. The human service centers estimated \$9.7 million, \$5.2 million of which is from the general fund, will be paid to private providers for seriously mentally ill and chemically dependent services during the 1995-97 biennium.

### Managed Care

The committee reviewed managed care, including general concepts, advantages, disadvantages, and possibilities for implementation in North Dakota. The committee learned that managed care combines the traditional roles of insurance companies that pay for health care and health care providers that oversee and deliver care.

Potential advantages of managed care include:

1. Improves the coordination of care by assigning a primary care physician to each enrollee to coordinate services.
2. Improves access to care by including in contracts specific services to improve access.
3. Emphasizes prevention because managed care organizations have a financial incentive to maintain the health of enrollees.
4. Includes quality assurance systems.

Concerns of managed care include:

1. Managed care is more costly to establish, administer, and monitor.
2. Access to care may be limited because managed care organizations may increase their profits by providing fewer or poor quality services.
3. For the recipients who may be in the system for only a few months at a time, managed care organizations have little incentive to provide preventive care that produces cost savings only on a long-term basis.

The committee reviewed a Kaiser Commission report regarding managed care which included the following themes:

1. Impact on access to care - Most managed care studies report a decline in the use of specialist services and emergency rooms under managed care systems. However, there is little evidence that managed care either increases or decreases the number of physician visits, the use of preventive health services, or inpatient hospital care.
2. Impact on health care costs - Cost savings are almost equally divided between studies that reflect managed care program savings and those that reflect managed care program costs similar to or above traditional fee-for-service systems. When savings are achieved in managed care systems, the savings range from five to 15 percent relative to fee-for-service systems. However, the overall savings potential for Medicaid managed care is limited because currently managed care plans focus on the least costly of the Medicaid population groups, children and adults in low-income families.
3. Impact on the quality of care and patient satisfaction - The quality of care in fee-for-service and managed care arrangements is about the same.
4. Impact on special populations - Medicaid covers a wide range of low-income individuals, including families with children, the elderly, people with disabilities, and those in need of long-term care. Most of the studies of Medicaid enrollees in managed care are based on low-income families and do not include the elderly or disabled; therefore, the experience with managed care for special populations is extremely limited.

The committee heard reports from the Department of Human Services and received other information on managed care relating to services for the mentally ill and chemically dependent. The committee learned that most states are developing managed care systems to try to control medical costs. The committee reviewed various managed care systems including fee-for-service, capitation, and shared-risk systems and managed care systems in other states. The committee learned that under a fee-for-service system, the payer assumes all the risk and the provider assumes none of the risk; under the capitation method, the payer shifts all risks to the provider; and under a shared risk system, which most states use, the

payer and the provider share in the risks.

The committee reviewed managed care pilot projects being implemented by the Department of Human Services. The Department of Human Services is developing a pilot project in the northeast region intended to provide specific services, with defined outcomes, to the aid to families with dependent children (AFDC) and poverty level (pregnant women and children) population with the Northern Plains Health Plan.

The committee learned that the Department of Human Services is developing a pilot project in the Badlands human service region intended to be a coordinated effort of the Badlands Human Service Center and St. Joseph's Hospital in Dickinson. The project will involve proactive case management and the continuum of mental health and chemical dependency treatment services to utilize the limited resources available to provide appropriate services in this region.

The Department of Human Services reported on possibilities for the development of a managed care system for providing treatment services at the human service centers, the State Hospital, and the Developmental Center, the effect of managed care on the Medicaid program, and in the delivery of mental health and alcohol and drug abuse treatment services.

The committee considered legislative action necessary to establish a block grant or managed care system for providing mental health and chemical dependency treatment services in one or two human service regions on a pilot basis for the 1997-99 biennium. The committee learned that statutory changes are not necessary to provide for a block grant or managed care system because regional human service centers have authority to move funds between various mental health and chemical dependency treatment programs to meet clients' needs identified by the centers. However, to establish a managed care block grant system, the Legislative Assembly may:

1. Provide a separate appropriation of funds to the Mental Health Division and to the Alcoholism and Drug Abuse Division to be provided in the regions participating in the pilot project.
2. Authorize the Mental Health Division and the Alcoholism and Drug Abuse Division to transfer funding to the regional human service centers participating in the pilot project based on a per capita allocation method that would provide a fixed amount of funding for each person receiving the mental health or chemical dependency treatment services in each participating region for the length of time the person is under the care of the human service center.
3. Provide that each human service center participating in the pilot project spend the funds allocated to the center for these services pursuant to a managed care concept and that each of these centers develop a plan for the mental health and chemical dependency services to be provided under

the managed care concept.

4. Allow for funding transfers within the center's appropriation to provide appropriate services to clients and provide that savings realized by human service centers from providing efficient treatment services may be used to enhance the level of services provided for the mentally ill and chemically dependent persons in that region.

### **Tour Groups**

During the interim, the Budget Committee on Government Services functioned as a budget tour group of the Budget Section and visited the Northeast Human Service Center; State Hospital; South Central Human Service Center; West Central Human Service Center; North Central Human Service Center; Badlands Human Service Center; and the psychosocial rehabilitation centers in Grand Forks (Mountainbrooke), Jamestown (Progress Community Center), Bismarck (Dakota Learning Center), Minot (Harmony Center), and Dickinson (Prairie Rose Activity Center); Dickinson State University; Dickinson Research Extension Center; Home on the Range in Sentinel Butte; and other private mental illness and chemical dependency treatment provider facilities. The committee heard about institutional needs for major improvements and problems institutions or other 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 1997 legislative session.

### **Other Reports**

The committee reviewed information on other states' offices of mental health consumer affairs. The committee learned that 23 states have a mental health consumer affairs office. The committee reviewed the offices in Alabama, Delaware, Iowa, Minnesota, Nebraska, and New Hampshire. The committee learned that the purpose of these offices is to obtain consumer input in developing each state's mental health system. In these states, the mental health consumer affairs offices are located within the mental health division and include one to three FTE positions. The offices' annual budgets range from \$45,000 to \$300,000 per year and funding is provided from the state's general fund or from federal mental health block grant funds.

Pursuant to the committee's request, the Mental Health Consumer Advocates of North Dakota presented a proposal to establish a mental health consumer affairs office in North Dakota. The primary responsibility of the office would be to advocate for change and the office would act as a facilitator and liaison between the bureaucracy, the service system, and the state's consumer movement. The estimated cost to operate the office for the 1997-99 biennium totals \$557,960.

The committee reviewed the costs of increasing the medically needy income level (for Medicaid eligibility) to 100 percent of the income level

allowed for individuals on supplemental security income (SSI). The committee learned that North Dakota may increase the medically needy income standard to the SSI payment level; however, based on federal requirements, the AFDC payment must also be increased. The estimated biennial cost to increase the medically needy income standard to the 1995 SSI payment level is \$33.5 million, \$8.8 million of which is from the general fund.

The committee heard reports on employees of the regional human service centers and private organizations involved in human services related activities. The committee learned that in October 1995 human service centers employed 71 part-time employees which comprised 41.33 FTE positions. Of the 71 part-time employees, 68 work at least 20 hours per week. The human service centers reported employing 54 temporary employees, 11 of whom are full time and 43 of whom are part time.

The committee heard a report on the status of regional intervention service (RIS) programs at the human service centers and the utilization of local hospitals as an alternative to State Hospital admissions. The committee learned that the structure of regional intervention service programs varies at each human service center. Some centers have specific individuals assigned to the RIS team while others involve all center staff in providing the regional intervention services. The committee learned that a number of regional human service centers have arrangements with local hospitals to provide short-term inpatient stays in crisis situations. Regions without specific arrangements with local hospitals use crisis residential units to provide short-term crisis treatment services.

The committee heard other reports from mental health advocacy groups, private providers, and clients on services for the mentally ill and chemically dependent in North Dakota. Major needs and concerns expressed in the reports include:

1. Concern that many human service centers do not have a separate regional intervention service function.
2. The need for more short-term hospitalization services in local communities to reduce State Hospital admissions.
3. Concern that although the human service centers report having complete children and adolescents at-risk teams in place, individuals listed as part of the team may also be responsible for other duties at the human service centers.
4. Concern regarding the lack of funding for services on the Indian reservations.
5. Concern that the Department of Human Services has not implemented programs approved by the Legislative Assembly to address community services in each of the eight regions of the state as envisioned by the Legislative Assembly.
6. Concern regarding the merger of the Mental Health Division with the Alcoholism and Drug Abuse Division of the Department of Human Services and the unfilled Mental

### Recommendations

The committee recommends Senate Concurrent Resolution No. 4001 directing the Legislative Council to:

1. Monitor the continued development of a continuum of services for the mentally ill and chemically dependent, including changes in the role of the State Hospital, and expanded community services, including psychosocial rehabilitation centers and clubhouse projects.
2. Monitor foster care services, including methods used to place juveniles in residential child care facilities and residential treatment centers and methods of setting and levels of reimbursements for residential child care facilities and residential treatment centers.
3. Monitor items of legislative intent relating to mental health and foster care services. The foster care services monitoring portion of this recommendation is explained in the following section of this report.

The committee expressed its support for the services of the psychosocial rehabilitation centers and the clubhouse projects and encourages the Legislative Assembly to consider further expansion of these programs.

### SERVICES TO SEVERELY EMOTIONALLY DISTURBED CHILDREN

Senate Concurrent Resolution No. 4058 directed the Legislative Council to determine how out-of-home mental health services to severely emotionally disturbed children may be delivered throughout the state without requiring the relinquishment of custody by parents.

#### Background

The 1995 Legislative Assembly approved Senate Bill No. 2044 that allows the Department of Human Services to establish a program in up to three human service regions for providing out-of-home treatment services for severely emotionally disturbed children. The bill provides that before a child may be placed in an out-of-home treatment program, the juvenile court must make a judicial determination that the placement is in the best interest of the child. The bill further provides that the department may not require a parent or legal guardian to transfer legal custody of the child in order to have the child placed in an out-of-home treatment program when the sole reason for the placement is the need to obtain services for the child's emotional or behavioral problems. The Department of Human Services estimated the cost of providing this service in three human service regions at \$2,640,000, \$1,320,000 of which is from the general fund and \$1,320,000 of federal funds; however, the 1995 Legislative Assembly did not provide any additional funding for this program.

### Out-of-Home Treatment Services

The committee reviewed the reasons why parents are required to relinquish custody of their children in order to receive state and federal funding for out-of-home treatment services for their children with emotional or behavioral problems. The committee learned that in order to receive state and federal funding for these services, parents must transfer custody, through court action, to the state. The state places these children in the foster care program even though these children, in most instances, are not considered to be deprived, delinquent, or unruly, the categories of children the foster care program is designed to serve. Federal requirements for foster care maintenance payments provide that:

1. The removal of the child from the home is a result of a judicial determination.
2. The child's placement and care (custody) are the responsibility of a state agency or public agency.
3. The child is placed in a foster family home or a child care institution.

Although representatives of the Department of Human Services indicated that these children would be more appropriately served under the Division of Mental Health Services rather than foster care because historically funding has not been provided through the Mental Health Division for these types of services, these children have been served through the foster care program.

The committee reviewed the current costs of all out-of-home treatment services for children in North Dakota. The committee learned that children are placed in the following types of care under the Department of Human Services foster care program:

1. Foster care families - A family providing for the child's care. Children placed with the foster care family are generally younger and have been deprived, neglected, or abused.
2. Therapeutic foster care - A family providing for the child's care. Children placed with a therapeutic foster care family generally have been diagnosed with a psychiatric disorder and oftentimes are in transition from a residential treatment center placement.
3. Residential child care facilities - These facilities include Charles Hall, Dakota Center, Eckert Youth Homes, Harmony House, Home on the Range, Lake Oahe Group Home, Little Flower Freedom Center, and the Prairie Learning Center. Children placed in these types of facilities are generally adolescents who have been deprived or abused, involved in a parent/child conflict, or have character disorders.
4. Residential treatment centers - These facilities include Dakota Center, Luther Hall, Manchester House, and Ruth Meiers House. Children placed in these types of facilities are generally adolescents who have been diagnosed with psychiatric disorders.

For the 1995-97 biennium the Department of Human Services estimates spending a total of

\$30.5 million for foster care services listed on the following schedule:

	General Fund	Federal Funds	Other Funds	Total
<b>Room and Board</b>				
Family foster care homes - All in state	\$ 2,462,106	\$ 3,590,994	\$ 685,451	\$ 6,738,551
Therapeutic foster care homes - Room and board amounts reflected under family foster care homes				
Residential child care facilities:				
In state	\$ 4,107,783	\$ 6,282,112	\$1,340,182	\$11,730,077
Out of state	608,561	930,683	198,546	1,737,790
Total	\$ 4,716,344	\$ 7,212,795	\$1,538,728	\$13,467,867
Residential treatment centers - Room and board amounts reflected under residential child care facilities				
Total room and board	\$ 7,178,450	\$10,803,789	\$2,224,179	\$20,206,418
<b>Treatment and Service Payments</b>				
Family foster care homes - Not applicable				
Therapeutic foster care homes - All in state	\$ 1,289,176	\$ 3,052,018	\$ 127,353	\$ 4,468,547
Residential child care facilities - All in state	507,552	676,735	169,183	1,353,470
Residential treatment centers - In state and out of state	1,054,005	2,634,118	159,042	3,847,165
Total treatment services	\$ 2,850,733	\$ 6,362,871	\$ 455,578	\$ 9,669,182
<b>Other Services</b>				
Shelter care	\$ 50,000	\$ 50,000		\$ 100,000
Independent living	114,945	379,378	\$ 1,051	495,374
Total other services	\$ 164,945	\$ 429,378	\$ 1,051	\$ 595,374
Total Department of Human Services foster care related expenses	\$10,194,128	\$17,596,038	\$2,680,808	\$30,470,974

The committee reviewed the costs of out-of-state treatment services for children. The committee learned that within the foster care program, a number of North Dakota children are placed in out-of-state facilities for services. These children are primarily difficult-to-serve children and for

whom North Dakota does not have an appropriate facility. The following schedule presents the average number of children placed in out-of-state residential child care facilities and group homes for treatment services since 1987 and the cost of those services:

Fiscal Year	Average Number of Children Per Month	Average Cost Per Month	Unduplicated Number of Children	Annual Cost
1995	34	\$ 92,081	70	\$1,104,974
1994	29	\$ 50,241	61	\$ 602,888
1993	26	\$ 47,338	48	\$ 520,713
1992	14	\$ 24,447	33	\$ 293,359
1991	12	\$ 33,523	32	\$ 402,276
1990	37	\$ 88,000	46	\$1,056,004
1989	39	\$113,962	63	\$1,367,546
1988	38	\$103,605	56	\$1,243,259
1987	34	\$ 90,251	49	\$1,083,018

The committee heard status reports from the Department of Human Services on the implementation of 1995 Senate Bill No. 2044, relating to the establishment of an out-of-home treatment services program for severely emotionally disturbed children without requiring parents to relinquish custody in up to three human service regions.

The Department of Human Services committed \$200,000 of funding within the Mental Health Division to begin implementing the services for severely emotionally disturbed children during the 1995-97 biennium. The department estimated that seven to 10 children will receive services in this program prior to the 1997-99 biennium. The Department of Human Services has not included any funding in its budget request or its optional adjustment forms for this program for the 1997-99 biennium.

Based on estimates prepared by the Department of Human Services, the projected cost of providing this program statewide for the 1997-99 biennium totals \$3.2 million, \$1.5 million of which would be from the general fund and \$1.7 million of federal funds. The estimates assume an additional 30 children per month would be receiving out-of-home treatment services.

#### **Testimony**

The committee heard other testimony from advocacy groups and parents regarding out-of-home treatment services for severely emotionally disturbed children. Major comments and concerns expressed to the committee include:

1. Once parents relinquish custody of their child, agencies involved in the child's treatment are not required to involve parents in decisions affecting their child.
2. The \$200,000 that the Department of Human Services allocated for the program for the 1995-97 biennium will not be adequate to meet the needs for services.
3. Parents have difficulty accessing services for their children and relinquishing custody of their children.

#### **Reimbursement Rates for Residential Child Care Facilities**

The committee heard reports from residential child care facilities regarding services provided and service reimbursements from the Department of Human Services. Foster parents, residential child care facilities, and residential treatment centers in North Dakota did not receive a rate increase for the 1996 fiscal year. Although the Department of Human Services 1995-97 budget request included a rate increase for these facilities, during the last few days of the 1995 legislative session 1995-97 foster care rejections made by the Department of Human Services excluded funding for the rate increase; therefore, funding for a rate increase was not appropriated by the Legislative Assembly.

The committee heard a report from the Department of Human Services indicating that it had identified sufficient funds from other areas

within the Children and Family Services Division budget as well as from additional reimbursements by the federal government to provide rate adjustments for the room and board payment for group homes, residential child care facilities, and residential treatment centers effective April 1, 1996, based on the facilities' latest audited expenditure report and would include a 2.9 percent inflationary increase. In addition, the committee learned that effective March 1, 1996, the Department of Human Services increased the maximum service rate for these facilities from \$200 to \$250 per month per child.

The Residential Child Care Facilities Association expressed concern regarding the methodology used by the Department of Human Services in providing rate adjustments for their facilities. Because reimbursement rates are based on previous fiscal year cost reports and because of delays in audits conducted by the provider audit section of the Department of Human Services, the rate adjustments facilities received on July 1, 1996, were for costs of operations that occurred 20 to 32 months earlier.

The committee reviewed residential child care facility reimbursement methods in other states and learned that South Dakota audits its private providers once every four years rather than annually and Montana reimburses the facilities for the amount it would cost the state to provide the service directly rather than basing reimbursements on cost reports of the providers as in North Dakota.

The committee heard other reports and testimony including a report from the Department of Human Services relating to provider audits. The committee learned that the provider audit section is involved in auditing 190 organizations and because of inadequate resources for staff and other factors, audits of providers are sometimes delayed.

#### **Recommendations**

The committee recommends House Bill No. 1036 providing that the Department of Human Services establish a statewide program to provide out-of-home treatment services for a child with a serious emotional disorder without requiring the parents of the child to transfer legal custody of the child.

The committee recommends as part of Senate Concurrent Resolution No. 4001 referred to earlier in this report to monitor services for the mentally ill and chemically dependent during the 1997-98 interim, that foster care services be monitored, including methods used to place juveniles in residential child care facilities and residential treatment centers and methods of setting and levels of reimbursements for residential child care facilities and residential treatment centers, and that items of legislative intent regarding foster care services be monitored.

The committee asked that the Department of Human Services provide information to committee members on the reasons why the residential child care facilities did not receive a rate increase on July 1, 1995.

## **NORTH DAKOTA LIBRARY SYSTEM**

Section 10 of 1995 Senate Bill No. 2013 directed the Legislative Council to study the library system in North Dakota, including the role and mission of the State Library, cooperative library ventures, and research and information systems.

### **Background**

#### **Types of Libraries**

The various types of libraries in North Dakota, and the functions and funding sources for each are:

1. **State Library** - The State Library provides services to the network of public, academic, school, and special libraries established in the state; to state agencies; and to citizens of the state who do not have access to a public library. Funding for the State Library is provided from the state general fund, federal funds, and special funds derived from miscellaneous fees charged by the State Library.
2. **Public libraries** - Public libraries provide services to residents of a community, district, or region. Public libraries include both city and county libraries. Funding for public libraries is provided from city or county property taxes, the state general fund through state aid to public libraries, federal funds, and miscellaneous income received from donations, interest income, and fees charged by each library.
3. **Academic libraries** - Academic libraries provide services to students and employees of the state's universities and colleges and community and private colleges. Academic libraries also serve the residents of the communities and regions in which they are located. Funding for libraries of the state's universities and colleges is provided primarily from the state general fund, tuition income, and federal funds. Funding for community and private college libraries is provided from tuition income and other funding sources for these institutions.
4. **School libraries** - School libraries provide services to students of public and private elementary and secondary schools, special education units, and vocational centers. Funding for school libraries is provided primarily from property tax collections, foundation aid, tuition apportionment, and, in some instances, federal funds.
5. **Special libraries** - Special libraries provide services to employees of business firms, associations, government agencies, or other organized groups whose collections are

limited in scope to the subject area of interest to the company, agency, or organization. Funding for these libraries is provided from the funds of the agency, company, or organization.

#### **State Library**

The State Library was established in 1907 as the Public Library Commission. Responsibility for administering the library has changed over the years from the Public Library Commission to the State Library Commission to the Board of Regents to the State Board of Administration to the Director of Institutions' office and, in 1989, to the Department of Public Instruction.

Current duties of the State Library include:

1. Making rules for the operation of the State Library.
2. Providing and caring for all books and library materials.
3. Employing qualified library personnel.
4. Making library materials available to libraries throughout the state.
5. Promoting and assisting the formation of libraries and improving those already established.
6. Coordinating the efforts of librarianship throughout the state and advising and assisting the extension of qualified public libraries into centers of county or regional (multicounty) libraries.
7. Compiling statistics of the free public libraries of North Dakota and their larger counterparts of county and regional libraries and of the work done at the State Library, and making a full report to the Superintendent of Public Instruction and the Governor.
8. Collecting, maintaining, and making available a reference and reading collection of books, slides, films, and other graphic materials that supplement and support the needs of all libraries in the state.
9. Collecting and maintaining a collection of the publications of the departments and agencies of state government.
10. Conducting research into the conditions of library service in this state and producing written plans for the development and betterment of that service.
11. Compiling union lists of resources of libraries throughout the state.
12. Establishing levels of certification for librarians of the state.

The following schedule presents legislative appropriations provided to the State Library for the 1995-97, 1993-95, and 1991-93 bienniums:

	Biennium		
	1995-97	1993-95	1991-93
FTE positions	29	29.5	25.5
Salaries and wages	\$1,660,013	\$1,614,325	\$1,453,792
Operating expenses	903,412	967,387	1,099,173
Equipment	22,500	22,500	14,500
Multitype library authority	0 <sup>1</sup>	50,000	50,000
Talking Book program	235,271	235,271	
Grants to school libraries	75,000		
State aid to public libraries	880,000	893,000	1,000,000
Other grants	<u>168,000</u>	<u>68,000</u>	<u>50,000</u>
Total appropriation	\$3,944,196	\$3,850,483	\$3,667,465
Less estimated income	<u>1,251,828</u>	<u>1,138,873</u>	<u>994,485</u>
General fund appropriation	\$2,692,368	\$2,711,610	\$2,672,980

<sup>1</sup> The 1995 Legislative Assembly appropriated \$100,000 from the general fund for multitype library authorities; however, the line item was vetoed by the Governor.

### Multitype Library Authorities

Senate Bill No. 2448, approved by the 1991 Legislative Assembly, provided for the establishment of a seven-member Statewide Library Planning Committee and multitype library authorities.

The Statewide Library Planning Committee consists of a state legislator and representatives of the Department of Public Instruction, State Library, a school library media center, a college or university library, a public library, and a special library. The committee is authorized to provide guidance for the development, implementation, and improvement of the multitype library authority network, to set terms and conditions of statewide service contracts with libraries, to determine necessary or desirable interauthority programs or services, to propose standards for service, to conduct periodic performance reviews of multitype library authorities, and to determine the interaction of North Dakota multitype library networks with interstate and national library networks.

The bill provided for the establishment of one multitype library authority during the 1991-93 biennium and for the establishment of one or more multitype library authorities in each biennium thereafter until no fewer than four nor more than eight are in existence.

A multitype library authority is a geographic subdivision within which libraries are organized for the purpose of providing library and information services through cooperation and mutual support.

The 1991 Legislative Assembly appropriated \$50,000 from the general fund for expenses of the Statewide Library Planning Committee and for the establishment of the first multitype library authority. After paying committee member expenses of approximately \$4,000, the Statewide Library Planning Committee used the remaining \$46,000 to establish the first multitype library authority in northwestern North Dakota called the New Dimensions Information Authority which consists of 13 member libraries.

The 1993 Legislative Assembly appropriated

\$50,000 from the general fund to continue the multitype library authority pilot project begun during the 1991-93 biennium in northwestern North Dakota. After paying committee member expenses of approximately \$4,000, the Statewide Library Planning Committee provided planning grants of \$4,000 each for developing two additional multitype library authorities, one in the Bismarck-Mandan area and one in the Minot area. The remaining \$38,000 was provided to the New Dimensions Information Authority to continue its operations.

The Dakota West Cooperating Libraries is the Bismarck-Mandan area library authority and consists of eight member libraries. The North Central Library Authority, which is located in the Minot area, consists of 22 member libraries.

The 1995 Legislative Assembly appropriated \$100,000 from the general fund for expenses of the Statewide Library Planning Committee and for grants to expand or establish multitype library authorities during the 1995-97 biennium; however, this appropriation was vetoed by the Governor.

### Resource Sharing Systems

Major interlibrary resource sharing systems operating in the North Dakota library system include:

1. On-line Computer Library Center (OCLC) - The OCLC is a national library data base centered in Columbus, Ohio. It is the world's largest and most comprehensive data base of bibliographic information. The records of 23 libraries in North Dakota are available on OCLC.
2. Minitex - Minitex is the Minnesota interlibrary loan brokerage service that is a regional (North Dakota, Minnesota, South Dakota) agreement that allows the sharing of library materials among libraries in the three states.
3. On-line Dakota Information Network (ODIN) - On-line Dakota Information Network is the statewide data base that allows access to the collections of 26 academic, public, medical, legal, and state

agency libraries. Member libraries pay 25 cents for each record each member library has listed in the data base. There is no charge to nonmember libraries for accessing the ODIN data base. The ODIN system is maintained through the University of North Dakota and is supported through member charges and state appropriations to the University of North Dakota.

4. InfoLynx - InfoLynx is the data base of the holdings of the Bismarck and Mandan public libraries, the University of Mary, and the Bismarck Public School District.
5. Winnebago - Winnebago is a software system that provides a data base for library holdings on a personal computer. The Minot Public Library and the libraries of the New Dimensions Information Authority use the Winnebago system for their library holdings data base.

### **Library Services**

#### **State Library**

The committee heard a report from the State Library on its services. The committee learned that the State Library provides the following services:

1. Coordination of resource sharing - Includes overseeing interlibrary loan activity in North Dakota.
2. Reference activities - Includes assisting local librarians who need additional material or assistance.
3. Collection development - Includes purchasing unique requested materials and providing services for the blind and physically disabled.
4. Last copy repository - A collection of seldom used items which are generally discarded from other libraries' collections.
5. Services to state government - Provides library and research services to state employees and elected officials.
6. State document depository system - Maintains a circulating state document collection.
7. State aid to public libraries - Provides funding to public libraries.
8. Statewide library development - Assists libraries of all types to acquire necessary hardware, software, and expertise to use statewide and international electronic networks.
9. Continuing education workshops - Coordinates training for North Dakota librarians.

#### **Multitype Library Authorities**

The committee heard reports from representatives of the multitype authorities on the services and goals of multitype library authorities. The committee learned that multitype library authorities enable libraries to work together to improve library services and to coordinate library

materials and services. The goals of multitype library authorities include:

1. Collection development.
2. Staff development and shared staff expertise.
3. Development of connectivity through a shared data base of resources.
4. Development of a timely delivery system.

Benefits of multitype library authorities include:

1. Shared collection development.
2. Reduced duplication of reference and periodical materials.
3. Reduced interlibrary loan demands.
4. Expanded interlibrary loan services to small libraries.
5. Improved communications between libraries.
6. Ability to purchase materials at group purchasing rates.
7. Coordination of training seminars.
8. Peer teaching.

The committee learned that proposed budgetary needs for multitype library authorities for the 1997-99 biennium total \$318,690, \$288,640 from state sources and \$30,050 of local funds.

#### **Library Study Steering Committee**

The committee suggested that North Dakota librarians organize a working group to identify issues affecting North Dakota libraries and to develop proposed solutions for presentation to the committee. The committee learned that the Governor's Advisory Council on Libraries, the State Library, and the North Dakota Library Association organized a Library Study Steering Committee that consisted of representatives of all types of libraries to identify issues and propose recommendations to be considered in the library system study. The steering committee met numerous times and organized a number of statewide forums open to all librarians and interested persons to review and refine the issues and recommendations developed by the steering committee.

The Library study steering committee identified the following focus areas to address as part of the library services study:

1. A statewide library data base with a commitment to resource sharing and delivery.
2. Network/Internet access for libraries using the North Dakota information network.
3. Legislative support and state funding for incentives involving local commitment.
4. The future role of the State Library and local libraries.
5. Development of a governance and administrative structure for the library system and for a data base service system.

The proposed recommendations of the Library Study Steering Committee are included in the "Library Vision 2004" document prepared and approved by the Library Study Steering Committee which contains the planning priorities for statewide library services in North Dakota. Steering committee recommendations presented to

the committee include:

1. Connect North Dakota libraries to the Internet.
  - a. Provide \$1,250,000 of state funding for each of the next four bienniums to establish and maintain a grant program for funding Internet connectivity projects of school districts and libraries.
  - b. Leverage state appropriated funds with local funds and, whenever possible, with federal or private sector funding.
  - c. Develop the North Dakota education and library information network that would include public schools, libraries, SENDIT, the Higher Education Computer Network, the Information Services Division, the State Library, and other organizations to serve all citizens of North Dakota.
2. Establish a statewide comprehensive data base.
  - a. Provide \$95,000 of state funding for the 1997-99 biennium to connect the major library systems currently operating in the state (ODIN, InfoLynx, and Winnebago).
  - b. Consider providing state funding in future bienniums to encourage the migration of the various systems currently operating into one system.
  - c. Provide state funding to offer financial incentives to North Dakota libraries to encourage them to contribute their bibliographic records to the developing statewide data base.
  - d. Involve the proposed North Dakota Library Coordinating Council in establishing general standards and reviewing the creation, migration, or development of any new integrated library automation system within the state to make sure it complies with existing standards of interconnectivity.
3. Convert library catalogs to a standardized machine readable format.
  - a. Provide \$500,000 of state funding for each of the next four bienniums to transfer 500,000 records per biennium to the statewide data base.
  - b. Develop standards and guidelines for local library participation in the statewide comprehensive data base.
4. Establish a Library Coordinating Council that will function as a guiding body for developing statewide library services, which will replace and assume the duties of the Governor's Advisory Council on Libraries and the multitype library authorities statewide planning committee, and which will be responsible for:
  - a. Selecting libraries to receive grants from federal Library Services and Construction Act (LSCA) funds.
  - b. Directing the development and operation of multitype library consortiums and cooperatives.

- c. Formulating policy for statewide library services.
  - d. Developing requests and shaping legislation for state funding for statewide library services.
  - e. Approving grant requests from funding available for grants to individual libraries or consortiums.
5. Provide for the State Library's role to be a strong coordinating agency providing coordination in the areas of training, collection development, interlibrary loan, cataloging and conversion, and administration of appropriated funds for the Library Vision 2004 project and other statewide library services. This recommendation includes adding two full-time field librarians and \$150,000 per biennium to the State Library to provide technical assistance, assist with professional training, and provide consulting services to librarians.

The following schedule presents total projected funding needed to implement the steering committee recommendations as contained in the "Library Vision 2004" document:

Biennium	Funding
1997-99	\$1,995,000
1999-2001	1,900,000
2001-03	1,900,000
2003-05	<u>1,900,000</u>
Total	\$7,695,000

The following is a summary of the funding needed to implement the recommendations for the 1997-99 biennium:

Internet access grants for libraries	\$1,250,000
Internet connection of library data bases	95,000
Library catalog conversion grants	500,000
Library development services	<u>150,000</u>
Total	\$1,995,000

#### Other Recommendations Considered

The committee heard other recommendations from North Dakota librarians regarding the North Dakota library system including:

1. The State Library should act as the lead agent in building coalitions throughout the state for information technology and the development of library cooperatives.
2. The State Library should facilitate statewide access to library resources and reference services for all libraries and citizens who do not have adequate local library facilities.
3. The State Library should work toward the improvement of library services to citizens by providing consultant services to public and school libraries and encouraging the

extension of networking and regional cooperation among libraries.

4. Existing State Library collections should be reduced and be focused to address only special services for the blind and physically handicapped, a professional print and nonprint collection of library science materials, a state documents depository network, and very basic reference services to state government.
5. Statistics from academic, public, school, and special libraries should be collected and compiled, including data on their information services.
6. Research into the conditions of North Dakota library services should be conducted and 10-year plans for the development and betterment of that service should be produced.
7. Levels of certification for North Dakota public and school libraries should be established and ongoing training relating to technology and professional library practices should be provided.
8. Efforts to promote literacy should be encouraged.
9. Changes in state laws relating to libraries and library and information services should be studied.
10. Activities related to the preservation of intellectual freedom should be initiated and supported.
11. The State Library should coordinate the provision of library services to the unserved and underserved areas of the state for a period not to exceed six years or until a local government provides library services in that area.
12. The State Library should establish levels of certification for libraries of the state that will meet the standards recommended by the American Library Association and the North Dakota Library Association.

#### **Other States' Systems**

The committee reviewed other states' library systems and statewide library networks. The committee learned that the South Dakota library system consists of a State Library, academic libraries, public libraries, school libraries, and special libraries. The South Dakota library system does not include multitype library authorities. South Dakota libraries share resources through use of the South Dakota library network that includes collections of the 40 largest libraries in South Dakota.

The Minnesota library system consists of the State Office of Library Development and Services, regional public library systems, academic libraries, school libraries, special libraries, and multitype library systems. The Office of Library Development and Services is part of the Minnesota Department of Education and its mission is to lead the library community in the pursuit of full and efficient library services. Minnesota public libraries are organized into 12 regional public

library systems and Minnesota has seven multitype library systems. Minnesota libraries maintain 16 different on-line catalog systems containing the materials of Minnesota libraries. Minnesota is in the process of planning for a statewide on-line library information system that will be considered by the 1997 Minnesota Legislature.

#### **Library Tours**

The committee conducted tours of the State Library, Grand Forks Public Library, and Minot Public Library. The committee learned that the State Library provides services to the disabled through its Talking Book program and Dakota Radio Information Service, that the Grand Forks Public Library requested 489 documents from other libraries while it provided 4,176 documents to other libraries in fiscal year 1994, and that the Minot Public Library makes computer terminals providing Internet access available to its patrons.

#### **Other Reports and Testimony**

The committee received other reports and testimony from librarians and library users regarding the North Dakota library system. Major comments, concerns, and recommendations made include:

1. The State Library should provide more consulting and technical support to libraries for developing their computer systems and for other library service needs.
2. The State Library plays an important role in coordinating interlibrary loan activity in North Dakota.
3. Small library services improve as a result of joining a multitype library authority.
4. Continuing the Dakota Radio Information Service for the blind, visually impaired, and reading disabled in North Dakota is essential.

#### **Recommendation**

The committee recommends House Bill No. 1035 that:

1. Establishes a North Dakota Library Coordinating Council consisting of 20 members that will:
  - a. Assist in planning, coordinating, and evaluating the services and programs of libraries in the state.
  - b. Administer the duties of the Governor's Advisory Council on Libraries and the Statewide Library Planning Committee to oversee the development of multitype library authorities.
  - c. Advise the State Librarian on the distribution of grants to libraries, except for state aid to public library grants.
  - d. Facilitate the development of a comprehensive statewide electronic data base, generate statewide resource sharing, and encourage electronic networking among all types of libraries.
  - e. Strengthen and support the State Library in its role of coordinating the extension

- and improvement of library services in the state.
- f. Support and strengthen regional library cooperatives in extending and improving all library services in the state.
  - g. Inform the public and governing bodies of the goals and objectives of the North Dakota Library Coordinating Council and of the role of libraries in assuring equitable access to information technology and basic library service.
  - h. Support literacy projects.
  - i. Facilitate the coordination of statewide library services.
2. Changes the powers and duties relating to the State Library by removing reference to specific materials collections of the State Library and by adding the following duties:
- a. Focus the State Library's collection.
  - b. Assist libraries in developing local standards and guidelines.
  - c. Promote and assist in the development of regional library cooperatives, including multitype library authorities.
  - d. Promote and assist libraries in the state.
  - e. Develop and maintain a computerized, comprehensive, bibliographic, statewide data base for storing library records that allows residents unmediated, seamless, direct access to library catalogs with a common interface and a common set of commands.
  - f. Coordinate interlibrary loan activities.
  - g. Arrange for continuing education and training programs for library personnel.
  - h. Provide technical assistance to library personnel.
  - i. Distribute grants to libraries within the limits of legislative appropriations.
  - j. Provide staff services to the North Dakota Library Coordinating Council.
3. Expands North Dakota Century Code Chapter 54-24.3, which relates to the administration of multitype library authorities by replacing multitype library authorities with regional library cooperatives that would include multitype library authorities and other organizations of one or more types of libraries.
4. Provides an appropriation of \$125,000 from the general fund for the 1997-99 biennium to the State Library to be distributed as directed by the North Dakota Library Coordinating Council for the following:

Internet access grants for libraries	\$ 30,000
Interconnection of library data bases	<u>95,000</u>
Total general fund	\$125,000

5. Repeals sections relating to the Statewide Library Planning Committee and printing costs of the State Library.

### **NORTH DAKOTA HOUSING NEEDS**

Senate Concurrent Resolution No. 4003 directed the Legislative Council to study the feasibility and

adaptability of a long-term funding initiative to make available housing for families who are low-income, homeless, or disabled, or who require transitional housing to assist them toward independent living.

### **North Dakota Housing Assessments**

In 1992 the Housing Finance Agency conducted an assessment of North Dakota housing needs. The assessment addressed current and projected market demand and supply for housing in North Dakota, structural conditions of North Dakota housing, financing and affordability, and the effectiveness of existing federal, state, and local programs. The final report of the assessment includes the following 13 action areas to improve housing in North Dakota:

1. Increase the affordability of home ownership.
2. Increase the quality and condition of housing in selected areas of the state.
3. Make home construction, rehabilitation, buying, selling, and renting as timely, cost-effective, and accessible as possible.
4. Clear multifamily bottlenecks in selected markets.
5. "Jump start" housing in economically developing communities.
6. Expand transitional housing for homeless and special needs groups.
7. Increase homeless shelter operating funds.
8. Move toward independent living for special needs groups.
9. Coordinate housing and community-based services.
10. Continue to make physical accessibility improvements.
11. Improve Indian reservation housing.
12. Provide migrant worker housing.
13. Make a range of senior housing available in urban areas.

The Office of Intergovernmental Assistance prepared a comprehensive housing affordability strategy update for North Dakota for fiscal years 1994 through 1998 as required by the federal National Affordable Housing Act of 1990. The report includes regional needs identified at meetings held across North Dakota and the following priorities established to meet housing and supportive service needs in North Dakota for the years 1994 through 1998:

1. Improve the quality and condition of existing housing for very low- and low-income households.
2. Increase the affordability of home ownership.
3. Increase the number of housing units accessible to persons with disabilities.
4. Increase the number of senior housing arrangements.
5. Increase the supply of affordable multifamily housing units.
6. Provide emergency housing for homeless individuals and homeless families with children.
7. Create more transitional housing for the homeless and persons who are seriously mentally ill which will assist in leading

- people to independent living.
8. Provide more opportunities for independent living for persons with special needs.
  9. Provide more housing for migrant workers.
  10. Enact a fair housing law comparable to the federal Fair Housing Act, strengthening landlord/tenant rights laws, and create a Fair Housing Advisory Council.
  11. Create an education program to keep lenders, developers, nonprofit organizations, cities and counties, and other interested housing entities informed on all state and federal housing programs.
  12. Provide assistance to the homeless to enable them to make the transition to permanent housing.
  13. Prevent low-income individuals and families with children from becoming homeless.

### **State Agency Housing Programs**

The committee heard reports from the Office of Intergovernmental Assistance regarding its housing-related programs. The committee learned that the Office of Intergovernmental Assistance provides the following housing-related programs:

1. Emergency shelter grants program - Provides assistance to homeless and domestic violence shelters in North Dakota.
2. Low-income shelter assistance program - Provides assistance with heating and cooling costs to shelters qualified under the emergency shelter grants program.
3. HOME program - A federally funded program that provides home ownership assistance and rental production/assistance.
4. Housing acquisition and rehabilitation program - Provides assistance to low-income families to purchase or rehabilitate homes.
5. Security deposit program - Assists families by providing funding for security deposits.
6. Weatherization program - Provides funding to improve the energy efficiency and comfort level of residences occupied by low-income households.
7. Community development block grant program - Provides funding to cities and counties to assist with housing rehabilitation assistance. In 1994, 219 households received assistance through this program.

The committee heard a report from representatives of the Housing Finance Agency regarding its housing-related programs. The committee learned that the Housing Finance Agency focuses primarily on finance-related programs. The Housing Finance Agency administers the following housing-related programs:

1. First-time home buyer loan program.
2. Rental assistance programs.
3. Low-income housing tax credit.
4. Downpayment and closing cost assistance program.
5. Interest rate assistance program.
6. Home ownership and rehabilitation program.
7. Application processing services.

8. Rural real estate mortgage program.
9. Home buyer education incentive program.
10. Helping Housing Across North Dakota (Helping HAND) program.

### **Other Reports and Testimony**

The committee heard a report from the Office of Intergovernmental Assistance on North Dakota housing needs and recommendations to improve housing. Needs, concerns, and recommendations expressed to the committee include:

1. The primary housing need in all regions of the state continues to be rehabilitation of existing housing.
2. A growing need is adequate housing for the elderly and for persons with disabilities, especially in an integrated independent setting.
3. There is a need for more affordable, accessible housing units.
4. There is a need for scattered site housing units for other persons with disabilities, including persons with developmental disabilities, serious mental illness, and head injuries.
5. Because affordability is an important housing issue that prevents many from obtaining home ownership, manufactured housing can play an important role in meeting the needs of persons with disabilities, large families, and the elderly. However, many communities in North Dakota zone manufactured housing to limited areas. Historically, manufactured homes have been limited to mobile home parks; however, in many parts of the country, these homes are now allowed to be placed on a foundation on a residential lot similar to site-built homes.
6. Zoning restrictions in many communities include minimum lot sizes which adds to the cost of housing. Many areas of the country now permit smaller lot sizes which enables developers to build more affordable homes.
7. The state should adopt a fair housing law similar to the federal Fair Housing Act which would allow the state direct involvement in assuring that all people have equal access to housing.
8. The state should consider zoning legislation to require all communities to meet minimum standards and to interpret those standards in the same way.
9. There is a need for more consistent interpretation of building codes by local officials.
10. Additional building code requirements enacted by local officials increase the cost of housing construction.

The committee heard reports from representatives of the North Dakota Association of Builders, North Dakota Association of Realtors, North Dakota League of Cities, and the North Dakota Manufactured Housing Association regarding building codes, zoning restrictions, and

manufactured housing. Concerns of the North Dakota Association of Builders include:

1. Government rules add approximately 25 percent to the cost of homes.
2. While uniform building code standards are desirable, local flexibility needs to be allowed.
3. Because the federal government utilizes a manufactured housing code it does not allow any discretion by local governments regarding manufactured housing.

The North Dakota Association of Realtors recognizes the need for building code and zoning restriction uniformity; however, the association supports local flexibility to address local conditions. The Association of Realtors believes more affordable homes may be provided in North Dakota by eliminating certain government regulations such as impact fees, transfer fees, city/county engineering fees, minimum lot size, street widths, double sidewalks, excessive setbacks, and density requirements that increase the cost of homes.

The North Dakota League of Cities supports local government flexibility regarding building codes and zoning restrictions. The League of Cities indicated that because of each city's unique characteristics, it would be difficult to apply uniform zoning restrictions statewide.

The North Dakota Manufactured Housing Association believes that:

1. Affordability is an overriding housing issue that prevents many from obtaining home ownership.
2. Manufactured housing can play an important role in solving the problem in North Dakota.
3. The role of manufactured housing has been greatly impeded as a result of communities restricting manufactured housing to limited areas.

The Manufactured Housing Association suggested that the committee consider recommending a bill draft to amend the state building code to provide that a county, township, or city may not adopt or enforce a zoning ordinance or regulation that prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured

home if the manufactured home meets certain requirements.

The committee learned that Burleigh County, Stark County, Bismarck, and Dickinson have amended their codes to allow manufactured housing in areas zoned for single-family dwellings. By allowing manufactured homes to be located on foundations similar to site-built homes, individuals purchasing these homes can obtain 30-year loans with lower downpayments. When manufactured homes are limited to mobile home parks, individuals need downpayments of up to 50 percent and loan terms may not exceed seven years.

#### **Recommendation**

The committee recommends Senate Bill No. 2026 to amend North Dakota Century Code Chapter 54-21.3 to provide that:

1. The governing body of a city, township, or county may not adopt or enforce a zoning ordinance or regulation that prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if the manufactured home bears an appropriate seal that indicates the home was constructed in accordance with the standards of the state building code for manufactured homes under subsection 2 of Section 54-21.3-03.
2. The governing body may require a manufactured home to be located and installed in accordance with the same standards for a foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot.
3. The governing body may require the manufactured home to meet certain specifications relating to minimum interior area, minimum exterior width, roof and exterior wall requirements, and a removable towing apparatus.
4. The governing body may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

# BUDGET COMMITTEE ON HOME AND COMMUNITY CARE

The Budget Committee on Home and Community Care was assigned three studies. Section 1 of 1995 Senate Bill No. 2460 directed a study of the appropriate quantity, distribution, and use of the state's resources and services in addressing the needs of the elderly residents. Senate Concurrent Resolution No. 4030 directed a study of the continuum of care for North Dakotans with Alzheimer's and related dementias and the needs of caregivers and families of patients with Alzheimer's and related dementias. Section 6 of 1995 House Bill No. 1006 directed a study of the licensing of home health care providers, including a determination of the appropriate agency to be responsible for the licensing of home health care providers.

Committee members were Senators Corliss Mushik (Chairman), Judy L. DeMers, Elroy N. Lindaas, Harvey Sand, Rod St. Aubyn, Harvey D. Tallackson, and Russell T. Thane and Representatives Merle Boucher, James O. Coats, Gereld F. Gerntholz, Steve Gorman, Howard Grumbo, James Kerzman, Richard Kunkel, Clara Sue Price, Ben Tollefson, and Janet Wentz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## STUDY OF THE NEEDS OF THE ELDERLY AND PERSONS WITH ALZHEIMER'S AND RELATED DEMENTIAS

Section 1 of 1995 Senate Bill No. 2460 directed a study of the use of the state's resources and services in addressing the needs of the elderly residents. Senate Concurrent Resolution No. 4030

directed a study of the continuum of care for North Dakotans with Alzheimer's and related dementias. The committee considered these study areas together. Some of the reasons cited for the study of the needs of the elderly included the significant increase in nursing home costs and the need to develop less costly alternatives to nursing home care, such as home and community-based services. The reasons cited for the study of Alzheimer's and related dementias include that Alzheimer's is the fourth leading cause of death and its prevalence in North Dakota is expected to increase to 7,756 people by the year 2000. Also, as the life expectancy of the state's population is increasing, a higher incidence of Alzheimer's and related dementias can be expected.

### Background

North Dakota has 7,190 skilled nursing care beds and 1,490 basic care beds, for a total of 8,680 institutional beds. This represents an average of 75.63 skilled beds per 1,000 of elderly over age 65 and 15.67 basic care beds per 1,000 of elderly, for a total of 91.3 beds per 1,000 of elderly. Approximately 3,980 of these beds are occupied by persons eligible for medical assistance, or 55 percent of the total. The average length of stay in North Dakota long-term care facilities is 3.4 years, compared to the national average of 2.6 years.

The national average of nursing care beds per 1,000 of elderly population is approximately 50.

### Elderly Continuum of Care Funding

The following is a summary of the 1995-97 appropriations for the components of North Dakota's continuum of care for the elderly:

Service	1995-97 Budget		
	General Fund	Other Funds	Total
Nursing home care	\$58,532,369	\$158,228,677	\$216,761,046
Basic care	3,420,771	1,562,481	4,983,252
Medicaid waiver - Elderly and disabled	1,318,818	2,924,922	4,243,740
Service payments for elderly and disabled (SPED)	7,131,840	375,360	7,507,200
Expanded SPED	<u>1,423,266</u>	_____	<u>1,423,266</u>
<b>Total</b>	<b>\$71,827,064</b>	<b>\$163,091,440</b>	<b>\$234,918,504</b>

### Elderly Continuum of Care Services

The following is a summary of the services in the continuum of care for the elderly:

- Nursing home care.** Services are provided in nursing homes and funded by the federal medical assistance (Medicaid) program for eligible recipients. The program is funded with federal, state, and county funds. Federal financial participation rates

budgeted for the 1995-97 biennium are 68.73 percent the first three months, 69.06 percent the next 12 months, and 68.8 percent for the last nine months. The actual rate for the last nine months is 67.73 percent. The state pays 85 percent and counties pay 15 percent of the nonfederal share of the Medicaid program (North Dakota Century Code Section 50-24.1-03).

2. **Basic care.** Services are provided in basic care facilities to persons that are Medicaid-eligible and, based on a functional assessment, determined eligible for services. The state pays 70 percent of the cost of the basic care program and counties pay 30 percent. Senate Bill No. 2012 (1995) delays rate equalization for basic care facilities to June 30, 1997. Section 22 of 1995 Senate Bill No. 2037 requires the Department of Human Services with the cooperation of county agencies to develop a formula for determining the appropriate share of basic care costs to be paid by each county.
3. **Medicaid waiver for the aged and disabled.** Services are provided in lieu of nursing home placement under a waiver received from the federal government for eligible elderly and disabled. Recipients must be Medicaid-eligible and in need of the level of care provided in a nursing home.
4. **Service payments for elderly and disabled program.** Services provided in

home and community-based settings to functionally impaired elderly and physically disabled persons to allow persons to avoid institutionalization. Services provided include family home care, homemaker service, home health aid, respite care, case management, nonmedical transportation, chore service, adult foster care, adult day care, and personal care. The state pays 95 percent of the cost of the SPED program and counties pay five percent.

5. **Expanded SPED program.** Provides basically the same services as the SPED program with different program and financial eligibility criteria. The state pays the entire cost of this program.

#### North Dakota Elderly Population

The following is a summary of North Dakota's elderly population by state planning regions and by age category:

	Elderly Population (Age 65+) by Region		
	1990	2000	2010
Region 1 - Williston	4,665	4,956	4,941
Region 2 - Minot	13,383	13,780	13,800
Region 3 - Devils Lake	7,495	7,652	7,589
Region 4 - Grand Forks	11,676	12,260	12,405
Region 5 - Fargo	17,419	18,817	19,191
Region 6 - Jamestown	13,624	13,836	13,631
Region 7 - Bismarck	16,324	18,129	18,424
Region 8 - Dickinson	6,469	6,891	6,979
<b>Total</b>	<b>91,055</b>	<b>96,321</b>	<b>96,960</b>

Age	Elderly Population by Age Category				
	1990	1995	2000	2005	2010
65-69	24,950	25,377	24,570	23,554	24,873
70-74	22,591	22,860	23,396	22,531	22,023
75-79	18,990	19,519	19,534	19,871	19,709
80-84	13,284	14,165	14,327	14,198	14,846
85-89	7,348	8,415	9,119	9,162	9,360
90-94	2,905	3,466	3,910	4,202	4,350
95	987	1,265	1,465	1,648	1,799
<b>Total</b>	<b>91,055</b>	<b>95,067</b>	<b>96,321</b>	<b>95,166</b>	<b>96,960</b>

#### Task Force on Long-Term Care Planning

A Task Force on Long-Term Care Planning was formed and cochaired by the State Health Officer and the executive director of the Department of Human Services. Membership included representatives of provider and senior related organizations, Department of Health, Department of Human Services, North Dakota Association of Counties, and the North Dakota Long Term Care Association. The mission of the Task Force on Long-Term Care Planning was to assist the executive and legislative branches of government in the design of a long-term care system responsive to the needs of North Dakota's elderly in a

cost-effective manner and to assist in the development of incentives to change the long-term care system into a responsive cost-effective system.

The committee met with the Legislative Council's Insurance and Health Care Committee and the State Health Council to receive the recommendations of the Task Force on Long-Term Care Planning and to receive public input. The task force recommendations became the starting point for development of bill drafts by the committee. Several recommendations of the Task Force on Long-Term Care Planning were assigned to the Insurance and Health Care Committee. Please refer to the report of that committee for

those recommendations.

on Long-Term Care Planning long-range recommendations and the recommendations made for consideration by the 1997 Legislative Assembly:

**Task Force on Long-Term Care Planning  
Recommendations**

The following is a summary of the Task Force

<b>Service Inventory, Distribution, and Alternatives</b>	
<b>Long-Range Recommendation</b>	<b>Recommendation to the 1997 Legislative Assembly</b>
<p><b>Institutional Care</b> Establish economic incentives to encourage the reduction of nursing facility bed capacity to 60 beds per 1,000 of population over age 65 by the year 2002 (currently 75 beds per 1,000).</p>	Extend or make permanent the legislative moratorium on licensure of additional nursing facility and basic care beds.
<p><b>Hospital Swing Beds</b> Case management be available to clients prior to admission to a swing bed.</p>	Require the resident assessment instrument (RAI) to be used by all swing bed facilities as a tool for planning resident care and the "resulting minimum data set" required of nursing facilities also be collected from swing bed facilities. This may be accomplished under rulemaking authority of the State Health Council.
<p><b>Veterans' Service Capacity</b> Continue to study to quantify the veteran population in need of services.</p>	The task force does not support the development of additional long-term care veterans' beds.
<p><b>Alzheimer's and Related Dementias</b> Adjust the existing institutional service capacity to meet the needs of the Alzheimer's and related dementias population with a greater emphasis on social services for clients without significant medical conditions.</p>	Establish several pilot projects to explore the financial and service viability of converting existing beds to a specific service environment for Alzheimer's and related dementias patients at a cost less than nursing home care with results available for the 1999 Legislative Assembly. This may require legislative authorization to allow the conversion of bed capacity.
<p><b>Services and Housing Component Definitions</b> Establish a pilot project in one region of the state involving the pooling of service dollars with innovative service delivery experiments initiated under the alternative services program authorized by North Dakota Century Code Section 23-01-04.3.</p>	Modify statutory definitions, including basic care, assisted living, and congregate care.
<p><b>Native American Long-Term Care Access</b> Study Native American long-term care needs and access to appropriate service.</p>	Establish effective case management and long-term care services on Indian reservations and service areas.
<p><b>Isolated Rural Elderly/Home and Community-Based Service Provider Availability/Training of Qualified Service Providers</b> Continue to study the means of expanding service availability, including options for training additional qualified service providers.</p>	No action recommended.
<p><b>Geropsychiatric Service Adequacy</b> Continue to monitor this issue pending the completion of studies by the State Hospital.</p>	No action recommended.
<p><b>Pooling of Service Reimbursement Sources</b> Pool service reimbursement payment sources to provide increased flexibility or portability of service payments to allow payment to flow to a broadened array of housing options.</p>	No action recommended.
<b>Long-Term Care Financing</b>	
<p><b>Nursing Facility Payment Policy</b> Encourage nursing facilities to reduce the number of beds and provide incentives to deliver alternative home and community-based services through carefully planned changes in the payment system.</p>	Authorize the Department of Human Services to analyze the current payment system, including reviewing current residents who would most likely receive necessary services in alternative settings and to estimate the cost

<b>Long-Range Recommendation</b>	<b>Recommendation to the 1997 Legislative Assembly</b>
	<p>savings of maintaining these residents in alternate settings as compared to nursing facilities.</p> <p>Require the department to conduct a study of nursing facility and other residential care systems to determine what financial, regulatory, or other impediments exist that prevent the development of alternative services.</p> <p>Direct the department to develop financial incentives to encourage nursing facilities to reduce the number of beds and to develop alternative long-term care services.</p> <p>Encourage the department to develop this concept with the assistance of an advisory committee receiving input from consumers, providers, and government and require the department to present the results of this study to the 1999 Legislative Assembly.</p>
<p><b>Nursing Facility Bed Capacity</b> Change the current policy that motivates facilities to keep a high occupancy rate in order to maximize reimbursement which is counterproductive to the goal of providing services in the least restrictive, most cost-effective environment.</p>	<p>Provide a permanent moratorium on the construction of additional nursing facility and basic care beds.</p> <p>Establish a "bed bank" for nursing facility beds no longer licensed which would be reallocated to other localities as needed, with the reallocation occurring only if a shortage of nursing facility beds exists after full implementation of home and community-based services.</p>
<p><b>Managed Care</b> Managed care may play a role in the delivery of long-term care services and could result in the development of alternative care. Because of limited experience and knowledge of the effects of managed care on long-term care services, the issue must be approached cautiously and systematically.</p>	<p>Encourage the Department of Human Services to explore the potential for implementation of a managed care system for long-term care services.</p>
<p><b>Long-Term Care Insurance</b> Promote the purchase of long-term care insurance to reduce reliance on the Medicaid program for payment of long-term care services.</p>	<p>Provide a tax incentive for the purchase of long-term care insurance available to individuals filing the short tax form; provide a tax incentive to employers who offer long-term care insurance to employees; create a "CHAND-type" product for the sale of long-term care insurance to individuals refused coverage because of preexisting conditions; require insurance companies to pay for home or community-based services provided by a provider that meets recognized standards, without requiring licensure; and encourage insurance companies to offer home and community-based service coverage options when marketing their products to potential policy owners.</p>
<p><b>Transfer of Assets</b> Allow for the orderly transition of assets without encouraging individuals to impoverish themselves in order to qualify for Medicaid services.</p>	<p>Apply the Uniform Fraudulent Transfer Act to asset transfers to discourage individuals from transferring assets for Medicaid eligibility and set aside a percentage of state funds generated from the savings resulting from the asset transfer law to conduct an educational effort discouraging the use of a transfer of assets to become Medicaid-eligible.</p>
<p><b>Spousal Impoverishment</b> No action recommended.</p>	<p>Extend the spousal impoverishment provisions, currently available to spouses of nursing home residents, to spouses of individuals receiving home and community-based services and reduce the maximum asset allowance for spousal impoverishment to reduce state costs.</p>

Long-Range Recommendation	Recommendation to the 1997 Legislative Assembly
<b>Case Management</b>	
<b>Case Management Definition</b> Amend applicable administrative rules, policies, and handbooks to reflect a revised definition of case management.	Amend North Dakota Century Code Chapter 50-06.2 to include the following definition of case management:  Case management is a process in which a professional case manager assesses the needs of the client and arranges, coordinates, monitors, and evaluates for services and advocates to meet the specific client needs in the least restrictive environment.
<b>Access and Standards</b> Implement an expanded case management system statewide based on the results of a pilot project.	Approve a pilot project testing an expanded case management system that includes "one-stop" accessibility, encourages agency and provider cooperation, develops caseload standards, is responsive to a defined service area, and provides "face-to-face" assessments. Fund the existing vulnerable adults state statute.
<b>Client Assessment</b> Implement a uniform computerized assessment document with the ability to transfer client information to each agency involved.	Include the uniform comprehensive assessment document in the pilot project.
<b>Costs of Case Management</b> Implement an expanded, automated, comprehensive case management system that would access funding from a variety of sources.	Request the appropriate state agencies to research and estimate the costs of an expanded case management system, the costs of a pilot project, and potential funding sources.

### Alzheimer's Related Information and Testimony

#### Related Definitions

**Dementia** - A condition characterized by a decline in mental function in an otherwise awake and alert individual and can have various causes, some of which can be arrested or reversed. Reversible dementias include those caused by a dysfunction of the thyroid, parathyroid, adrenal or pituitary glands, nutritional disorders such as thiamine deficiency, severe hypertension, or "normal pressure" hydrocephalus. Some dementias including Alzheimer's disease are irreversible.

Dementia is a result of dysfunction of the brain, including areas that help to integrate perceptions and thoughts to allow purposeful actions and adjustment to the environment. In most dementias memory is usually affected along with other intellectual functions, including language, judgment, abstract thought, and orientation in space and time.

**Alzheimer's disease** - A progressive, degenerative, organic disease affecting brain cells.

The incidence of the disease appears to be increasing among the elderly.

Alzheimer's disease may include:

- A progressive loss of memory and cognitive functions including judgment.
- Mood swings and depression may develop, accompanied by behavior changes.
- Disorientation and wandering occur and as the disease progresses, the affected individual loses the ability to walk or speak and is eventually rendered completely helpless.
- Conditions generally last from seven to 10 years with the disease or its complications eventually causing death. Victims of the disease include family members serving as caretakers.

#### 1990 Task Force Report

The committee received information on a 1990 task force report regarding Alzheimer's and related dementias entitled *Easing the Burden*. The committee received testimony regarding the recommendations and implementation status from state agencies and other organizations summarized as follows:

Task Force Recommendation	Implementation Status
<b>Geriatric curriculum expansion</b> - Board of Higher Education should address expanding geriatrics/gerontology curriculum components and the School of Medicine should substantially expand its geriatrics curriculum.	<b>Coursework has not been analyzed</b> - Some course material and special training is provided and a gerontological nurse practitioner program has been established at the University of Mary.

Task Force Recommendation	Implementation Status
<b>Continuing education</b> - Nursing and other health professional schools should develop dementia-related continuing education programs.	<b>Implemented</b> - The University of North Dakota has offered continuing education programs specific to dementias.
<b>Toll-free telephone line</b> - A "hotline mechanism" should be established to provide information, counseling, and referral resources to the public, funded through the Aging Services Division of the Department of Human Services.	<b>Implemented</b> - A toll-free information and referral telephone line is maintained by St. Alexius Medical Center through a contract with the Department of Human Services funded with Older Americans Act funds.
<b>Nursing home staff training</b> - The effectiveness of the training curricula provided nurses aides in nursing homes should be evaluated.	<b>Implemented</b> - The Department of Human Services believes that this is a beneficial curriculum and specifically addresses communicating with, understanding the behavior of, and techniques for addressing the unique needs and behaviors of people with dementias.
<b>State agency coordination</b> - A statewide dementia education/diagnosis/service coordinating mechanism should be established within an existing state agency.	<b>Not implemented.</b>
<b>Followup services - After diagnosis</b> - All physicians or clinics providing diagnostic and comprehensive evaluations to assist memory loss should provide family conferences, education, followup, counseling, and case management for at least six months from the date of diagnosis.	<b>Varies</b> - Some provided formally, some informally, and some not at all.
<b>Trained physicians</b> - Large medical centers should have trained staff in the fields of geriatrics and gerontology.	<b>Partially implemented</b> - The number of physicians trained in geriatrics is limited; physicians with additional expertise or a certificate of added competency in geriatrics is higher.
<b>Diagnosis - Nursing homes</b> - Adequate diagnostic workup should be completed before long-term care facilities identify or manage individuals with dementing illness.	<b>Unsure</b> - No formal statewide rule regarding adequate diagnostic workup; may be accomplished on an individual facility basis.
<b>Day care/respite care - Nursing homes</b> - Long-term care facilities should be encouraged to provide day care and respite care services for individuals with dementing illness.	<b>Provided at some facilities.</b>
<b>Training - Home providers</b> - Inservice education on dementing illnesses should be provided to caregivers in home and community-based programs.	<b>In process</b> - The Department of Human Services is planning to offer, as a service funded by the Medicaid waiver for aged and disabled, training for family caregivers.
<b>Pilot project legislation</b> - The Department of Health and the Department of Human Services should draft legislation to establish a pilot project aimed at enhancing coordinating services for persons with dementing illness.	<b>No legislation introduced</b> - Committee recommends pilot project legislation.
<b>Alzheimer's units</b> - The development of additional Alzheimer's "special units" should be encouraged and more adequate funding mechanisms developed.	<b>Developed</b> - Currently seven units with 146 beds are licensed as part of defined Alzheimer's units.
<b>Nursing home residents</b> - The Department of Human Services and the Department of Health should assure that nursing home residents are adequately assessed and diagnosed for dementias and that proper care is being given to nursing facility residents suffering from dementias.	No mechanism exists to assure adequate assessment is made to diagnose dementias; onsite surveys by the Department of Health are intended to assure that residents, including those with dementias, receive acceptable care.
<b>Physical restraints</b> - The Department of Health, the Department of Human Services, and provider restraint organizations should develop workshops and training materials to reduce the use of physical and chemical restraints in long-term care facilities.	<b>Implemented - Federal regulations emphasize reducing the use of physical and chemical restraints</b> - The Department of Health and the North Dakota Long Term Care Association have sponsored training sessions for long-term care providers and the department funded a pilot study on physical restraint reduction.

Task Force Recommendation	Implementation Status
<b>Training initiative</b> - The Department of Human Services and the Department of Health should implement a training initiative to provide special training on the treatment and management of dementias.	<b>Partially implemented</b> - Training has been provided although additional effort is necessary, especially in managing behaviors.
<b>SPED program</b> - The SPED program should be expanded to allow caregivers and victims access to services at earlier stages to prevent or postpone institutionalization.	<b>Program has been expanded</b> - Eligibility in the SPED program considers cognitive skills but is based on impairment and does not establish eligibility based on a diagnosis or illness.
<b>Adult protective services</b> - Adult protective services should be available in all areas of the state.	<b>Not implemented</b> - Adult protective services statute is in place; very limited funding provided for service implementation.

### North Dakota Alzheimer's Facilities

The following is a summary of nursing care and basic care Alzheimer's facilities in North Dakota:

Nursing Facility - Location	Alzheimer's Unit Bed Capacity
Baptist Home, Inc., Bismarck	15
St. Benedict's Health Center, Dickinson	15
Bethany Homes, Fargo	48
Trinity Nursing Home, Minot	22
Deaconess Health Center, Northwood	12
Bethel Lutheran Home, Williston	24
Home for the Aged, Wishek	10
Total nursing facility beds	146
Basic Care Facility - Location	
Kensington Cottages, Bismarck	24

The following information was presented to the committee regarding residents in long-term care facilities with an "organic mental" syndrome, including dementias:

Long-Term Care Facility Reported Data	
1992-93	
Total long-term care resident occupancy (5/92 through 6/93)	6,730
Total residents with primary or secondary diagnosis of an "organic mental" syndrome, including dementias	2,316
Percentage of residents with dementias	34.4%
1994-95	
Total long-term care resident occupancy (6/94 through 6/95)	6,857
Total residents with primary or secondary diagnosis of an "organic mental" syndrome, including dementias	2,797
Percentage of residents with dementias	40.8%

### Related Testimony

The committee learned the medical profession is 85 percent accurate in identifying the Alzheimer's disease in patients, and the early signs of Alzheimer's include memory loss, difficulty performing familiar tasks, problems with language

comprehension, disorientation to time and place, poor judgment and impulse control, problems with abstract thinking, misplacing of items, significant changes in mood or behavior, personality changes, and lack of initiative. A significant problem relating to Alzheimer's is the stress and the demand on the patient's caregiver, often a family member. It was also learned that Alzheimer's patients need a specific type of facility to reduce patient frustration resulting from typical nursing facility hallways that end in a closed exit.

### Architectural Concerns

The committee received information from an architect specializing in the development and design of facilities for individuals with Alzheimer's and related dementias. Special design considerations for Alzheimer's and related dementia patients include additional space, locating residents' rooms on a side of a unit, allowing a "wandering path," and including common use spaces. An Alzheimer's and related dementias unit needs to be secure, must be the exclusive home of the residents, and must contain all necessary support areas including security doors and silent paging systems, and must be of a steel or concrete construction type.

### Department of Human Services Testimony

In addition to testimony provided regarding the long-term care task force, representatives of the Department of Human Services identified the following suggestions for changes for services to the elderly in North Dakota:

1. Strengthen and expand the case management system to support and divert people to community-based options.
2. Develop a "gatekeeper" program for Medicaid and private pay individuals seeking admission to a nursing facility.
3. Expand supportive housing, such as the Academy Village project in Devils Lake.
4. Develop assisted living services.
5. Support and expand programs such as SPED, expanded SPED, and Medicaid waiver for the aged and disabled.
6. Expand adult family foster care and adult day care.

### 1997-99 Biennium Costs

The Department of Human Services provided

the following information regarding preliminary estimates of costs of elderly care programs for the 1997-99 biennium:

1. Medicaid nursing home reimbursement - A total of \$240.8 million, of which \$62.7 million is from the state general fund, compared to \$216.6 million for the 1995-97 biennium, of which \$58.5 million is from the general fund.
2. Home and community-based care for the elderly and disabled - A total of \$4.4 million, of which \$1.4 million is from the general fund, compared to the budget for the 1995-97 biennium of \$4.2 million, of which \$1.3 million is from the general fund.

### **Fiscal Impact of Task Force on Long-Term Care Planning Recommendations**

The department provided testimony on the fiscal impact of the following recommendations for the 1997-99 biennium:

1. Alzheimer's and related dementia pilot projects - The department intends to fund pilot projects, to be authorized in House Bill No. 1037 recommended by the committee, from moneys appropriated to pay for nursing home services. It is expected that if the pilot projects are successful they should defer otherwise eligible Medicaid recipients from entering nursing homes.
2. Case management pilot projects - The department estimates an expanded case management program statewide would cost approximately \$835,000 with the cost for individual counties as follows: Burleigh - \$71,500, Cass - \$117,000, Grand Forks - \$76,000, Stutsman - \$29,500, and Ward - \$63,800. This request is not contained in the 1997-99 Department of Human Services budget request. The committee recommendation, in House Bill No. 1038 discussed later in the report, anticipates two case management pilot projects.
3. Adult protective services funding - A recommendation of the Task Force on Long-Term Care Planning was that the state fund the vulnerable adult protective services program provided for in North Dakota Century Code Chapter 50-25.2. This program would identify vulnerable adults who are at risk due to abuse, neglect, or exploitation, would involve voluntary reporting, and would include assessment of a person's situation and any necessary followup services. Implementation of this program is contingent upon the Legislative Assembly providing an appropriation to support the implementation and enforcement of the chapter. The law became effective January 1, 1990. The 1989 Legislative Assembly funded two pilot projects for the 1989-91 biennium; however, because of the 1989 tax referrals the funding was eliminated and the program has not been funded since. The committee learned the 1997-99 biennial cost of providing adult

protective services on a statewide basis is \$966,170 from the state general fund and is expected to provide funding sufficient for 11 additional staff and related travel, equipment, and supplies.

### **Long-Term Care Testimony**

The committee learned the following information from representatives of the North Dakota Long Term Care Association:

1. The association's top priority is providing adequate wages to nursing home staff by requiring the Department of Human Services to provide inflationary adjustments using the Data Resources, Inc. (DRI) inflationary adjustment. It was reported this reimbursement was included in the nursing reimbursement system prior to 1993 and recent inflationary adjustments for nursing homes have been 2.5 percent for 1993, 2.6 percent for 1994, three percent for 1995, and 2.5 percent for 1996. The Long Term Care Association proposed a bill draft that would provide for annual nursing home inflationary adjustments based on the average of the DRI index and the consumer price index (CPI-W) currently used by the Department of Human Services.
2. A concern is the significant turnover of certified nurses aides. The turnover rate for nursing home certified nurses aides is 59 percent.
3. Other staff turnover rates at North Dakota nursing homes are approximately 20 percent for activity personnel, 40 percent for housekeeping, and 43 percent for food services. Staff turnover rates for other positions include 17 percent for administrators, 18 percent for social workers, 22 percent for licensed practical nurses, 24 percent for directors of nursing, and 28 percent for registered nurses.

### **South Central Senior Citizens' Services**

The committee met at the Barnes County Senior Citizens Center in Valley City and learned the Barnes County Senior Citizens Council was created in 1973 and provides congregate and home-delivered meals, nutrition education, transportation, chore, and outreach services. Services are provided to allow elderly persons to remain independent and in their homes as long as possible. As a result of other counties wanting to reduce administrative costs, the South Central Adult Services Council was established allowing the Barnes County director to administer senior programs in a six-county area--Barnes, LaMoure, Foster, Logan, McIntosh, and Griggs. Each county's senior citizens council retains responsibility for decisions regarding elderly in the county.

South Central Adult Services provides outreach services to citizens in the six-county region, with potential needs identified by outreach workers, who are trained to assess clients' service needs and

are aware of the services available from service providers. Persons in need of services are referred to the appropriate provider, including agencies providing home services, congregate housing, hospital care, and nursing home care.

The committee learned a multicounty senior services organization may realize savings by sharing administrative costs and volume purchasing. As an example, the Valley City center prepares meals for other sites, including Sanborn, Wimbledon, Hannaford, Cooperstown, and a senior housing project in Valley City. Meals are also prepared centrally in other county locations and are served in 27 senior citizen centers throughout the six-county region. Transportation services are a necessity for the elderly to access health care to allow them to remain in their homes and are available in each county, with public transit systems developed in Barnes, LaMoure, and Griggs counties and transit services, provided by volunteers in private vehicles, available in Logan, McIntosh, and Foster counties.

The committee learned of Project CARE (Community Action to Reach the Elderly), established to identify the needs of Barnes County's growing population and to assist local communities in meeting those needs. Major outcomes of Project CARE include the development of an attitude of cooperation between agencies, businesses, and private individuals in the provision of services to the elderly, development of a volunteer system to assist the elderly with paperwork associated with insurance and Medicare claims, a media campaign to inform the public of services available to the elderly in Barnes County, and a fitness program for seniors cosponsored by the Parks and Recreation Department, Mercy Hospital, and the Barnes County Senior Citizens Council.

#### **Tour of Long-Term Care Facilities**

The committee toured two facilities in Bismarck, the Baptist Home and the Kensington Cottages. The Baptist Home has a New Horizons Alzheimer's unit of 15 beds with residents ranging in age from 56 to 92 years and an average age of approximately 82 years. The Kensington Cottages is an assisted living facility for Alzheimer's patients providing care for up to 24 residents, with a semiprivate room rate of \$2,750 per month and a private room rate of \$3,350 per month. Currently, the facility has only private pay residents because North Dakota does not have an assisted living Medicaid waiver that would allow a payment of Medicaid funds for eligible persons in an assisted living facility.

#### **Other Testimony**

The committee learned of a continuum of care for the elderly being developed in Devils Lake, the Academy Village. The village, when completed, will include congregate care, patio homes for the elderly, a village center, an Alzheimer's care facility, and an assisted living facility.

The committee also received information

regarding the hospice program including program services and funding.

The North Dakota Senior Services Project Directors Association informed the committee of Older Americans Act programs provided by senior agencies. Member agencies spent in excess of \$9 million in 1994 to provide services to over 60,000 North Dakota senior citizens, with approximately one-half of the amount generated from local sources, including \$2.6 million of contributions by program participants. The association asked that the committee consider expanding the funding of the senior citizens' mill levy matching from a total of \$900,000 to \$1.2 million for the 1997-99 biennium.

#### **Committee Recommendations**

The committee recognizes the effort, the coordination of elderly services, the cooperation among service providers, and the potential for cost savings related to the elderly services delivery system developed in the south central adult services area. The committee recommends counties contract with an administrative agency for the consolidated administration of elderly services and the agency develop procedures that may result in efficiencies and provide for the referral of elderly residents to necessary and appropriate services.

The following is a summary of the bills and study resolutions recommended by the committee:

1. House Bill No. 1037 makes permanent the moratorium on basic care and long-term care bed capacity and requires the Department of Human Services to establish pilot projects to meet the service needs of the Alzheimer's and related dementia population. The pilot projects are to explore the financial and service viability of converting existing nursing facility or basic care capacity to a specific service environment that targets this population.
2. House Bill No. 1038 defines case management and requires the Department of Human Services to establish a project designed to provide an expanded case management system for individuals in need of long-term care services.
3. House Concurrent Resolution No. 3003 directs the Legislative Council to monitor the implementation of the projects developed by the Department of Human Services relating to converting existing bed capacity for use by Alzheimer's and related dementia persons and the testing of an expanded case management system for elderly persons and disabled persons.
4. House Concurrent Resolution No. 3004 directs the Legislative Council to study expanding home and community-based service provider availability, availability of geropsychiatric care, and the feasibility of combining service reimbursement payment sources for elderly and disabled services.
5. House Concurrent Resolution No. 3005

directs the Legislative Council to study Native American long-term care needs and access to appropriate services, including the relationship between state service units and the Native American reservation service systems.

6. House Concurrent Resolution No. 3006 directs the Legislative Council to study the long-term care financing issues, including nursing facility and other residential care systems, to determine the financial, regulatory, and other changes necessary to assist in the development of alternative services, the financial incentives to encourage nursing facilities to reduce the number of beds, and the feasibility of a managed care system for long-term care services.
7. House Bill No. 1039 allows the Department of Human Services to waive the imputed minimum occupancy level requirement for a nursing home that the department determines to be providing significant home and community-based services to encourage the development of home and community-based services as an alternative to nursing home care.
8. House Bill No. 1040 requires the Department of Human Services to provide inflationary increases for nursing home care based on the average of the increase in the DRI nursing home input price index and the increase in the consumer price index for all urban wage earners and clerical workers (CPI-W). This is projected to cost, during the 1997-99 biennium, a total of \$1,405,000, of which \$365,000 is from the state general fund.

### **HOME HEALTH CARE LICENSING STUDY**

Section 6 of 1995 House Bill No. 1006 directed a study of the licensing of home health care providers, including determining the appropriate agency to be responsible for the licensing of home health care providers.

#### **1995 Legislative Assembly Issues**

House Bill No. 1461 (1995), which would have expanded the licensing requirements for home health agencies, was defeated. The bill would have expanded the definition of home health services, defined supported services, provided penalties, and established license fees to generate funding for the cost of home health agency licensing surveys required under the bill. The cost of the bill was estimated to be from \$120,000 to \$200,000 with an annual fee necessary to support the cost of licensing inspections between \$500 to \$600 for each provider.

Currently, North Dakota Century Code Chapter 23-17.3 provides for the licensing of home health agencies for a home health agency providing home health services that is defined to include the services of a licensed registered nurse and at least one other therapeutic service.

Testimony provided on 1995 House Bill No. 1461 included the following:

1. Currently, only agencies providing home skilled nursing and at least one other service are subject to state licensing laws.
2. Current law does not provide criteria or minimum standards for businesses providing a single home care service, causing confusion to the consumer and misrepresenting the home health care industry to the public.
3. The home health agency licensing currently requires a \$75 one-time fee and an initial onsite half day survey. The number of additional providers that would be impacted by the proposed legislation was difficult to project.
4. Individuals and businesses that may have been subject to the proposed changes in home health care licensing may not have been aware of the impact the bill would have had on provider operations and costs.
5. The Aging Network of North Dakota opposed the bill because it would eliminate unlicensed home health care and could result in services not being readily available in rural North Dakota.

#### **Department of Health Testimony**

The committee learned of the following potential problems relating to the licensing of home health care agencies, according to the Department of Health:

1. Personal caregivers who are not registered and therefore not regulated.
2. Clients may be receiving unsafe or inadequate care.
3. The lack of any reporting mechanism for problems or the ability of the state to interact.

In addition, several alternatives were identified by the Department of Health:

1. Currently home health licensing scope can be expanded and additional licensing regulation required.
2. Home care providers who are not licensed by another entity could be licensed through the Department of Health or some other department.
3. Home care providers could be registered as an alternative to licensing.
4. Voluntary licensing and registration could be allowed.

In addition, the committee learned the Department of Health established a toll-free number to record complaints of unsafe or poor care being provided by personal caregivers who are not regulated by other agencies. There are 43 home health care agencies in North Dakota, seven agencies only licensed by the Department of Health and 36 licensed by the Department of Health and also Medicare-certified. The committee also learned of the certified nurses aide registry handled by the Department of Health which provides a listing of certified nurses aides and includes an investigation and hearing process prior

to identifying infractions related to individual certified nurses aides.

### **Department of Human Services Testimony**

The committee learned the Department of Human Services currently has a registry system for qualified service providers, individuals providing services under North Dakota Century Code Chapter 50-06.2. These providers are either a county agency or an independent contractor meeting Department of Human Services standards for services and operations and providing services including homemaker, chore, respite care, home health aide, case management, family home care, personal attendant care, and adult family foster care.

The committee learned the Aging Services Division of the department, because it administers the qualified service provider registry, could be an appropriate location for a home health care registry and that registration should be mandatory for all paid caregivers. Also, the registry should not interfere with the network of informal voluntary providers, and the Aging Services Division should develop a fee schedule and establish minimum criteria or standards to be met prior to registration.

The department assisted the North Dakota Association for Home Care in developing a bill draft for the committee's consideration establishing a home health care provider registry. The department had concerns including identifying the standards to be met prior to registration, licensing revocation authority, corrective action, and the necessity to fund adult protective services. The department estimated the cost for the 1997-99 biennium of implementing a home health care registry system would be \$21,060 from the state general fund.

### **North Dakota Association for Home Care**

The committee learned from representatives of the North Dakota Association for Home Care the following:

1. Medicare pays home care providers up to \$39 per visit for nursing services and up to \$20 per visit for home health aid services.
2. For the safety of the client there should be a minimum standard for all caregivers requiring the licensure or registration of all businesses or individuals providing direct client care in the home.
3. Examples were provided in which unlicensed home health care providers had stolen money from clients and a reporting process would have identified these violations, preventing multiple occurrences.
4. Medicare provides reimbursement to home health care providers for only costs, does not allow a profit, and does cost settlements after the provider's yearend.
5. The industry has outgrown the existing home health care law and supports a statewide registry of individuals providing home health care services which would serve

as an information source for individuals seeking home health care services, provide a central location to receive complaints regarding home health care providers, and include a public education campaign to make consumers aware of the home health care registry.

6. The current law requires only agencies providing skilled nursing and at least one other therapeutic service to be licensed, allowing agencies providing only a single service to operate without a license.

The North Dakota Association of Home Care, after consultation with the Department of Human Services and the Department of Health, submitted a proposal for a bill draft to implement a home health care registry system. The registry would be maintained by the Department of Human Services and be required for all home health care providers, including private providers providing services identified in North Dakota Century Code Section 50-06.2-03(5). In addition, the proposed bill draft would have required certain persons to report complaints against private providers and qualified service providers and provided a penalty for any unregistered agency or individual providing the identified services.

### **Other Testimony**

In addition, the committee learned the North Dakota Long Term Care Association had concerns regarding the current practice of requiring two registry listings for nurses, one by the Board of Nursing and one by the Department of Health, and that the establishment of a registry for home health care providers could result in a third registry for nursing facilities staff as nursing homes expand into providing home care services.

Representatives of the North Dakota Local Health Services Association supported a registry for private home care providers.

### **Committee Recommendation**

The committee recommends Senate Bill No. 2027 that establishes a registry system of home health care providers to be administered by the Department of Human Services that:

1. Defines a private provider as a person registered, meeting departmental standards for service, and providing at least one of the following services:
  - a. Respite care.
  - b. Home health aid services.
  - c. Case management.
  - d. Personal attendant care.
  - e. Adult family foster care.
2. Allows a private provider to register for a one-time \$10 fee.
3. Requires case managers, qualified service providers, or private providers to report client concerns and complaints to the Department of Human Services, and allows other persons aware of concerns or complaints regarding services to report the concerns and complaints to the department.

4. Provides a penalty for any unregistered person providing listed services.
5. Exempts from the registry persons providing the service on a volunteer basis without compensation, persons providing a service for a family member, or persons licensed under North Dakota Century Code Title 43 or another law, provided the service is included within the scope of the practice for which the person is licensed.

#### **BUDGET TOUR**

While conducting a meeting in Valley City, the committee conducted a budget tour of Valley City State University. On the tour, the committee heard of institutional needs for capital improvements and any problems the university 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 1997 Legislative Assembly.

# BUDGET COMMITTEE ON HUMAN SERVICES

The Budget Committee on Human Services was assigned four study responsibilities. House Concurrent Resolution No. 3045 directed a study of the responsibilities of county social service agencies, regional human service centers, and the Department of Human Services. Senate Bill No. 2035 required the Department of Human Services to seek authorization for a welfare reform demonstration project and to report to the Budget Committee on Human Services regarding the implementation status of the project during the 1995-96 interim. House Concurrent Resolution No. 3021 directed a study of the issues and concerns related to fetal alcohol syndrome. Senate Concurrent Resolution No. 4047 directed a study of refugee resettlements in North Dakota, including the definition and identification of the net fiscal effects of refugees and other limited English proficient students on school districts and the providers of social services.

Committee members were Senators Jerome Kelsh (Chairman), Evan E. Lips, Donna Nalewaja, David O'Connell, and Russell T. Thane and Representatives Merle Boucher, Ron Carlisle, Tony Clark, Pat Galvin, Pam Gulleason, Sally Sandvig, Ken Svedjan, Gerald O. Sveen, and Laurel Thoreson. Senator Kit Scherber was also a member of the committee until her death in November 1995.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## HUMAN SERVICES DELIVERY SYSTEM STUDY

House Concurrent Resolution No. 3045 directed the Legislative Council to study the responsibilities of county social service agencies, regional human service centers, and the Department of Human Services. The committee, in addition to Bismarck meetings, held meetings in Lisbon, Mohall, and Williston to receive testimony from county officials and other interested persons regarding human service priorities and suggested changes to the human service delivery system.

### Background

North Dakota has a state-supervised, county-administered social services delivery system. The total amount spent on economic assistance programs for the 1993-95 biennium was \$800.4 million, of which \$182.4 million was from the state general fund and \$37.1 million was from county funds. This amount included total county operational costs of \$33.9 million, of which \$18.6 million was from federal funds, \$1.4 million from the state general fund, and \$13.9 million from county funds. Statewide there were a total of 293.33 full-time equivalent (FTE) economic assistance employees of county social service agencies

with a total caseload of 46,784, an average of 159.5 cases per FTE employee. The ratio of total cases to FTE employee ranged from a high of 250.2 for Richland County to a low of 42.8 for Oliver County.

### Issues Identified for Study

Early in the committee's study, representatives of the following entities suggested the following issues be considered by the committee in its review of the human services delivery system:

#### Department of Human Services

1. Program financing.
2. The economic assistance formula used to distribute costs to individual counties (developed in 1982).
3. Economic assistance program administration economies of scale.
4. Federal funding changes, including welfare and Medicaid block grant proposals.

#### North Dakota Association of County Social Service Board Directors

1. State/county communications - Direct communications between the department and county social service agencies, rather than the current procedure of communicating through the regional human service centers.
2. Transfer of human services responsibilities - In the areas of crippled children's services and early periodic screening, diagnosis, and treatment programs.
3. Licensing responsibilities - Licensing of day care and foster care facilities and homes be conducted by multicounty licensing agencies rather than individual counties.
4. Provider training - The state provide training of foster care and day care providers for planned and systemic training.
5. Program and delivery standards - Eliminate program supervision at the regional human service centers and establish program and delivery standards for county social services resulting in accreditation.
6. Alternative funding - Explore alternatives to property tax collections for the financing of social service programs.
7. Alternative delivery methods - Review other methods of delivery of human services.

#### Regional Human Service Centers

1. Balance between planning/service development and cost efficiency.
2. Economies of scale.
3. Flexibility of funding.
4. Privatization.
5. Prevention and early intervention.
6. Outreach services in rural areas.
7. Service needs of the most difficult to serve individuals.

## North Dakota Association of Counties

1. Review the management of each of the major economic assistance programs including areas that county officials believe are duplicative or unnecessary.
2. Consider the various components of the direct services provided by county and regional workers.
3. Identify administrative procedures that create inefficiencies.
4. Review the actual cost of human services delivery.

## Multicounty Social Service Districts

North Dakota Century Code Chapter 50-01.1 provides for the establishment of multicounty social service districts summarized as follows:

1. Section 50-01.1-02 - Allows the consolidation of county agencies into multicounty social service districts, subject to approval by the Department of Human Services.
2. Section 50-01.1-02.1 - Provides, within the limits of legislative appropriations, for financial incentives for the creation of multicounty social service districts based upon achieved economies of scale, adherence to caseload standards, reduced administrative costs, specialized qualifications of staff, and quality of services provided.
3. Section 50-01.1-03 - Provides the factors to be considered for multicounty district approval including the level and quantity of social and economic assistance services, the number and qualifications of staff, caseloads, the geographical area and population served, the distance of recipients from county agencies and the benefits that would be realized from the creation of the district in terms of lower costs, increased availability of services, new services, and improved services.

## Department of Human Services Testimony

The committee received information from the Department of Human Services regarding a compilation of central office, human service center, and county social services administrative costs and caseloads for calendar year 1994 which includes:

### Central office

- 98.25 FTE employees and costs of \$6.3 million, \$2.7 million from the general fund.

### Human service centers

- 141 FTE employees and costs of \$5.3 million, \$4.4 million from the general fund.

### County social services

- The ratio of economic assistance cases to employees varies by county from a high of 250 in Richland County to a low of 42.8 cases per employee in Oliver County.
- The average monthly administrative cost per economic assistance case ranges from a low of \$15.35 per case in Rolette County to a high of \$92.10 per case in Oliver County.
- County social service board administrative

and service costs per capita averages \$41.83 per person, ranging from a high of \$86.64 per person for Benson County to a low of \$27.47 per person for Grand Forks County.

- The ratio of county residents to county social service board employees ranges from a high of 1,235 residents per employee for Grand Forks County to a low of 348 residents per employee for Adams County.
- Total county social service board employees authorized was 1,077.7, of which 952.3 were filled.
- Economic assistance recipient projections for the year 2010 indicate only 16 counties will have more than 1,000 recipients and those 16 counties serve 87 percent of the state's assistance recipients.

Testimony from the Department of Human Services also provided the following information:

1. Principles regarding public policy for human service delivery that have been identified include:
  - a. Administrative responsibility belongs with the lowest level of government feasible to make decisions.
  - b. Accountability is optimal when the decisionmaker is also the payer, and if a significant portion of program costs is borne by the level of government administering the program, accountability is maximized.
  - c. The entity responsible for program administration must be free to "own the program," "establish policy," and "make a difference."
  - d. The administrative agency must be an economically viable unit that can operate effectively and cost efficiently.
2. The application of these principles can lead to the following conclusions:
  - a. Counties could assume a greater share of the administrative and program costs in areas in which they exercise control, including foster care, family preservation services, child protection, aid to families with dependent children (AFDC), job opportunities and basic skills (JOBS), child care, and food stamp employment and training.
  - b. Counties could also assume a greater share of the cost of nursing facility care, service payments for elderly and disabled (SPED), Medicaid waiver, and basic care, resulting in counties having a stake or incentive in developing less costly alternatives to nursing facility care.
  - c. The state could assume a greater share of the costs in those programs in which it or the federal government dictates program parameters, including low-income home energy assistance program (LIHEAP), food stamps, Medicaid (exclusive of long-term care), and child support.
3. The realignment of fiscal responsibilities between the state and the counties could be a

"zero sum" exchange, with neither the state nor the counties paying more or less program costs in total than under the current system.

### **North Dakota Association of Counties Testimony**

The committee invited county officials and other interested persons to provide input relating to program priorities in the event federal welfare reform including block grants is implemented. County officials were asked to provide input on which programs were a priority and would be continued if federal or state matching funds were not available, which programs would be considered for administration with a neighboring county or counties if federal or state administrative cost reimbursement is substantially reduced, and suggestions for an appropriate formula to allocate administrative funds if limited by federal block grant reforms.

The North Dakota Association of Counties formed a committee of county officials to study the human services delivery system and the association made the following statements:

1. Counties should be more involved in the development of policy regarding federal and state welfare reform.
2. A complete analysis should be done of all levels of human services administrative efficiency.
3. The implementation of federal block grant administration caps should not be in a manner that allows unequal recognition of state and county administrative costs.
4. The current allocation of economic assistance costs to counties has no relation to property values.
5. As the property tax burden shifts from agricultural property to commercial and residential property, the connection between human services and property values becomes less defensible.
6. Counties have performed the personal contact, evaluation, guidance, and personal assistance aspects of human services and any change to the current structure must maintain the close relationship between the person providing the service and those being served.

Testimony of other county representatives included:

- County commissions are required to levy property taxes to fund the county share of between 30 to 40 separate federal, state, and local social service programs but have very little authority concerning who can receive services, the type of services and benefits delivered, program administration, or salary levels of county social service staff.
- Funding formulas for some economic assistance programs are based on a formula developed in 1983 allocating costs to individual counties, and subsequent population changes have resulted in a wide variation in the per capita county costs with the highest

per capita cost of medical assistance of \$36.54 per year for Sheridan County.

- Several examples of county sharing of staff and services were provided, including the sharing of a county social service board director between McKenzie and Williams counties.

### **Department of Human Services, North Dakota Association of Counties, and North Dakota Association of County Social Service Board Directors Study**

The Department of Human Services, the North Dakota Association of Counties, and the North Dakota Association of County Social Service Board Directors met and discussed alternative methods of delivery and funding of the administration of economic assistance programs. These entities provided the committee findings and recommendations regarding the delivery and funding of economic assistance programs in North Dakota.

The Department of Human Services made the following observations resulting from this study:

- About 65 percent of the counties experienced costs in excess of the statewide weighted average for the administration of economic assistance programs.
- Nearly 86 percent of the eligible economic assistance recipients lived in 23 North Dakota counties.
- The trade areas for North Dakota's 24 largest cities contained about 88 percent of the unduplicated economic assistance cases in 1994.
- Any federal reform of economic assistance programs will likely require statewide application for uniform eligibility, benefits, and program operations.
- Counties with large Indian populations will continue to require state financial assistance to defray a substantial portion of the local costs of administering economic assistance programs.

### **Committee Considerations**

The Department of Human Services and county representatives suggested alternatives for changing the administration and financing of human service programs. Originally, a "swap" proposal was developed that would have increased the counties' financial responsibilities for the administration of economic assistance programs and reduced the counties' financial responsibilities for medical assistance and basic care program grant costs. However, because the "swap" proposal would have resulted in additional costs for 18 counties, the Department of Human Services and county representatives were unable to reach agreement regarding the administration and financing of human service programs. As a result, the committee considered alternative bill drafts, one reflecting the department's state/county cost neutral "swap" of financial responsibilities and the second reflecting the county representatives' position exchanging financial responsibilities in a

manner that has less negative impact on individual counties but has an additional cost to the state general fund.

Both bill drafts would provide for an exchange of financial responsibilities requiring the counties to pay for and administer defined local economic assistance programs in exchange for the state paying the entire grant costs of medical assistance and basic care assistance. The Department of Human Services proposal, while overall cost neutral between the state and counties, had a negative financial impact on 18 counties. The county proposal would allow counties to retain the current federal/state funding for the administration of child support enforcement at a biennial cost of \$3,662,360 from the state general fund and would provide financial assistance for 13 counties containing Indian reservation land within their boundaries at a cost of \$780,000, for a total biennial state cost of \$4,442,360. This information is based on calendar year 1995 costs. The counties' proposal would result in five counties being negatively impacted.

### Committee Recommendation

The committee recommends House Bill No. 1041 that requires counties, effective January 1, 1998, to assume the financial responsibility for the costs of administering the following economic assistance programs:

1. Aid to families with dependent children (AFDC).
2. Job opportunities and basic skills (JOBS) program.
3. Child care block grant.
4. IV-A at-risk child care.
5. Food stamps.
6. Medical assistance.
7. Low-income home energy assistance program (LIHEAP).
8. Refugee assistance.
9. Basic care.

In return, the bill requires the state to assume complete financial responsibility for the grant costs of medical assistance and basic care and contribute additional support of administrative costs for counties with Indian land.

The following is a summary of the estimated annual general fund fiscal impact of the bill based on actual program costs for calendar year 1995:

Additional county cost (reduced state cost) related to the counties assuming the financial responsibility for administering the economic assistance programs	\$( 8,591,240)
Additional state cost (reduced county cost) related to the state assuming the financial responsibility for the medical assistance (\$9,812,155) and basic care (\$610,265) grant costs, and additional support of administrative costs for counties with Indian land (\$390,000)	<u>10,812,420</u>
Net annual cost to the general fund	\$ 2,221,180

The estimated cost to the general fund during the 1997-99 biennium, based on a January 1, 1998, effective date, would be \$3,331,770.

The bill also:

- Requires the Department of Human Services to establish standards for the administration of the locally administered programs.
- Provides procedures if a county fails to meet the standards, which may include corrective action plans, a receiver, or peer review.
- Allows a county to contract for the administration of economic assistance programs.
- Provides a statutory mechanism to calculate and provide additional relief to counties that have human service mill levies that exceed the statewide average by at least 10 percent. Annually, counties would submit reports on human service mill levies and county costs. The Department of Human Services would determine the counties that exceed the statewide average by at least 10 percent and allocate to each county its proportionate share of any funds appropriated for this purpose.
- Requires the Department of Human Services to seek an appropriation for financial assistance to county social service boards for human service program costs and local expenses of administering human service programs in counties where the presence of an Indian reservation substantially reduces the amount of property subject to taxation. (An appropriation of \$1,220,000 for the 1997-99 biennium is provided.)
- Requires the Department of Human Services to develop a formula to determine each county's share of 25 percent of the nonfederal share of the amount expended for AFDC.
- Repeals sections in North Dakota Century Code Chapter 50-09 regarding county responsibilities for AFDC grants, Section 50-24.1-03 regarding county responsibilities for medical assistance grant matching, Section 50-03-07 regarding the county's share of food stamps, Section 50-09-20.1 that requires the state to reimburse counties for 50 percent of administration of certain programs, and Section 50-24.5-06 that requires counties to pay for 30 percent of basic care costs.

### WELFARE REFORM DEMONSTRATION PROJECT MONITORING

Pursuant to 1995 Senate Bill No. 2035, the Budget Committee on Human Services monitored the Department of Human Services implementation of North Dakota's welfare reform demonstration project during the 1995-96 interim. The bill required the Department of Human Services to seek federal authorization for a welfare reform demonstration project.

#### TEEM Project

The Department of Human Services provided status reports at each of the committee's meetings

regarding the welfare reform demonstration project, the training, education, employment, and management (TEEM) project. The TEEM project combines benefits under the state's AFDC, food stamps, and fuel assistance programs. In addition, TEEM emphasizes employment as a means of attaining self-sufficiency, strengthens the family structure, and emphasizes the responsibility of both parents by improving child support collections. The committee learned that the Department of Human Services TEEM project was approved by federal agencies on September 28, 1995, and will be implemented on a phased-in basis in 11 counties by January 1997. The demonstration counties are Adams, Cass, Morton, Ransom, Richland, Sargent, Stark, Steele, Stutsman, Traill, and Williams.

The committee learned as a result of the signing of the federal welfare reform bill in August 1996, the department began an extensive review of the legislation as it relates to the TEEM project as well as the current AFDC program. Consideration may be given to implementing the TEEM project statewide. The committee also learned 22 counties are interested in participating as a demonstration site if the TEEM project is expanded during the 1997-99 biennium.

#### **Temporary Assistance for Needy Families (TANF) Block Grant**

The Department of Human Services also reported to the committee on the status of federal welfare reform. The committee learned Congress passed H.R.3734 effective August 22, 1996, entitled "The Personal Responsibility and Work Opportunity Act of 1996," which provides temporary assistance for needy families (TANF) and child care block grants. The TANF block grant replaces the current AFDC program, allows the state to develop its assistance program, and provides North Dakota approximately \$26.4 million annually. The legislation includes:

- Requiring a state plan by July 1, 1997;
- A 15 percent cap on state administrative costs;
- Requiring that the legislature appropriate the state's block grant funds;
- Requiring an 80 percent maintenance of effort based on state spending for fiscal year 1994;
- Allowing transfers of block grant moneys of up to 30 percent to the social services block grant and up to 10 percent to the child care block grant;
- Requiring work participation;
- Providing sanctions and penalties against states for failing to meet work participation rates;
- Requiring states to implement child support enforcement requirements; and
- Limiting individual receipt of welfare benefits to a five-year time period.

The committee makes no recommendation regarding its monitoring of the welfare reform project.

#### **FETAL ALCOHOL SYNDROME STUDY**

House Concurrent Resolution No. 3021 directed the Legislative Council to study issues and concerns relating to fetal alcohol syndrome (FAS). Fetal alcohol syndrome is a condition resulting from maternal alcohol exposure based on the following diagnostic criteria:

- Evidence of facial abnormalities;
- Evidence of growth retardation; and
- Evidence of central nervous system development abnormalities, including decreased cranial size at birth, structural brain abnormalities, impaired fine motor skills, neurosensory hearing loss, or poor eye-hand coordination.

Fetal alcohol effect is a condition similar to FAS that does not include the evidence of facial abnormalities.

The resolution cites the following as reasons for the study:

- Fetal alcohol syndrome is the leading identifiable cause of mental retardation and neurological deficit in the United States.
- The child and adult populations of persons with fetal alcohol syndrome in North Dakota could be as high as 1,124.
- Between 10 and 18 children are born with fetal alcohol syndrome in North Dakota each year and the cost of caring for each person with fetal alcohol syndrome over a lifetime is estimated to exceed \$1.4 million.
- More than two-thirds of the children with fetal alcohol syndrome in North Dakota are in foster care or have been adopted and less than 20 percent remain with a biological parent.
- The neurologic deficits associated with fetal alcohol syndrome are lifelong and some persons with fetal alcohol syndrome have lower IQs as adults than they had as children and adolescents.
- Adolescents and adults who do not have appropriate services have a high rate of criminal activity that frequently leads to incarceration.
- Early intervention has been shown to reduce the number of children with fetal alcohol syndrome and has been shown to mitigate many of the developmental disabilities and behavior problems.

#### **Related Testimony During 1995 Legislative Assembly**

Following is a summary of testimony provided by individuals in support of House Concurrent Resolution No. 3021:

- Fetal alcohol syndrome is resulting in the expenditure of funds by many state agencies and little is being done in terms of prevention of fetal alcohol syndrome.
- Fetal alcohol syndrome is the leading cause of mental retardation and is a very preventable problem.
- As a child becomes older services are more

difficult to access and often incarceration becomes a solution rather than other more appropriate services.

- Additional services for children with fetal alcohol syndrome are necessary, available services need to be identified, and a lead agency should be designated for provision of services to children with fetal alcohol syndrome.
- Schools are finding fetal alcohol syndrome children are presenting educational problems including attention deficit disorder.
- A Fetal Alcohol Syndrome Task Force has been established and has conducted some study of the situation.
- Prevention is the key to reducing the need for fetal alcohol syndrome related services and schools can assist in the education process.
- Catholic Family Services, with funding provided by a grant, has sponsored a prevention program that involved the education of high school students, pregnant women, doctors, nurses, and teachers regarding fetal alcohol syndrome and fetal alcohol effect.

#### **Fetal Alcohol Syndrome Center**

The 1993 Legislative Assembly passed House Bill No. 1313, now codified as North Dakota Century Code Sections 15-11-35 and 15-11-36, that established a fetal alcohol syndrome center in the Department of Neuroscience at the University of North Dakota School of Medicine. The center is to develop prevention activities in groups that are at high risk for fetal alcohol syndrome. The responsibilities of the program include:

1. To develop incidence and prevalence data on fetal alcohol syndrome in this state.
2. To conduct research on prevention and management of fetal alcohol syndrome and maternal alcohol ingestion during pregnancy.
3. To develop a center for the evaluation of children with fetal alcohol syndrome from this state in cooperation with the child evaluation and treatment program at the Medical Center Rehabilitation Hospital at the University of North Dakota and to operate followup clinics as funding allows.
4. To provide consultation and training across the state on fetal alcohol syndrome.
5. To conduct other activities as may be directed by a state fetal alcohol syndrome task force.

The center is to coordinate a study of the prevalence of fetal alcohol syndrome in school-age children, including a review of the prevalence of fetal alcohol syndrome in both rural and urban North Dakota communities, including North Dakota Indian reservations.

#### **Fetal Alcohol Syndrome Task Force Report**

The committee received a report from the Task Force on Fetal Alcohol Syndrome including the following recommendations regarding the

designation of the FAS Center as the lead agency for FAS-related activities, and FAS prevention, services, and screening:

1. Identify the FAS Center as the lead agency for fetal alcohol syndrome activities.
2. Make FAS a condition reportable to the Department of Health.
3. Change the eligibility criteria for the Developmental Disabilities Division services to include fetal alcohol syndrome.
4. Change special education definitions to include fetal alcohol syndrome as an eligibility criteria.
5. Require FAS case management at each human service center.
6. Require the Department of Human Services to fund a pilot program for comprehensive long-term care for persons with FAS.
7. Require each human service center to develop a regional FAS task force.
8. Require the Department of Health to complete an annual cost study of FAS-related hospital and outpatient costs.
9. Require FAS screening for all children receiving services through the women, infants, and children (WIC) program; early periodic screening, diagnosis, and treatment program (EPSDT); the juvenile justice system; and the foster care system with a copy of each screening sent to the FAS Center.
10. Amend the birth certificate reporting process to include screening questions relating to alcohol use during pregnancy.
11. Provide an appropriation for the FAS Center.

#### **FAS-Related Testimony**

The FAS Center at the University of North Dakota School of Medicine provided the following observations regarding FAS:

- Fetal alcohol syndrome is the leading identifiable cause of mental retardation.
- The children and adult populations of people with FAS in North Dakota could be as high as 1,124.
- Each year 10 to 18 children are born with FAS.
- The FAS Center is operating but lacks sufficient funding and has a waiting list of 23 people.
- If North Dakota spent one percent of the cost of caring for persons with FAS on prevention, approximately \$158,000 per year would be spent.
- The cost of caring for persons with FAS is identified to be \$1.2 million to \$2.4 million per year, and could be as much as \$15.7 million per year.

Parents of FAS and fetal alcohol effect (FAE) children testified on the need for the early identification of children with the syndrome and for appropriate and necessary services.

The committee received testimony from various

organizations regarding FAS including:

- Representatives of the North Dakota Medical Association reported it is difficult to screen for FAS because many expectant mothers receive sporadic medical care before pregnancy and may not be forthcoming about alcohol use when questioned.
- The Department of Public Instruction reported that the drug free schools curriculum provides information to elementary and secondary students on the prevention of FAS and other consequences of drug and alcohol use.
- Representatives of the Department of Corrections and Rehabilitation said managers in the juvenile justice system are trained to identify problems, including FAS-related problems, but the department does not have information regarding the number of prison inmates affected with FAS or FAE.
- Representatives of the North Dakota Highway Patrol said the appropriate role of law enforcement in FAS services may be to refer persons to the appropriate agency.
- Representatives of the North Dakota Supreme Court said there currently is not a diversion program available in the court system for FAS persons.
- Representatives of the North Dakota Wholesale Liquor Dealers said the industry does not condone or sanction the misuse of alcohol products and has a national information group that provides public education information on the effects of FAS.
- The North Dakota Council of School Administrators said the health curriculum is a proper place for instruction on FAS and local educators and school districts should be allowed to develop their own curriculums.

### Committee Recommendation

The committee recommends Senate Bill No. 2028 that:

- Defines FAS and designates the FAS Center at the Department of Neuroscience at the University of North Dakota School of Medicine as the lead agency for coordinating FAS and fetal alcohol effect related activities;
- Requires the Department of Health to assist the FAS Center in completing a biennial study of inpatient and outpatient costs related to FAS;
- Requires regional human service centers to assess FAS-related services and needed services, to establish an FAS task force to plan for screening and needs assessment, to develop an appropriate service delivery plan, to conduct annual evaluations of services provided persons with FAS, to coordinate efforts with health care providers, and to meet with the FAS Center to coordinate activities; and
- Provides a \$370,000 general fund appropriation for the operation of the FAS Center for the 1997-99 biennium.

### REFUGEE RESETTLEMENT STUDY

Senate Concurrent Resolution No. 4047 directed the Legislative Council to conduct a study of refugee resettlements in the state, including the definition and identification of the net fiscal effects of refugees and other limited English proficient or language minority students on school districts and providers of social services.

### Background

The committee learned refugees from 11 different ethnic backgrounds have been resettled in North Dakota with over 74 percent of them resettled in the Fargo area and in excess of 13 percent in the Bismarck area. The remaining refugees have been resettled in 16 other North Dakota communities concentrated in the largest cities designated as resettlement cites. Refugees are placed with the assistance of Lutheran Social Services and the Episcopal Diocese of North Dakota, primary refugee placement agencies in North Dakota.

The following is a summary of the refugee resettlements by fiscal year:

Refugees Resettled in North Dakota	
1991	271
1992	479
1993	360
1994	380
1995	422
1996	331
1997	360 (estimated)

The committee learned a language proficiency test could identify persons in the following proficiency categories:

- Level 1 - Negligible Language Proficiency - The student is expected to find the language demands of education impossible to manage, if provided monolingual instruction at the student's chronological age or corresponding grade level.
- Level 2 - Very Limited Language Proficiency - The student is expected to find the language demands of education extremely difficult, if provided monolingual instruction at the student's chronological age or corresponding grade level.
- Level 3 - Limited Language Proficiency - The student is expected to find the language demands of education difficult, if provided monolingual instruction at the student's chronological age or corresponding grade level.

The Department of Public Instruction estimates that 2,400 North Dakota students fall into levels 1, 2, and 3 (negligible, very limited, and limited English proficient), including 500 refugee students. Of the 2,400 students, 735 are estimated to be in levels 1 and 2 (negligible and very limited English proficient), including 400 refugee students.

### Other Testimony

The committee received a report from

Dr. Kathleen Slobin, North Dakota State University, on a study of refugee immigration in the Fargo community, including information on the impact and outcomes resulting from refugee immigration. The report included information on the services required and agencies providing services to refugees and agency, refugee, and community needs. The committee learned that the effects of clustering refugees in communities can have both positive and negative impacts. An example of a positive impact is the support provided new refugees by refugees with similar national origin. Public transportation was cited as a problem for refugees in the Fargo area because public busing is not available to many of the areas where refugees work.

The committee also received testimony from the Fargo School District and Cass County Social Services regarding the impact of refugees on service provision. The committee learned the Fargo School District had excess costs of providing limited English proficient student services in Fargo estimated to be approximately \$400,000 for fiscal year 1996 and as an example refugee students in

the Fargo School District have between 45 to 60 language dialects. The committee learned Cass County Social Services had identified three major concerns regarding the refugee resettlement process:

- The disproportionately high placement rates in Cass County;
- The lack of adequate support for refugees during the resettlement process; and
- The lack of state financial support of county costs relating to refugee services.

Cass County Social Services representatives suggested resettlement be done more equitably throughout the state, resettlement agencies increase case management staff to meet refugee needs, and the long-term fiscal impact on local governments be reimbursed by the federal or state governments.

The committee also received information on estimated state agency costs of providing services to refugees for the 1995-97 biennium. A total of \$4.9 million is estimated to be spent for refugee programs during the biennium, including \$652,000 from the general fund summarized as follows:

Agency	Program	General Fund	Other Funds	Total Funds
Job Service	JTPA - Refugees	\$ 0	\$ 10,000	\$ 10,000
Department of Health	Refugee health services	5,000	40,000	45,000
Board for Vocational and Technical Education	Refugee intensive training project	0	12,900	12,900
Department of Human Services	Various assistance programs	596,603	4,020,832	4,617,435
Department of Public Instruction	Adult education and literacy and emergency immigrant education	50,000	185,000	235,000
<b>Total</b>		<b>\$651,603</b>	<b>\$4,268,732</b>	<b>\$4,920,335</b>

The committee received information from representatives of Lutheran Social Services of North Dakota and the Episcopal Diocese of North Dakota regarding refugees and resettlement costs. The committee learned 92 percent of the refugees placed in Fargo are employed after six months, the average starting salary is \$5.40 per hour, and 85 percent of those employed receive benefits. Lutheran Social Services receives a grant of between \$400 to \$600 per refugee for relocation costs which is used for rent, phone, food, and other necessities. Of the grant amount, 20 percent is provided to the refugee and 80 percent retained by Lutheran Social Services for related refugee costs, including case management. The committee learned the grant amount does not meet total Lutheran Social Services refugee resettlement related costs, with between \$60,000 to \$80,000 of private funds raised annually for refugee resettlement costs.

The committee received testimony from Fargo residents regarding the negative impacts of refugees in Fargo, including the related problems of clustering refugees in certain neighborhoods and the lack of support services for refugees, including case management.

### Committee Considerations and Recommendations

The committee considered several bill drafts providing funding for school districts impacted by the additional costs of educating refugee students.

The committee considered, but chose not to recommend, a bill draft that would have increased the weighting factors used in determining foundation aid payments for school districts by 25 percent for students defined as being negligible English proficient (level 1) and by 17.5 percent for those defined as being very limited English proficient (level 2). This bill draft, based on Department of Public Instruction estimates, would have cost a total of approximately \$1,950,000 for the 1997-99 biennium, \$1,850,000 to adjust the weighting factors and \$100,000 for adult learning centers with refugee students.

The committee recommends Senate Bill No. 2029 providing payments to school districts for refugee students with difficulty speaking, reading, writing, and understanding English. An additional \$475 for each student is to be provided annually by the Department of Public Instruction. It is estimated that as many as 500 refugee students will meet

departmental criteria resulting in a biennial cost of \$475,000. Funding is not included in the bill for this cost for the 1997-99 biennium. In addition, the bill provides an appropriation of \$100,000 from the general fund to the Superintendent of Public Instruction to provide educational assistance through adult learning centers to eligible refugee adults having limited English proficiency. An eligible adult is defined as one who has immigrated to the United States as a refugee from a country in which a language other than English is dominant and who has difficulty speaking, reading, writing, or understanding English.

### **BUDGET TOURS**

While conducting meetings in Williston and Lisbon, the committee conducted a tour of the Northwest Human Service Center and budget tours of the Williston Research Center, UND-Williston, and the Veterans Home in Lisbon. On the tours, the committee heard of institutional needs for capital improvements and any problems institutions or other 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 1997 Legislative Assembly.

# COMMERCE COMMITTEE

The Commerce Committee was assigned two studies. Section 3 of Senate Bill No. 2403 (1995) directed a study of the feasibility and desirability of the Workers Compensation Bureau establishing a system through which injured workers 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 directed 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 workers the pension or annuity would be paid. Senate Concurrent Resolution No. 4010 directed a study of international trade agreements and their effect on this state. The Legislative Council designated the committee as the interim committee to receive, under North Dakota Century Code (NDCC) Section 54-34.3-04, annual reports from the Department of Economic Development and Finance on loan performance and performance of the department.

Committee members were Representatives Rick Berg (Chairman), Al Carlson, Chris Christopherson, James O. Coats, Glen Froseth, Howard Grumbo, Leonard J. Jacobs, Jim Poolman, Elmer Retzer, Arlo E. Schmidt, Bob Skarphol, and Al Soukup and Senators Bill L. Bowman, Tony Grindberg, Karen K. Krebsbach, Duane Mutch, and Harvey Sand. Senator Kit Scherber was also a member of the committee until her death in November 1995.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## WORKERS' COMPENSATION RETIREMENT STUDY

### North Dakota Workers' Compensation Law

North Dakota's workers' compensation law was enacted in 1919 and is contained in NDCC Title 65. The stated purpose of the law is to provide sure and certain relief for an employee who is injured while engaged in hazardous employment, to provide relief for the employee's family and dependents, and to provide this relief to the exclusion of every other remedy. All civil actions against an employer for injuries incurred on the job are abolished.

### Recent Legislative Council Workers' Compensation Studies

During the 1981-82 interim, the Legislative Council's interim Business Operations Committee studied the North Dakota workers' compensation premium determination system. The committee reviewed premium rates for various job classifications using different payroll maximum levels. The committee noted that legislation had

been introduced to raise the maximum wage base used for payroll determination in each session since 1971. The committee, partly as a result of prior failed legislation, did not recommend any bill to change the maximum payroll upon which premiums were calculated.

During the 1983-84 interim, the Legislative Council's interim Government Reorganization Committee studied the possibility of consolidating the Commissioner of Labor, Job Service North Dakota, and the Workers Compensation Bureau. The committee concluded that the three agencies should cooperate in an attempt to provide better labor and employment services. The committee recommended Senate Bill No. 2073 (1985) to allow the sharing of payroll information data between the Commissioner of Labor and the Workers Compensation Bureau. That bill was enacted by the Legislative Assembly.

During the 1991-92 interim, the Legislative Council's interim Industry, Business and Labor Committee studied workers' compensation issues resulting from the consolidation of the Workers Compensation Bureau into Job Service North Dakota, effective July 1, 1993, in accordance with Senate Bill No. 2206 (1991). The committee recommended House Bill No. 1039 to repeal the provisions in Senate Bill No. 2206 providing for the consolidation, and House Bill No. 1040 to repeal the consolidation and require the Workers Compensation Bureau and Job Service North Dakota to be established as divisions under the Commissioner of Labor. The Legislative Assembly enacted House Bill No. 1039, rather than House Bill No. 1040.

During the 1993-94 interim, the Legislative Council's interim Workers Compensation Committee studied replacing the workers' compensation permanent partial impairment benefit system with a permanent partial disability system, whether the medical basis for certifying disability should be established by medical evidence supported by objective medical findings, and the impact of consortium awards on third-party subrogation settlements and cases. The committee also studied the workers' compensation system, including the cost and delivery of medical care, the cost of rehabilitation, legal fees, previous legislation, premium structure, alternate insurance concepts and the impact on the fund of those concepts, administration and staffing of the bureau, the number of injured workers receiving social service benefits, and employer and employee fraud. The committee made no recommendation as a result of its studies.

### House Bill No. 1228 (1995)

House Bill No. 1228 provided that an injured employee who is receiving permanent total disability, temporary total disability, temporary partial disability, or rehabilitation benefits, and who begins receiving Social Security retirement

benefits or other retirement benefits in place of Social Security retirement benefits, or who is at least 65 years old and is eligible to receive Social Security retirement benefits or other retirement benefits in place of Social Security retirement benefits, is considered to be retired. The bill further provided that the Workers Compensation Bureau may not pay permanent total, temporary total, temporary partial, rehabilitation, or supplemental benefits to an employee who is considered retired. The bill applies to all persons who retire or become eligible for Social Security retirement benefits or other retirement benefits in place of Social Security retirement benefits after July 31, 1995.

Under the bill, the Workers Compensation Bureau remains liable for permanent partial impairment and medical benefits for retired workers; for benefits for catastrophically injured workers; and for disability, permanent partial impairment, and medical benefits for those who are eligible to receive Social Security retirement benefits or other retirement benefits in place of Social Security but continue to work.

The expressed rationale behind House Bill No. 1228 was concern that wage loss benefits paid to an injured employee after retirement age, when combined with Social Security retirement benefits, could result in an injured employee receiving more income than when the injured employee worked.

## Testimony and Committee Considerations

### Workers Compensation Bureau Studies and Options

Representatives of the Workers Compensation Bureau testified a study is being performed to determine the impact of the retirement provision. As of July 1996, the bureau reviewed 60 claims to determine whether the claimants meet the statutory definition of retired. The bureau determined 51 claimants should no longer receive workers' compensation wage loss benefits, three claimants are catastrophically injured, three are not eligible to receive Social Security retirement benefits and are therefore eligible to continue receiving wage loss benefits, and three began receiving Social Security retirement benefits before the effective date of the legislation.

Late in the interim, the Governor directed the Workers Compensation Bureau to study options for providing retirement benefits to injured workers. As the result of its study, the bureau presented four options to the committee:

1. An injured worker's permanent impairment award could be increased, and by using the permanent partial impairment deferment provision, the injured worker could defer at least part of that payment until age 65.
2. A retired worker receiving wage loss benefits for at least seven consecutive years immediately preceding retirement could be entitled to a lump sum payment equal to a flat percentage of the total wage loss

benefits accrued and paid to the worker after the initial seven years.

3. A catastrophically injured worker, or a worker who has received total disability benefits for at least 10 consecutive years immediately before retirement could continue to receive wage loss benefits but the Social Security retirement offset would be 100 percent of the retirement benefit received. Unlike the current procedure, the amount of the monthly primary insurance amount paid by the Social Security Administration would be updated annually as cost-of-living increases are added to the primary insurance amount by the Social Security Administration.
4. An injured worker who receives total disability payments for at least 10 consecutive years immediately preceding retirement could be subject to the current offset amount of approximately 40 percent, and a worker who is injured within the 10 years immediately preceding retirement could be subject to a 100 percent offset.

### Social Security Benefits

The committee received testimony that Social Security disability benefits of permanently and totally disabled individuals are adjusted to recognize effects of inflation. Benefits, however, are based on the wage at the time of the injury and do not take into account promotions a worker might have received in the future. When an injured person reaches retirement age, Social Security disability benefits are converted to Social Security retirement benefits, but the amount of the benefits does not change.

Subject to some limitations, a workers' compensation lump sum payment usually results in an offset against Social Security disability benefits. One exception to lump sum offset may be permanent impairment benefits. In *Frost v. Chater, Commissioner of Social Security* (decided August 26, 1996, United States District Court for the District of North Dakota, Southeastern Division), the court held permanent partial impairment lump sum awards are exempt from any offset by the Social Security Administration. *Frost* may serve to increase an injured worker's incentive to defer payment of a permanent partial impairment lump sum award if it is known the award will not affect the receipt of Social Security income.

### Injured Worker Testimony

The committee received testimony from an injured worker and his wife. The injury occurred in 1963. As a result of House Bill No. 1228, the injured worker's monthly workers' compensation benefits of \$845 were terminated when he reached retirement age. Upon reaching retirement age, their Social Security disability benefits of \$559 were converted to monthly Social Security retirement benefits of \$559. They testified the monthly Social Security benefit amount of \$559 is

not enough for the couple to live on, and they had no way to prepare for the termination of workers' compensation benefits and their resulting financial situation.

### **Committee Recommendation**

Because the Workers Compensation Bureau had not completed its study by the committee's last meeting, the committee makes no recommendation other than that the Legislative Assembly consider proposals brought before it during the 1997 session with regard to workers' compensation benefits for retired injured employees.

## **INTERNATIONAL TRADE AGREEMENTS STUDY**

### **Previous Legislative Council International Trade Agreement Study**

During the 1993-94 interim, the Legislative Council chairman established the International Trade Committee to overview state compliance with requirements of international trade agreements. The committee recommended Senate Concurrent Resolution No. 4010 (1995) to establish an International Trade Committee to study international trade agreements and their effects on North Dakota. The committee also recommended Senate Bill No. 2066 (1995) to establish an International Trade Coordinating Council to oversee and coordinate policies and activities relating to international affairs of North Dakota. This bill was approved by the Legislative Assembly, but was vetoed by the Governor.

### **Trade Agreements**

The committee received testimony on international trade agreements. State measures inconsistent with the international trade agreements can continue to be enforced if they are reserved. North Dakota provisions submitted to the United States Trade Representative for the General Agreement on Trade in Service and the North American Free Trade Agreement (NAFTA) were approved by blanket reservations. Although no legislation is needed on the state level as a result of the international trade agreements, all proposed legislation should be reviewed with the trade agreements in mind to ensure compliance with the most-favored nation and national treatment standards of agreements and the standards in the World Trade Organizations Subsidies Agreement.

### **International Trade Program**

A representative of the Department of Economic Development and Finance described to the committee international trade advantages and challenges for North Dakota companies and changes and opportunities in the global market. Services offered through the department's international trade program include technical assistance, lead generating assistance, and export financing assistance. These items were listed as the 10 most important changes in international

trade in the last 16 months: the Internet and the telecommunications revolution; the general acceptance by most of the world of the necessity for global trade; the public becoming more at ease with trade agreements such as NAFTA and the General Agreement on Tariffs and Trade; the development of trade corridors and trading blocs; the growing need to assist developing nations build their infrastructures; the opening of the Chinese market to American producers; the end of the Cold War and the fall of the Iron Curtain; the revolutionization of how companies perceive their businesses due to International Organization Standardization quality standards; the environmental problems created by years of industrialization now being fought by green technologies and processes; and the higher priority many state and federal governments are giving to international trade and investment.

### **Committee Recommendation**

Because North Dakota needs to make a strong and long-term commitment to the international trade program, the committee recommends the Legislative Assembly request a coordinated strategic plan for international trade.

## **DEPARTMENT OF ECONOMIC DEVELOPMENT AND FINANCE ANNUAL REPORT**

North Dakota Century Code Section 54-34.3-04 requires the director of the Department of Economic Development and Finance to report on loan performance and performance of the department, including evaluations of the Division of Finance, the Division of Marketing and Technical Assistance, and the Division of Science and Technology. The report is to include a comparison of dollars spent to the jobs created of all programs administered or supervised by the director and a review of the timeliness of the loan processing practices including a log of activities from application to final determination.

### **Previous Legislative Council Economic Development Studies**

During the 1989-90 interim, the Legislative Council's Jobs Development Commission studied methods to initiate economic development. One of its recommendations was Senate Bill No. 2058 (1991), which was enacted by the Legislative Assembly. The bill replaced the Economic Development Commission with the Department of Economic Development and Finance.

During the 1993-94 interim, the Legislative Council's Jobs Development Commission studied methods and efforts to initiate and sustain new economic development; products liability statutes as they relate to the aircraft industry; tax, regulatory, marketing, and other business incentives that could be enacted by the state to maintain and encourage development of the state's lignite resources; open records, open meetings, and bidding laws for nonprofit corporations and organizations; and the social economic impact of

defense-related downsizing, closures, and loss of federal contracts. The committee also received the reports from the Department of Economic Development and Finance regarding the impact of the income level requirement in NDCC Section 10-30.3-11 and the annual report on loan performance and performance of the department.

#### **Recent Legislation**

Senate Bill No. 2021 (1993) made the following changes that affected the Department of Economic Development and Finance: Section 6 of the bill changed the name of the "Economic Development Finance Corporation" to "Future Fund, Incorporated;" Section 10 changed the name of the "Science and Technology Corporation" to "Technology Transfer, Incorporated;" and Section 18 eliminated the Division of Marketing and Technical Assistance. House Bill No. 1021 (1995) repealed NDCC Chapter 10-30.3, entitled Future Fund, Incorporated, and created and

enacted NDCC Chapter 10-30.5, entitled North Dakota Development Fund, Incorporated, which became effective July 1, 1995. Because these legislative changes did not revise the reporting requirement under NDCC Section 54-34.3-04, the report could not include the information as required by the statute because division names have changed and one division no longer exists.

#### **Annual Report**

The committee received a report from the Department of Economic Development and Finance with respect to the following divisions, subject matters, and programs: North Dakota Future Fund, Inc., Technology Transfer, Inc., Community Development, Industrial Development, Marketing, Native American Business Program, Women's Business Program, International Trade, Research and Information Services, and Contractual Agreements.

# CRIMINAL JUSTICE COMMITTEE

The Criminal Justice Committee was assigned three studies. House Bill No. 1089, Section 15, directed a study of the proper role of the administrative hearings process in suspension or revocation of motor vehicle operators' licenses in light of recent court decisions on double jeopardy issues. House Concurrent Resolution No. 3016 directed a study of the feasibility and desirability of providing a community notification process by which communities would be informed of a release of a convicted sexual offender and of persons charged with or convicted of sexual offenses. Senate Concurrent Resolution No. 4001 directed a study of the dispositional alternatives available in cases involving sexual offenses against children, the disposition of cases involving perpetrators who do not attend court-ordered treatment, and the courts' use of and compliance with North Dakota Century Code (NDCC) Chapter 12.1-35 and Rule 803(24) of the North Dakota Rules of Evidence.

Committee members were Senators Donna Nalewaja (Chairman) and Wayne Stenehjem and Representatives LeRoy G. Bernstein, Grant C. Brown, Loren DeWitz, RaeAnn Kelsch, Amy Kliniske, William E. Kretschmar, John Mahoney, and Allan Stenehjem.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## DUI ADMINISTRATIVE HEARINGS AND DOUBLE JEOPARDY STUDY

### Background

Article I, Section 12, of the Constitution of North Dakota provides that "[n]o person shall be twice put in jeopardy for the same offense . . . ." North Dakota Century Code Section 29-01-07 provides:

No person can be twice put in jeopardy for the same offense, nor can any person be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted, or acquitted, or put in jeopardy, except as is provided by law for new trials.

The North Dakota Supreme Court in *State v. Alles*, 216 N.W.2d 805 (1974), determined that both of these provisions provide the same protection as the Fifth Amendment of the United States Constitution does through its double jeopardy clause, which is made applicable to the states through the 14th Amendment. The Fifth Amendment provides, in part:

No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb . . . .

Other state trial courts have found that a dual system of an administrative license revocation or

suspension and a criminal sanction violates a person's right to be free from double jeopardy because a second punishment is imposed.

This state has a dual system. A person is guilty of a crime under NDCC Section 39-08-01 if that person is driving with a blood alcohol content of .10 percent, is driving while under the influence of drugs or alcohol, or is driving while rendered incapable of safely driving by drugs or alcohol. If a person arrested for a violation of Section 39-08-01 refuses to submit to testing or that person's test result shows a blood alcohol content of .10 percent or more, the Department of Transportation begins an administrative proceeding to revoke or suspend that person's license to operate a motor vehicle.

The crux of the argument for whether an administrative hearing and a criminal trial for driving while under the influence place a person in double jeopardy is based on whether the administrative license revocation or suspension is "punishment" or is "remedial" in nature. During the committee's study, the North Dakota Supreme Court in *State v. Zimmerman*, 539 N.W.2d 49 (1995), and *State v. Jacobson*, 545 N.W.2d 152 (1996), decided North Dakota's dual system does not violate the United States Constitution, the Constitution of North Dakota, or Section 29-01-07. The court decided that the administrative hearings were created for the remedial purpose of quickly removing intoxicated drivers from the highways.

### Testimony and Discussion

The committee determined that regardless of whether an administrative hearing and a criminal trial for driving while under the influence place a person in double jeopardy, some members of the public perceive the hearings as unfair or punitive. The committee investigated means by which the appearance of unfairness could be removed while improving the administrative hearings.

The committee was informed that the scope of administrative hearings is increasing due to North Dakota Supreme Court decisions requiring the consideration of more and more issues. The longer hearings make the process seem like a trial.

In many instances, the hearing officer places evidence in the record and acts as a judge. This gives the appearance that the hearing officer is not impartial. In addition, this function appears combative because the hearing officer must subpoena a witness rather than conduct ex parte communications (questioning the witness without notice to the party to the hearing). Also, a defense attorney may object to a hearing officer's question, and the hearing officer rules on the objection. Thus, it appears that the hearing officer is prosecutor and judge.

The committee briefly discussed, then rejected, the idea of replacing the administrative hearings process with an automatic license suspension or revocation.

The committee received testimony on

transferring the administrative hearings for driving while under the influence from the Department of Transportation to the Office of Administrative Hearings. The department's hearings are based on an inquisitorial model, in which the department's hearing officer sits for the director of the department. The hearings of the Office of Administrative Hearings are based on a court model, in which the hearing officer, called an administrative law judge, is independent and is hired by and housed in the Office of Administrative Hearings.

Hearings at the Department of Transportation cost approximately \$500,000 per year which includes the maintenance of five hearing officers. The Office of Administrative Hearings charges approximately \$50 per hour for any activity that an administrative law judge conducts.

The Department of Transportation estimated a transfer of hearings from the department to the Office of Administrative Hearings would require an additional \$700,000 per year for the department to have legal representation at the hearings of the Office of Administrative Hearings. This additional cost would cause a loss of highway funds of \$259,000 per year to cities and counties because cities and counties receive approximately 37 percent of the highway funds and the extra expenditure for legal representation would lower the cities' and counties' share of the highway fund. A transfer of administrative hearings would not affect the receipt of federal funds.

The department requested legal representation because the department would no longer be able to manage the hearings through its hearing officers. A representative of the Attorney General also testified that this representation would be needed if hearings were transferred to the Office of Administrative Hearings.

The committee received testimony that providing legal representation for the department at the hearings would help remove the appearance that the hearing officer is not impartial. The hearing officer then could serve solely as a judge. Rarely is there legal representation for the state at a hearing. The arresting officer enters most evidence.

The committee reviewed the option of having local prosecutors be the legal representation for the department. The committee was informed that state's attorneys do not attend the administrative hearings because they are not a "party" under the definition contained in NDCC Chapter 28-32, which governs administrative proceedings of state agencies.

### **Bill Drafts Considered But Not Recommended**

The committee considered a bill draft that would have provided for a delay in the order for suspension of an operator's license for 90 days or until the criminal case for driving while under the influence, whichever occurred first, and would have provided that the suspension order is vacated upon acquittal in the criminal proceeding. This bill draft would have removed the appearance of unfairness that occurs when a person is found not

guilty at the criminal trial, but whose license to operate a motor vehicle still is revoked or suspended. Opponents of the bill draft indicated that the remedial purpose of the administrative process--quickly removing dangerous drivers from the road--would not be fulfilled because the bill draft would allow drivers to stay on the road up to 90 days. Opponents also contended the bill draft would cause the loss of federal antidrunk and drugged driving countermeasure funds, increase car insurance rates, and increase drunk driving. The committee found that although the bill draft would help reduce the appearance of unfairness, the bill draft would remove the benefits of the current administrative system.

The committee considered a bill draft that would have provided for the transfer of administrative hearings for driving while under the influence from the Department of Transportation to the Office of Administrative Hearings and would have required local prosecutors to be present and represent the Department of Transportation. Opponents of the bill draft revealed a lack of support by local prosecutors because they would be forced to attend administrative hearings and because any required attendance may pose a conflict of interest for local prosecutors.

The committee considered a bill draft that would have provided for the transfer of administrative hearings for driving while under the influence from the Department of Transportation to the Office of Administrative Hearings and would have clarified that the department has a right to appeal from hearings of the Office of Administrative Hearings. Opponents of the bill draft focused on the increased costs due to the transfer, the slower resolution of hearings upon transfer, and their satisfaction with the present system.

The committee considered a bill draft that would have required hearing officers for the Department of Transportation to be law-trained, except for any already employed by the department. Testimony revealed that the bill draft would have minimal effect on the cost of hearings and personnel because the Department of Transportation hires law-trained hearing officers. Concern also was expressed that the bill draft would have excluded employment of a qualified person who is not a lawyer.

### **Recommendations**

The committee recommends House Bill No. 1042 to allow local prosecutors to assist in the administrative hearings for driving while under the influence which occur in their jurisdiction. The bill is designed to counteract some district court opinions that a local prosecutor is not a party to an administrative hearing for an operator's license revocation or suspension for driving while under the influence because the local governmental unit does not have a significant enough interest in the outcome of the hearing. The bill allows the local prosecutor to be present at the hearings based upon where the alleged conduct occurred. The bill prohibits the local prosecutor from appealing the decision of the hearing officer.

The committee recommends House Bill No. 1043 to require an alcohol evaluation before the return of an operator's license when the license is suspended or revoked through an administrative hearing for driving while under the influence. The bill makes an evaluation a prerequisite for the return of an operator's license, regardless of the criminal proceeding. A criminal trial could take up to one year to be completed, which does not serve the remedial purpose of quickly removing drunk drivers from the highways.

## **SEX OFFENDER STUDY**

The committee treated the study of sex offender registration and notification and the disposition of sex offenders as one study. Because "disposition" encompasses "treatment" and "court disposition," the committee conducted a broad investigation into what to do with sex offenders.

### **Disposition of Sex Offenders**

#### **Background**

The study of the disposition of sex offenders was recommended by the Child Welfare League in its report *Investing in the Future: Promoting the Well-Being of North Dakota's Children and Families* (the report). According to the report, in June 1994, 55 percent of the 113 sex offenders incarcerated at the State Penitentiary had not been court-ordered into treatment. In 1995 the Legislative Assembly enacted Senate Bill No. 2040, which added commitment to a sexual offender treatment program as a sentencing alternative.

According to the report, two-thirds of prison sentences were less than three years, the minimum time required for sex offender treatment at the Penitentiary. In 1995 the Legislative Assembly enacted NDCC Section 12.1-32-09.1, which requires those convicted of gross sexual imposition to serve at least 85 percent of the sentence imposed by the court before being eligible for parole. Theoretically, the offenders sentenced under this section will stay in prison longer, thereby increasing the chance of completed treatment.

According to the report, longer periods of probation are needed to adequately monitor the treatment of many sexual abuse perpetrators. In 1995 the Legislative Assembly amended NDCC Section 12.1-32-06.1 to provide that a court may impose an additional five years of probation if the defendant has pled or been found guilty of a felony sexual offense against a minor or an additional two years of probation if the defendant has pled or been found guilty of a misdemeanor sexual offense against a minor.

The report estimated that 150 sex offenders did not receive treatment because they lack the funds or insurance to pay for treatment. It was also estimated that 300 sex offenders did not attend treatment due to lack of transportation to treatment sites. It was reported that this state lacked assessment capabilities and group treatment in some regions. One place where complete assessment of and treatment for a sex offender is offered is the Penitentiary.

An alternative to the punitive incarceration and treatment of sexual offenders is involuntary civil commitment. Generally, there are two circumstances in which a person may be involuntarily committed in this state.

Under NDCC Section 12.1-04.1-20, the court may order the commencement of an involuntary civil commitment proceeding on the success of a defendant's not guilty by reason of insanity defense. Under NDCC Section 12.1-04.1-22, the court must commit in this situation if the court finds that the defendant is mentally ill or defective, that there is a substantial risk that the defendant will commit a violent criminal act, and that the defendant is not a proper subject for conditional release.

Under NDCC Chapter 25-03.1, an adult may petition for the involuntary civil commitment of another. If the petition establishes probable cause, a treatment hearing may be held to establish the treatment that will be judicially ordered. The petition must be supported by clear and convincing evidence for treatment to be ordered.

Other states have enacted legislation that provides for a special procedure for the civil commitment of a sex offender. Two states that actively use these procedures are Minnesota and Washington. Both of these states civilly commit following a prison sentence.

#### **Treatment of Sex Offenders**

The committee was informed that the statute that requires certain sex offenders to serve 85 percent of their sentence will not greatly affect sex offender treatment because most sex offenders serve the full sentence given to them. Seventeen to 19 percent of the inmates are sex offenders, though this may not be accurate because a sex offender may plead guilty to another charge so as not to be labeled a sex offender. Only two sex offenders have been paroled in the last 10 years.

The committee was informed that the state needs more treatment facilities and the funds to operate these facilities, along with agency accountability for the treatment, whether through the Department of Corrections and Rehabilitation or the Department of Human Services. The Department of Corrections and Rehabilitation and the Department of Human Services agreed to develop a plan to coordinate the use of their resources. The committee was informed that although there is limited treatment throughout the state, imprisonment is a good motivator and people will travel a long way to get treatment if the alternative is imprisonment.

According to a treatment provider from the Penitentiary, sex offenders suffer from a behavioral disorder, which responds to group or individual treatment rather than drug therapy. A treatment provider from the Department of Human Services testified to the benefit of using drug therapy, a polygraph, a plethysmograph, and group therapy. The committee was informed that there is no cure for sex offenders, but only the prevention of future bad acts, and sex offenders are not a reliable source of information.

## **Treatment at Penitentiary**

The committee reviewed sex offender treatment at the Penitentiary. The Penitentiary provides for the combination of both sexes and different crimes in group treatment. The treatment program also requires the sex offender to apologize to the victim.

Any inmate, not only one convicted of a sex offense, who through the assessment process has been found to have a sex problem, is referred to the sex offender treatment program. Sex offender treatment takes 24 to 36 months to complete. There is no mechanism to force treatment after completion of a sentence. During incarceration, "good time" may be taken away for failure to attend court-ordered treatment.

There is no formal separate treatment program at the Penitentiary or in this state for sex offenders with mental illness or retardation. The Penitentiary staff spent one year trying to find a residential treatment center in the United States for a developmentally disabled sex offender and could not find one.

## **Sex Offenders in Denial**

The committee received information on the treatment of sex offenders who are in denial. The reason sex offenders do not attend treatment is that it is psychologically painful. Forced treatment is not advisable because it provides a sex offender with a rationalization for being psychologically fit because of the attended treatment. Also, forced treatment educates a sex offender in faking recovery.

Most treatment providers will not accept a person for treatment who is in denial for two reasons--it is not cost-effective and a person in denial is difficult to treat.

## **Registration and Notification**

### **Adult Registration and Notification**

During the 1991-92 interim, the Legislative Council's interim Judiciary Committee reviewed this state's sex offender registration laws. The Legislative Assembly enacted the committee's recommendation to consolidate the sex offender and crimes against children registration statutes into NDCC Section 12.1-32-15, which was also amended to provide that the registered person had 10 days to notify law enforcement of any name change.

In 1995, Section 12.1-32-15 also was amended to require a court to impose a registration requirement on any person who has pled guilty or been found guilty of a crime against a child. The amendments also required a person to register if that person is incarcerated or is on probation or parole on August 1, 1995, for a crime against a child or as a sex offender; if the person has pled guilty or nolo contendere to, or been found guilty of, a federal or any other state's offense equivalent to an offense for which registration is required in this state; or if the person has pled guilty to or been found guilty of a crime against a child or as a sex offender within 10 years before August 1, 1995. The amendments also provided that law enforcement agencies could release relevant and necessary

information to the public regarding a person required to register and who is about to be released into the community if the agency determines the person is a public risk and disclosure of the information is necessary for public protection.

Section 12.1-32-15 provides a 10-day period for compliance, a 10-year period for registration, and allows a large amount of information to be actively, publicly disclosed.

Section 12.1-32-15 provides for two classes of information--registration and nonregistration. Registration information consists of a registration statement, fingerprints, and a photograph. The registration statement is a written statement made and signed by the offender which gives the following information: name, date of birth, Social Security number, and state identification of offender; offense; date of conviction; date of release; court of record; prosecuting attorney; originating agency; originating officer; address of offender and date of occupancy; place of employment; and number of years required to register. A law enforcement agency may only disclose registration information to the public if necessary for public protection.

Nonregistration information is gained through criminal history records and from other public records. This information could include the name of the person required to register, the offense, the date of judgment or order imposing a sentence or probation, the name of the court entering the judgment or order imposing a sentence or probation, the sentence or probation imposed upon the offender, and the disposition, if known, of a sentence or probation. The Attorney General is required to provide nonregistration information to the public at no cost.

Most other states have sex offender registration statutes and there is a trend toward notification, although there have been legal challenges to these laws. The challenges have been on ex post facto, cruel and unusual punishment, double jeopardy, due process, and right to privacy grounds. The most successful argument has been the ex post facto argument. This argument has been used to hold registration with notification laws unconstitutional in states that had retroactive application of their registration laws. The crux of the ex post facto, as well as the cruel and unusual punishment and double jeopardy arguments, is whether registration is a punishment or is regulatory in nature. If a registration statute has retroactive application and it is determined that the registration statute is punitive, then the statute is unconstitutional.

### **Juvenile Registration and Notification**

In this state, there are three instances in which a juvenile may be transferred to adult court. Under NDCC Section 27-20-34, a juvenile is transferred to adult court if:

1. The juvenile is more than 16 years of age and requests a transfer;
2. The juvenile is at least 14 years of age and the court determines that there is probable cause to believe the juvenile committed or attempted to commit a murder, gross sexual imposition by force or threat of imminent

death, serious bodily injury, or kidnapping;  
or

3. The juvenile is at least 14 and the court finds reasonable grounds to believe that the juvenile committed a crime, the juvenile is not amenable to treatment, the interest of the community requires that the juvenile be placed under legal restraint or discipline, and the juvenile inflicted or threatened serious bodily injury.

Once in adult court, a juvenile who is found guilty of a crime against a child or as a sexual offender will have to register. As for a delinquent act disposed of in juvenile court, there is no duty to register placed upon the juvenile offender, but in certain instances or for certain persons there is access to information about a juvenile offender.

Most juvenile records are closed or are open for limited purposes that do not identify the juvenile to the public. Under NDCC Section 27-20-51(6), however, upon a third adjudication of delinquency involving an offense that if committed by an adult would constitute a felony and upon a second adjudication of delinquency involving an offense defined in NDCC Section 12.1-20-03 (gross sexual imposition), 12.1-20-04 (sexual imposition), or 12.1-20-07 (sexual assault), the name of the juvenile adjudicated delinquent may be disclosed.

### **Testimony and Discussion**

#### **Registration Requirements**

The committee was informed that this state's sex offender registration and notification law was structured for the protection of the public. This is why there are two lists of information--the registration list and the nonregistration list. The committee was informed that the registration list is available only to law enforcement because the information is gained through forcing the sex offender to supply the information. This information is released by local law enforcement on a discretionary case-by-case basis. Because the statute allows release of "relevant and necessary" information, a law enforcement agency must have facts and justifications to release the information.

The committee received testimony on the success of the registration system and efforts to track unregistered sex offenders and those persons who committed a crime against a child. The committee was informed that it is difficult to track offenders who move into the state, but it is easy to track offenders released on parole. Sex offenders on parole are under the control of the Department of Corrections and Rehabilitation and are under intensive or maximum supervision.

The tracking of sex offenders is necessary not only for knowing the location of offenders, but in sending the offender a notice of the duty to register. To prove the crime of failure to register, the state must prove that the sex offender had notice of the requirement to register. The committee was informed that the penalty for failure to register is an effective penalty and, once explained to the offender, is severe enough to overcome the fear of registration.

Other states have guidelines that regulate the

release of information. Some states require the offender's name, address, and crime to be printed in the local newspaper.

The committee compared this state's notification law to other states' notification laws. The committee was informed that public notification affects the social integration of an offender after release from prison and makes the offender more mobile and less stable. Also, notification could negatively affect the offender's family members and the victim's family.

Testimony indicated 1,000 sex offenders will be on the registration list. The committee was informed that the large number of sex offenders will require extra personnel to administer the registration statute.

#### **District Court Jurisdiction**

The committee reviewed a request to provide for district court jurisdiction over a person at least 20 years of age who committed an offense while under 18 years of age. This change would have the effect of an automatic transfer to district court upon the defendant turning 20 years old.

Under the bill draft prepared in response to the request, the district court would have the first contact with a person coming under its jurisdiction. The bill draft only affected offenses with a long statute of limitations period, such as murder and sexual abuse. The bill draft would not allow prosecution upon intentional delay by the state, but would allow intentional delay by a victim.

#### **Risk Assessment**

The committee considered a bill draft that required a risk assessment as part of the presentence investigation for individuals charged with gross sexual imposition. The committee was informed that the additional cost of a risk assessment could be absorbed by the Department of Corrections and Rehabilitation or the Department of Human Services. According to a representative from the Department of Corrections and Rehabilitation, the projected cost of a pilot program, a polygraph operator, a clinical supervisor for state treatment, and common assessment instruments will be included in the agencies' budget requests.

#### **Involuntary Civil Commitment**

The committee considered a bill draft proposed by a representative of the Attorney General which provided for the involuntary civil commitment of sexually dangerous individuals. Civil commitment would require a high burden of proof--clear and convincing evidence. Commitment would be for an indefinite period and a person in denial could remain committed for life.

In Minnesota, 87 sexual offenders have been involuntarily civilly committed in the past five years. Based upon these numbers, this state will require approximately 20 beds for sexually dangerous individuals. Based upon Minnesota's costs, it will cost this state approximately \$1.2 million for 24 months. This figure is based upon 10 individuals being committed in the next biennium. The State Hospital is developing a

program for sexually dangerous individuals. Representatives of the State Hospital indicated funds for the cost of the treatment program will be included in the State Hospital's budget request for the 1997-99 biennium.

### **Federal Requirements**

The committee considered a bill draft to keep this state's sex offender registration and notification law in compliance with federal law. The bill draft provided for the indefinite registration of sexually violent predators and for a "qualified board" to advise judges in the determination of whether a person is a sexually violent predator. The Department of Human Services would determine the membership of the board. Also, the bill draft required, rather than authorized, relevant and necessary information to be released by local law enforcement upon a determination of public risk and a necessity for public protection. Although the bill draft made this change, law enforcement would still have discretion because law enforcement would still have to form a risk determination and determine the need for public protection before the notification process. The change, however, would ensure law enforcement notifies the public when law enforcement has determined there is a risk and there is a need for public protection. Enactment of the bill draft would prevent the loss of 10 percent (approximately \$200,000 per year) of the federal matching Byrne funds received by criminal justice agencies in this state for enhancement of the criminal justice system.

The committee was informed that the number of sexually violent predators would be very small because not many individuals meet the definition of sexually violent predator and because the bill draft required a motion by the state's attorney before a determination would be made that an individual is a sexually violent predator.

The committee discussed the lack of information on who would serve on the qualified board and the need for a list of more definite procedures that the qualified board should follow. Testimony suggested that the Parole Board might be able to handle the duties of the qualified board.

### **Data Collection System**

The committee considered a bill draft to provide for a data collection system for juvenile offenders. The bill draft provided that a juvenile who commits sexual assault, murder, kidnapping, felonious restraint, gross sexual imposition, sexual imposition, prostitution, or is involved with the use of or promoting of children in a sexual performance will have information collected on that juvenile and sent to the Attorney General. Upon receipt of the information, the Attorney General would release the information to law enforcement for law enforcement purposes, to the Department of Human Services for licensing purposes, and when relevant and necessary, to the juvenile's school for the purpose of maintaining that child's and other children's safety during school activities. Law enforcement would be able to disclose the information to the public upon a second listed

delinquent act if the juvenile is a public risk and disclosure is necessary for public protection.

The present location of juvenile records is in the county in which a juvenile committed a crime. There are no centralized records for juveniles. Because juvenile records are accessible by contacting a clerk of court in a county, access to juvenile records is limited to the daytime.

According to a representative from the Bureau of Criminal Investigation, the cost of the adult registration system would include the cost of a juvenile data collection system because of low numbers of juvenile offenders on whom data would be collected.

The committee was informed that a data collection system will not produce much of a deterrent effect, but will make it easier to arrest a juvenile for a subsequent offense because law enforcement would have access to information to find the juvenile and the information would provide a profile that may focus the investigation. Opponents of the bill draft expressed concern with community notification based on broad discretion given to law enforcement and with school notification. Instances were cited in which a teacher or other school official leaked information to the student body concerning a juvenile offender.

### **Recommendations**

The committee recommends that the Fifty-fifth Legislative Assembly approve funding for administration of the sex offender registration and notification law as requested by the Bureau of Criminal Investigation.

The committee recommends House Bill No. 1044 to require individuals convicted of a relevant offense in municipal court to register as if convicted in district court. Certain offenses, including simple assaults and certain sexual assaults, are tried in municipal court. Although these misdemeanors may be a violation of a city ordinance, a person who violates a city ordinance is not registered. A person convicted of one of these misdemeanors would be registered if the person had been convicted in district court.

The committee recommends House Bill No. 1045 to clarify district court jurisdiction over a person at least 20 years of age who committed an offense while under 18 years of age.

The committee recommends House Bill No. 1046 to require a risk assessment as part of the presentence investigation for individuals charged with gross sexual imposition.

The committee recommends House Bill No. 1047 to provide for the involuntary civil commitment of sexually dangerous individuals.

The committee recommends House Bill No. 1048 to keep this state's registration law in compliance with the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and an amendment to it, Megan's Law. The Jacob Wetterling Act requires registration for at least 10 years and until a court determines the offender is no longer a sexually violent predator. Megan's Law requires release of relevant and necessary information.

The committee recommends Senate Bill

## CHILD VICTIM AND WITNESS PROTECTION STUDY

### Background

As part of Senate Concurrent Resolution No. 4001, the committee was directed to study the courts' use of and compliance with NDCC Chapter 12.1-35 and North Dakota Rules of Evidence Rule 803(24). This study was recommended in the report by the Child Welfare League. According to the report, several people complained that the courts have misinterpreted or not used changes made in Rule 803(24) and Chapter 12.1-35. Rule 803 provides:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(24) **Child's statement about sexual abuse.** An out-of-court statement by a child under the age of 12 years about sexual abuse of that child or witnessed by that child is admissible as evidence (when not otherwise admissible under another hearsay exception) if:

- (a) The trial court finds, after hearing upon notice in advance of the trial of the sexual abuse issue, that the time, content, and circumstances of the statement provide sufficient guarantees of trustworthiness; and
- (b) The child either:
  - (i) Testifies at the proceedings; or
  - (ii) Is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement.

The hearsay rule prevents the introduction of, as evidence, out-of-court statements offered for the truth of the matter asserted. Rule 803 allows an out-of-court statement of a child abuse victim or witness to be introduced into evidence if the statement is trustworthy and if the child testifies or the statement is corroborated.

North Dakota Century Code Chapter 12.1-34 provides for the release of certain information to victims and witnesses of crimes. The information is on the status of the investigation, charges filed, pretrial release, all court proceedings, and available services. The chapter also provides for the return of property, a waiting area, protection of identifying information, and the right to be present at proceedings. There are also provisions for

involvement in postconviction proceedings. The protections are effectuated mainly by the state's attorney.

North Dakota Century Code Chapter 12.1-35 addresses the unique problems encountered with victims and witnesses who are minors. State's attorneys are encouraged to facilitate the court's, the child's, and the family's understanding of the special circumstances that surround testimony of a minor. The chapter also provides confidentiality and speed in the proceedings. Section 12.1-35-05.1, this state's "lap law," provides:

Upon request of a witness who is under the age of fourteen, the court shall permit an individual selected by the court to sit with, accompany, or be in close proximity to the witness in order to provide support to the witness while that witness is giving testimony. In order to provide support to a witness who is fourteen years of age or older, while that witness is giving testimony, the court may permit an individual selected by the court to sit with, accompany, or be in close proximity to that witness.

If there is a lack of use of these provisions, the report suggested proper training would increase the use or at the minimum help ensure the correct use of the provisions. In addition, the report expressed concern about the "lap law" not expressly allowing children to be accompanied by comfort objects, such as bears or dolls.

### Testimony and Discussion

The committee monitored use of and compliance with Chapter 12.1-35 and Rule 803(24) by sending a questionnaire to all district court judges. The results revealed that the protections for child victims and witnesses are not used that often because there are few trials in which there is a minor victim or witness. The results also revealed that judges understand the purpose of the "lap law" and have allowed children to be accompanied by comfort objects such as a bear or a doll. The judges rated the effectiveness of Rule 803(24) on a scale from 1 to 10 (with 10 being very effective) as a 7.1.

The committee was informed of studies that had shown that the fewer times a child has to repeat a story of sexual abuse in front of a group of people, the better the child does emotionally and in providing clear testimony.

### Recommendation

The committee recommends House Bill No. 1049 to require the court to protect a child victim or witness from repeated or lengthy interrogation, testimony, or discovery proceedings.

# EDUCATION FINANCE COMMITTEE

The Education Finance Committee was assigned three responsibilities. Sections 9 and 6 of 1995 Senate Bill No. 2519 directed a study of the financing of elementary and secondary education and the availability of state support for school construction, a review of formulas used to equalize state aid in the areas of transportation and special education, a review of funding sources that could be alternatives to property taxes, and a review of supplemental payments to high school districts. The Legislative Council also directed the committee to monitor implementation of the special education block grants as provided for by Senate Bill No. 2063 (1995). The committee incorporated this directive in its study of the financing of elementary and secondary education. The Legislative Council chairman instructed the committee to review the report on the performance audit of the Department of Public Instruction.

Committee members were Senators Layton W. Freborg (Chairman), Tony Grindberg, Jerome Kelsh, Rolland W. Redlin, Steven W. Tomac, Terry M. Wanzek, and Jim Yockim and Representatives Ole Aarsvold, James Boehm, Jack Dalrymple, David Drovdal, Tom D. Freier, William E. Gorder, Lyle L. Hanson, Ruth E. Holm, Dennis Johnson, Joe Kroeber, Richard Kunkel, David Monson, Ronald Nichols, Catherine Rydell, and Dennis J. Schimke. Representative Andy Hagle was also a member of the committee until his death in March 1996.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## FINANCING OF ELEMENTARY AND SECONDARY EDUCATION STUDY

### Background

#### Initiation of the Foundation Aid Program

A foundation aid program designed to provide financial assistance to local school districts has been in effect in North Dakota since 1959, when the Legislative Assembly enacted a uniform 21-mill county levy and provided a supplemental state appropriation to ensure that school districts would receive 60 percent of the cost of education from nonlocal sources. This initial program was adopted in part because the Legislative Assembly recognized that property valuations, demographics, and educational needs varied from school district to school district. The Legislative Assembly embraced the broad policy objective that some higher cost school districts in the state "must continue to operate regardless of future school district reorganization plans." Taking into account the financial burdens suffered by the low valuation, high per student cost school districts, the Legislative Assembly forged a system of weighted

aid payments that favored schools with lower enrollments and higher costs. This initial program also allocated higher weighting factors to districts that provided high school services.

#### The 1970s

For the next several years, the foundation aid program remained essentially unchanged. However, federal and state courts were beginning to address issues of spending levels for elementary and secondary education and whether those levels should be dependent upon the wealth of the school district in which a student resides. The Legislative Assembly, in an attempt to preempt the issue in North Dakota, responded by amending the foundation aid program in a way that evidenced a higher level of sophistication. The state more than doubled the per student payments and replaced the flat weighting factor with one that recognized four classes of high schools. Elementary weighting factors were altered as well. Adjustments continued to be made during the mid-1970s. A new category encompassing seventh and eighth grade students was created and fiscal protection for schools experiencing declining enrollments was instituted. This latter provision ensured that no school district could receive less in foundation aid payments for a current year than that district would have received based on its enrollment during the previous school year. For the 1975-77 biennium, the foundation aid appropriation was \$153.4 million. In 1979 the Legislative Assembly appropriated \$208.4 million for the foundation aid program and added an additional appropriation of \$1 million to pay for free public kindergartens.

#### The 1980s

The next major development affecting education finance occurred with the approval of initiated measure No. 6 at the general election in November 1980. This measure imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax must be used to make possible state funding of elementary and secondary education at the 70 percent level. To meet this goal, the 1981 Legislative Assembly allocated 60 percent of the oil extraction tax revenues to the school aid program. Initiated measure No. 6 also provided for a tax credit that made the 21-mill levy inapplicable to all but the owners of extremely high value properties. The Legislative Assembly eliminated the 21-mill county levy and increased state aid to compensate for the revenues that would otherwise have been derived from the levy.

During the early 1980s, discussions continued to center around purported funding inequities. Districts spending similar amounts per student and having similarly assessed valuations were not levying similar amounts in property taxes to raise the local portion of education dollars. It was alleged that the system encouraged some districts to levy much smaller amounts than their spending

levels and assessed valuations would seem to justify.

In response, the Legislative Council's Education Finance Committee, during the 1981-82 interim, examined a method of funding education known as the "70-30" concept. This proposal was a significant departure from the existing foundation aid formula in that it took into account the cost of providing an education in each school district. The formula required determination of the adjusted cost of education, and then required the computation of a 30 percent equalization factor to arrive at each district's entitlement. It was contemplated that a local mill levy would be employed to raise the district's local share of the cost of education.

Proponents touted this approach as one that included a comprehensive equalization mechanism and which recognized local variances in the cost of education. Opponents argued it did nothing more than award high spending districts and penalize those that had been operating on restricted budgets. The interim committee did not recommend the concept.

Discussions regarding the many aspects of education finance continued through the 1980s. Legislative Council interim committees explored weighting factors, considered the effects of increasing the equalization factor, and explored the excess mill levy grant concept. During the 1987-88 interim, the Education Finance Committee established specific goals and guidelines to guide its deliberations on matters of education finance. While the interim committees have articulated the need to alter the state's education funding system, they could reach little agreement beyond recommending increases in the level of per student aid.

### State Litigation

In 1989 legal action was initiated for the purpose of declaring North Dakota's system of public school finance unconstitutional. The complaint in *Bismarck Public School District No. 1 v. State of North Dakota* charged that disparities in revenue among the school districts had caused corresponding disparities in educational uniformity and opportunity which 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 listed these "constitutionally objectionable" features of the school financing system:

- Disparities in current revenue per pupil are the result of variations in school district taxable wealth.
- The 22-mill equalization factor in the foundation aid formula fails to equalize for variations in district wealth because the equalization factor is below the state average school district tax rate for current revenue and leaves much of the school millage outside the foundation formula.
- The low level of foundation educational

support fails to ensure substantial equality of resources for children in similarly situated school districts.

- The use of cost weightings that are inaccurate unjustifiably benefits districts with large amounts of taxable wealth.
- The flat grant allocation of tuition apportionment ignores the vast differences in taxable wealth among school districts and operates as a minimum guarantee for wealthy districts.
- The transportation aid program exacerbates existing resource disparities by reimbursing some, often wealthy, districts for more than the actual cost of transportation to the district and require other, often poorer, districts to fund a substantial share of transportation costs from other revenue sources.
- The special education funding program exacerbates existing resource disparities by giving higher spending districts an advantage in obtaining state reimbursement of special education costs and requiring school districts to fund a large share of the excess costs of special education programs from the disparate tax basis of school districts.
- The state aid for vocational education exacerbates existing resource disparities.
- The state system for funding school facilities relies on the unequal taxable wealth of school districts.
- The payment of state aid to wealthy districts maintains large ending fund balances.
- The failure of the state to ensure that resource differences among school districts are based on factors relevant to the education of North Dakota children rather than on the unequal taxable wealth of North Dakota 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 Superintendent of Public Instruction was directed to prepare and present to the Governor and the Legislative Assembly, during the 1993 session, plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

### Response to the Litigation

In response to the district court's order, the Superintendent of Public Instruction presented the following recommendations to the 1993 Legislative Assembly:

- Raise the per student payment to \$3,134.
- Fund special education by dividing the 13 disabilities categories into three broad categories and assigning weighting factors to each.
- Fund vocational education by assigning weighting factors to high cost and moderate cost programs.
- Provide transportation reimbursements based

- on six categories of density.
- Provide state funding of education at the 70 percent level.
- Establish a uniform county levy of 180 mills.
- Distribute tuition apportionment in the same manner as foundation aid.
- Provide that federal and mineral revenues in lieu of property taxes and districts' excess fund balances be part of a guaranteed foundation aid amount.
- Allow districts the option of levying 25 mills above the 180-mill uniform county levy.
- Require that all land be part of a high school district and that districts having fewer than 150 students become part of a larger administrative unit.
- Provide \$25 million for a revolving school construction fund.

As introduced, House Bill No. 1003 (1993) was the appropriations bill for the Superintendent of Public Instruction. As it progressed through the legislative process, it became the principal 1993 education funding enactment. The bill:

- Set the state support for education at \$1,572 per student for the first year of the 1993-95 biennium and at \$1,636 for the second year.
- Raised the equalization factor from 21 to 23 and then to 24 mills.
- Set weighting factors at 25 percent of the difference between the prior statutory amount and the five-year average cost of education per student, as determined by the Superintendent of Public Instruction, for the first year of the biennium and at 50 percent of the difference for the second year of the biennium.
- Capped state transportation payments at 100 percent for the first year of the 1993-95 biennium and at 90 percent for the second year of the biennium and directed that any savings resulting from imposition of the 90 percent cap during the second year of the biennium be used by the Superintendent of Public Instruction to increase the per student transportation payments available under North Dakota Century Code (NDCC) Section 15-40.1-16.
- Reiterated the existing statutory requirement that school districts admitting nonresident students charge tuition but exempted school districts that admit nonresident students from other districts offering the same grade level services.
- Directed the Legislative Council to conduct another study of education finance and appropriated \$70,000 for purposes associated with the study, including necessary travel and consultant fees.

### 1993-94 Interim Study

The Legislative Council's interim Education Finance Committee began its efforts during the 1993-94 interim before an appeal of *Bismarck Public School District No. 1* was taken to the North Dakota Supreme Court. The committee was

aware that many of the issues addressed by the trial court had been the subject of interim studies and legislative deliberations for many years. However, the committee also realized that the requisite number of Supreme Court justices (four) might not necessarily agree with the lower court's determination that the state's system of funding education was unconstitutional.

The North Dakota Supreme Court issued its decision on January 24, 1994--*Bismarck Public School Dist. No. 1 v. State of North Dakota*, 511 N.W.2d 247 (N.D. 1994). Only three of the five justices held that the state's education funding system was unconstitutional.

A majority of the Supreme Court indicated that there were three principal areas in need of attention--in lieu of revenues, equalization factors, and transportation payments. The Supreme Court did not, however, mandate specific legislative action. The court indicated the areas of concern and then left it up to the Legislative Assembly to determine how those areas should be addressed. In a dissenting opinion, Chief Justice VandeWalle stated:

[T]he present funding system is fraught with funding inequities which I believe have not yet transgressed the rational-basis standard of review but which appear to me to be on a collision course with even that deferential standard.

The Supreme Court decision was issued midway through the 1993-94 interim. By the time the Education Finance Committee had completed its work, it had considered 35 bill drafts and three resolution drafts. Twenty-seven pieces of legislation were recommended to the Legislative Council for introduction during the 1995 legislative session.

The committee's recommendations included increases in the minimum high school curriculum; establishment of an additional Governor's school; appropriation of funds for elementary summer school programs, professional development programs, professional development centers, and refugee student assistance; placement of all land in a high school district; alteration of the weighting categories; a variable equalization factor; reclassification of special education categories; distribution of tuition apportionment according to average daily membership; an increase in transportation payments from 28 cents to \$1 per day for all students transported by schoolbuses; and an \$80 million increase in the level of foundation aid over that appropriated during the 1993-95 biennium.

### Response by the 1995 Legislative Assembly

Although the 1995 Legislative Assembly enacted a variety of bills dealing with education and education finance, the most significant provisions were found in three bills--Senate Bill No. 2059, Senate Bill No. 2063, and Senate Bill No. 2519.

Senate Bill No. 2059 dealt with the funding of

transportation. The bill maintained the per mile payment of 25 cents for small buses and 67 cents for large buses and it added a payment for in-city transportation of 25 cents per mile. The per head payment for in-city students riding schoolbuses or commercial buses was increased from 17.5 cents to 20 cents per one-way trip. The 90 percent cap on payments, which was instituted by the 1993 Legislative Assembly, was left in place.

Senate Bill No. 2063 dealt with the funding of special education. The bill provided that \$10 million must be used to reimburse school districts for excess costs incurred on contracts for students with disabilities, for low-incidence or severely disabled students, and for certain boarding care. The bill also provided that \$400,000 must be used to reimburse school districts for gifted and talented programs approved by the Superintendent of Public Instruction and \$500,000 must be used to reimburse school districts with above-average incidence of moderately or severely disabled students. Any amount remaining in the special education line item must be distributed to each school district in accordance with the number of students in average daily membership. The line item for special education was \$36,850,000. The bill also provided that during the 1995-96 school year, no district or special education unit may receive less than 95 percent of the amount it received during the 1993-94 school year, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. During the 1996-97 school year, no district or special education unit may receive less than 90 percent of that amount.

Senate Bill No. 2519 provided an increase in the per student payment for small but necessary elementary and high schools and increased by 20 percent the weighting factors applied to students attending school out of state. The bill raised the equalization factor from 24 mills to 28 mills for the first year of the biennium and to 32 mills for the second year of the biennium, and provided that thereafter the equalization factor would be tied by a mathematical formula to increases in the level of foundation aid. The equalization factor would not fall below 32 mills nor rise above 25 percent of the statewide average school district general fund mill levy. Weighting factors, which had been set at 50 percent of the difference between the factor stated in statute and the five-year average cost of education per categorical student, were left at 50 percent of the difference for the first year of the biennium and then raised to 65 percent of the difference for the second year. High school districts whose taxable valuation per student and whose cost of education per student are both below the statewide average are entitled to receive a supplemental payment, again based on a mathematical formula. The sum of \$2,225,000 was appropriated for supplemental payments. The payments, however, are effective only through June 30, 1997. Per student payments were set at \$1,757 for the first year of the biennium and at \$1,862 thereafter.

The 1995 Legislative Assembly appropriated \$517,598,833 for foundation aid, transportation aid, supplemental payments, tuition apportionment, and special education. That figure exceeds the 1993-95 appropriation by \$41,561,941.

### **School Construction - Testimony and Conclusion**

Before 1964, there were only five court cases in which the constitutionality of school finance was challenged. The generic profile of school districts, however, was being replaced by a variety of characteristics. Some districts became larger, while others became smaller. Some were left with a declining agricultural tax base, while others were able to take advantage of urban sprawl. The resulting diversity in the ability to access dollars prompted charges of inequity and an onslaught of court cases across the nation. The court cases addressed issues of equity and adequacy in terms of general operating revenues--dollars necessary to pay teachers and to purchase supplies and equipment. The committee was told that future court cases are expected to extend their focus to issues of equity and adequacy in terms of capital construction.

North Dakota, like similarly situated states, has experienced the development of new programs, increased demand for teacher inservice activities, increased demand for technological updating, declining student numbers in the rural areas, and a reluctance on the part of taxpayers to accept additional taxes on state and local levels. School districts have responded by prioritizing their financial requirements. Because facility maintenance and construction do not have the same actual or perceived significance as instructional needs do, the result, the committee was told, has been a deterioration of the state's school buildings and facilities.

The Superintendent of Public Instruction commissioned a study of the state's school facilities. The resulting report indicated that 40 percent of the state's 21 million plus square feet of school buildings is located in the eight largest school districts. Over 50 percent of the state's 21 million plus square feet of school buildings is more than 30 years old. The report indicated that even though a facility might be structurally sound, it probably suffers from educational obsolescence in that it was not designed to appropriately accommodate many of the educational programs or instructional activities we now have.

The report stressed that school buildings, like any other physical plants, deteriorate if timely maintenance and renovation efforts are not undertaken. In the case of North Dakota schools, needed maintenance and renovation includes paving parking lots; lighting sites; repairing or replacing windows, doors, exterior walls, and roofs; making classrooms, washrooms, drinking fountains, and elevators handicapped accessible; updating teaching and noninstructional areas; and repairing or replacing heating, plumbing, and electrical services and systems. The estimated cost

of doing such work is \$421,367,366. Testimony indicated that these costs traditionally increase by five percent a year.

It was suggested to the committee that some long-term responses might include:

- Developing a state role in which school facilities are funded in the same proportion that the foundation aid received by a district bears to the total amount of foundation aid appropriated by the state.
- Guaranteeing a level of valuation perhaps equal to the statewide average valuation.
- Implementing a system of grants to support multidistrict construction and renovation efforts.

The committee makes no recommendation relating to school construction.

### **Transportation - Testimony and Committee Considerations**

The state has played a role in the funding of school district transportation services since 1972. Rates are set by the Legislative Assembly and payments are made by the Superintendent of Public Instruction, taking into account factors such as miles traveled, number of students, vehicles used, and one-way and return trips. In past years, some school districts received transportation reimbursements in excess of their transportation expenditures. In 1993 the Legislative Assembly limited transportation payments to 90 percent of a district's current transportation operating cost plus the eight-year average cost of transportation equipment.

Districts affected by the cap complained that reported transportation costs were not uniform among the districts. Superintendents from smaller districts said they spend considerable time on busing--time that is not reflected in the cost calculations. Other districts charge costs to other users of transportation services on an ability-to-pay basis. For example, an extracurricular program not having a budget for transportation may be subsidized by the regular transportation program in one district and not reported at all in another. Recognizing these inconsistencies, the Legislative Assembly, in 1995, directed the Superintendent of Public Instruction to develop and require that school districts use a uniform cost accounting system for the transportation reimbursement program.

The document *Guidelines for Student Transportation Costs* was issued in April 1996 and presented to the committee. The guidelines address contracted services, bus drivers, fuel, family transportation, repairs, maintenance, insurance, equipment costs, the district superintendent's allocation, business office and school board costs, and time allocation.

The committee was told that the Superintendent of Public Instruction believes that the 1995 formula, together with the uniform cost accounting system now in place, must be given time to work and must be adequately assessed before legislative changes are made. The

Superintendent of Public Instruction does not intend, therefore, to seek any changes in the transportation funding formula.

The committee, however, did consider a bill draft relating to contracted transportation services. According to testimony presented to the committee, if a school district switches from contracting for transportation services to providing its own transportation services, there is a problem in determining actual costs for reimbursement purposes. The bill draft provided that in such a situation a school district may use the higher of its own transportation operating expenditures or the statewide average cost of transportation during that first year. The committee determined that contracted costs include capital expenditures and therefore it is reasonable that school districts switching from contracting for services to providing their own services be given a factor they can use when applying for transportation reimbursements. This is not a widespread problem, but very significant to the affected school districts. Approximately 20 percent of all school districts contract for transportation services.

### **Special Education Funding and the Monitoring of Special Education Block Grants - Testimony and Conclusion**

The 1995-97 appropriation for special education was \$36.8 million--an increase of \$3.35 million over the previous biennium. With that increase, the Legislative Assembly also revised the parameters within which the Superintendent of Public Instruction could distribute the funds. In the past, the Superintendent of Public Instruction distributed special education appropriations in accordance with language found in NDCC Section 15-59-06.2:

If allowable costs for special education and related services for a child with disabilities in a special education program, as determined by the Superintendent of Public Instruction, exceed the reimbursement provided by the state, the school district is liable to pay for each such student an amount over the state reimbursement up to a maximum each school year of two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department. The two and one-half times amount includes the amount the school district is required to pay in section 15-59-06. The state is liable for one hundred percent of the remainder of the cost of education and related services for each such student with disabilities.

Under that method of distribution, the amount appropriated for special education was first devoted to the excess costs and then any remaining dollars were devoted to noncontract costs such as teacher-student units and new program initiatives. The reimbursement of costs in excess of the two

and one-half times amount were guaranteed. Other reimbursements were not.

The guaranteed amount was generally associated with costs for student contracts, i.e., the costs for students placed in a school district for reasons other than education. This tends to occur as a result of placements by other state agencies such as the Division of Juvenile Services or foster care entities. It also applies to costs incurred by students placed in private care facilities inside or outside the state for purposes of education. The problem was that the cost of student contracts continued to rise at an exponential rate. During the 1990-91 school year, 14.4 percent of a \$12 million annual allotment for special education was used for student contract reimbursements. During the 1995-96 school year, the cost of student contracts was \$5.7 million. The committee was told that without changes there was no reason to expect that this growth rate would have slowed down.

In an attempt to curb this growing cost, and perhaps force districts to consider alternative placements for the contract students, the 1995 Legislative Assembly reverted from guaranteeing the excess amount of student contracts to capping the amount allocated for student contracts at \$10 million, and, in effect, guaranteeing the personnel side of special education reimbursement. Personnel reimbursement had been tied to a complex formula involving student-teacher units, but the new reimbursement system is based on average daily membership. In addition, the Superintendent of Public Instruction clearly defined the components of a student contract, including how costs are calculated and what qualifies as an excess cost. Before this effort, each school district and special education unit engaged in somewhat different forms of calculations, resulting in inequitable reimbursements. As a result of these changes, some school districts, which had been advantaged by the former reimbursement system, received fewer dollars. However, the majority of the school districts received two-thirds of their special education dollars through a mechanism that equalizes the special education dollars in the same fashion as foundation aid dollars.

School districts receive \$109 for each student in average daily membership and have available to them certain safety features that were built into the revised distribution method, including a set-aside of \$500,000 for above-average incidences of moderately or severely disabled students. During the 1995-96 school year, districts and special education units were guaranteed a special education funding level of no less than 95 percent of the amount they received for the 1993-94 school year, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. For the 1996-97 school year, the guarantee was lowered to 90 percent of the amount received for the 1993-94 school year, excluding reimbursements for student contracts, boarding care, and gifted and talented programs.

Because Section 1 of Senate Bill No. 2063 (1995) provided that \$10 million must be used to reimburse school districts for excess costs incurred on student contracts, the committee questioned what would happen if school districts and special education units, working under the new reimbursement system, claimed or were allowed to claim an amount less than the \$10 million. Testimony offered to the committee indicated that if any portion of the \$10 million set aside for student contracts was not so distributed, it would be prorated on a per student basis.

The committee determined that this new reimbursement mechanism, also referred to as a block grant distribution, had been thoroughly studied during the 1993-94 interim and implemented on that committee's recommendation by the 1995 Legislative Assembly. Even though there is continuing controversy about the distribution of special education appropriations, the committee determined that the controversy stems less from the actual method of distribution than from the fact that the special education needs of North Dakota students exceed the funds available to accommodate those needs.

The committee makes no recommendation relating to special education funding and the monitoring of special education block grants.

#### **Supplemental Payments to High School Districts - Testimony and Conclusion**

In Senate Bill No. 2519, the Legislative Assembly appropriated \$2,225,000 for supplemental payments to high school districts whose taxable valuation per student and whose cost of education per student are both below the statewide average. The payments, however, are effective only through June 30, 1997. Future payments were conditioned upon a review of the provision by an interim committee and a favorable recommendation for continuation.

Districts receiving supplemental payments during the 1995-97 biennium include:

Belfield	\$ 27,111
Beulah	\$ 45,792
Bismarck	\$322,620
Bottineau	\$ 16,321
Center	\$ 6,609
Devils Lake	\$126,582
Dickinson	\$251,629
Edinburg	\$ 3,673
Flasher	\$ 5,419
Grafton	\$ 48,045
Grand Forks	\$190,414
Granville	\$ 33
Hankinson	\$ 4,182
Hazen	\$100,704
Jamestown	\$126,826
Larimore	\$ 2,091
Lisbon	\$ 1,448
Mandan	\$ 92,379
Milnor	\$ 2,011
Minnewaukan	\$ 7,779
Minot	\$147,789

Montefiore	\$ 6,372
Mt. Pleasant	\$ 762
Newport	\$ 49
New Salem	\$ 5,027
Park River	\$ 4,861
Rugby	\$ 269
Sawyer	\$ 1,675
Sheyenne	\$ 3,055
Southern	\$ 1,104
South Heart	\$ 23,079
Stanley	\$ 5,674
Surrey	\$ 21,449
Thompson	\$ 12,212
Underwood	\$ 3,661
United	\$ 5,901
Valley City	\$ 62,868
Velva	\$ 13,180
Wahpeton	\$ 40,628
Washburn	\$ 40,118
West Fargo	\$ 47,450
White Shield	\$ 28,119
Williston	\$362,874

Testimony indicated that the supplemental funding provision was included in the 1995 education funding package so that the effects of the implemented equity provisions would be found more palatable by those districts negatively impacted.

With respect to whether the supplemental payment provision should be maintained, it was suggested that rather than creating a formula and adding a supplemental payment provision because the foundation aid formula is deemed to be inequitable, inadequate, or both, an attempt should be made to arrive at a funding package that is equitable and adequate when standing on its own. The committee discussed whether income should be included as a factor in determining eligibility for supplemental payments. The committee determined that because income taxes are not levied locally, they should not be equalized locally.

The committee considered a bill draft that would have removed the sunset provision on the section of law providing for supplemental payments to certain high school districts. Some committee members were concerned that, at this point, they did not know the specifics of the foundation aid package and that it was therefore premature to assume a supplemental payment provision would be necessary. It was also stated that while districts falling within the parameters of the statutory eligibility criteria clearly needed the additional funding provided by the supplemental payment mechanism, there were also districts falling just outside the eligibility parameters and those districts were in equal need of additional money. Others argued that even if the concept of the supplemental payment is not perfect, it should be considered during the legislative session as a part of the overall funding package.

While the committee, by motion, articulated its support for the concept of supplemental payments and the use of such payments, if necessary, to ensure a greater level of adequacy and equity in

the 1997-99 foundation aid package, the committee makes no recommendation relating to supplemental payments to high school districts.

### Property Tax Relief - Testimony and Conclusion

The school districts of this state receive revenues from two primary sources--the state general fund and local property taxes. Property taxes traditionally have been favored as a significant component of school funding because of the stability of that funding source. Unlike income taxes, energy taxes, or sales taxes, property taxes are not greatly affected by economic fluctuations. The ability to pay property taxes and the reliance of the education sector on property taxes, however, have brought the issue of property tax relief to the forefront.

### Proposal by the Superintendent of Public Instruction

The Superintendent of Public Instruction presented to the committee a proposal that would have placed a two percent tax on North Dakota taxable income, thereby raising \$100 million a year. The local source of the income tax revenue would be identified and \$3 of every \$4 raised by the tax would be returned to the local districts so that property taxes could be lowered and the remaining funds would be left with the state for redistribution through the foundation aid formula. The school district mill levy cap would be reduced from 185 mills to 110 mills in the process. Proponents of this concept indicated it would greatly reduce dependence on local property taxes; it would replace property taxes with equalized dollars; it would allow school districts flexibility to meet their individual needs in that they could still levy up to 110 mills, or if they were unlimited taxing districts, they could levy any amount deemed necessary locally; and it would provide options to the Legislative Assembly in that decisions could be made to provide less property tax relief, but use the income tax assessment for additional education revenues.

The proponents cited these advantages of the proposal:

- Issues regarding the regressivity of a sales tax increase would be avoided.
- Income taxes, unlike sales taxes, can for the most part be attributed to a specific district.
- Cities levying sales taxes would not be as opposed to an income tax hike as they would to a sales tax increase.
- The state is ranked higher nationally with respect to its sales tax rates than its income tax rates.

Approximately 46 percent of all school district revenues come from property taxes and 42 percent of all school district revenues come from state sources. The two percent income tax proposal was advanced as potentially reducing the local share to 26 percent and raising the state share to 62 percent of the cost of education (assuming that \$25 million of new money is included as a result of

the rise in income taxation). Per student payments would be increased to \$2,560.

The committee, however, was concerned that a subsequent reduction in local property taxes would not be applicable to those districts having unlimited taxing authority. The committee also was concerned that there is no guarantee future Legislative Assemblies would be inclined to filter the new dollars generated by the increased income taxes to education funding. It was stated that the end result could in fact be an increase in income taxes with no perceivable long-term reduction in property taxes. Moreover, concern was expressed that if in the future the Legislative Assembly found itself needing to raise revenue for a purpose other than education, it would be unlikely that the electorate would support a further increase in the state's income tax rates.

The committee took no action on the proposal by the Superintendent of Public Instruction.

### **Proposal by the North Dakota Stockmen's Association**

Representatives of the North Dakota Stockmen's Association presented to the committee a proposal that would have increased the personal income tax rate from 14 percent to 22 percent of federal liability and increased the taxes on all corporate income over \$50,000 from 10.5 percent to 15.5 percent, thereby raising approximately \$100 million annually. The proposal included a provision whereby 20 percent of the amount raised would be considered new money for education and 80 percent of the amount raised would be returned in the form of property tax relief. School districts would have their mill levies lowered by the property tax replacement funding and then be allowed to increase their mill levies by only two percent each year.

The committee determined that this proposal would shift the burden of taxation from those who own property to those who are generating income. The committee was concerned about capping school district mill rates and even considered a proposal whereby the cap would be instituted only if the 1997-99 appropriation for foundation aid exceeded the 1995-97 appropriation for the same purpose by \$40 million. The proposal to implement a conditional mill levy cap was not favored because of the theory that \$20 million in new funding during each year of the biennium would alleviate the districts' need to generate more local revenue. However, the committee also found that while the proposal addressed property tax issues related to school districts, nothing in the proposal limited other local taxing entities from raising their levies.

The committee determined that a proposal such as this, if enacted, would provide a readily available avenue for future tax increases for education or other purposes. The committee also determined that the proposal did not require property tax reductions by school districts having unlimited taxing authority.

The second part of the proposal offered by representatives of the North Dakota Stockmen's

Association involved the equalization factor. During the 1995 legislative session, the equalization factor was set at 32 mills for the 1996-97 school year and thereafter would be raised according to a mathematical formula based on the amount of foundation aid actually appropriated. The equalization factor cannot fall below 32 mills nor rise above 25 percent of the state average school district general fund mill levy. The association's proposal reduced the equalization factor to 16 mills and factored in .21 of one percent times the total adjusted gross income of school district residents.

Proponents of the proposal indicated that .21 percent of income approximates 16 mills and, as a result, the proposal substituted an income value for property value. Opponents questioned how income would be identified and how it would be attributed to a particular school district, especially if an individual lives in a bedroom community, and earns income in a neighboring city located in another school district, or if an individual lives in one school district and farms in another school district. Even though income tax forms require identification of a school district, opponents contended penalties for misidentifying or not identifying school districts would have to be considered.

The committee determined that while there were legitimate concerns regarding implementation of the concept, inclusion of income in the financing formula precipitates additional equity discussions that should be shared with all members of the Legislative Assembly.

### **Other Property Tax Relief Measures**

As discussions ensued regarding the merits of the proposals offered by the Superintendent of Public Instruction and by representatives of the North Dakota Stockmen's Association, the committee considered two bill drafts that were variations of the prior proposals and a third bill draft that related to the state average school district general fund mill levy.

The first bill draft would have raised personal and corporate income taxes to provide for a combined annual increase of \$80 million, all of which would be dedicated to property tax relief. The combined biennial tax increase would set personal income tax rates at 20.4 percent of federal liability and corporate rates at 14.5 percent.

Proponents of the bill draft hailed it as being truly neutral in that it did not raise additional taxes for education, but merely shifted the tax burden from the present system favoring property taxes to one placing greater reliance on income taxes. Opponents argued that a mere replacement of tax dollars through a shift in revenue sources does not address the continued need for additional education funding. Opponents also argued that the bill draft contained the same concerns articulated with respect to the proposal by the North Dakota Stockmen's Association. Specifically, the bill draft imposed a cap on school districts that do not have unlimited taxing authority but relied

on the good faith of school districts with unlimited mill levy authority to maintain reduced property tax levels.

The second bill draft would have provided for an increased short-form income tax rate, changed the basis of the tax from tax liability to taxable income for the purpose of raising approximately \$100 million during each year of the biennium, and provided that 80 percent of the amount raised be returned in the form of property tax relief. The bill draft would have used the federal rate tables, as they are adopted by the federal government each year and would have established a rate of 22 percent of whatever the federal rate is for income in that bracket. Although the rates would generate the same revenue, they would look lower because they would apply to taxable income.

Proponents stated that the reference to taxable income would in fact make the tax increase appear more palatable both to North Dakota taxpayers and to citizens in other states seeking to move to the state or invest in the state. Opponents argued that the bill draft might be thought of as being deceptive. Even though the rates look lower, the fact that they are being applied to taxable income rather than being a percentage of federal liability does not change the reality of an income tax increase of \$100 million per year.

The committee considered a bill draft that would have provided that the calculation of the state average school district general fund mill levy could not include school districts having unlimited taxing authority. Proponents testified that the state average school district general fund mill levy is 209.4 mills. If the school districts with unlimited taxing authority are eliminated from the calculation, the state average school district general fund mill levy drops to 170.98. This bill draft would have reduced the equalization factor for school districts and consequently allowed some school districts to obtain increases in state aid.

Opponents suggested that if the top six taxing districts are removed from the calculation, perhaps the six lowest taxing districts should also be removed. That would, however, present a skewed figure in that the top six taxing districts have a huge valuation while the bottom six districts have very little valuation. The committee determined that this bill draft would result in less local effort and consequently amount to a move away from equity.

#### **Committee Recommendations**

The committee recommends Senate Bill No. 2031 to provide that if a school district has contracted for transportation services and then proceeds to provide its own transportation services, the school district may use the higher of its own transportation operating expenditures or the statewide average cost of transportation during the first year for which it seeks transportation reimbursement from the Superintendent of Public Instruction. The committee determined that it was important to statutorily establish a base cost so that districts switching from contracted services to

their own services can obtain reimbursement during the first year in which they provide their own services.

The committee recommends House Bill No. 1050 that reduces the equalization factor to 16 mills and requires that .21 of one percent times the total adjusted gross income of school district residents be factored into the calculation of the equalization factor. The committee determined that while property ownership is not necessarily an accurate measure of wealth, income is an accurate measure.

#### **Miscellaneous Matters - Testimony and Committee Recommendation**

##### **Computer Programming Error**

During the 1993-95 biennium, a computer programming error resulted in a miscalculation in the number of students attending alternative high schools in Bismarck, Devils Lake, Fargo, Grand Forks, Jamestown, and Minot. The error was not discovered until after the close of the 1993-95 biennium. Using current biennial appropriations, adjustments were made to the 1995-97 payments. Because the Superintendent of Public Instruction could not use current appropriations to correct errors applicable to the previous biennium's payments, the question of addressing the loss suffered by these school districts during the 1993-95 biennium came before the committee. The unadjusted amount of the error is \$426,000.

The committee considered a bill draft that used funds remaining in the foundation aid - transportation line item at the end of the 1995-97 biennium to first reimburse the six school districts for the losses they suffered during the 1993-95 biennium. Upon completion of that distribution, the Superintendent of Public Instruction would distribute any remaining funds to all school districts as a separate and contingent per student payment on a weighted basis. Previous appropriations to the Superintendent of Public Instruction for the foundation aid program traditionally included language allowing for the separate and contingent distribution of any funds remaining in the line item at the end of the biennium. The committee was told that such authorizing language was omitted from the 1995 appropriation because if a statute sets forth a specific dollar appropriation, and those dollars are available and distributed, any funds remaining should be returned to the state general fund. The Superintendent of Public Instruction estimated that there will be approximately \$2.5 million in excess funds at the end of the 1995-97 biennium.

While the committee was concerned with how an error of this magnitude could have occurred, the members were in agreement that the six affected school districts should not bear the financial burden of the error and should be reimbursed out of any excess funds remaining in the foundation aid - transportation line item at the end of the biennium. There was not, however, a consensus that the tradition of distributing a separate and contingent per student payment at the end of the

biennium should be maintained, if legislatively authorized payment amounts are met. Doing so was labeled a poor accounting practice, even though it may have become an expectation on the part of school boards when determining district budgets.

The committee determined that the concept of reimbursement for the six school districts having alternative high school students and the concept of maintaining separate and contingent per student payments should be viewed independently and therefore recommends separate bills.

The committee recommends House Bill No. 1051 to use funds from any amount remaining in the foundation aid - transportation line item at the end of the 1995-97 biennium to reimburse the six school districts in Bismarck, Devils Lake, Fargo, Grand Forks, Jamestown, and Minot for the losses they suffered during the 1993-95 biennium as a result of a computer programming error that miscalculated the number of students those districts had in their alternative high schools.

The committee recommends House Bill No. 1052 to authorize the Superintendent of Public Instruction to distribute any funds remaining in the foundation aid - transportation line item at the end of the 1995-97 biennium to all eligible school districts as a separate and contingent weighted per student payment.

## **REVIEW OF THE PERFORMANCE AUDIT OF THE DEPARTMENT OF PUBLIC INSTRUCTION**

### **Background and Testimony**

Section 11 of Senate Bill No. 2013 (1995) directed the State Auditor to conduct a performance audit of the Department of Public Instruction. The audit was presented to the Legislative Audit and Fiscal Review Committee. Because many of the issues addressed in the audit pertained to the administration of education programs and issues within the purview of the interim Education Finance and Education Services committees, the Legislative Audit and Fiscal Review Committee requested the Legislative Council chairman to reassign review of the audit to one of those committees. The Legislative Council chairman directed the interim Education Finance Committee to review the audit and to make appropriate recommendations.

Created in 1889, the office of Superintendent of Public Instruction is charged with enforcing state statutes and federal regulations pertaining to the establishment and maintenance of public schools and related programs. The Superintendent of Public Instruction is responsible for the general supervision of the common and secondary schools of this state.

Within the Department of Public Instruction there are eight separate divisions--the Executive Operations Management Council Division; the Instructional Services Support Division; the Operations and School District Support Services Division; the Adaptive Services Support Division;

the Division of Independent Study; the North Dakota State Library; the Vision Services Division; and the North Dakota School for the Deaf.

The performance audit of the department was designed to:

- Assess the effectiveness and efficiency of the school approval and state accreditation programs by evaluating the accomplishment of legislative intent, evaluating the laws and policies, and by evaluating the programs' resources;
- Determine if department personnel meet the Office of Management and Budget's qualifications;
- Determine if the department is in compliance with the supplanting clause of the federal contract for the safe and drug-free schools program; and
- Determine whether a more efficient monitoring process could be used through development of a consolidated team monitoring process.

### **Audit Recommendations Regarding Approval and Accreditation Programs**

The audit recommended that the Superintendent of Public Instruction take appropriate steps to clarify statutory criteria regarding the approval of schools and to ensure that only schools meeting the statutory criteria are designated as "approved" schools. The Superintendent of Public Instruction should develop a coordinated system for the inspection of schools seeking approval or maintenance of the approval standards, should include a visual inspection of the schools' calendars, and should verify that the schools are meeting all statutory health, safety, and fire requirements.

The audit recommended that the Superintendent of Public Instruction should take appropriate steps to ensure that only those schools meeting all accreditation standards are designated as "accredited" schools. The Superintendent of Public Instruction should combine the elementary and secondary education units; should review accreditation on a two-year cycle rather than annually to ensure that more indepth reviews are conducted; should conduct and document onsite monitoring of schools before determining approval and accreditation status; should review the *Accreditation Standards, Criteria, and Procedures for the Classification of Elementary, Middle Level/Junior High, and Secondary Schools* to ensure it reflects procedures being followed; and should follow a formal procedure for the reduction of state aid to schools that do not meet approval or accreditation standards.

The audit recommended that the Superintendent of Public Instruction review NDCC Title 15, as it relates to elementary and secondary education, to ensure that departmental personnel are appropriately implementing or enforcing the statutory provisions, and to seek the amendment or repeal of those sections no longer necessary or appropriate. The audit found that the

Superintendent of Public Instruction has exceptional controls to determine compliance with teacher qualification standards, but has implemented only limited reviews of curriculum requirements, kindergarten plans, and compliance with health, fire, and safety requirements.

### **Audit Recommendations Regarding Personnel Issues**

The audit cited several employees of the Superintendent of Public Instruction who do not meet the Office of Management and Budget's qualifications for the positions they hold. The audit recommended that the Superintendent of Public Instruction reclassify, promote, transfer, and hire individuals for positions only if those individuals meet the minimum qualifications established by the Office of Management and Budget and that the Superintendent of Public Instruction review current personnel to ensure that all are in compliance with the statutory and administrative requirements.

### **Audit Recommendations Regarding the Safe and Drug-Free Schools Program**

The audit found that the department is not in violation of the supplanting clause contained in the grant agreement for the safe and drug-free schools program. The department was found, however, to be in violation of certain state laws as they relate to the procurement and awarding of funds for the chemical abuse and prevention program. The audit recommended that the Superintendent of Public Instruction make an effort to identify additional sources of funding and to secure funding through the appropriation process so that the chemical abuse and prevention program can be administered in accordance with the requirements of NDCC Chapter 15-21.1. If funding cannot be obtained, the Superintendent of Public Instruction should take appropriate steps to amend or repeal the chapter.

### **Audit Recommendations Regarding the Combined Monitoring Functions**

The audit found that the Superintendent of Public Instruction is responsible for administering 12 programs that require monitoring at the elementary, middle, and high school levels to ensure compliance with federal laws and regulations and to evaluate the effectiveness of the programs. Local administrators questioned the need for so many different individuals from the department coming to their schools at different times. They complained about the interruptions this has caused in their schools. The audit recommended that the Superintendent of Public Instruction conduct a comprehensive review of the safe and drug-free schools program, Title I programs relating to the operation of basic programs by local education agencies, Title II programs relating to professional development, Title VI programs relating to innovative education strategies, migrant education, the education of the homeless, and Goals 2000 to determine how the

monitoring functions could be consolidated to provide more efficient and effective services. This should include the development of a master matrix of all entities administering the different programs, the development and implementation of a plan for coordinating efforts as appropriate, the determination of specific expertise needed to monitor and evaluate the different programs, and the development of a cross-training program so that individuals can conduct multiple monitoring functions.

### **Committee Considerations**

The committee was particularly concerned that one of the statutory criteria for the approval of schools--fire safety--was not well-defined. The North Dakota Century Code makes no specific provision for the timely inspection of schools, the correction of noted defects, and the criteria to be employed in determining when a school should be deemed unsafe and subsequently closed. The issue of school fire inspections and school safety was addressed by the 1993-94 interim Education Finance Committee, which recommended House Bill No. 1038. However, the bill encountered difficulty when concerns were raised about revenue sources to assist with potentially costly repairs and when concerns were raised about state versus local responsibility in ensuring a safe environment for North Dakota schoolchildren. The bill failed to pass.

The committee considered a bill draft that required the State Fire Marshal to inspect each public and private elementary and secondary school in the state at least once every three years. An inspection report is to be prepared and deficiencies are to be categorized. With respect to correction schedules, the bill draft provided that if a deficiency is related to a school's design, it is to be remedied when any construction, repair, improvement, renovation, or modernization is undertaken. If the deficiency is related to fire safety, the building principal is to remedy the deficiency within a time period acceptable to the State Fire Marshal or to submit a plan of correction to the State Fire Marshal. If the deficiency is an imminent fire hazard, the State Fire Marshal may require that the principal take immediate remedial action or may recommend to the Superintendent of Public Instruction that some or all of the school be closed until the hazard is eliminated. If a school is closed under these circumstances, the bill draft directed the Superintendent of Public Instruction to work with the school's authorities to make arrangements for the interim education of all affected students.

Unlike House Bill No. 1038 (1995), this bill draft contained no provision for the withholding of financial aid or the imposition of any financial penalty. The committee determined that a financially strapped school district will be in no better position to make needed repairs or corrections if additional funds are withheld.

Proponents of the bill draft indicated that it focused on education--on ensuring that people

understand why certain conditions create serious fire hazards and it relied on reasonableness to correct noted deficiencies. The committee determined that many fire safety issues can be addressed through alternative means. Sometimes, rather than remodeling an entire wing of a school building, installation of early warning systems such as smoke detectors or the installation of a sprinkling system can serve as adequate and cost-effective options.

The committee also was concerned that issues regarding the approval and accreditation of schools were indicative of a larger, more pressing need to review all the provisions of Title 15 that relate to elementary and secondary education. The committee determined that the irrelevant, duplicative, inconsistent, illogically arranged, and unclear sections in the title needed to be examined and addressed. Because of the scope of such a project, the time factor, and the need for legal and educational expertise, the committee determined that the most desirable approach would be to ask that an interim legislative committee be directed to undertake the task.

### **Recommendations**

The committee recommends Senate Bill No. 2032 to require the State Fire Marshal to inspect each public and private elementary and secondary school in the state at least once every three years, to prepare an inspection report, to categorize deficiencies, and to work with school staff to appropriately correct noted deficiencies. The committee determined that through education, reasonableness, and cooperation among state and local fire and school officials, all North Dakota schoolchildren can be assured of a safe educational environment.

The committee recommends Senate Concurrent Resolution No. 4002 to direct the Legislative Council to study those provisions of NDCC Title 15 which relate to elementary and secondary education and to subsequently recommend changes to those portions of the title found to be irrelevant, duplicative, inconsistent, illogically arranged, or unclear in their intent and direction.

# EDUCATION SERVICES COMMITTEE

The Education Services Committee was assigned three studies. Section 8 of Senate Bill No. 2063 directed a study of the equitable provision of services to students who are gifted and talented, the equitable funding of such programs, and whether those services should be funded independently of or together with services provided to students who are disabled. House Concurrent Resolution No. 3006 directed a study of the feasibility and desirability of utilizing institutions of higher education to provide educational options and opportunities for North Dakota high school students. Senate Concurrent Resolution No. 4007 directed a study of the delivery and effectiveness of, and costs associated with, professional growth and development programs for teachers. The committee was also directed to acknowledge the receipt of county plans assigning the duties of the county superintendents of schools by those counties eliminating the position. The committee took additional testimony regarding compensatory time for teachers participating in parent-teacher conferences outside regular school hours and implementation of the education strategist credential.

Committee members were Senators Ray Holmberg (Chairman), Bonnie Heinrich, David O'Connell, Randy A. Schobinger, and Terry M. Wanzek and Representatives Ole Aarsvold, James Boehm, Lyle L. Hanson, Ruth E. Holm, David Monson, Bill Oban, and Catherine Rydell.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## SERVICES TO STUDENTS WHO ARE GIFTED AND TALENTED

### Background

North Dakota Century Code Section 15-59-01 defines a "child who is gifted" as:

[A] gifted and talented child identified by professional, qualified persons, who, by virtue of outstanding abilities, is capable of high performance and who requires differentiated educational programs and services beyond those normally provided by the regular school program in order to realize his or her contribution to self and society.

The provision of special education services to students who are gifted is not mandatory under the laws of this state. Nevertheless, during the 1995-96 school year, 16 school districts served students who were identified as gifted and talented. Before the 1995-96 school year, the Superintendent of Public Instruction set aside a portion of special education funds for the provision of services to gifted students. During the 1995 session, the Legislative Assembly, for the first

time, created a separate line item appropriation of \$400,000 for the reimbursement of school districts that provide programs for gifted and talented students. The reimbursements were contingent upon submitting an application to the Superintendent of Public Instruction and receiving approval of the application in accordance with guidelines adopted by the Superintendent. The Legislative Assembly also provided that per student special education payments could be used by school districts to provide services to students who have special needs, including students who are gifted and talented.

### Levels of Service

In 1992 the Superintendent of Public Instruction published *Guidelines for Gifted Programming*. The guidelines provide that gifted programming "should be viewed as a commitment to create, support, and sustain many services through which educators seek, bring out, and nurture the strengths, talents, sustained interests, and best potentials of all our students."

The document goes on to provide:

The goals and purposes of gifted programming should therefore be considered more broadly (and, we believe, more powerfully) than merely to select and label a single, fixed group of students to be assigned to a single, fixed program. These guidelines, therefore, do not merely concern "having a gifted program" in your district or school, as much as they address the dynamic and ongoing process of challenging many students to become aware of their best potentials, and to fulfill those potentials as fully as possible through the opportunities and services offered throughout the school program.

In order for a school district to be eligible to receive the funds set aside by the Legislative Assembly, the guidelines require the district to employ a teacher credentialed in gifted education and to implement a "service level" approach to instructional programs. This approach moves away from the traditional view of a "single, fixed" program for students specifically identified as being gifted and talented and "toward 'programming' which is dynamic and 'multidimensional.'" The approach provides for activities and services at four programming levels.

Level I programming is directed toward "all" students. It includes creative and critical thinking in the regular curriculum; high levels of Bloom's Taxonomy; independent projects undertaken on an individual or small group basis; accommodation of student learning styles; general exploratory activities such as guest speakers, field trips, assembly programs, and interest development centers; exposure to new topic areas such as foreign languages and fine arts; and activities that are based on expressed student interests.

Level II programming involves services for "many" students. It encompasses the Great Books, Odyssey of the Mind competitions, Future Problem Solving, Young Authors programs, Readers' Theatre, Young Inventors, computer labs, science fairs, mathematics competitions, performing and visual arts, clubs and academic interest groups, personal and career counseling services, curriculum compacting, and after school or summer enrichment programs.

Level III programming provides services for "some" students. It involves the use of newspapers and literary magazines; indepth followup seminars with guest speakers; individual art, music, and drama lessons; advanced classes or sections in academic areas; community problem solving; internship programs; complex or extended projects on an individual or small group basis; talent search participation; test-outs of credit-by-examination; peer teaching opportunities; and participation in special programs sponsored by colleges and universities for talented students.

Level IV programming provides services for "a few" students. It provides students with the opportunity to enroll in higher level high school or postsecondary level courses. It provides for grade level acceleration or multiple grade advancement. It also involves the use of mentors, the presentation of students' work to outside groups, the publication of students' work in outside sources, and the development and conduct of research or service projects.

### **Testimony**

"Giftedness" used to be measured by intelligence quotient (IQ) test scores. Children at or above a predetermined cutoff score were "gifted" and eligible for special services while children below the cutoff score were not entitled to those special services. The special services were most often offered within the confines of a "pullout" program. For a specific number of minutes each week, gifted students were segregated and could pursue studies or activities not available to their classmates.

Pullout programs are still maintained in some school districts and are vigorously supported by the parents of students involved in the programs. Parents told the committee that gifted students are different and that this fact is recognized by the parents, the students, and the teachers. They said it is virtually impossible to meet the educational needs of gifted students within the confines of a regular classroom even under the best of circumstances and absolutely impossible to meet the needs of gifted students in a large classroom, led by an overworked teacher having responsibility for students on all ends of the aptitudinal spectrum.

Teachers indicated that it is their job to enhance the learning of all students, not just those falling within a fixed delineation of test scores. All students should be exposed to new and exciting concepts. It is this belief that has prompted some school officials to use the levels of service approach and begin to address the needs of their students

using concepts such as curriculum compacting. Instead of focusing on whether a student sits for the amount of time generally thought necessary to master a concept, the focus is placed on the mastery itself. Once a student has demonstrated the required skill level, the student can progress within the subject area or can use spare time for other projects or purposes. This approach is used at the elementary level and is being introduced at the middle school level.

Testimony indicated that the challenge for teachers involved in curriculum compacting appears to be communication so that if a sixth grade student completes all the required sixth grade mathematics curriculum and three-fourths of the seventh grade mathematics curriculum, the student's seventh grade teacher will be made aware of this and allow the student to continue progressing, rather than demand that the student sit through material already mastered.

Gifted education has focused primarily on the elementary grades, in part because of limited funding and in part because of the rationalization that high school students, by virtue of having a larger variety of course offerings, can find more challenges for themselves.

### **Committee Considerations**

The committee considered a bill draft that appropriated \$400,000 to the Superintendent of Public Instruction for the provision of educational services to gifted and talented elementary and secondary students. This amount is to be in addition to any amount requested by the Governor in the 1997-99 executive budget for existing gifted and talented programs.

The bill draft also placed two directives on the Superintendent of Public Instruction. The first requires that the Superintendent encourage the provision of services to gifted and talented students in small, rural school districts. The committee was particularly concerned that moneys set aside for the education of gifted students be available to assist gifted students across the state, not just those who reside in the large, urban school districts. Recognizing that any appropriation for gifted students is likely to be minimal in terms of actual need, the committee wanted to ensure that whatever funds are available be used in the most effective and efficient manner possible. The committee determined that given the educational delivery structure in this state, such a manner would have to involve the special education units. Therefore, the second directive requires that the Superintendent encourage collaborative and cooperative efforts among school districts and special education units in the delivery of educational services to gifted students.

### **Recommendation**

The committee recommends House Bill No. 1053 to appropriate \$400,000 to the Superintendent of Public Instruction for the provision of educational services to gifted and talented elementary and secondary students. The bill also encourages

delivery of educational services to gifted and talented students in small, rural school districts and collaboration and cooperation among educational providers in making the most efficient use possible of available funds.

## **EDUCATIONAL OPTIONS AND OPPORTUNITIES FOR HIGH SCHOOL STUDENTS**

### **Background**

As issues of educational equity and quality continue to be explored, there is frequent discussion regarding the limited scope of course offerings, especially in the state's smaller high schools, together with limited opportunities for all high school students to pursue courses that are more academically challenging than those made available through the standard high school curriculum. One option for addressing these concerns is a postsecondary enrollment options program. Beginning with the premise that education occurs along a continuum, rather than in a segmented fashion, postsecondary enrollment options programs seek to involve institutions of higher education in providing greater options and opportunities to high school students.

A postsecondary enrollment options program allows 11th and 12th grade students who are enrolled in a public high school and who meet certain admission criteria to enroll in institutions of higher education on a part-time or a full-time basis and receive high school credit, postsecondary credit, or both, for courses successfully completed.

These programs generally fall into one of three categories. The first category involves comprehensive programs that are offered at minimal or no cost to students. Credits earned under the programs apply to both high school and postsecondary requirements and few restrictions are imposed regarding the courses to be taken. Colorado, Florida, Georgia, Maine, New Jersey, Ohio, Utah, and Washington have enacted this type of program. In the second category, the programs are less comprehensive. Tuition is generally paid if the student enrolls in the postsecondary course for high school credit only and restrictions are placed on the types of courses deemed acceptable. Minnesota and Wisconsin have enacted this type of program. The third category is limited programs. Students pay the costs associated with the postsecondary courses, academic credit restrictions are imposed on the courses, and stringent eligibility criteria are enforced. Arizona, Arkansas, Indiana, Iowa, Kansas, and Louisiana have implemented this type of program. The committee studied representative programs from each category.

### **The Colorado Program**

Colorado enacted its postsecondary enrollment options program in 1988. According to the original Act:

- High school students need to be continually challenged to maintain their academic

interests;

- Such challenges must include rigorous academic pursuits;
- Exposure to academic challenges declines during the last two years of high school as students complete their graduation requirements;
- There exists a high dropout rate among 11th and 12th graders;
- Courses offered in a setting other than a high school may provide, for certain students, a stimulation or maintenance of interest;
- By offering a wider variety of options and by encouraging and enabling high school students to enroll in courses offered by state institutions, students are provided with new and exciting academic challenges; and
- Postsecondary enrollment options programs provide access to excellence in education.

Postsecondary schools that are eligible to participate in the program include the state colleges and universities, junior colleges, and community colleges; independent vocational schools; and nonpublic institutions of higher education.

A student is eligible to participate in the program if the student is 21 years of age or younger, is enrolled in the 11th or 12th grade, and is in need of coursework at a higher academic level than that available at the student's school or is in need of a different environment.

Each school district is required to notify its students and parents of the program. Any student wishing to participate must notify the school district in writing of the student's intent at least two months before enrollment. The student must specify the courses in which the student intends to enroll. Allowable courses are any offered by the institution of enrollment.

Every allowable course counts as credit toward the student's high school graduation requirements, unless the credit is specifically denied by the student's high school principal and upheld by both the district superintendent and the local school board. The requirement that a course must be taught by a certificated teacher if high school credit is to be awarded is waived.

When a student enrolls in the program, the student's school district and the institution of higher education enter a cooperative agreement. The agreement must provide that any coursework undertaken by the student qualifies as credit toward a high school diploma and toward a postsecondary degree or certificate. The agreement also must provide that the student will not be required to pay tuition charges.

A participating institution of higher education is responsible for the content of any course taken by a high school student under the program and for the quality of the instruction.

With respect to financial provisions, an institution is reimbursed by the student's school district of residence for costs, as provided by the agreement. The amount of tuition is the same as that charged for a resident university-level student

taking the course. If the student voluntarily drops the course, without the consent of the student's principal, the student and the student's parent or legal guardian must reimburse the school district for the amount of any tuition paid by the district. The student is responsible for transportation.

For purposes of calculating average daily membership, a student who is receiving high school credit is counted as being in attendance at high school even when participating in the postsecondary enrollment options program. However, that student may not be included by the postsecondary institution in determining the number of full-time equivalent students in that institution unless the student is not receiving high school credit for the course.

An institution of higher education is permitted to limit the number of students enrolled under the program. The program is not applicable to students enrolled in summer school.

### **The Minnesota Program**

In 1984 Minnesota enacted a program under which high school students could take academic courses at institutions of higher education and receive high school credit for those courses. In 1985 Minnesota enacted its Postsecondary Enrollment Options Act to enable high school students to enroll full time or part time in nonsectarian courses or programs in eligible institutions of higher education.

Eligible institutions of higher education include public postsecondary institutions; private, nonprofit, two-year trade and technical schools; the Opportunities Industrialization Center accredited by the North Central Association of Colleges and Schools; and private, residential, two-year and four-year liberal arts degree-granting colleges or universities in Minnesota.

On or before March 1 of each year, school districts are to provide general information about the program to all students in grades 10 and 11. A student interested in participating in the program is to notify the school district before March 30.

Any 11th or 12th grade student enrolled in a public school, other than an international exchange student enrolled in a district under a cultural exchange program, may apply to an eligible institution of higher education. If the student is accepted, the institution is to notify the student's school district and the state Commissioner of Children, Families, and Learning within 10 days. The notification must include the courses and hours of enrollment. The institution must grant priority to its postsecondary students when filling courses. Once a high school student has been enrolled in a course, however, that student may not be displaced by a postsecondary student.

A student may enroll in a course for either high school or postsecondary credit. Seven quarter or four semester college credits equal at least one full year of a high school course. Proration is used to determine course credits. If a comparable course is offered by the district, the student must be

granted a comparable number of credits. If a comparable course is not offered by the district, the district must ask the Commissioner of Children, Families, and Learning to determine the number of credits to be awarded.

The Minnesota Department of Children, Families, and Learning reimburses institutions that enroll high school students under the program if the student is receiving high school credit. If the student is receiving postsecondary credit, all accompanying charges are the responsibility of the student. The rate of payment for which a postsecondary institution is eligible is determined by a statutory formula. The institution may not charge a student for whom it receives payment under the program for fees, textbooks, materials, or other necessary costs of the course or program. All textbooks and equipment provided to a student are the property of the student's school district of residence and must be returned by the student upon completion of the course.

For the purpose of determining average daily membership, students participating in the postsecondary enrollment options program are deemed to be students in attendance at their school district of residence.

Unlike many of the other postsecondary enrollment options programs in which transportation is the responsibility of the student and the student's parents, the Minnesota program provides that parents may apply to the school district of residence for transportation reimbursement. The reimbursement is based on financial need and is set at the actual cost or 15 cents per mile, whichever is less. Reimbursement may not be paid for more than 250 miles per week. If, however, the nearest postsecondary institution is more than 25 miles from the student's high school, the weekly reimbursement may not exceed the per mile rate multiplied by the actual distance between the high school and the nearest postsecondary institution, times 10. Transportation reimbursement is not available to any student who enrolls in the postsecondary enrollment options program for postsecondary credit.

If a student is enrolled in a high school that is more than 40 miles from the nearest eligible institution of higher education, the student may request that the school district offer at least one accelerated or advanced academic course for postsecondary credit within the district. Upon being requested to do so, the school district must offer at least one such course during the next academic period and must continue to do so in later academic periods. The district may decide which course to offer and how to offer the course. If a postsecondary-level course is taught for high school credit in a high school setting, the teacher must meet the university's requirements for an adjunct instructor. State regulations requiring that high school courses be taught by certificated teachers are not applicable to any postsecondary-level courses for which a student may obtain high school credit.

### The Arkansas Program

Arkansas allows any public school student who has successfully completed the eighth grade to apply for admission to and, if accepted, enroll in a publicly supported community college or four-year college or university. Upon completion of the coursework at an institution of higher education, the student is eligible to receive both high school and postsecondary credit. All costs associated with the program are borne by the student.

### The Minnesota Experience

After having a postsecondary enrollment options program in place for nearly a decade, the Research Department of the Minnesota House of Representatives undertook a study of the program, the students who enrolled in it, the types of courses taken by the students, and the financial impact of the program. The research indicated that almost half of the students who participated were from the metropolitan Minneapolis-St. Paul area. The research also indicated that 47 percent of all K-12 students in Minnesota were from the metropolitan Minneapolis-St. Paul area.

On average, seven percent of a school district's 11th and 12th graders participated in the program. Those districts with moderate rates of participation (those in the five to 15 percent range) tended to be relatively close to an institution of higher education. Those districts with the highest rates of participation (those in the 40 percent plus range) had no institution of higher education readily accessible.

Forty-one percent of the participants enrolled in courses at community colleges, 26 percent enrolled at the University of Minnesota, 18 percent enrolled at technical colleges, 10 percent enrolled at state universities, and five percent enrolled at private colleges. The most popular courses included:

Communications	24%
Social science	19%
Vocational courses	12%
Mathematics	8%
Science	7%
Art/music	5%
Foreign language	5%
Business	5%

Physical education, history, humanities, health, applied mathematics, and miscellaneous subjects were in the two to four percent range.

During the 1992 fiscal year, the cost of the program was approximately \$31 million. The cost of educating those same students if the program had not been in existence would have been approximately \$28 million. The research showed that in the long term, the state would also see financial benefits because of student participation in the program. The reason for this is that the state pays a portion of the cost of educating public college students, regardless of whether those students are high school students participating in the postsecondary enrollment options program or college-level students. However, the state pays

less to educate a high school student enrolled in the postsecondary enrollment options program than it does to educate a college student taking the same course.

The research concluded that the program also has long-term benefits that are less tangible. Among these benefits are the fact that the program gives postsecondary institutions in the state an advantage in recruiting and retaining some of the best and brightest high school students and the fact that the program seems to meet the needs of students who are not doing well within the traditional high school system.

### The Moorhead State University Experience

The committee met with faculty, staff, and students at Moorhead State University regarding implementation of the postsecondary enrollment options program at that institution. Area high school students who attend Moorhead State University under the program are provided with a wide variety of college-level courses. The high school students are expected to meet the same standards as those imposed upon traditional college-level students.

Moorhead State University sets its own admission criteria. Students often are required to be ranked in the upper half of their high school class. A student's desire to enroll in a class is not sufficient criteria for admission. Approximately 25 high school students attend Moorhead State University on a full-time basis. The experience of Moorhead State University has been that the high school students who attend under the auspices of the postsecondary enrollment options program have a very high rate of success and are generally at the top of their high school class, very mature, academically astute, and very committed to succeeding in their postsecondary-level courses.

### The Moorhead Public School District Experience

When the postsecondary enrollment options program was first implemented, Minnesota school districts received foundation aid dollars that were prorated according to the amount of time spent by a student in the student's school district of residence. The remainder of the per student entitlement was sent to the postsecondary institution attended by the student. In 1993 the Minnesota Legislature guaranteed school districts a minimum of 12 percent of the per student foundation aid payment, even if the student did not enroll in any high school class. Although this was an improvement for school districts, 15 school districts still experienced a combined loss of \$100,000 in foundation aid payments during the 1994-95 school year. The school districts maintained that even though they were not actually educating the students, they still had the responsibility for so doing and with the responsibility there should be funding.

The Moorhead Public School District has experienced a three to four percent reduction in the number of its full-time 11th and 12th grade students as a result of the program and this has

affected staffing patterns. While staff preservation was one of the biggest obstacles to participation in the program, however, school district staff and administration have come to realize that their purpose is to provide educational opportunities for their students and to do whatever is best for their students.

One example of enriched opportunities for students comes in the area of foreign languages. While students have three foreign language options through the Moorhead Public School District, they have these additional languages available to them through the postsecondary enrollment options program: Arabic, Chinese, Latin, Norwegian, Russian, and Swedish. Options such as these enhance the education of students and play a critical role in supplementing the educational experience for academically advanced students.

### **Testimony**

A postsecondary enrollment options program, if designed to promote rigorous academic pursuits, would provide high school students with access to a wide variety of courses and challenges. However, such a program does have certain ramifications that should be carefully considered.

The principal concern expressed to the committee was that if North Dakota implemented a program similar to Minnesota's, the school districts of this state would suffer some loss of foundation aid. It was suggested that rather than spending tax dollars to provide a postsecondary education to certain students, all of the money should remain at the district level, because even though the district is not actually educating students participating in the program, the district is still responsible for their education.

The next concern was that if North Dakota implemented a program similar to Minnesota's, the result would be a removal of our best and brightest students--our student leaders--from their high school environments, thereby denying to the remaining students the benefit of their colleagues' leadership. The ancillary effect of such a program would be to reduce actual student numbers in the state's high schools and perhaps necessitate a discontinuance of other electives currently offered at the high school level.

The final concern was that if North Dakota implemented a program similar to Minnesota's, the state would in fact be granting high school credit to students who were instructed by university personnel and despite the fact that such personnel are qualified academically, they may lack the qualifications to teach by virtue of not being certificated high school teachers. It was suggested that a better alternative might be to encourage certificated high school teachers to teach postsecondary-level courses at the local high schools.

### **Committee Considerations**

The committee considered a bill draft that allowed 11th and 12th grade students to enroll in

courses at postsecondary institutions and upon successful completion of the courses, to obtain both high school and postsecondary credit for their efforts. The student and the student's parents or legal guardian are responsible for the costs associated with the dual credit, as well as any necessary transportation arrangements. For purposes of foundation aid, a student enrolled in the program would be considered enrolled in the school district of residence. The student would retain eligibility to participate in all high school sports and other nonathletic activities. The bill draft also included a section providing that courses taken by a student enrolled in the postsecondary enrollment options program are considered to be postsecondary-level courses and therefore not subject to any statutory or regulatory requirements otherwise imposed upon high school courses. This would include issues of seat time, course content, course materials, and teacher certification.

### **Recommendation**

The committee recommends Senate Bill No. 2033 to allow the enrollment of 11th and 12th grade students in courses at postsecondary institutions and upon successful completion of the courses, to obtain both high school and postsecondary credit for their efforts. This bill is viewed as an effort to create challenging opportunities for this state's high school students, without having a negative fiscal impact on school districts.

## **TEACHER PROFESSIONAL GROWTH AND DEVELOPMENT PROGRAMS**

### **Background**

Professional growth and development of teachers begins with admission to an approved teacher training program. In North Dakota, accredited programs are found at Dickinson State University, Mayville State University, Minot State University, North Dakota State University, Valley City State University, and the University of North Dakota. Jamestown College, Trinity Bible College, and the University of Mary provide accredited private programs.

To be admitted, a student must:

- Have sophomore standing with a minimum cumulative grade point average of 2.5;
- Have satisfactorily completed English 111 and 112;
- Have successfully completed a speech screening test;
- Have a record of good conduct; and
- Have good physical and mental health.

Teacher training programs are four years in length and require successful completion of approximately 128 credit hours. Roughly one-third of the credit hours must be in general studies. Students need to have a major in a content area and 26 hours of a professional education sequence (at least 10 of those hours must be spent on student teaching assignments).

According to representatives of the educational

establishment, the demands placed on teachers by the public and private sectors are probably more than can reasonably be addressed within the traditional teacher training curriculum. Not that long ago, a student was educated through a cooperative effort put forth by the student's family, the student's church, and the student's school. Today, teachers are being asked to do more and more. As social concerns increase and as the role of technology in the home, the workplace, and the school becomes more prominent, the expectations of teachers are heightened, as are concerns regarding the adequacy of teacher training programs and the availability and effectiveness of continuing educational opportunities, also known as inservice programs.

### **Education Standards and Practices Board**

In 1993 the Education Standards and Practices Board replaced the Teachers Professional Practices Commission. The board consists of nine members and includes four public school classroom teachers, one private school classroom teacher, one school board member, two school district administrators, and one dean of a college of education. The Superintendent of Public Instruction also sits on the board as an ex officio member. The board is charged with developing and revising professional codes or standards relating to ethics, conduct, and professional performance and practices and with providing recommendations for the inservice education of persons engaged in the teaching profession in the public schools.

The board has been involved with determining strategies for professional development as part of the state's Goals 2000 school improvement plan. These strategies articulate professional development activities and set the following goals for the years 1995 to 2000:

- To develop a coordinated, valid assessment of professional development and school system needs with sensitivity to time, access, barriers, and funding and to set standards for long-range planning that will facilitate linkages between professional development, teacher certification, and accreditation;
- To evaluate areas targeted for professional development and to pay particular attention to changes in knowledge and classroom application;
- To develop a training-of-trainers program that can use local professionals to assist teachers in learning the necessary strategies for classroom teaching and to assist students in meeting the challenges imposed by new course content and performance standards;
- To develop a system of peer coaching, mentoring, and support;
- To explore and establish sustained professional development plans at the local level that can be carried out in an ongoing cycle linked to the state accreditation process;
- To involve university faculty in the teacher training process at the preservice and inservice levels;

- To develop a framework whereby teachers can become acquainted with the integration of course content areas;
- To develop a system whereby quality students in the teacher preparation programs are identified and supported so that they will remain in the programs;
- To convene an annual meeting of technology service providers;
- To develop a process whereby input can be sought from constituency groups;
- To create a consensus for the establishment of guidelines pertaining to technology development as it is related to professional development activities; and
- To use technology planning workshops so that 80 percent of the state's high school districts will be involved in an annual technology planning process by the year 2000.

Statistics show that 27 percent of new teachers leave the profession by the end of their first year and that over 40 percent leave by the end of their second year. Because of these figures, the board has taken the position that a mentoring system is a critical need. The board also maintains that any professional development activities must make a difference for both the teacher and the students.

### **Continuing Education Units**

Among the most frequently heard criticisms of continuing education offerings for teachers are that they are lengthy and time-consuming, that they offer interesting ideas and suggestions but no opportunity for experimentation, that they lack followup activities, that they lack a mentoring approach, and that the need to obtain credits in a time-convenient and cost-effective manner often supersedes the desire to obtain courses that would be relevant to a particular teacher's needs.

An option that addresses all these concerns is the continuing education unit. Recently implemented by the Fargo School District, a continuing education unit offers one hour of class for one credit. When a teacher accumulates 20 credits, the teacher receives \$100. Teachers who serve as instructors for purposes of continuing education units receive two credits per class.

Continuing education units, as available through the Fargo School District, are designed to respond to the ever-changing demands placed upon teachers by society, in a manner that allows teachers to cope effectively with the changes. Courses are developed by teachers for teachers and have been extended to include all district employees. Last year, 659 teachers participated in 10,545 hours of training. The cost to the Fargo School District was \$14,000. Had the district offered this same training within the traditional inservice days, it would have cost \$88,000 per day or a total of \$176,000.

Although the continuing education units address a variety of areas, the one receiving the greatest amount of time and attention is technology. Three years ago, the Fargo School Board determined that ". . . all students will

graduate from our high schools with information management skills in word processing, data base, spreadsheets and network navigation--including the Internet." Having made that determination, it was then incumbent upon the district to ensure that its teachers had the ability to help students meet those goals. The Fargo School Board found that teachers needed assistance not only in acquiring their own computer skills, but also in integrating those skills into their teaching curricula.

Working from the belief that teacher proficiency levels are based on what is expected of students, the Fargo School Board has increased the number of computers in the district in the last three years from 600 to over 2,000. Every employee has an e-mail address that is accessible by other employees and by parents. Newly hired teachers are expected to have the required skills or be able to acquire them very quickly.

The Fargo School Board expects to continue its continuing education unit program. Despite the success of the Fargo program, the Education Standards and Practices Board is reluctant to recognize continuing education units for purposes of graduate credit and teacher certificate renewal.

### **Continuing Education Needs**

Testimony indicated that societal changes have challenged schools and teachers by creating a generation of students who are no longer impressionable. New teachers are entering the teaching profession without the skills necessary to deal with the continuum of student and family situations. Inservice programs therefore become a critical part of the teaching experience. This need, however, competes with issues of time, money, and credentials. Some districts tend not to engage in significant amounts of district-directed inservice activities because teachers have individual, rather than collective, needs and because teachers tend to get tied down with day-to-day activities. These facts, when combined with a lack of funds for inservice activities, have tended to support inservice activities offered through the teacher learning centers.

### **Teacher Learning Centers**

Teacher learning centers came into existence in 1977, as the result of a grant from the Bush Foundation to the University of North Dakota Center for Teaching and Learning, which funded one full year of service to school districts. Thereafter, school districts were asked to contribute to the operation of the centers. Beginning in 1985, the Legislative Assembly appropriated state funds for this purpose.

As first conceived, teacher learning centers were to provide a coordinated statewide response to the inservice needs of teachers, while maintaining responsiveness to locally determined teachers' needs. In 1977 teacher learning centers opened at Devils Lake, Grand Forks, Mayville, and Minot. Two years later, the University of North Dakota initiated the Upper Midwest Small Schools

Project. The project's center was designed to serve schools not otherwise served by a teacher learning center. In the 1980s, additional teacher learning centers opened in Bismarck, Dickinson, Fargo, and Valley City. With the 1986 opening of teacher learning centers in Wahpeton and Williston, the Small School Center had completed its mission and closed its doors.

### **Valley City Area Teacher Learning Center**

Although each teacher learning center differs according to the energy and commitment of its director, its board, and its member school districts, the Valley City Area Teacher Learning Center is an example of the role and function of a teacher learning center. Established in 1980, the Valley City Area Teacher Learning Center serves the counties of Barnes, Dickey, Griggs, LaMoure, Ransom, Sargent, and Stutsman, half of McIntosh and Logan counties, and the Maple Valley and Page school districts in Cass County. Thirty-four school districts are included in the region. Those districts employ 926 teachers and serve 11,387 students.

The center contracts for the services of a director for 32.5 hours per week during the school year. Summer activities include completing year-end reports, coordinating summer workshops and credit classes, processing of summer mail, and preparing for the day-long inservice classes presented in August. Area inservice funds, the center, and the office of the county superintendent partially pay for summer activities. The unpaid portion is considered volunteer time.

During the 1994-95 school year, the Valley City Area Teacher Learning Center received 20 percent of its funding from the state. The member districts pay \$25 per teacher with \$200 being the minimum for a graded elementary district and \$300 being the minimum for a high school district. Special education units and the Valley City Area Vocational and Technical Center also pay membership fees. Other funds come from:

- The Superintendent of Public Instruction and the Department of Health for HIV/AIDS education prevention activities;
- The National Diffusion Network's grant to the Superintendent of Public Instruction to enable replication of validated educational programs at low costs;
- The Game and Fish Department and the Water Commission for the dissemination of information and the coordination of inservice activities;
- The Greater Barnes County Consortium and Goals 2000 to coordinate planning activities;
- The assessments of school districts that participate in the fall inservice activities; and
- Other sources such as Eisenhower grants and the Math Science Alliance.

The center provides many services to area educators and acts as a clearinghouse for educational opportunities and resources. The center does not have a large number of onsite visitors but it does have a significant number of

telephone, mail, and e-mail communications. It publishes a newsletter eight times a year. The newsletter is sent to every teacher in the member districts, key people in nonmember districts, legislators, school boards, the Superintendent of Public Instruction, and the other teacher learning centers.

In the area of professional development, the center sponsors a teacher visitation program. This allows a teacher to spend a day in another teacher's classroom for the purpose of learning new techniques and strategies, as well as to confer with another teacher. The center also works with Valley City State University's Continuing Education Division to bring graduate credit classes to teachers in the area, thereby reducing the need for teachers to travel to the university. The center is also instrumental in encouraging area school districts to pool their inservice dollars so that teachers can participate in activities that no district could afford on its own.

### **Testimony**

The committee received testimony indicating that teacher learning centers are valuable contributors to the state's education scene, and especially so in the area of professional development. Through their regional focus, they serve all school districts in the state. Their programs are guided by local policy boards consisting of area teachers, administrators, and community representatives.

Teacher learning centers have excellent communication among themselves, provide mutual support for each other's directors, and pride themselves on their ability to share resources. These efforts all contribute to the improvement of education in this state.

Teacher learning centers continue to support the ongoing growth of teachers by organizing professional development opportunities that are responsive to the needs of teachers and to their professional growth and development.

As teachers and school boards address the need for professional growth and development, issues of time, money, and relevancy are always in the forefront. Teachers need time to learn new skills and to practice those skills. Followup activities and ongoing support are becoming recognized as integral components of any professional development undertakings.

The committee was told that teacher learning centers cannot accomplish their roles and missions without appropriate legislative support. They need money to hire sufficient and qualified staff, to provide quality professional development activities, and to assist teachers and school districts so that teachers' time can be freed up and teachers can fully participate in the available offerings.

Testimony indicated that teacher learning centers have accomplished a great deal on very limited funds and they have proven that the pooling of resources is an efficient and effective way to deliver much-needed professional development opportunities. The committee was

told that teacher learning centers have operated on shoestring budgets since their inception in 1977 and should now be both recognized for their ability to function as a much-needed professional resource and funded so they can continue to meet this most pressing need.

### **Committee Considerations**

The committee considered a bill draft that appropriated \$640,000 to the Superintendent of Public Instruction for the purpose of funding teacher learning centers. The committee noted a variance in the use and effectiveness of the established teacher learning centers and debated whether a reduction in the number of centers would result in better-funded centers. The committee was concerned that by specifying a reduction in numbers, the ultimate result could be a reduction in the number of centers and continued inadequate funding. The committee determined that teachers should have reasonable geographic access to teacher learning centers so that they can make the best possible use of the available resources and services.

### **Recommendation**

The committee recommends House Bill No. 1054 to appropriate \$640,000 to the Superintendent of Public Instruction for the purpose of funding teacher learning centers. If divided among the 10 centers, the \$64,000 per center would make it possible for each center to employ a director, have funds available for supplies, and enhance its effectiveness in the area of professional development.

## **COUNTY SUPERINTENDENTS OF SCHOOLS**

### **Background**

Beginning in the late 1880s, and for nearly a century thereafter, the county superintendents of schools performed virtually the same set of statutory responsibilities. Those responsibilities included:

- Supervising rural and graded elementary schools;
- Assisting the distribution of forms and the collection of data;
- Providing leadership to school boards;
- Advocating for parents and other citizens;
- Restructuring school boundaries; and
- Providing early forms of special education.

During the mid-1900s, school districts underwent numerous reorganizations and the leadership and supervisory functions once performed by county superintendents were taken over by trained administrators. As teacher training undertook a more professional demeanor and as the universities and professional organizations became more acutely involved in both preservice and inservice activities, the role of the county superintendent as a coordinator and as a facilitator was abrogated.

The 1989 Legislative Assembly made the

position of county superintendent an appointed rather than an elected office and allowed county superintendents to serve multiple counties. In 1995 the Legislative Assembly allowed counties to eliminate the position entirely, provided they assigned the remaining statutory duties to other appropriate officials. A county wishing to eliminate the position was directed to file with the Legislative Council the plan assigning the statutory duties.

### **Testimony**

To date, 12 counties have eliminated the office of county superintendent. Nine of those counties have filed plans with the Legislative Council. The elimination of the position has not been without difficulty. The committee received testimony identifying these concerns:

- All the plans are not on file with the Legislative Council;
- The Superintendent of Public Instruction and the Department of Public Instruction staff are not informed of which individual is responsible for which duty when the plans are filed solely with the Legislative Council;
- Some counties that have eliminated the position of county superintendent designated the Superintendent of Public Instruction and the Superintendent's staff as the individuals who will perform the remaining statutory duties;
- Some county officials have refused to perform their newly assigned duties;
- No one reviews the county plan to ensure that the remaining statutory duties have been assigned to appropriate individuals; and
- The 1995 law contains no penalty for noncompliance.

### **Committee Considerations and Conclusions**

The committee was concerned that in some instances neither the letter nor the spirit of the law is being followed. The committee, however, recognized that the law allowing counties to eliminate the position of county superintendent and reassign any remaining statutory duties to other county officials is a rather monumental step. The concerns that were brought to the committee were deemed not to be insurmountable and, consequently, the committee recommended to the Superintendent of Public Instruction and the Superintendent's staff that they do whatever they can to encourage compliance on the part of counties and to assist counties in eliminating the position and appointing appropriate officials to carry out the remaining duties. The committee determined that, given more time, the difficulties being encountered would be resolved and did not warrant legislative intervention.

## **MISCELLANEOUS MATTERS**

### **Compensatory Time for Parent-Teacher Conferences - Recommendation**

North Dakota Century Code Section 15-47-33 requires that there be at least 180 days of

classroom instruction during each school term. Included in the 180 days are three holidays, two days or fractions of days devoted to parent-teacher conferences, and any days on which classes cannot be held because of acts of God, epidemics, or the failure of physical facilities. The committee discussed days devoted to parent-teacher conferences.

With the proliferation of two-parent working families, as well as single-working parents, school districts have found that parental participation in parent-teacher conferences has been significantly higher when the conferences have been scheduled during evening hours. While this better accommodates parents' schedules, a literal reading of the statute makes it unlikely that school districts can compensate teachers for the time they spend conducting evening conferences by granting them time off during a regular schoolday.

The committee recommends House Bill No. 1055 to allow schoolboards to subtract compensatory time for parent-teacher conferences held outside normal school hours from the 180-day minimum school term. The committee recommends the bill as a means to encourage parental participation in their children's education, including the scheduling of parent-teacher conferences at times that recognize and better accommodate the schedules of working parents. The committee could not determine any reason to deny teachers compensatory time when they spend evening hours conferring with parents about the educational progress of the children they teach.

### **Education Strategist Credential - Conclusion**

Since the enactment of the Education for All Handicapped Children Act in 1975, now known as the Individuals with Disabilities Education Act, a variety of terms have been coined to reference the practice of educating students with disabilities in an environment shared with nondisabled students. Mainstreaming, the regular education initiative, integration, and inclusion are among the terms used frequently and interchangeably. While federal law does not contain a specific definition of "least restrictive environment," it does give local education agencies guidance with the following phraseology:

To the maximum extent appropriate, children with disabilities including children in public and private institutions or other care facilities, [should be] educated with children who are not disabled, and . . . special classes, separate schooling, or other removal of children with disabilities from the regular educational environment [should occur] only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The United States Department of Education monitored North Dakota school districts and issued a report in June 1994 stating that all North Dakota

school districts must make the changes necessary to come into compliance with the least restrictive environment requirements. It was found that all too often students were placed not according to their needs, but according to administrative convenience and especially so in the area of efficient personnel usage. For North Dakota school districts this meant addressing the routine placement of students in some disability groups in separate classrooms outside their neighborhood schools and the routine lack of consideration given to less restrictive options before removing students with disabilities from the regular classroom.

With the existence of factors such as the federal requirement that students with disabilities be educated in their neighborhood schools, limited personnel especially in rural areas, and overall fiscal concerns experienced by all school districts in the state, it was deemed appropriate to follow the path taken by 42 other states and promote a more generic training of special educators. The Superintendent of Public Instruction therefore proposed a change in the special education credential for those personnel serving students with mild disabilities. Such students include those who are educable mentally handicapped, those who have specific learning disabilities, and those who are seriously emotionally disturbed. The change would allow personnel currently credentialed in those areas to build on their categorical training and add skills that will prepare them to take on a new and more general role.

The revised credential, known as the "educational strategist credential," would allow fewer specialists to serve a wider range of student needs in neighborhood schools. The plan was to establish standards and competencies, require portfolio assessments, and begin training personnel for this new credential on a region-by-region basis.

Serious concerns were raised about the process by which the educational strategist credential was being implemented. Special education directors were concerned because they had not been asked to play a greater role in the development of the credential and the setting of a timeline for the creation and assessment of teachers' portfolios. There was concern that the universities had not been given a sufficient timeframe within which to alter their teacher preparation programs and an even greater concern that the long-term effects had not been sufficiently studied, given the fact that Minnesota has a target date of 2002, Kansas has been involved in the process for over five years and has still not completed the process, and Iowa began the process and chose to discontinue it.

Concerns were raised about whether a teacher having an educational strategist credential would be qualified to assist students with disabilities and could meet the needs of students with disabilities. Perhaps the greatest concern was the issue of voluntariness. While special education teachers were assured that the credential was strictly voluntary, not mandatory, they were faced with the realization that fiscally strapped school boards would be inclined to hire teachers who are able to address a variety of disabilities, as opposed to one specific disability group.

The Superintendent of Public Instruction indicated to the committee that as a result of the numerous concerns and uncertainties expressed both to the committee and to the department's personnel, the educational strategist credential process was on hold and will be subject to further review before any effort to implement the credential is undertaken.

The committee makes no recommendation regarding the implementation of the education strategist credential.

# 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. 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 employees 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, NDCC Section 54-52.1-08.2 requires the committee to approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements.

The Legislative Council assigned to the committee the responsibility to receive by April 1, 1996, a report from the State Investment Board, Teachers' Fund for Retirement Board, and Public Employees Retirement System Board on their study of methods to reorganize the Public Employees Retirement System and the Retirement and Investment Office to achieve cost reductions. The chairman of the Legislative Council also assigned to the committee a study of state government employee assistance programs.

Committee members were Representatives Rick Clayburgh (Chairman), Dan J. Austin, Glen Froseth, Leland Sabby, and Rich Wardner and Senators Bonnie Heinrich, Karen K. Krebsbach, Elroy N. Lindaas, and Carolyn Nelson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## **CONSIDERATION OF RETIREMENT, HEALTH, AND RETIREE HEALTH PLAN PROPOSALS**

The committee established April 1, 1996, as the deadline for submission of retirement, health, and retiree health proposals. The deadline provided 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 retirement, health, and retiree health proposals for consideration.

The committee reviewed each submitted proposal and solicited testimony from proponents; retirement, health, and retiree 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 every proposal submitted to it to the affected retirement, insurance, or retiree insurance program, which was requested to 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 and retiree health programs, and the actuarial services of Deloitte & Touche, LLP, in evaluating proposals that affected the public employees health insurance program. The Teachers' Fund for Retirement Board used the actuarial services of the Watson Wyatt 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, health insurance, and retiree health insurance program administrators, interest groups, and affected individuals; the impact on state general 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 securing introduction of the proposal in the 1997 Legislative Assembly.

## **Teachers' Fund for Retirement**

Former NDCC Chapter 15-39 established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by NDCC 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 NDCC Chapter 15-39.1. The plan is managed by the board of trustees of the Teachers' Fund for Retirement.

The Teachers' Fund for Retirement plan

provides a retirement benefit of 1.55 percent of final average salary times the number of years of teaching service. Final average salary is defined as the average of the highest annual salaries for any three years of service under the fund. Full benefits are payable when the teacher has completed five years of teaching credit and is at least 65 years of age or when the teacher has a combined total of years of service credit and years of age which is equal to at least 85. The plan provides for a minimum benefit for a full-time member who retired on July 1, 1993, or later, of \$10 per month per year of teaching for the first 25 years of service and \$15 per month of teaching credit for service over 25 years.

Postretirement adjustments were provided by the Legislative Assembly in 1983, 1985, 1987, 1989, 1991, and 1993. A reduced early retirement benefit is available after five years of service. Disabled teachers are entitled to receive a benefit equal to the greater of the amount computed by the retirement formula without consideration of age or the amount computed by the retirement formula without consideration of age but assuming the member had 20 years of credited service.

The teacher and the teacher's employer each contribute 6.75 percent of covered salary to the plan. Employers are permitted to pay the employee's share by effecting an equal cost reduction in the gross salary of the teacher or by offsetting the contribution against future salary increases.

The latest available report of the consulting actuary was dated July 1, 1996. According to the report, on that date the fund had total assets with an actuarial value of \$733,277,405 and a market value of \$847,339,136. Total active membership was 9,797 and total membership was 15,535. The report indicated that an employer contribution of 5.33 percent of projected fiscal 1996 compensation is necessary to meet the normal cost and payment of unfunded liability. This results in an actuarial margin of 1.42 percent, the difference between the indicated required employer contribution and the expected employer contribution of 6.75 percent.

The following is a summary of proposals affecting the Teachers' Fund for Retirement over which the committee took jurisdiction and the committee's action on each proposal:

#### **Bill No. 47**

**Sponsor:** Senator Carolyn Nelson

**Proposal:** Increases the employee contribution from 6.75 percent to 7.75 percent; increases the employer contribution from 6.75 percent to 7.75 percent; and increases the benefit multiplier from 1.55 percent to 1.75 percent.

**Actuarial Analysis:** The required employer contribution rate for the proposal is 7.75 percent of total covered compensation and thus the margin remaining would be 0.0 percent.

**Committee Report:** No recommendation.

#### **Bill No. 65**

**Sponsor:** Representative Gerry L. Wilkie

**Proposal:** Allows a retired person to return to teaching for up to one year without losing any benefits if at least 50 percent of the salary earned by that person is placed in the school district's educational foundation.

**Actuarial Analysis:** The consulting actuary believes the number of retired members who would take advantage of this provision is small. Thus, this proposal will not have a measurable actuarial impact on the Teachers' Fund for Retirement. However, there is some potential for increased cost, because a member with long service who is already eligible for an unreduced benefit could continue to receive the same total income, between 50 percent of that person's regular pay and that person's retirement benefit, while having the other 50 percent of the person's pay going to the foundation. This could encourage employees to retire a year earlier than they would have otherwise. This could result in a reduction of the Teachers' Fund for Retirement margin, the amount of which would depend on the number of members who use the provision.

Also, in a technical comment, the consulting actuary noted that the proposal could endanger the qualified status of the plan. Under qualified retirement plans, benefits are not taxable until they are received. If a plan loses its qualified status, accrued vested benefits become immediately taxable.

**Committee Report:** Unfavorable recommendation because the proposal could endanger the qualified status of the Teachers' Fund for Retirement.

#### **Bill No. 69**

**Sponsor:** Representative Lee Kaldor

**Proposal:** Provides that persons receiving monthly benefits from the Teachers' Fund for Retirement are entitled to receive a monthly credit toward hospital and medical benefits coverage of \$2.50 multiplied by the person's years of service funded by a one percent employer contribution.

The committee amended the proposal at the request of the sponsor to delete the one percent employer contribution funding mechanism and include an appropriation of \$6 million from the general fund to fund the proposal.

**Actuarial Analysis:** The consulting actuary reported that in estimating the costs for this proposal, a key assumption is the expected participation in the benefit. Not all retirees will participate in the uniform group insurance program, even given the availability of the subsidy. Some will choose to purchase health

insurance from other providers, such as the American Association of Retired Persons; some will have health insurance provided through a spouse or from other employment; and some will simply choose to rely on Medicare. The portion of all retirees and beneficiaries who choose to participate is called the utilization percentage, which is a key assumption in deciding whether the proposed one percent of salary contribution rate will be sufficient to support the program.

When the consulting actuary examined a predecessor of this proposal in 1992, it was told that the Public Employees Retirement System's health premium subsidy was used by about 60 percent of the retirees. Assuming the teachers' retiree health benefits fund experiences similar utilization, and based on the 40-year funding period and other assumptions, the cost to fund this benefit is .95 percent. Therefore, the one percent contribution rate is adequate, given these assumptions.

The following table shows the cost (employer contribution rate as a percentage of active teachers' salaries) under various monthly credit levels and with various assumptions about the utilization percentage.

Cost for Teachers' Retiree Health Fund Under Various Alternatives					
Utilization Rate	Monthly Credit Per Year of Service				
	Cost as Percent of Teachers' Salaries				
	\$1.00	\$1.50	\$2.00	\$2.50	\$3.00
50%	0.32%	0.47%	0.63%	0.79%	0.95%
60%	0.38%	0.57%	0.76%	0.95%	1.13%
75%	0.47%	0.71%	0.95%	1.18%	1.42%
100%	0.63%	0.95%	1.26%	1.58%	1.89%

Note: Contribution rates are equal to normal cost plus a 40-year amortization of unfunded actuarial accrued liability.

These costs may be converted to a dollar amount by applying the percentages against the expected payroll for the Teachers' Fund for Retirement members of \$296 million. Costs for other multipliers or utilization rates may be calculated by straight-line interpolation between the costs shown.

**Committee Report:** No recommendation on the proposal as amended because of uncertainty concerning the rate of utilization.

**Bill No. 79**

**Sponsor:** Board of Trustees

**Proposal:** Changes the Teachers' Fund for Retirement Board to a board composed of two members elected by teachers, one member elected by school administrators, two members elected by the retired members of the fund, the State Treasurer, and the Superintendent of Public Instruction; authorizes the board to establish investment policy for the fund, arrange for actuarial and medical consultants,

pay benefits and consultant fees, and submit to the Legislative Council's Employee Benefits Programs Committee any changes in statutes relating to the administration of the fund; and repeals NDCC Section 15-39.1-05 that governs current management of the fund.

**Actuarial Analysis:** The proposal has no actuarial cost impact on the fund.

**Committee Report:** Favorable recommendation.

**Bill No. 80**

**Sponsor:** Board of Trustees

**Proposal:** Defines the term "interest" as applied to unintentional reporting errors by participating employers under the fund as the actuarial assumption for investment earnings; deletes the Developmental Center at Westwood Park, Grafton, as a "state institution" under the Teachers' Fund for Retirement; defines "teachers" as persons certified to teach in North Dakota by the Education Standards and Practices Board; includes persons employed in supervisory, administrative, or extracurricular services and the professional staff of the State Board for Vocational and Technical Education and the Division of Independent Study as "teachers" for purposes of the Teachers' Fund for Retirement; allows the board to refuse to accept a qualified domestic relations order if the order provides for only a very small distribution; allows the fund to accept rollovers from other qualified plans; deletes the provision that allows heirs to file a claim with the fund within 150 days of the death of the member if no probate proceedings have been instituted within 30 days of the death of the member; provides that a retired teacher who is receiving a retirement annuity may return to covered employment for a maximum of 90 working days and continue receiving a monthly retirement benefit if 60 calendar days have elapsed from the member's retirement date; and allows the board to correct errors and adjust payments or make a lump sum payment as a result of errors in the records of the fund or a participating employer.

The committee amended the proposal at the request of the board to remove the definition of the term "interest" as applied to unintentional reporting errors by participating employers under the fund as the actuarial assumption for investment earnings; removed the section deleting the provision that allows heirs to file a claim with the fund within 150 days of the death of a member if no probate proceedings have been instituted within 30 days of the death of the member; added a definition of working day as four or more hours of teaching; and added a provision that allows the Teachers' Fund for Retirement Board to waive the \$250 penalty for unintentional late

payments and reduce but not eliminate the interest rate charged to the investment return rate used in the most recent actuarial valuation, compounded annually. The committee further amended the proposal at the request of the board to remove the provision allowing the board to refuse to accept a qualified domestic relations order if the order provides for only a very small distribution.

**Actuarial Analysis:** The proposal has no actuarial cost impact on the fund.

**Committee Report:** Favorable recommendation on the proposal as amended.

#### **Bill No. 81**

**Sponsor:** Board of Trustees

**Proposal:** Increases the benefit multiplier from 1.55 percent to 1.60 percent and provides a postretirement benefit increase of \$25 per month.

The committee amended the proposal at the request of the board to increase the benefit multiplier from 1.55 percent to 1.61 percent and provide a postretirement benefit increase of \$30 per month.

**Actuarial Analysis:** The reported actuarial cost of the proposal is 1.08 percent of total covered compensation. The reported actuarial cost of the proposal, as amended, is 1.30 percent of total covered compensation.

**Committee Report:** Favorable recommendation.

#### **Public Employees Retirement System**

The Public Employees Retirement System is governed by NDCC Chapter 54-52 and includes the Public Employees Retirement System main system, judges' retirement system, and National Guard retirement system; Highway Patrolmen's Retirement System; and retiree health benefits fund. The plan 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, 1979, 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 also members of the plan but receive benefits different from other members. A county, city, or school district may choose to participate on completion of an employee referendum and on the execution of an agreement with the Retirement Board. The Retirement Board also administers the uniform group insurance, life insurance, flexible benefits, deferred compensation, and NDCC Chapter 27-17 judges' retirement programs. The NDCC 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

future payments to judges serving on July 1, 1973, as required by law.

The plan provides for participating members other than judges to receive a retirement benefit of 1.74 percent of final average salary times the number of years of service. For judges, the normal retirement is 3.50 percent of final average salary times the first 10 years of judicial service, 2.80 percent of final average salary for the next 10 years, and 1.25 percent for service after 20 years. Final average salary received is defined as the average of the highest salary received by the member for any 36 months employed during the last 10 years of employment. An employee is vested after five years of service. The normal retirement benefit is payable at age 65 or when the member has a combined total of years of service credit and years of age equal to 88. A reduced early retirement benefits is payable for vested employees who have reached age 55. Disability retirement benefits are payable to members who become permanently and totally disabled after completing at least 180 days of eligible employment. Disability benefits are calculated at 25 percent of the member's final average salary with a minimum monthly disability retirement benefit of \$100.

The employer contributes 4.12 percent of covered salary to the plan and the employee contributes four percent. For many employees, no deduction is made from pay for the employee's share. This is the result of 1983 legislation that provided for a phased-in "pickup" of the employee contribution in lieu of a salary increase at that time.

The 1989 Legislative Assembly established a retiree health benefits fund account with the Bank of North Dakota for 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 are eligible to receive, or were receiving, retirement benefits. The employer contribution under the Public Employees Retirement System was reduced from 5.12 percent to 4.12 percent and under the Highway Patrolmen's Retirement System from 17.70 percent to 16.70 percent or one percent of the monthly salaries or wages of participating members, including participating Supreme Court and district court judges, and those moneys were redirected to the retiree health benefits fund.

The latest available report of the consulting actuary is dated July 1, 1996. According to the report, on that date the Public Employees Retirement System had net assets with an actuarial value of \$643,819,104 and a market value of \$746,704,607. Total active membership was 15,478 (15,398 persons other than judges or National Guard security officers or firefighters, 51 judges, and 29 National Guard security officers or firefighters). The report indicated that an

employer contribution of 3.23 percent of projected fiscal 1996 compensation is necessary to meet the normal cost associated with nonjudge members. This means statutory contributions exceed actuarial requirements of the Public Employees Retirement System and the margin available in the main system is .89 percent of total covered compensation.

The report for the judges' retirement system indicated that an employer contribution of 9.76 percent of payroll is required to fund the system. The statutory employer contribution rate is 14.52 percent of salary. This results in an actuarial margin of 4.76 percent of total covered compensation.

The report for the National Guard retirement system indicated that an employer contribution of 7.12 percent of payroll is required to fund the system. The contribution rate set by the Retirement Board is 8.33 percent of salary. This results in an actuarial margin of 1.21 percent of total covered compensation.

The latest available report of the consulting actuary for the Highway Patrolmen's retirement fund is dated July 1, 1996. According to the report, on that date the Highway Patrolmen's retirement fund had net assets with an actuarial value of \$22,156,332 and a market value of \$25,697,024. Total active membership was 112 and an employer contribution of 11.69 percent of payroll is necessary to meet the normal cost of the Highway Patrolmen's retirement fund. The statutory contribution rate is 16.70 percent of payroll. Thus, the actuarial margin is 5.01 percent of payroll.

The latest available report of the consulting actuary for the retiree health benefits fund is dated July 1, 1996. According to the report, on that date the fund had net assets with a market value of \$13,309,095. Total active membership was 15,590 (6,464 men and 9,126 women). An employer contribution of 1.01 percent of payroll is required to fund the plan. The statutory contribution rate is 1.00 percent of payroll. This results in an actuarial margin of -.01 percent of payroll.

The following is a summary of the proposals affecting the Public Employees Retirement System over which the committee took jurisdiction and the committee's action on each proposal:

#### **Public Employees Retirement System Main System**

##### **Bill No. 74**

**Sponsor:** Retirement Board

**Proposal:** Implements a rule of 85; increases the benefit multiplier from 1.74 percent to 1.80 percent; provides a disability adjustment of 6.50 percent of the present benefit; provides a postretirement adjustment of three percent of present benefits for retirees and beneficiaries receiving benefits on July 31, 1997; and provides a prior service (service or employment before July 1, 1966) adjustment of 3.50 percent of the present benefit.

The committee amended the proposal at

the request of the Retirement Board to reduce the increase in the benefit multiplier from 1.80 percent to 1.77 percent, provide a disability benefit adjustment of five percent of the present benefit rather than 6.50 percent, and provide a prior service (service or employment before July 1, 1966) adjustment of five percent of the present benefit rather than 3.50 percent.

**Actuarial Analysis:** The reported actuarial cost impact of the proposal is 1.14 percent of covered payroll for the Public Employees Retirement System main system, .09 percent of the covered payroll for the judges' retirement system, .01 percent for the retiree health benefits fund, and 1.29 percent for the National Guard retirement system. The reported actuarial cost impact of the proposal, as amended, is .814 percent of covered payroll for the Public Employees Retirement System main system, .09 percent of covered payroll for the judges' retirement system, .01 percent for the retiree health benefits fund, and .68 percent for the National Guard retirement system.

**Committee Report:** Favorable recommendation.

##### **Bill No. 75**

**Sponsor:** Retirement Board

**Proposal:** Provides that participants in the judges' retirement system are entitled to receive an annual two percent postretirement adjustment in their present monthly benefit applicable to participants receiving benefits on December 31 of each year and effective for benefits payable after that date. However, the board may suspend the increase for an upcoming year if it determines that the increase is not actuarially prudent.

**Actuarial Analysis:** The reported actuarial cost impact of the proposal is 4.63 percent of payroll. However, the committee noted that Bill No. 74 has an actuarial cost impact of .09 percent of payroll and thus if both Bill No. 74 and Bill No. 75 are enacted, the remaining margin in the judges' retirement system will be .04 percent.

**Committee Report:** Favorable recommendation.

##### **Bill No. 77**

**Sponsor:** Retirement Board

**Proposal:** Allows the Retirement Board to refuse to accept a qualified domestic relations order if the board determines that the order provides for only a very small distribution; exempts a member from the requirement that conversion payments for conversion of sick leave must be made within 60 days of termination and before the member receives a

retirement annuity if the member submits an approved payment plan to the board; and provides that information concerning a member's years of credit and years of age may be disclosed to the member's employer but that the information must remain confidential.

The committee amended this proposal at the request of the Retirement Board to delete the provision allowing the Retirement Board to refuse to accept a qualified domestic relations order if the board determines that the order provides for only a very small distribution and to insert a provision that all deferred compensation plan assets and income must be held in trust or in custodial accounts or contracts as described in Internal Revenue Code Section 401(f) for the exclusive benefit of participants and their beneficiaries.

**Actuarial Analysis:** The proposal has no actuarial cost impact on the fund.

**Committee Report:** Favorable recommendation.

### Highway Patrolmen's Retirement System

#### Bill No. 76

**Sponsor:** Retirement Board

**Proposal:** Increases the benefit multiplier from 3.03 percent to 3.25 percent of final average salary for the first 25 years of service and provides a postretirement increase in the benefit multiplier from 3.03 percent to 3.25 percent of final average salary.

**Actuarial Analysis:** The reported actuarial cost impact of the proposal is 3.82 percent of covered payroll.

**Committee Report:** Favorable recommendation.

### Retiree Health Benefits Fund

#### Bill No. 71

**Sponsor:** Representative Bill Oban

**Proposal:** Allows members or surviving spouses to continue to participate in the retiree health benefits program provided they did not receive a single lump sum retirement payment.

**Actuarial Analysis:** The reported actuarial cost impact is .04 percent of covered payroll.

**Committee Report:** Unfavorable recommendation because the reported actuarial cost impact (.04) would increase the shortfall in the retiree health benefits fund to .05 percent of payroll.

#### Bill No. 78

**Sponsor:** Retirement Board

**Proposal:** Allows the Retirement Board to provide actuarially reduced benefit options for the member and the member's surviving spouse including a 100 percent joint and survivor option, a 50 percent joint and survivor option, or a five-year or 10-year certain option.

**Actuarial Analysis:** The proposal has no actuarial cost impact on the fund.

**Committee Report:** Favorable recommendation because the proposal has no actuarial cost impact on the fund.

### Pretax Benefits Program

#### Bill No. 36

**Sponsor:** Senator Carolyn Nelson

**Proposal:** Allows district health units to participate in the pretax benefits program.

**Actuarial Analysis:** The proposal has no actuarial cost impact.

**Committee Report:** Favorable recommendation.

### Uniform Group Insurance Program

#### Bill No. 59

**Sponsor:** Senator Tim Mathern

**Proposal:** Allows any person who is without health insurance coverage to participate in the uniform group insurance program provided medical underwriting requirements are met.

**Actuarial Analysis:** The actuarial consultant reported that assuming that the proposal provides the board with the authority to impose appropriate minimum standards, medical underwriting requirements, and risk adjusted premium mechanics, the proposed expansion should not have a negative impact on the Public Employees Retirement System uniform group insurance program. The actuarial consultant noted that the proposal allows the Retirement Board to operate the uniform group insurance program as a governmental benefit plan and that if it is determined that federal approval is required to operate as a governmental benefit plan, the board must apply to the federal government to receive exempt status under the Employee Retirement Income Security Act to allow for expansion of the program to include nongovernmental employees. Such a waiver would be required to allow a governmental plan to cover nongovernmental entities and private citizens without losing its status as a governmental plan.

**Committee Report:** Favorable recommendation because the proposal includes minimum standards, underwriting requirements, and risk

adjusted premiums.

**Other Retirement Plans**

The committee considered several proposals dealing with changes to other retirement plans, including the Old-Age and Survivor Insurance System, Job Service North Dakota retirement plan, and alternate firefighters relief association plans. The committee considered the following proposals:

**Bill No. 70**

**Sponsor:** Representative Rick Clayburgh

**Proposal:** Allows the governing body of a county to levy a tax for its Social Security obligations and contributions to a retirement program established by the governing body within statutory levy limitations.

**Actuarial Analysis:** Job Service North Dakota indicated that the proposal would have no actuarial impact on the Old-Age and Survivor Insurance System.

**Committee Report:** Favorable recommendation.

**Bill No. 72**

**Sponsor:** Job Service North Dakota

**Proposal:** Allows Job Service North Dakota and the North Dakota National Guard to establish employee retirement programs by contract with the State Investment Board or the North Dakota Public Employees Retirement System and authorizes Job Service North

Dakota to administer a retirement plan for its employees.

**Actuarial Analysis:** Job Service North Dakota indicated that the proposal will not have an actuarial impact on the Old-Age and Survivor Insurance System.

**Committee Report:** Favorable recommendation.

**Bill No. 73**

**Sponsor:** Job Service North Dakota

**Proposal:** Increases primary insurance benefits under the Old-Age and Survivor Insurance System fund.

**Actuarial Analysis:** Job Service North Dakota indicated that the proposal would increase total payments from the Old-Age and Survivor Insurance System trust fund by \$1,800 in the year ending July 31, 1998, and \$2,880 in the year ending July 31, 1999. Job Service North Dakota indicated that the fund has sufficient assets to pay for the proposed increase and similar future increases through the end of the program.

**Committee Report:** Favorable recommendation. However, the committee urged Job Service North Dakota to consider recommending that a benefit adjustment from the following table, except No. 10, be considered because of the small number of beneficiaries and the size of the fund.

No.	Proposal	Monthly Average Amount in 1997	Monthly Average Amount in 2008	Ending Fund Balance
1	Current proposal - \$15/month increase each year	\$355	\$ 505	\$304,140
2	\$30/month increase each year	\$370	\$ 670	\$263,827
3	\$60/month increase each year	\$400	\$1,000	\$183,200
4	\$90/month increase each year	\$430	\$1,330	\$102,574
5	\$100/month increase each year	\$440	\$1,440	\$ 75,699
6	\$100/month increase in 1997 + \$30/month each year after	\$440	\$ 740	\$211,932
7	\$100/month increase in 1997 + \$60/month each year after	\$440	\$1,040	\$153,546
8	\$200/month increase in 1997 + \$30/month each year after	\$540	\$ 840	\$137,796
9	\$200/month increase in 1997 + \$60/month each year after	\$540	\$1,140	\$ 79,411
10	Monthly amount doubled in 1997, no other increases	\$680	\$ 680	\$ 92,392
11	Monthly amount doubled in 1997, \$30/month increase each year after	\$680	\$ 980	\$ 34,006

**Bill No. 222**

**Sponsor:** Representative Marv Mutzenberger

**Proposal:** Provides an increase of three percent for members with 20 years of service in the

optional payment schedule for members of a firefighters relief association with 10 years of service.

**Actuarial Analysis:** The reported actuarial

cost impact on the Bismarck Firefighters Relief Association is three percent of covered compensation.

**Committee Report:** No recommendation.

### **State Investment Board - Teachers' Fund for Retirement - Public Employees Retirement System Reorganization**

#### **Bill No. 82**

**Sponsor:** Senator Bryce Streibel

**Proposal:** Combines administrative authority for the Teachers' Fund for Retirement, the Public Employees Retirement System, and the investment functions for these retirement systems into a single agency supervised by an administrative board composed of elected members of the Teachers' Fund for Retirement Board of Trustees and the Public Employees Retirement System Board; provides that the Teachers' Fund for Retirement and Public Employees Retirement System boards would continue to set policy for their respective retirement systems and benefits programs; transfers the functions of the Retirement and Investment Office and the State Investment Board to the new administrative board and agency; and eliminates the State Investment Board and makes statutory provisions for investment of non-Teachers' Fund for Retirement and non-Public Employees Retirement System funds.

**Actuarial Analysis:** The proposal has no actuarial cost impact.

**Committee Report:** No recommendation.

### **APPROVAL OF PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD TERMINOLOGY TO COMPLY WITH FEDERAL REQUIREMENTS**

The committee received a report from representatives of the Public Employees Retirement System Board that no action on the part of the committee was required pursuant to NDCC Section 54-52.1-08.2 which requires the committee to approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements.

### **REORGANIZATION REPORT**

Section 2 of 1995 Session Laws Chapter 50, the appropriations bill for the retirement and investment agencies, stated that it is the intent of the Fifty-fourth Legislative Assembly that the State Investment Board, Teachers' Fund for Retirement Board, and Public Employees Retirement (System) Board study methods to reorganize the Public Employees Retirement System and the Retirement and Investment Office to achieve cost reductions in the administration of the programs under the control of the respective

boards. This section required representatives of the State Investment Board, Teachers' Fund for Retirement Board, and Public Employees Retirement (System) Board to report their findings to the interim Employee Benefits Programs Committee of the Legislative Council no later than April 1, 1996.

The committee received the report on March 21, 1996. The result of the study is a cooperative agreement between the Public Employees Retirement System Board and the State Investment Board. The agreement constitutes the initial cooperative agreement between the Public Employees Retirement System Board and the State Investment Board to govern their actions through June 30, 1999, unless terminated earlier upon a majority vote of either board.

Phase 1 of the agreement states that the Public Employees Retirement System Board and the State Investment Board agree to jointly pursue the solicitation of a single actuary for both boards; that the Public Employees Retirement System Board and the State Investment Board consult with the State Auditor concerning having a combined audit; and that the Public Employees Retirement System Board and the State Investment Board agree to study, by January 1999, integrating several selected activities such as data processing support, fiscal services, internal audits, and member services. The agreement provides that study teams will be formed which will include management and staff in each of the selected activities and the teams will study methods for integration and report their specific findings and conclusions to the boards on their selected activity by January 1, 1998. The final element of Phase 1 is that the Public Employees Retirement System Board and the State Investment Board agree to investigate collocational alternatives for implementation by June 30, 1999.

Phase 2 of the agreement provides that the parties further recite and declare to commit to ongoing exploration of additional savings and possible efficiencies with the prospect of capturing these savings and efficiencies as they may arise.

### **EMPLOYEE ASSISTANCE PROGRAMS STUDY**

The chairman of the Legislative Council assigned to the committee a study of state government employee assistance programs. The study of employee assistance programs reflects the concern of the chairman of the Legislative Council regarding the provision of these services. The chairman noted that many state agencies provide this benefit to their employees but other agencies do not because there is no statutory authorization for agencies to provide this benefit for their employees.

#### **Background**

An employee assistance program may be defined as an employer-sponsored service for employees under which a professional employee assistance staff assists employees and their families in finding help for emotional, drug,

alcohol, family, health, and other personal or job-related problems that may be affecting their work performance.

### **Survey of State Agencies**

The Legislative Council staff surveyed each state agency and asked whether that agency participates in an employee assistance program, under what authority, what the cost was for the 1993-95 biennium, what the estimated cost is for the 1995-97 biennium, whether copayments were required, the name of the vendor, and the number of persons participating or receiving services during the 1993-95 biennium. Of the 74 agencies responding to the employee assistance program survey, 37 indicated that they have an employee assistance program in place and 35 indicated that they do not have an employee assistance program. It appeared that, as a general rule, the agencies with an employee assistance program are agencies with large numbers of employees while the agencies that do not have an employee assistance program are small agencies or boards or commissions.

The total cost of employee assistance programs for the 1993-95 biennium was \$269,045.20 and the estimated cost for the 1995-97 biennium is \$239,948.59. It appeared that the estimated cost for the 1995-97 biennium is lower than the cost for the 1993-95 biennium because the Department of Human Services only reported estimated costs for 1995 and not the entire biennium. These figures do not include the cost for the employee assistance programs at North Dakota State University or for the Supreme Court (unified judicial system).

The survey results indicated that at least 2,077 persons participated or received services through employee assistance programs during the 1993-95 biennium. One agency provided a range when estimating the number of employees who participated, one agency gave a percentage estimate, five agencies do not know how many employees received services, and one agency did not provide this information.

The survey respondents cited various authority for the programs: Executive Order No. 1976-3; Executive Order No. 1981-11; a policy statement concerning North Dakota employee assistance programs; Unified Judicial System Policy 109R; NDCC Sections 15-10-11, 15-10-17, 20.1-02-05, 37-17.1-06, and 54-52.5-02; and Section 6 of Article VIII of the Constitution of North Dakota.

### **Committee Considerations**

The committee determined that the Legislative Assembly did not authorize state agencies to provide employee assistance programs until 1995 when it authorized the Public Employees Retirement System to provide such services. It was noted that Executive Order No. 1981-11, the order that many of the executive agencies are relying on as authority, provides that the program

is voluntary and that any expenses are to be borne by the employee or applicable health insurance coverage. Thus, state agencies are providing benefits to employees at public expense without specific legislative authorization. Also, the committee was concerned with the disparity in benefits among those agencies that had entered contracts for employee assistance program benefits. The committee discovered that one agency had entered separate contracts with two providers for different employee assistance program benefits. However, representatives of several agencies testified that employee assistance programs are not an employee benefit but are a management tool that benefits the employer rather than being exclusively an employee benefit. Based upon this rationale, representatives of several agencies testified that this is why the cost is often assumed by the employer rather than the employee. One agency noted that no agency requires its employees to pay for the employee assistance program; therefore, a representative of that agency presumed that the agencies citing an executive order feel justified in providing the employee assistance program without cost to their employees because they believe it is a management tool. One agency stated that its authority to use an employee assistance program as a management tool stems from the approval of that agency's budget through the budget process, and its authority as a constitutional office.

### **Recommendation**

The committee recommends Senate Bill No. 2034 to require the Public Employees Retirement System Board to establish an employee assistance program available to persons in the uniform group insurance medical and hospital benefits coverage group. The bill requires each state agency to obtain employee assistance program services through the Public Employees Retirement System Board for eligible employees and prohibits them from entering agreements to obtain employee assistance program services from third-party providers, except that an agency may use its own employee assistance program services to the extent that such services are provided by personnel of that agency. The bill contains a delayed effective date of July 1, 1999, in order to allow the Public Employees Retirement System Board time to establish employee assistance program plans for participating employers who have not contracted for employee assistance program services and to assume contractual authority for those participating employers who have already contracted for such services. The delayed effective date also gives agencies time to plan for and include the cost of employee assistance program benefits in the salaries and wages line item of their budget requests for the 1999-2001 biennium.

# GARRISON DIVERSION OVERVIEW COMMITTEE

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

Under Section 54-35-02.7, the committee consists of the majority and minority leaders and their assistants from the House and Senate, the Speaker of the House, the President Pro Tempore of the Senate selected at the end of the immediately preceding legislative session, the chairmen of the House and Senate standing Committees on Natural Resources, and the chairmen of the House and Senate standing Committees on Agriculture.

Committee members were Representatives Lee Kaldor (Chairman), John Dorso, Tom D. Freier, Clarence Martin, Eugene J. Nicholas, Bill Oban, and Alice Olson and Senators Bill L. Bowman, William G. Goetz, Tim Mathern, Gary J. Nelson, Jens Tennefos, John T. Traynor, and Dan Wogsland.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## HISTORY OF THE PROJECT

### Pick-Sloan Plan

The Garrison Diversion Unit is one of the principal developments of the Pick-Sloan Missouri River Basin program, a multipurpose program authorized by the federal Flood Control Act of 1944 (Pub. L. 78-534; 57 Stat. 887). The Pick-Sloan plan provided for construction of a series of dams on the Missouri River to control flooding, provide power generation, and maintain a dependable water supply for irrigation, municipalities, industry, recreation, wildlife habitat, and navigation. Approximately 550,000 acres of land in the state were inundated by reservoirs on the Missouri River under the Pick-Sloan plan.

One feature of the Pick-Sloan plan was the Missouri-Souris Unit, which was the forerunner of the Garrison Diversion Unit. Under the plan for the Missouri-Souris Unit, water was to be diverted below the Fort Peck Dam in Montana and transported by canal for irrigating 1,275,000 acres; supplying municipalities in North Dakota, South Dakota, and Minnesota; restoring Devils Lake; conserving wildlife; and augmenting the Red River. The building of Garrison Dam changed the diversion point of the Missouri-Souris Unit from

Fort Peck Dam to Garrison Reservoir (Lake Sakakawea). After considerable study and review of the Missouri-Souris Unit, Congress reauthorized the project as the initial stage, Garrison Diversion Unit, in August 1965 (Pub. L. 89-108; 83 Stat. 852).

### Garrison Diversion Unit

The first detailed investigations of the Garrison Diversion Unit were completed in 1957 and involved a proposed development of 1,007,000 acres. The initial stage of the Garrison Diversion Unit provided for irrigation service to 250,000 acres in the state. This plan involved the construction of major supply works to transfer water from the Missouri River to the Souris, James, and Sheyenne rivers and the Devils Lake Basin. The plan also anticipated water service to 14 cities, provided for several recreation areas, and provided for a 146,530-acre wildlife plan to mitigate wildlife habitat losses resulting from project construction and to enhance other wetland and waterfowl production areas.

Under the 1965 authorization, the Snake Creek Pumping Plant would lift Missouri River water from Lake Sakakawea into Lake Audubon, an impoundment adjacent to Lake Sakakawea. From Lake Audubon the water would flow by gravity through the 73.6-mile McClusky Canal into Lonetree Reservoir, situated on the headwaters of the Sheyenne River. The Lonetree Reservoir would be created by construction of Lonetree Dam on the upper Sheyenne River, Wintering Dam on the headwaters of the Wintering River, and the James River dikes on the headwaters of the James River. Lonetree Reservoir would be situated so that water could be diverted by gravity into the Souris, Red, and James river basins and the Devils Lake Basin.

The Velva Canal would convey project water from the Lonetree Reservoir to irrigate two areas totaling approximately 116,000 acres. The New Rockford Canal would convey project water for irrigation of approximately 21,000 acres near New Rockford and to deliver water into the James River Feeder Canal for use in the Oakes-LaMoure area. The Warwick Canal, an extension of the New Rockford Canal, would provide water for irrigation in the Warwick-McVile area and provide water for the restoration of the Devils Lake chain.

The United States Bureau of Reclamation has overall responsibility for operation and maintenance of the Garrison Diversion Unit and will operate and maintain all project works during the initial period following completion of construction.

A number of concerns have slowed or halted construction on the project in recent years, including:

1. Canadian concerns that the Garrison Diversion Unit would allow transfer of foreign species of fish and other biota to the detriment of Canadian waters in violation of

the Boundary Waters Treaty of 1909.

2. Numerous problems concerning wildlife mitigation and enhancement lands.
3. Legal suits brought by groups, such as the National Audubon Society, seeking to halt construction of the Garrison Diversion Unit by claiming that the project violates the National Environmental Policy Act and to enforce a stipulation between the United States and Audubon to suspend construction until Congress reauthorizes the Garrison Diversion Unit.

### Canadian Concerns

Canadian interest in the Garrison Diversion Unit has centered on concerns that because the Garrison Diversion Unit involves a transfer of water from the Missouri River to the drainage basins of the Souris and Red rivers, the return flows entering Canada through the Souris and Red rivers would cause problems with regard to water quality and quantity.

In 1973 the Canadian government requested a moratorium on all further construction of the Garrison Diversion Unit until a mutually acceptable solution for the protection of Canadian interests under the Boundary Waters Treaty of 1909 was achieved. The United States government responded by stating its recognition of its obligations under the Boundary Waters Treaty and adopting a policy that no construction affecting Canada would be undertaken until it was clear that these obligations would be met.

During 1974 several binational meetings of officials were held to discuss and clarify Canadian concerns over potential degradation of water quality. An agreement was reached in 1975 between the governments of Canada and the United States to refer to the International Joint Commission the matter of potential pollution of boundary waters by the Garrison Diversion Unit.

The International Joint Commission created the International Garrison Diversion Study Board. The board concluded that the Garrison Diversion Unit would have adverse impacts on water uses in Canada, including adverse effects on flooding and water quality. The board recommended that any direct transfer by the Garrison Diversion Unit of fish, fish eggs, fish larvae, and fish parasites be eliminated by adopting a closed system concept and the installation and use of a fish screen structure.

In August 1984 representatives of Canada and the United States announced a general agreement between the two governments that Phase I of the initial stage of the Garrison Diversion Unit could be constructed. Canada, however, remained firmly opposed to the construction of any features that could affect waters flowing into Canada.

### Garrison Diversion Unit Commission

The water and energy appropriations bill signed on July 16, 1984, contained an agreement to establish a commission to review the Garrison Diversion Unit.

The Secretary of the Interior appointed a

12-member Garrison Diversion Unit Commission to review the Garrison Diversion Unit in North Dakota. The commission was directed to examine, review, evaluate, and make recommendations regarding the existing water needs of the state and to propose modifications to the Garrison Diversion Unit before December 31, 1984. Construction on the project was suspended from October 1 through December 31, 1984.

The commission worked under the restriction that any recommendation of the commission must be approved by at least eight of the 12 members and that should the commission fail to make recommendations as required by law, the Secretary of the Interior was authorized to proceed with construction of the Garrison Diversion Unit as designed.

Congress directed the commission to consider 11 specific areas:

1. The costs and benefits to North Dakota as a result of the Pick-Sloan Missouri Basin program.
2. The possibility for North Dakota to use Missouri River water.
3. The need to construct additional facilities to use Missouri River water.
4. Municipal and industrial water needs and the possibility for development, including quality of water and related problems.
5. The possibility of recharging ground water systems for cities and industries, as well as for irrigation.
6. The current North Dakota water plan to see if parts of the plan should be recommended for federal funding.
7. Whether the Garrison Diversion Unit can be redesigned and reformulated.
8. The institutional and tax equity issues as they relate to the authorized project and alternative proposals.
9. The financial and economic impacts of the Garrison Diversion Unit, when compared with alternative proposals for irrigation and municipal and industrial water supply.
10. The environmental impacts of water development alternatives, compared with those of the Garrison Diversion Unit.
11. The international impacts of the water development alternatives, compared with those of the Garrison Diversion Unit.

The commission released its final report and recommendations on December 20, 1984. The commission affirmed the existence of a federal obligation to the state for its contribution to the Pick-Sloan Missouri Basin program but recommended that an alternative plan be implemented in place of the 250,000-acre initial stage of the Garrison Diversion Unit. The commission recommended that the Sykeston Canal be constructed as the functional replacement for the Lonetree Dam. While the Lonetree Dam and Reservoir would remain an authorized feature of the plan, construction of that dam would be deferred pending appropriation of funds by Congress and a determination by the Secretary of

the Interior that consultations with Canada were satisfactorily concluded. The commission recommended that the Garrison Diversion Unit be configured to provide irrigation service to 130,940 acres in the Missouri and James river basins instead of the initial stage 250,000-acre project. The commission also recommended that the first phase of the Glover Reservoir be included as a feature of the plan in lieu of Taayer Reservoir for regulation of flows in the James River.

The commission further recommended the establishment of a municipal, rural, and industrial system for treatment and delivery of quality water to approximately 130 communities in North Dakota. A municipal and industrial water treatment plant with a capacity of 130 cubic feet per second was recommended to provide filtration and disinfection of water releases to the Sheyenne River for use in the Fargo and Grand Forks areas.

An alternate state plan for municipal water development was submitted to the Garrison Diversion Unit Commission by then Governor Olson and Governor-elect Sinner, proposing that the state would design and construct the water systems and pay 25 percent of their costs. In return, the federal government would provide up to \$200 million in nonreimbursable funds for municipal water development projects. The federal government would pay 75 percent of the construction costs of the systems with only the operation and maintenance costs borne by the cities benefited.

#### **Garrison Diversion Unit Reformulation**

Following the issuance of the commission's final report, Congress enacted the Garrison Diversion Unit Reformulation Act of 1986 (Pub. L. 99-294; 100 Stat. 433). This legislation was supported by representatives of the state, the Garrison Diversion Conservancy District, the National Audubon Society, and the National Wildlife Federation.

The legislation addressed the James River by directing a comprehensive study of effects over the next two years during which time construction of the James River Feeder Canal, the Sykeston Canal, and any James River improvements could not be undertaken. Of the 32,000-acre New Rockford Extension included in the Garrison Diversion Unit Commission final report, 4,000 acres were transferred to the West Oakes area and 28,000 acres were authorized for development within the Missouri River Basin.

The legislation also provided for:

1. 130,940 acres of irrigation.
2. Deauthorization of the 1944 Flood Control Act and the 1965 Garrison authorization.
3. Preservation of the state's water rights claims to the Missouri River.
4. Nonreimbursement of features constructed before enactment which will no longer be employed to full capacity, to the extent of the unused capacity.
5. Acre-for-acre mitigation based on ecological equivalency rather than the 1982 mitigation plan.

6. Deauthorization of the Taayer Reservoir and purchase of the Kraft Slough for waterfowl habitat.
7. Continued authorization, but no construction, of the Lonetree Reservoir. The Sykeston Canal was mandated for construction following required engineering, operational, biological, and economic studies. The Lonetree Reservoir could be built if:
  - a. The Secretary of the Interior determines a need for the dam and reservoir;
  - b. Consultations with Canada are satisfactorily completed; and
  - c. The Secretaries of State and the Interior certify determinations to Congress and 90 days have elapsed.
8. No construction of irrigation acreage other than on the Indian reservations or the 5,000-acre Oakes Test Area until after September 30, 1990.
9. A \$200 million grant for construction of municipal and industrial water delivery systems. A \$40.5 million nonreimbursable water treatment facility to deliver 100 cubic feet per second of water to Fargo and Grand Forks was authorized. All water entering the Hudson Bay drainage system must be treated and must comply with the Boundary Waters Treaty of 1909.
10. Municipal and industrial water delivery systems for the Fort Berthold, Fort Totten, and Standing Rock reservations.
11. Irrigation soil surveys that must include investigations for toxic or hazardous elements.
12. Federal participation in a wetlands trust to preserve, enhance, restore, and manage wetland habitat in North Dakota.

#### **Garrison Municipal, Rural, and Industrial Water Supply Program**

Included within the Garrison Diversion Unit Reformulation Act of 1986 is an authorization enabling Congress to appropriate \$200 million for the Garrison municipal, rural, and industrial water supply program. These funds are for the planning and construction of water supply facilities for municipal, rural, and industrial use throughout the state.

On July 18, 1986, the Garrison Diversion Conservancy District and the State Water Commission entered an agreement for the joint exercise of governmental powers. The agreement allows the district to use the expertise of the commission in developing and implementing the water supply program. In addition, the district was to enter an agreement with the Secretary of the Interior which designates the district as the fiscal agent for the state concerning money received and payments made to the United States for the water supply program.

On November 19, 1986, the United States and the Garrison Diversion Conservancy District entered an agreement that designates the district

to act on behalf of the state in the planning and construction, as well as the operation and maintenance, of the water systems constructed pursuant to the Garrison Diversion Reformulation Act of 1986. The agreement defines the responsibilities of the United States and the district under the agreement and contains provisions concerning the work to be undertaken by the district, stipulations concerning the transfer of funds, and the procedure for reporting, accounting, and reviewing the planning and construction programs. The agreement also provides that the Southwest Pipeline Project is eligible to receive funding under this program.

An important aspect of the water supply program is that an application for financial assistance for construction of a water supply project must be submitted by a local governmental entity and must be supported by a preliminary report and followed by a feasibility report. The feasibility report must be submitted before the project can be approved for funding. Once these steps have been satisfactorily completed, the project sponsors may then seek financial assistance to proceed with the design and commence construction of the project.

### LEGAL ISSUES

Legal counsel for the Garrison Diversion Conservancy District briefed the committee on litigation surrounding the project. In June 1986 the Spirit Lake Nation, formerly known as the Devils Lake Sioux Tribe, initiated a quiet title action against the United States, the state of North Dakota, the Garrison Diversion Conservancy District, and others concerning the ownership of the Devils Lake lakebed and the location of the northern boundary of the reservation. The claim was that the United States owns the lakebed in trust for the Spirit Lake Nation, that the lakebed is all land below the 1,439-foot contour around the lake (the 1867 elevation of the lake was 1,439 feet, which is near the current elevation), and that the north reservation boundary also follows the 1,439-foot contour. The United States responded with a motion to dismiss, asserting that the 12-year statute of limitations had expired. The United States District Court, after allowing the parties an opportunity for discovery, granted the motion in 1989. In 1990 the Spirit Lake Nation appealed to the United States Court of Appeals for the Eighth Circuit, and the court of appeals reversed the decision of the district court and remanded the case for further proceedings. Since 1990, the parties have attempted to negotiate a settlement of the lawsuit. Legal counsel for the Garrison Diversion Conservancy District reported that settlement discussions have been cordial, but have not resulted in an agreement. The Spirit Lake Nation continually has insisted that any settlement result in a federal-state agreement that the northern boundary of the reservation is the north shoreline of Devils Lake. The parties continue to meet periodically, and the settlement discussions involve a legislative package that may

be included in proposed amendments to the Garrison Diversion Reformulation Act of 1986.

### PROJECT UPDATE

The committee received updates concerning the Garrison Diversion Unit Project from representatives of the Garrison Diversion Conservancy District, State Water Commission, and the United States Bureau of Reclamation.

### Appropriations

Since 1966, Congress has appropriated \$594,847,000 for the Garrison Diversion Unit Project. Of this amount, \$570,020,408 has been expended. Since 1986, \$347,407,000 has been spent on the Garrison Diversion Unit. This includes \$97,155,000 for state municipal, rural, and industrial water supply projects; \$89,771,000 on water supply and operation, maintenance, and research; \$36,744,000 on fish and wildlife projects; \$22,501,000 for irrigation; \$20,100,000 for Indian municipal and industrial water supply projects; \$13,001,000 on the Lonetree Game Management Area; \$10,288,000 for the wetlands trust; \$3,622,000 on recreation facilities; \$1,665,000 in miscellaneous expenses; and \$40,796,000 in nonfederal funds. Expenditures in 1996 totaled \$25,011,500 in federal funds and \$3,495,000 in nonfederal funds. Of this amount, \$8,130,000 was for the state municipal, rural, and industrial water supply program; \$6,390,000 was for fish and wildlife facilities; \$2,950,000 was for water supply systems and operation, maintenance, and research; \$2,531,000 was for Indian municipal, rural, and industrial water supply programs; \$1,121,000 was for the Oakes Test Area; \$869,000 was for Jamestown Reservoir modifications; \$675,000 was for Indian irrigation projects; \$671,000 was for collaborative studies; \$312,500 was for the wetlands trust; \$110,000 was for recreation facilities; and \$1,252,000 was in underfinancing.

Congress has appropriated \$23 million for fiscal year 1997. Although it has not yet been determined how these funds will be allocated, it appears that of this amount approximately \$12 million will be designated for municipal, rural, and industrial water supply programs and \$3 million for operation and maintenance of project features, with the remainder allocated for fish and wildlife and mitigation activities.

Of the \$200 million authorized for the Garrison municipal, rural, and industrial water supply program, approximately \$120 million has been received since 1986. The committee learned, however, that the \$200 million will not meet North Dakota's future water needs and thus the state must reallocate how this money is spent before it is exhausted.

The State Water Commission has developed an allocation and schedule of remaining Garrison municipal, rural, and industrial water supply grant funding based on a September 29, 1995, water coalition funding report. This includes \$29.96 million for Phase 2 of the Northwest Area Water Supply Project; \$14.71 million for the

Ransom-Sargent Rural Water Project; \$9.56 million for the Southwest Pipeline Project; \$6.33 million for the Burleigh water system; \$5.36 million for Grand Forks water treatment plant modifications; \$5.17 million for the Missouri West Water Project; \$5.05 million for the North Valley Rural Water Project; \$2.92 million for the Pierce Rural Water Project; \$2.60 million for Phase 1 of the Northwest Area Water Supply Project; \$3.27 million for other projects; and \$1 million in administration expenses.

The Southwest Pipeline has supplied water to Dickinson since October 15, 1991. The pipeline is currently servicing 15 communities and 11 rural hookups in North Dakota.

Construction on the Northwest Area Water Supply Project is scheduled to commence in 1998 and the project is now in its final design stage. It is anticipated that water will be delivered in 2000. This project is being financed from Garrison municipal, rural, and industrial water supply funds and through bonding. The project is designed to supply water to 15 communities north and west of Lake Sakakawea and five rural water systems with the distribution system being centered in Minot.

### **Bureau of Reclamation Projects**

Representatives of the Bureau of Reclamation reported on bureau activities. The bureau is negotiating a cooperative agreement with the North Dakota Game and Fish Department for the department to assume operation and maintenance of the Lonetree Wildlife Management Area. The bureau spent \$6.1 million on wildlife activities in fiscal year 1996. The bureau is negotiating the terms of the water supply agreement for the Oakes Test Area with the Garrison Diversion Conservancy District. Fiscal year 1996 was the final year of studies at the Oakes Test Area, and it is anticipated that the results of these studies will be reported during fiscal year 1997. The bureau expended \$1.1 million on the Oakes Test Area in fiscal year 1996. Also, the Bureau of Reclamation spent \$471,000 in fiscal year 1996 on studies as a result of the collaborative process.

### **RECENT DEVELOPMENTS**

#### **Garrison Diversion Project Completion Act**

The committee received a draft of the Garrison Diversion Project Completion Act. This proposal was developed by the Garrison Diversion Conservancy District. The most recent working draft was released on July 5, 1996, and authorizes completion of the federal water distribution system in North Dakota. The purposes of the Act are to:

1. Have the state of North Dakota implement the Garrison Diversion Project in a manner that is fiscally responsible and meets the highest priority water supply distribution needs as defined by the state.
2. Construct and operate the Garrison Diversion Unit in the most environmentally sound manner possible.

3. Assist the United States in meeting its responsibilities under the Boundary Waters Treaty of 1909.
4. Assure equitable and timely repayment of federal funds expended for the Garrison Diversion Unit.
5. Preserve any existing rights of the state of North Dakota to use water from the Missouri River.
6. Offset the loss of farmland and economic productivity within the state of North Dakota resulting from the construction of major features of the Pick-Sloan Missouri Basin program, and fulfill the federal promise to meet the state of North Dakota's water needs through a municipal, rural, and industrial comprehensive water management program.
7. Meet Indian municipal, rural, and industrial water needs at Standing Rock Sioux Tribe, Fort Berthold, Three Affiliated Tribes, and the Spirit Lake Nation reservations.

Under the proposed Act, the New Rockford Irrigation Area (20,935 acres); West Oakes Area (19,660 acres); Turtle Lake Area (13,700 acres); LaMoure Area (13,500 acres); Lincoln Valley Area (6,515 acres); McClusky Canal Area (4,000 acres); Westhope Extension Area (4,000 acres); Harvey Pumping Area (2,000 acres); additional irrigation outside Hudson Bay, James River, and Devils Lake areas (28,000 acres); the Lonetree Dam and Reservoir; and the Sykeston Canal would be deauthorized.

However, the proposed Act would authorize the design and construction of the following features, at or near the noted capacity:

1. The Lonetree pipeline (450 cubic feet per second) to convey water for recreational, wildlife, and municipal, rural, and industrial purposes from the McClusky Canal to the New Rockford Canal. The state would be allowed to add an additional 25 percent to the capacity of the pipeline for future undetermined uses at its sole cost.
2. A screening facility at the head of the Lonetree pipeline and Lonetree pipeline biota removal treatment plant (450 cubic feet per second).
3. Lining and slide repair and improvements needed on the McClusky and New Rockford canals to bring them into full operational status. These costs would be nonreimbursable.
4. The James River Feeder Canal or pipeline (75 cubic feet per second).
5. James River channel improvements.
6. Sheyenne River channel improvements.
7. An Oakes Test Area ring dike and a bypass channel around the Arrowwood National Wildlife Refuge if needed and agreed to by the Secretary of the Interior and the state.
8. Pipeline and siphon from the New Rockford Canal to the Sheyenne River (350 cubic feet per second) for water deliveries to Devils Lake and the Red River Valley. The final

allocation of the cost of this feature would be a part of a master repayment agreement developed pursuant to negotiations required by the Act.

9. A pipeline from the Sheyenne River to Devils Lake (200 cubic feet per second).

The proposal contains a \$400 million federal appropriation to finance completion of Garrison Diversion facilities including:

1. The Lonetree pipeline at a capacity of 450 cubic feet per second.
2. The Lonetree pipeline treatment system plant for the Sheyenne River, including screening and pretreatment facilities at the Lonetree pipeline and a biota removal treatment plant, with a capacity of 450 cubic feet per second.
3. Improvements and repairs to remaining works necessary to make the McClusky and New Rockford canals fully operational.
4. The James River Feeder Canal or pipeline with a capacity of 75 cubic feet per second.
5. James River channel improvements.
6. Sheyenne River channel improvements.
7. The Oakes Test Area ring dike.
8. Sheyenne pipeline from the New Rockford Canal to the Sheyenne River for Red River Valley water deliveries at a capacity of 350 cubic feet per second.
9. A pipeline from the Sheyenne River to Devils Lake for a Devils Lake inlet and outlet at a capacity of 200 cubic feet per second.
10. The Devils Lake management plan.
11. The Turtle Lake Water Management Program up to 17,000 authorized acres.

The funds appropriated under the Act would remain available in the Garrison Diversion construction fund until expended without fiscal year limitation. The completion package would be financed by an off-budget financing package that would use power revenues generated by water authorized for irrigation and an automatic appropriation based on the annual power revenues from the Western Area Power Administration.

#### **North Dakota Water Priorities Plan**

The committee received the North Dakota water priorities plan prepared by the North Dakota Water Coalition. The North Dakota Water Coalition is composed of approximately 30 statewide organizations, regional entities, municipalities, and other groups from North Dakota.

The coalition was established in July 1994 with the stated goals of providing an adequate water supply across North Dakota for manufacturing, industry, energy byproduct utilization, agriculture, agricultural processing, recreation, wildlife, municipalities, and rural water systems that have inadequate supply or quality of water. The goals include completing a workable and achievable Garrison Diversion project to provide a multiuse water supply to central and eastern North Dakota, including the James, Sheyenne, and Red rivers;

completing the Southwest Pipeline Project; stabilizing Devils Lake; undertaking and completing the Northwest Area Water Supply Project; securing adequate funding for the Garrison municipal, rural, and industrial water supply program; and developing multiuse statewide water impoundments for recreation, wildlife, and fishing. The other stated goal of the coalition is to complete projects to control and alleviate flood waters and damages, including such projects as increasing the flood control capacities of the Bald Hill Dam and Reservoir, the Maple River Dam, and others. The coalition identified \$259,739,300 in immediate water priorities, defined as years 1997 through 1999. Of this total, \$147,576,470 was in federal funds, \$41,669,450 was in state funds, and \$70,493,380 in local funds. The coalition also identified \$928,723,500 in short-term priorities, defined as years 2000 through 2005. Of this total, \$634,609,575 was in federal funds, \$126,420,500 was in state funds, and \$154,594,425 was in local funds. The coalition is conducting additional work to identify the specific cost estimates for long-term priorities, defined as years 2006 through 2025.

#### **Devils Lake**

The committee received updates concerning the Devils Lake flood situation from the State Engineer. The lake is currently at 1,437.4 feet mean sea level and is anticipated to be at 1,438 feet mean sea level next spring. The United States Army Corps of Engineers is spending \$7 million to raise the dikes protecting the city of Devils Lake with nonfederal participation of 25 percent with the state and city of Devils Lake splitting the nonfederal cost share. The lake has inundated approximately 30,000 acres of land around the lake since 1993.

#### **Devils Lake Emergency Outlet Plan**

The committee received the Devils Lake emergency outlet plan prepared by the United States Army Corps of Engineers. The plan was released on August 13, 1996, and consolidates available information on a plan that could help reduce the Devils Lake flooding problem. The plan examines engineering feasibility, effectiveness, and potential impacts in the Devils Lake Basin. The plan, following the twin lakes route, involves pumping Devils Lake water into a series of three pools created by earth-filled dams. The pools would act like a stepladder to successfully raise water to the top of the divide between the Devils Lake Basin and the Sheyenne River Valley. At that point, water would flow down to the Sheyenne River in an open channel. An outlet capacity of 200 cubic feet per second was used based upon available information regarding the river's channel capacity and ambient water quality in the lake and river. The cost of planning, engineering, designing, constructing, managing, acquiring real estate, quantifying environmental mitigation, and construction is approximately \$21 million. The annual operation and maintenance costs are

estimated at \$700,000 when the project is operating seven months per year and about \$200,000 when the project is not pumping. The plan identifies two implementation timelines. The first is a 60-month timeline assuming that activities are accelerated but normal project criteria is satisfied, including preparation of an environmental impact statement, design documents, standard real estate acquisition and contracting procedures, and a two-year construction schedule following timely congressional authorization and appropriations. The other is an accelerated 29-month schedule, which assumes specific congressional emergency authorization and appropriations. The emergency plan would require waiving requirements for the planning and design process, real estate acquisitions, and contracting procedures. In addition, National Environmental Policy Act requirements would have to be modified.

The plan anticipates that construction under an accelerated schedule would cost more than under the 60-month timeline.

### **Conclusion**

The committee reviewed a bill draft directing the State Water Commission to assist the Garrison Diversion Conservancy District and the United States Bureau of Reclamation in developing and completing the Garrison Diversion Unit Project. The committee noted that the Water Resources Committee is studying the financing and funding needs for development and completion of the state's water resources infrastructure and methods for development of a program to provide financing of water supply facilities in this state. Thus, the committee forwarded the bill draft to the Water Resources Committee for its consideration.

# GOVERNMENT ORGANIZATION COMMITTEE

The Government Organization Committee was assigned two studies. House Bill No. 1001 directed a study of the membership, duties, and responsibilities of all boards, councils, committees, and commissions of state government. Senate Bill No. 2008 directed a study of the services provided by the Public Service Commission, their cost and effectiveness, and the need for continuing services as a result of regulatory changes at both the state and federal level.

Committee members were Senators Pete Naaden (Chairman), John M. Andrist, Rolland W. Redlin, and Ken Solberg and Representatives Wesley R. Belter, Jeff W. Delzer, Robert Huether, Keith Kempenich, Matthew M. Klein, and Ben Tollefson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## BOARDS AND COMMISSIONS STUDY

### Background

House Bill No. 1001 provided that the study of all boards, councils, committees, and commissions of state government should include consideration of whether any of those entities have overlapping powers and duties; whether any of those entities should be eliminated or consolidated; whether each entity performs the functions for which it was originally created; and whether the membership of each entity is responsive to the people of the state. When the Legislative Council prioritized this study, the Council indicated that the committee conducting the study should base its study on the findings of the Governor's task force that reviewed boards and commissions in 1994.

### Governor's Task Force Report

In January 1994 the Governor appointed a five-member task force to review the necessity and efficiency of approximately 150 entities to which the Governor makes appointments. The task force interviewed representatives from each entity and established criteria in examining each entity. The criteria employed by the task force was to determine whether each entity had outlived its original mission or funding and whether a legitimate need existed for the entity to remain in existence. The task force also gathered information describing the service the entity provides, the financial status of the entity, the frequency of meetings, the length and location of meetings, and reimbursement practices for attendance at the meetings.

The task force submitted recommendations regarding the status of each entity reviewed and various other recommendations, including:

1. Establishment of a board to oversee the activities of all boards and commissions

that have a licensing function.

2. Submission of financial statements by boards and commissions with a certified audit by an outside independent accounting firm.
3. Adoption of standards to ensure uniformity in all financial reports.
4. Establishment of requirements to address excess funding of entities that collect fees.

After reviewing the report, the committee focused on six entities that the task force recommended be disbanded or combined with other entities. The committee reviewed financial information and received testimony from representatives of the Wetlands Mediation Advisory Board, State Outdoor Recreation Interagency Council, Milk Marketing Board, Children's Services Coordinating Committee, Racing Commission, and Yellowstone-Missouri-Fort Union Commission.

### Wetlands Mediation Advisory Board

The task force recommended the Wetlands Mediation Advisory Board be abolished. The board was created in 1987 to mediate disputes or conflicts relating to decisions of the United States Fish and Wildlife Service pertaining to wetlands. The board consists of 10 members including various state officials and representatives of farm organizations, political subdivisions, and the federal government.

The committee received testimony indicating that the board has never met and that the federal government probably would not be bound by a decision of the board due to the supremacy clause in the United States Constitution.

The committee reviewed a bill draft that abolished the Wetlands Mediation Advisory Board. Proponents of the bill draft contended that because the board has never met and probably has no substantive authority, it should be eliminated.

### State Outdoor Recreation Interagency Council

The task force recommended the State Outdoor Recreation Interagency Council be abolished. The council was organized in 1977 to provide a broader perspective on outdoor recreation and to develop priority lists for development in the state. The council consists of 10 members, all of who are appointed officials of state government. The committee received testimony indicating that because of the dwindling amount of federal funds available, the last budget for the council was during the 1987-89 biennium. The council met in 1994 for the purpose of discussing outdoor issues.

The committee reviewed a bill draft that abolished the State Outdoor Recreation Interagency Council. Proponents of the bill draft contended that the council was unnecessary and had outlived its purpose. Although there was testimony indicating that members of the council believed it was worthwhile to meet occasionally to

share ideas and address common issues, committee members generally agreed those individuals could continue to do so on an informal basis.

### **Milk Marketing Board**

The task force recommended the Milk Marketing Board be abolished. The board consists of five members representing milk producers, processors, and retailers and consumers. The committee received testimony from representatives of the Milk Marketing Board indicating that the board ensures an adequate supply of fresh milk to the state, eliminates unfair trade practices, and thus provides economic stabilization to the dairy industry and the state. Supporters of the board contended that if the board were abolished, out-of-state milk producers would flood the state with cheap milk--resulting in North Dakota dairy producers going out of business.

### **Children's Services Coordinating Committee**

The task force recommended the Children's Services Coordinating Committee be abolished and the responsibilities of the committee be placed with the Children and Family Services Division of the Department of Human Services. The committee consists of 15 members including one member appointed by the Governor and 14 designated state officials. The committee is required to plan and coordinate services and activities for children at risk and to foster preventative and early intervention strategies for children at risk. Testimony in support of the committee contended that preventative programs provided by the committee reduce subsequent burdens on the human services system.

### **Yellowstone-Missouri-Fort Union Commission**

The task force recommended the Yellowstone-Missouri-Fort Union Commission be abolished. The purpose of the commission is to improve and facilitate efforts to market Fort Union and Fort Buford. The commission meets quarterly and has no budget. Supporters of the commission contended that abolishing the commission would be detrimental to efforts to encourage tourism and would generate no cost savings to the state.

### **Racing Commission**

The task force recommended combining the Racing Commission with the State Gaming Commission. After receiving testimony regarding the responsibility of the Racing Commission to promote the racing industry, the committee determined that combining the two entities appeared to be inappropriate because the Gaming Commission is a regulatory agency.

### **Survey of Boards and Commissions**

The committee surveyed all statutorily created boards and commissions of state government. Among the questions asked were:

1. How many regular and special meetings has the entity held since January 1, 1993?

2. What types of subjects are considered at meetings?
3. What was the total per diem, mileage, and travel expenses incurred by the entity during the biennium ending June 30, 1995?
4. What are all sources of funds received by the entity?
5. What is the total of all expenditures from public funds made by the entity for each of the previous five bienniums?
6. What is the present scope of activities of the entity and do those activities conform with the original legislative intent when the entity was established?
7. Are any changes in duties, functions, or composition of the entity necessary to continue effectively serving the public?
8. What other North Dakota entity has similar or overlapping functions?
9. Is there a possibility of combining functions of other entities with this entity?
10. Why should this entity remain in existence?

The committee reviewed the approximately 120 completed surveys and identified several entities for further review.

### **Water Pollution Control Board**

The survey returned by the Water Pollution Control Board indicated that the board had not met in over three years. Although the board was created to advise the Department of Health regarding water pollution control matters, the board has not met because water pollution control programs have not changed in recent years. The 1995 Legislative Assembly considered a bill that would have eliminated the Water Pollution Control Board and the Air Pollution Control Advisory Council, but the bill did not pass.

The committee considered a bill draft that would have abolished the Water Pollution Control Board. Opponents of the bill draft argued that the board provides a forum through which representatives of industry can have input when the Department of Health proposes changes to water pollution control rules. Supporters of the bill draft contended that the board is no longer necessary and the Department of Health would continue to seek input from all sides regarding the adoption of rules through ad hoc committees and through the rulemaking process.

### **Air Pollution Control Advisory Council**

The committee received a request to replace the Air Pollution Control Advisory Council and the Water Pollution Control Board with an Environmental Advisory Board. Proponents of the proposal argued that combining the Air Pollution Control Advisory Council and the Water Pollution Control Board into an Environmental Advisory Board would provide a forum for representatives of industry and the general public to review proposed rule changes by the Department of Health. Representatives of the Department of Health testified that an Environmental Advisory Board

was not necessary because the department seeks input throughout the rulemaking process.

The committee considered a bill draft that established an Environmental Advisory Board. Supporters of the bill draft argued that such a board would assist the Department of Health in adoption of rules and would reduce the likelihood of objections to the rules during the rulemaking process. They contended that the advisory board could work with the department to develop a consensus before the actual proposal of the rules. Opponents of the bill draft argued that the board is not necessary.

#### **Poultry Advisory Board**

The survey completed by the Poultry Advisory Board indicated that the board spent approximately two to three hours in meetings during the previous three years. The survey also indicated that the State Board of Animal Health has similar functions and could assume the responsibilities of the Poultry Advisory Board.

The committee considered a bill draft that abolish the Poultry Advisory Board. Opponents of the bill draft requested the committee to keep the board in place so the board could act in the event it became necessary to advise the Commissioner of Agriculture regarding poultry issues. In addition, they contended that keeping the board in place would cost the state nothing. Proponents of the bill draft contended that the board is unnecessary and the poultry industry would continue to have input with the Board of Animal Health and the Commissioner of Agriculture.

#### **State Banking Board and Credit Union Board**

The surveys completed by the State Banking Board and the Credit Union Board suggested that certain powers and responsibilities of the boards were inappropriate. The state banking commissioner requested the committee to consider a bill draft to remove the requirement that the Governor make appointments to the Credit Union Board from a list of names submitted by the North Dakota Credit Union League. The commissioner also proposed that the various responsibilities of the Banking Board and the Credit Union Board be assigned to the commissioner to reduce the burden on the boards.

The committee considered a bill draft that transferred various responsibilities of the State Banking Board and the Credit Union Board to the banking commissioner and removed the requirement that the Governor make appointments to the Credit Union Board from a list submitted by the North Dakota Credit Union League.

A representative of the North Dakota Credit Union League contended that the league should have input regarding the selection of representatives to the Credit Union Board. In addition, concerns were expressed regarding the increased authority of the banking commissioner and the reduced role of the Credit Union Board.

#### **Central Personnel Board**

The survey completed by the Central Personnel Board included a suggestion that there may no longer be a need for the Central Personnel Board as a result of 1995 legislation changing the role of the board.

At the request of the committee, the director of the Central Personnel Division conducted a survey of employees regarding the functions of the board. Based upon that survey, the Central Personnel Division concluded that the only change with respect to the board should be a statutory change to reduce the required number of meetings. The committee took no further action regarding the proposal.

#### **Corn Utilization Council**

The survey returned by the Corn Utilization Council indicated that the council could be abolished and the Corn Growers Association could assume the responsibilities of the council. The committee received testimony indicating there was interest in that concept. However, concerns were expressed regarding the handling of the one-quarter of one percent per bushel assessment provided by law. The committee took no further action regarding elimination of the Corn Utilization Council.

#### **Occupational and Professional Licensing Boards**

During review of the surveys completed by the various occupational and professional licensing boards, committee members expressed concern regarding the handling of public funds. Many of the surveys indicated that boards had large reserves and significant expenses for board meetings. Committee members also expressed concern regarding the use of license fees for lobbying purposes by occupational and professional licensing boards. Because license fees and other fees collected by licensing boards pursuant to statutory authorization are public funds, committee members generally agreed that the use of those funds for lobbying purposes is inappropriate.

The committee considered a bill draft that would have prohibited occupational and professional licensing boards from using any funds derived from registration, certification, license, or examination fees or any income resulting from those funds for lobbying or political purposes.

Opponents of the bill draft testified that licensing boards do not spend funds for political purposes and rarely use board funds for lobbying. They contended that lobbying on behalf or in opposition to legislation directly affecting the boards is sometimes necessary and informative for legislators. Opponents of the bill draft argued that because board members are acting in a volunteer capacity, the board members should not be prohibited from accepting reimbursement from the board for providing information relating to proposed legislation.

The committee discussed the feasibility of consolidating all licensing boards under one central administrative authority. The committee received testimony regarding the consolidation of South Carolina licensing boards under the State Labor Commissioner.

The committee requested the North Dakota Commissioner of Labor to prepare a presentation regarding the feasibility of consolidating the administration of all occupational and professional licensing boards under the commissioner. After reviewing the feasibility of such a consolidation, the Commissioner of Labor reported that consolidation did not appear to be feasible.

The committee considered a bill draft that would have consolidated the Board of Massage, State Examining Committee for Physical Therapists, State Board of Psychologist Examiners, State Board of Examiners on Audiology and Speech-Language Pathology, Board of Athletic Trainers, Board of Occupational Therapy Practice, Board of Social Work Examiners, Respiratory Care Examining Board, Board of Dietetic Practice, Board of Addiction Counseling Examiners, Board of Counselor Examiners, Board of Clinical Laboratory Practice, and Board of Reflexology into a Board of Health Services; and would have consolidated the Abstracters' Board of Examiners, Board of Barber Examiners, Board of Cosmetology, Board of Architecture, Board of Funeral Service, Board of Hearing Instrument Dispensers, Board of Public Accountancy, State Board of Registration for Professional Engineers and Land Surveyors, Private Investigation and Security Board, Real Estate Appraiser Qualifications and Ethics Board, Real Estate Commission, Board of Examiners for Nursing Home Administrators, and the State Board of Registration for Professional Soil Classifiers into a Board of Business Practices. The bill draft would have limited the authority of each board to that of issuing licenses and disciplining a licensee if the licensee did not maintain the qualifications required by the board to practice.

Proponents of the bill draft contended that the proposal would centralize administration, reduce the number of unnecessary boards, and reduce license fees because of lower administrative costs. Proponents of the bill draft also contended that the discipline of persons engaged in those professions could be handled by nongovernmental entities such as professional certification or registration associations.

Opponents of the bill draft argued that the special expertise of board members from the various regulated occupations and professions is necessary for the licensing process. Opponents also contended that the consolidation would not result in cost savings. In addition, it was contended that removing the authority of the licensing boards to discipline licensees would jeopardize the safety of the public because trade associations are advocacy groups and are not designed to handle disciplinary matters.

Although committee members generally agreed that there should be some consolidation of the

administration of occupational and professional licensing boards, committee members also agreed that the bill draft under consideration was not the best approach to consolidation. The committee urged representatives of the licensing boards to work to consolidate administration of boards and bring consolidation proposals to the Legislative Assembly.

The committee reviewed financial records of the Board of Cosmetology and other documents that addressed an investment of \$100,000 by the board. Among the documents was a letter from the Attorney General to the board urging the board's attorney to recover the invested funds.

The committee requested the Attorney General to investigate the investment made by the Board of Cosmetology to determine whether the investment violated any criminal statute. The investigation revealed that although the Board of Cosmetology had no authority to make the investment and there were possible criminal violations, it was too late to pursue any criminal or civil action. The investigation also revealed that the invested funds had been recovered.

The committee received a request to abolish the Advisory Commission on Intergovernmental Relations. Testimony in support of abolishing the commission centered on the fact that the commission consists of four legislators and seven members representing political subdivisions and the Governor so the nonlegislative members have the power to control the commission. It was noted that the commission has the same powers as interim legislative committees that consist entirely of legislators. Opponents of the commission also argued that the local government efficiency planning grant program, which provided grants to local governments to conduct studies and evaluate methods through which local governments could become more efficient, was used inappropriately.

Proponents of retaining the commission responded that the local government efficiency planning grant funds were not used inappropriately. Also, 1995 Legislative Assembly did not appropriate any funds for the grant program and the commission can now concentrate on its main mission which is to serve as a forum for the discussion and resolution of intergovernmental problems. Commission supporters argued that the commission is an important forum for local governments and representatives of state government to work together to address problems affecting local governments.

### **Recommendations**

The committee recommends House Bill No. 1056 to abolish the Wetlands Mediation Advisory Board.

The committee recommends House Bill No. 1057 to abolish the State Outdoor Recreation Interagency Council.

The committee recommends House Bill No. 1058 to replace the Water Pollution Control Board and the Air Pollution Control Advisory Council with an Environmental Advisory Board to advise the Department of Health on issues relating to water

pollution control and air pollution control. The bill provides that the board is to consist of the State Health Officer, the State Engineer, the State Geologist, and six members appointed by the Governor representing city or county governments, the solid fuels industry, the fluid and gas fuels industry, the environmental sciences, the agricultural sector, and wildlife interests.

The committee recommends House Bill No. 1059 to abolish the Poultry Advisory Board.

The committee recommends House Bill No. 1060 to transfer responsibilities from the Banking Board and Credit Union Board to the banking commissioner and to remove the requirement that the Governor make appointments to the Credit Union Board based upon recommendations from the North Dakota Credit Union League.

## **PUBLIC SERVICE COMMISSION STUDY**

### **Background**

Section 12 of Article V of the Constitution of North Dakota provides that the Public Service Commission consists of three public service commissioners, each holding a term of office of six years. Section 13 of Article V of the constitution provides that the powers and duties of the Public Service Commission are to be prescribed by law.

The Public Service Commission is directed by law to perform a variety of functions, including regulation of telecommunications and electric and natural gas utilities; regulation of surface mining and reclamation activities; licensure of auctioneers and auction clerks, grain elevators, roving grain and hay buyers, and public storage warehouses; supervision of weighing and measuring devices; and regulation of railroads.

The Public Service Commission is organized into five divisions--the Public Utilities Division, the Reclamation Division, the Abandoned Mine Lands Division, the Licensing Division, and the Testing and Safety Division. The commission employs 44 full-time employees. The general fund appropriation for the commission for the 1995-97 biennium is approximately \$3.2 million, compared to a general fund appropriation of \$4.2 million for the 1985-87 biennium. Approximately 67 percent of the commission's budget is from federal funds, which are primarily relating to mine reclamation activities.

### **Public Utilities Division**

The Public Utilities Division of the commission is responsible for regulating electric and natural gas utilities and telecommunications companies. Included among those responsibilities is the review of applications for the siting of energy conversion and transmission facilities and enforcement actions related to electrical generation facilities and electrical and gas transmission facilities.

### **Electric and Natural Gas Utilities**

The committee received testimony relating to the responsibility of the commission to supervise

the rates of all public utilities. As a result of orders issued by the Federal Energy Regulatory Commission, the wholesale power market has been opened to competition and the transmission system for electricity has been unbundled and opened to wholesale wheeling. Although the significance of the orders has not been fully determined, it appears that the state will have jurisdiction to regulate recovery of the cost of stranded investments.

The committee received testimony from representatives of investor-owned utilities indicating that the utilities may seek changes to North Dakota laws governing the regulation of utilities as a result of federal deregulation. Although the role of state regulation has not been determined, representatives of various utilities testified that the regulatory role of the commission may be more significant in the future.

### **Telecommunications**

Although the telecommunications industry has largely been deregulated by federal legislation, federal law has delegated various responsibilities to state regulators. Representatives of the commission testified that the total impact of the Federal Telecommunications Act of 1996 will not be known for some time. However, it is clear that the state will continue to have some authority to regulate telecommunications.

Representatives of the telecommunications industry testified that the Public Service Commission will be facing additional responsibilities in the near future as a result of the Federal Telecommunications Act of 1996. Because the major changes resulting from the Act generally occur first in more populated areas, testimony to the committee indicated the commission will have the benefit of observing the impact of deregulation in other states before making decisions regarding deregulation in North Dakota.

### **Reclamation Division**

The Public Service Commission is the state regulatory authority for all purposes relating to the Federal Surface Mining Control and Reclamation Act of 1977. The commission is also responsible for developing an abandoned mine reclamation plan to accomplish the purpose of the Act.

The Reclamation Division of the commission has a biennial budget of approximately \$1.1 million, \$800,000 of which is from federal funds. Because federal participation in the reclamation program is expected to decrease after July 1, 1997, the federal share of the reclamation budget will likely decrease by nearly \$100,000.

### **Abandoned Mine Lands Division**

The Abandoned Mine Lands Division budget for the 1995-97 biennium is approximately \$5.2 million, 100 percent of which is from federal funds. The program is financed by a federal reclamation coal tax, which taxes lignite at a rate of 10 cents per ton extracted. Federal law provides that 50 percent of the funds collected are returned

to the state for abandoned mine land reclamation projects. However, Congress has not appropriated the full amount to be returned to the contributing states. The commission has approximately 50 known minesites in western North Dakota which it considers priorities for future reclamation work. The estimated cost of reclaiming those sites is nearly \$35 million. However, because Congress has reduced funding to the states, the amount of future reclamation work may be reduced.

Representatives of the lignite industry and representatives of environmental interests testified that the reclamation activities undertaken by the commission have been successful. Representatives of the lignite industry testified that the industry would favor changes to the reclamation law to assure that North Dakota requirements are no more stringent than federal requirements.

In 1983 the Reclamation Research Advisory Committee was created to prepare an inventory and description of all reclamation research projects, review past and current reclamation research projects, review proposed reclamation research projects, and recommend future reclamation research budgets. Representatives of the Public Service Commission testified that because the Reclamation Research Advisory Committee has accomplished its purpose and because the Lignite Research Council performs similar functions, the advisory committee is no longer necessary.

The committee considered a bill draft that abolished the Reclamation Research Advisory Committee. Proponents of the bill draft contended that the committee is not necessary because little reclamation research is being conducted. The testimony indicated that although the committee has been successful and has published an inventory of research in North Dakota, the Lignite Research Council can address research activities.

## **Licensing Division**

### **Railroads**

Although the Public Service Commission's role in regulating railroads is limited, the commission has authority with respect to intrastate economic regulation and rail safety. The commission represents the state's interest in shipping matters and disseminates information regarding rail shipping in the state. Approximately 20 percent of the workload of one full-time employee is assigned to administering the commission's railroad responsibilities.

The commission's authority to regulate railroads with respect to safety mainly involves presiding over investigations concerning the need to open or close railroad grade crossings and the adequacy of safeguards at rail crossings, reviewing clearance variance requests, and adopting and enforcing railroad safety rules.

The commission's largest area of responsibility concerning railroads is representation of the state's shipping interests before federal agencies and in direct negotiations with rail carriers.

The commission's role with respect to dissemination of information is generally limited to answering questions from the public relating to railroad crossings, drainage and weed problems along rail lines, land purchases along abandoned rail lines, and lease rates for business property adjacent to rail lines. Although the commission does not have direct jurisdiction over most of those concerns, representatives of the commission help find solutions to the problems.

The committee reviewed a bill draft that defined the authority of the commission with respect to regulation of railroads within the state. The bill draft provided that the commission, to the extent not inconsistent with federal law, may regulate railroads within the state to the extent railroad activities constitute intrastate commerce. The bill draft also provides that the commission may represent the state's shipping interests in direct negotiations with rail carriers and in proceedings before Congress, federal agencies, and courts.

Supporters of the bill draft testified that the bill draft would clarify the authority of the Public Service Commission.

The committee considered a bill draft that repealed various statutes relating to the regulation of railroads so as to remove references to authority of the commission in areas in which the commission is no longer authorized to regulate due to federal preemption. The bill draft also moved a section of law relating to the limitation of liability of the owner or operator of a railroad for an injury to an individual riding on a locomotive or railroad car without the authority of the owner or operator from a chapter in the North Dakota Century Code addressing the liability of railroads for injuries to employees of railroads to a chapter relating to judicial remedies.

### **Auctioneers**

The Public Service Commission is required by law to license auctioneers and auction clerks. The commission licenses approximately 700 auctioneers and auction clerks annually and generates approximately \$50,000 per biennium in revenue through license fees. Although the commission has no regulatory authority over auctioneers and auction clerks, the commission receives complaints and attempts to negotiate settlements when disputes arise between auctioneers or between auctioneers and a seller or buyer.

The committee received testimony indicating that auctioneers are satisfied with the licensing arrangement. Representatives of auctioneers and the commission indicated that they would be discussing the possibility of requiring continuing education requirements for auctioneers.

### **Grain Elevators**

The Public Service Commission annually licenses warehouses that buy grain or store grain for the public. An applicant for a license must submit to the commission a performance bond and proof of insurance.

The commission focuses its inspections on

elevators that are not inspected by the Federal Commodity Credit Corporation. However, because of the decline in the number of elevators that are choosing to store grain covered by the Federal Commodity Credit Corporation, the number of elevators inspected by the commission is increasing.

The committee received testimony indicating that the Public Service Commission has a good relationship with operators of grain elevators.

### **Roving Grain and Hay Buyers**

Roving grain and hay buyers are required to be licensed and bonded. The commission licenses approximately 30 roving grain and hay buyers annually. The annual license fee is \$75.

### **Public Storage Warehouses**

North Dakota Century Code Chapter 60-07 requires public storage warehouses to obtain an annual license from the Public Service Commission. Public storage warehouses are facilities used to store goods, other than bulk grain, for the public. The commission licenses 23 public storage warehouses.

Representatives of the Public Service Commission testified that the licensing of public storage warehouses may be unnecessary. The committee considered a bill draft that repealed the requirement that public storage warehouses be licensed. Because so few warehouses are licensed and because persons who store goods in warehouses can resort to civil actions to recover any losses, proponents of the bill draft contended that licensing is not necessary.

### **Testing and Safety Division**

The Public Service Commission is responsible for the supervision of all weighing and measuring devices in the state. The commission inspects commercial weighing and measuring devices for proper installation and operation and for proper tolerance. The commission also registers and certifies equipment and techniques used by service companies to test scales and pumps. In addition, the commission oversees the safety of intrastate natural gas transmission and distribution facilities through the enforcement of gas pipeline safety standards.

The committee requested representatives of the commission to examine the feasibility of eliminating the weights and measures functions of the commission and requiring the owners of all weighing and measuring devices to contract with private scale companies for inspections of the devices. The report of the commission stated that "privatization" of the weights and measures functions would reduce general fund expenditures by about \$400,000 per biennium and would reduce inspection fee income by \$423,000 per biennium.

The committee received testimony indicating that the weights and measures functions of the Public Service Commission generally are not in

competition with private scale companies. Testimony from the scale industry and others indicated that the commission had an important role to play with respect to its weights and measures activities.

The committee considered a bill draft that required the commission to charge a fee equal to the cost of operating the motor vehicle used in conducting a test when the commission conducts a special test of a weighing or measuring device in addition to a regularly scheduled annual test. The bill draft provided that the mileage charges must be calculated to cover the costs of the additional travel. The bill draft also allowed the commission to collect an \$8 fee to test a hanging scale of 50-pound capacity or less.

Representatives of the commission testified that the bill draft would provide the commission the flexibility to adjust the mileage charged for the special test. In addition, the \$8 fee for the test of a hanging scale of 50-pound capacity or less would correct an oversight in the law. Without the proposed change, the commission would be required to charge a much higher fee for the conduct of such a test.

### **Recommendations**

The committee recommends Senate Bill No. 2035 to abolish the Reclamation Research Advisory Committee.

The committee recommends Senate Bill No. 2036 to provide that the Public Service Commission, to the extent not inconsistent with federal law, may regulate railroads within the state to the extent the railroad activities constitute intrastate commerce. The bill also provides that the commission may represent the state's shipping interests in direct negotiations with rail carriers and in proceedings before Congress, federal agencies, and courts.

The committee recommends Senate Bill No. 2037 to repeal various statutes relating to the regulation of railroads to remove references to authority of the Public Service Commission in areas in which the commission is no longer authorized to regulate due to federal preemption. The bill also moves a section of law relating to the limitation of liability of the owner or operator of a railroad for an injury to an individual riding on a locomotive or railroad car without the authority of the owner or operator.

The committee recommends Senate Bill No. 2038 to repeal the requirement that public storage warehouses be licensed by the Public Service Commission.

The committee recommends Senate Bill No. 2039 to require the Public Service Commission to charge a fee equal to the cost of operating a motor vehicle used in conducting a special test that is required in addition to the regularly scheduled annual test of a weighing or measuring device. The bill also establishes an \$8 fee for the test of a hanging scale of 50-pound capacity or less.

# INSURANCE AND HEALTH CARE COMMITTEE

The Insurance and Health Care Committee was assigned four studies. Section 39 of House Bill No. 1050 directed a study of the feasibility and desirability of requiring mental health services and alcohol and drug addiction related services to be included as health insurance covered services. House Concurrent Resolution No. 3008 directed a study of the feasibility and desirability of implementing recommendations by the North Dakota Health Task Force for improving the health status of North Dakotans, the rate of health care cost increases, the impact of newly enacted programs to improve the health status of North Dakotans, and the unmet medical needs in rural areas. House Concurrent Resolution No. 3023 directed a study of the availability, coverage, and regulation of long-term care insurance. Section 1 of Senate Bill No. 2460 required a study, in conjunction with the Health Council, of the certificate of need process and other means of planning and decisionmaking in relation to the growth of the health care industry in North Dakota. The Legislative Council also assigned to the committee the responsibility to receive reports from the Commissioner of Insurance relating to basic health insurance coverage and to the progress of the partnership for long-term care program.

Committee members were Representatives Ken Svedjan (Chairman), Eliot Glassheim, G. Jane Gunter, Dale Henegar, George Keiser, RaeAnn Kelsch, Bruce Laughlin, John Mahoney, David Monson, Marv Mutzenberger, Doug Payne, Clara Sue Price, Jim Torgerson, and Francis J. Wald and Senators Judy L. DeMers, Judy Lee, Tim Mathern, and Russell T. Thane.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## MENTAL HEALTH AND ALCOHOL AND DRUG ADDICTION INSURANCE STUDY

### Background

Mental health services and substance addiction related services are required to be covered services by health insurance in certain instances. North Dakota Century Code (NDCC) Section 26.1-36-08 provides that an insurance company, nonprofit health services corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group, blanket, franchise, or association basis unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of alcoholism, drug addiction, or other related illnesses.

North Dakota Century Code Section 26.1-36-09 provides that an insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group, blanket, franchise, or association basis unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of mental disorders and other related illnesses.

During the 1995 legislative session, an amendment was proposed to House Bill No. 1050 to require a basic health plan and a standard health plan issued on an individual or group basis to include coverage for the treatment of substance abuse and mental disorders which meets or exceeds the minimum requirements of NDCC Sections 26.1-36-08 and 26.1-36-09. The proposed amendment failed to pass.

The issue of mandating health insurance coverage in North Dakota was reviewed by the Legislative Council's Industry and Business Committee during the 1989-90 interim. Mandated coverages for health services in North Dakota include coverage for health services performed by an advanced registered nurse practitioner (NDCC Section 26.1-36-09.5); certain coverage for the diagnosis, evaluation, and treatment of alcoholism or drug addiction under group health policies and health service contracts (NDCC Section 26.1-36-08); certain coverage for the diagnosis, evaluation, and treatment of mental disorders under group health policies and health service contracts (NDCC Section 26.1-36-09); certain coverage for mammogram examinations (NDCC Section 26.1-36-09.1); certain coverage for involuntary complications of pregnancy (NDCC Section 26.1-36-09.2); coverage for surgical and nonsurgical treatment of temporomandibular joint disorder and craniomandibular disorders (NDCC Section 26.1-36-09.3); nondiscrimination provisions relating to chiropractic services (NDCC Section 26.1-36-12.1); and nondiscrimination provisions relating to optometric services (NDCC Section 43-13-31).

Testimony to that committee indicated the problem of increased unaffordability of health insurance coverage could be due to the increasing number of providers and legislatively mandated benefits and coverages. That committee recommended House Bill No. 1043 (1991) to prohibit the introduction of legislation or the consideration of amendments mandating health insurance coverage unless the proposal is accompanied by a report prepared by the Commissioner of Insurance which assesses the impact of the proposal. The bill failed to pass the Senate.

That committee also recommended House Bill No. 1042 (1991), which allowed the offering of a basic health insurance coverage plan, free of certain mandated coverages, to individuals and employers with fewer than 25 employees who have been without health insurance coverage for at least 12 months preceding the date of application for the coverage. The bill was passed by the Legislative Assembly.

### **Testimony and Committee Considerations**

Mental health and substance abuse mandates only apply to group policies. Testimony indicated approximately 90 percent of all health insurance written in the state is on a group basis, and Blue Cross Blue Shield of North Dakota opts to include these mandates in its individual policies. Employer self-funded Employee Retirement Income Security Act group plans are exempt from state jurisdiction, and therefore are not required to comply with state mandates. Data from Blue Cross Blue Shield of North Dakota indicated approximately one-half of its self-funded businesses provide the state-mandated coverage. Approximately three to four percent of the individual insurance contracts written in the state do not contain these mandates.

Representatives of the Mental Health Association of North Dakota and the North Dakota Treatment Providers Coalition testified that mental illness and alcohol and drug addiction are illnesses that should be treated on an equal basis (parity) with insurance coverage for physical illnesses. They suggested the committee recommend legislation either granting mental health and drug and alcohol addiction treatment parity coverage with that for physical illnesses or rearrange the current limits set for mental health and drug and alcohol addiction coverage so the limits better address the types of treatment used today. The coalition testified that current insurance coverage for drug and alcohol addiction needs to be revamped to reflect the need for more outpatient treatment and less restrictive treatment.

A representative of Blue Cross Blue Shield of North Dakota testified North Dakota already has parity coverage for mental health and substance abuse services in that other disorders have limits similar to the mental health and substance abuse limits.

Representatives of insurers suggested that parity is not necessary for mental health and drug and alcohol addiction treatment in this state. Testimony also indicated that North Dakota's limits for mental health and drug and alcohol addiction insurance coverage are already higher than most other states and that most policyholders did not reach the limits for mental health and drug and alcohol addiction treatment. Insurers testified that a small minority of individuals--the seriously mentally ill--cost the system the largest amount of money, and it is these individuals who reach the caps of mental health insurance coverage.

The testimony indicated insurers want to

maintain annual use limits for three reasons--without limits, more subscribers may use more services; limits encourage wise use of benefits; and limits provide a point at which cases are evaluated for medical necessity before approving funding for services beyond the limit. It was suggested that if caps are removed, something else will be needed to keep premiums down, such as sliding copayments, higher copayments, or aggressively managed care.

The committee received information on studies in other states which concluded that medical costs decrease as a result of parity coverage. The information indicated that parity has shown cost savings where there is a closed panel situation, a significant gatekeeper, and a single employer situation. The committee also reviewed data concerning parity legislation in other states and Manitoba, Canada. The data indicated coverage provided by parity legislation varies significantly from state to state.

The committee also received testimony from the medical assistance office of the Department of Human Services regarding the impact of mental health and drug and alcohol addiction treatment on Medicaid funds. In many instances, the services provided under Medicaid funds have become a safety net for individuals without mental health insurance coverage, or individuals whose mental health coverage only provides limited benefits. The Medicaid program also provides mental health clinic services through human service centers, payments for psychiatric and psychological services, and services for certain groups of patients at the State Hospital. Testimony indicated that although the Medicaid program does provide mental health services, the services may not be flexible enough to meet the needs of the mentally ill and thus Medicaid recipients may not always receive needed care in the least restrictive environment. Testimony indicated that a managed care environment could have a positive effect on Medicaid services for the mentally ill.

The committee received testimony that most mental health expenditures are for inpatient treatment, which is the treatment primarily responsible for the rising mental health costs; a large percentage of inpatient treatment can be effectively delivered in outpatient settings; and outpatient treatment is less costly than inpatient treatment.

A member of the North Dakota Treatment Providers Coalition recommended that current insurance coverage for substance addiction be changed to reflect the need for more outpatient and less restrictive treatment. The coalition member testified that increased lengths of stay in outpatient treatment programs improve patient outcome, and the trend to move from inpatient to outpatient programs has resulted in decreased treatment costs. Testimony disputed whether these recommendations would save money right away or whether it would instead save money in the long term.

The committee received testimony regarding the cost of addictive and mental disorders and the effectiveness of treatment. Persons untreated for mental illness and substance abuse may end up in penal or other state institutions. Ninety to 95 percent of people in penal or other state institutions have a substance addiction problem.

### **Proposals Considered**

Members of the North Dakota Treatment Providers Coalition presented recommendations for substance abuse legislation. The recommendations included reducing the psychiatric inpatient mandate from 60 days to 30 days, increasing the outpatient mandate from 20 sessions to 75 sessions of intensive outpatient treatment, and adding 48 sessions of low intensity outpatient treatment. These mandates would apply to both individual and group health insurance plans. Proponents said this plan might increase costs in the short term, but long term it would be cost-effective because of the resulting reduction in crime and other social problems.

In response to an effort by the coalition, Blue Cross Blue Shield of North Dakota, treatment providers, and the Division of Alcoholism and Drug Abuse, members of the coalition presented a second proposal, this time to amend NDCC Section 26.1-36-08 to expand the number of facilities that can provide substance abuse services to include addiction treatment programs, and to expand the definition of partial hospitalization to include medically necessary treatment services provided by licensed professionals.

A member of the North Dakota District Branch of the American Psychiatric Association expressed concern over the coalition's proposal because psychiatrists are an integral part of treating individuals with both substance abuse and psychological problems.

Testimony was received that the treatment of mental health conditions has evolved in the last 10 to 15 years from the traditional inpatient and outpatient treatment programs to one that provides for the assignment of a case manager to design a treatment program for a particular person, psychosocial rehabilitation, and when appropriate, residential treatment.

The committee considered adding residential treatment, case management, and psychiatric rehabilitation to the current coverage required for mental health services. A representative of insurers requested these terms be statutorily defined.

### **Recommendations**

The committee recommends Senate Bill No. 2040 to require group mental health policy coverage to include residential treatment. This bill also deletes the definition of "partial hospitalization" that is currently in the statute.

The committee recommends Senate Bill No. 2041 to require group health substance abuse policy coverage to include licensed addiction treatment programs. The bill also provides that

medically necessary treatment services provided under partial hospitalization no longer must be provided under the supervision of a licensed physician.

## **NORTH DAKOTA HEALTH TASK FORCE RECOMMENDATIONS STUDY**

### **Recent Legislative Council Health Insurance Studies**

During the 1987-88 interim, the Legislative Council's Budget Committee on Government Administration studied the health care insurance needs of individuals who did not have access to insurance coverage. Information presented to that committee indicated that between 10.6 and 12 percent of the state's population was either uninsured, underinsured, or without access to health services.

During the 1989-90 interim, the Legislative Council's Industry and Business Committee studied the health care insurance needs of uninsured and underinsured persons. Testimony received by the committee indicated that approximately 8.8 percent of the state's population were without health insurance coverage. The committee concluded that, absent changes in the health care delivery system, efforts to address the needs of the uninsured and underinsured must target a well-defined population and must be sensitive to the economic environment within which the efforts are implemented.

During the 1991-92 interim, the Legislative Council's Health Care Committee studied the need for a state health policy for the purpose of providing basic medical and health care to all citizens of this state, and the feasibility of adopting a state-subsidized health insurance program for uninsured and underinsured residents of the state. During these studies, the committee was informed of the efforts of the North Dakota Health Task Force.

During the 1993-94 interim, the Legislative Council's Health and Communications Committee studied the feasibility and desirability of allowing all North Dakota residents to participate in the Public Employees Retirement System uniform group insurance program. The committee also studied the feasibility and desirability of pooling all sources of funding for health care benefits in conjunction with the North Dakota Health Task Force study of the control of costs and the redistribution of dollars toward improved access to services through a health care reimbursement system. The committee reviewed recommendations for health care reform that were prepared by the North Dakota Health Task Force. The committee also received testimony concerning the North Dakota Health Task Force recommendations, federal initiatives for health care, and the uniform group insurance program.

### **North Dakota Health Task Force**

The State Health Council established the North Dakota Health Task Force in 1990 to identify and

address the major health issues facing the state and to develop appropriate recommendations for change. The task force identified six critical areas in its review of the health care crisis—cost, education and prevention, access, regulation, manpower, and health care policy and delivery systems. In June 1994, the task force submitted its final recommendations on health care reform to the State Health Officer, the State Health Council, and the Governor. The task force also submitted the final recommendations for improving the health status of North Dakotans. These recommendations contained the following principles:

- Emergency medical services should be available within five minutes to 90 percent of the population in urban areas and within 10 minutes to 90 percent of the population in rural areas.
- A 911 emergency number system should be extended statewide.
- Access to primary care should be available within 30 minutes at least once per week to at least 90 percent of the rural population.
- The Commissioner of Insurance and Health Insurance Advisory Committee should establish common standards for health lifestyle incentives and health promotion options for health insurance policies with appropriate areas for discounts.
- The State Health Officer should establish a broad-based Health Education Committee to develop instructional objectives for a health education curriculum for kindergarten through 12th grade.
- The State Health Council should develop a comprehensive statewide assessment of North Dakotans' health status and health care services. This information should be used to identify and prioritize areas that require actions to enhance North Dakotans' health status. A comprehensive health system strategy including evaluation methods should be developed to provide guidance for resource allocation.

#### **Testimony and Committee Considerations**

The committee received testimony from a representative of the State Health Council indicating that the council is trying to implement several of the North Dakota Health Task Force recommendations for improving the health status of North Dakotans. The State Health Officer testified the council should proceed with a study on implementing the Health Task Force recommendations for improving the health status of North Dakotans.

#### **Emergency Medical Service Availability**

Many of North Dakota's hospitals have completed the certification process to be designated Level II (urban) and Level IV (rural) trauma centers. Using 50-mile radii, 91.26 percent of the state has trauma center coverage, and 94.27 percent of the population has trauma center coverage. Using four-mile radii, ambulance and

quick response services cover 12.44 percent of the state and 29.21 percent of the population; using seven-mile radii, these services cover 34.63 percent of the state and 56.29 percent of the population.

#### **Primary Care Access**

The Department of Health surveyed rural health clinics. Preliminary assessment of the survey results indicates that rural health clinics are providing primary care to the population within a 30-minute range, available at least once a week, to 90 percent of the state's population.

#### **Health Education, Lifestyles, and Assessment**

Representatives of the Department of Health testified that although health education curriculum is available throughout North Dakota, it is not being implemented uniformly across the state.

The State Health Officer described the dilemma regarding implementation of insurance incentives intended to change a person's lifestyle because the incentives need to be effective without being unduly burdensome.

Testimony indicated the Department of Health is enhancing its data system through the use of geographical information system software. The enhancements are intended to make it easy for consumers to access information on health care costs and services and to enable the department to make comparisons of health care costs and services among the various regions of the state. This data will be instrumental in the department completing a comprehensive statewide assessment of health status and health care services and identifying and prioritizing actions to enhance health status.

#### **Impact of Newly Enacted Programs**

A representative from the Department of Health testified it is too early to review the impact of newly enacted programs. The department is preparing a report on the health status of North Dakotans for selected diseases and injuries that are a major cause of death or that lead to a substantial reduction in the average life span. North Dakota is meeting or approaching national goals established under the "Healthy People 2000" project. The percentage of low weight births has been declining, the rate of Caesarean section deliveries is below the national average, and the statewide age-adjusted death rate for diabetes is within range of the national goals. However, the age-adjusted death rate for American Indians substantially exceeds national goals.

#### **Health Care Expenditures**

A representative of the Department of Health testified the department is working on a project to measure the health care costs of North Dakotans. The goal of the study is to adjust expenditures for border crossings and for services provided by the Indian Health Service, the Veterans Administration, and military hospitals in order to develop a better estimate of the total and per capita expenditures for health care received by citizens of

North Dakota.

A preliminary analysis of health care expenditures in North Dakota indicates that per capita health care expenditures in the state and the trend in those expenditures are both below national averages. Data indicates North Dakota is consistent with national reports indicating a substantial reduction in the growth of health care expenditures during 1994-95.

### **Impact of 1995 Legislation on Insurance Costs**

A representative of the Commissioner of Insurance testified it is the consensus of insurance companies in the state that the insurance reforms passed in 1995 will not have a large impact on insurance premiums and have had very little effect on the small group market.

Testimony from representatives of the North Dakota Association of Life Underwriters indicated that several one-gender businesses will not be able to afford premiums because of the gender rating reform. The data received by the committee indicates some businesses' insurance premiums have increased, while others have decreased.

A representative from Blue Cross Blue Shield of North Dakota testified the small group insurance reforms passed in 1993 and the insurance reform legislation in 1995 have had a positive effect on the marketplace, and there have not been any major negative consequences during the implementation process. Testimony indicated that there has not been a significant change in the number of insured persons in the state over the past several years.

The committee received testimony regarding the impact the 1995 legislation had on two areas under the jurisdiction of the Department of Human Services. First, the increase in the medically needy income levels has allowed individuals who have worked and earned Social Security benefits to keep some additional funds to meet their maintenance needs that would have otherwise been applied to recipient liability. Second, the addition to the Medicaid program of poverty-level children born before September 30, 1983, who have family income at or below 100 percent of the federal poverty level, has resulted in an increase in eligible children, and has reduced the number of medically needy children who would have been required to incur a recipient liability before Medicaid would have begun paying for medical services.

### **Conclusion**

The committee urges the State Health Council continue studying the implementation of the Health Task Force recommendations for improving the health status of North Dakotans.

## **LONG-TERM CARE INSURANCE STUDY**

### **Background**

Long-term care consists of services for the chronically ill or infirm, senior citizen adult day care, senior citizen hospice care, and senior citizen

home health care. Long-term care insurance is any insurance policy primarily advertised, marketed, offered, or designed to provide coverage for not less than one year for each covered person on an expense-incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. Long-term care insurance in North Dakota is governed under NDCC Chapter 26.1-45. Several insurance companies offer long-term care insurance policies in this state.

In 1993 the Legislative Assembly passed Senate Bill No. 2311, which provided an income tax credit for premiums paid for long-term care insurance for taxpayers using the long form for income taxes. This legislation was codified as NDCC Section 57-38-29.2.

In 1995 the Legislative Assembly enacted Senate Bill No. 2538 relating to the effect of nursing home insurance on medical assistance eligibility.

Three other bills were introduced in 1995 that related to long-term care insurance but they failed to pass. Senate Bill No. 2436 would have provided an income tax deduction for premiums paid for long-term care insurance coverage. Senate Bill No. 2083 would have provided an income tax credit for premiums paid for long-term care insurance coverage for persons using the short-form income tax form. Both bills failed to pass the Senate. Senate Bill No. 2161 would have provided long-term care insurance nonforfeiture benefits. Senate Bill No. 2161 failed to pass the House.

### **Medicaid**

The Medicaid program was established in 1965 under Title XIX of the Social Security Act. All states are required to offer basic health care services to certain low-income individuals and families. The federal government reimburses states for part of the cost of providing required services. States are allowed to include additional services, as Medicaid-covered services, and may receive federal reimbursement for part of the cost of the additional services.

The Health Care Financing Administration, a division of the United States Department of Health and Human Services, administers Medicaid at the federal level. States are required to follow Medicaid rules and guidelines set by the Health Care Financing Administration. States may also establish their own guidelines and rules for the administration of Medicaid at the state level. All state Medicaid programs must stay within the scope of the federal rules and regulations, but there may be a variation among state programs.

The Department of Human Services is responsible for administering the Medicaid program at the state level.

### **Testimony and Committee Considerations**

The committee received testimony indicating that long-term care insurance is more accepted in

North Dakota than in other states. It is estimated that four percent of nursing home residents in North Dakota have their care paid for by a private, long-term care insurance policy compared to only two percent nationwide. A representative of the Commissioner of Insurance testified that a long-term care insurance policy is generally not considered suitable for someone with less than \$200,000 in assets.

The committee received testimony indicating the Medicaid program is the primary payer of institutional long-term care services in North Dakota. Although only 12 percent of the people on Medicaid are in nursing homes, they use up to 60 percent of Medicaid funds. Medicaid assists 58 percent of the nursing facility residents in North Dakota.

Annual Medicaid expenditures for nursing facility services exceeded \$100 million for the first time during fiscal year 1995. The committee reviewed alternatives to the use of nursing facility services for long-term care. The Department of Human Services operates several programs that provide funds for alternatives to institutional long-term care by allowing individuals to remain in the community, including the home and community-based services (HCBS) program, which uses federal waivers to help fund the program, and the service payments for elderly and disabled (SPED) program, which is funded by state and local funds and is provided for those individuals who do not meet requirements of the home and community-based services program. The Medicaid program expended \$1.7 million for home and community-based care in fiscal year 1995 as compared to \$100.6 million for nursing facility care.

#### **Senate Bill No. 2538 (1995)**

Senate Bill No. 2538 provided that an individual who secures insurance to cover necessary medical and nursing home care may provide proof of that insurance to demonstrate that an asset was disposed of exclusively for a purpose other than to qualify for medical assistance.

A working group on the implementation of Senate Bill No. 2538 consisting of representatives from the Department of Human Services, the Commissioner of Insurance, the insurance industry, and the long-term care industry, has concluded:

- Long-term care insurance should be described in terms of the daily benefit amount and set at 125 percent of the average daily cost of nursing home care in North Dakota for the year the policy is issued. The minimum term would be a total of three years.
- In addition to the long-term care coverage, persons with Medicare benefits would be required to secure a substantial Medicare supplement policy. Persons without Medicare coverage would be required to secure substantial major medical coverage with a maximum annual deductible of \$5,000 and a lifetime

maximum benefit of \$1 million or more.

- There is no single way of providing proof of the insurance, but the working group designed some forms to be used by insurance agents as one means of demonstrating verification.

The working group developed draft rules for consideration by the Department of Human Services. After the rules are adopted, the intent is to inform the public about the insurance product.

Testimony also indicated concern as to the need for the insurance product available under Senate Bill No. 2538 (the insurance product acts as a financial planning tool by allowing a person to retain that person's assets longer), and a concern over public awareness of the insurance product.

#### **Long-Term Care Task Force Recommendations**

A member of the North Dakota Long-Term Care Task Force recommended the Legislative Assembly enact legislation that:

- Mandates that spousal impoverishment be extended to individuals who access home and community-based services to ensure that the same policies are applied to everyone using long-term care services through the Medicaid program.
- Creates a Comprehensive Health Association of North Dakota (CHAND)-type product for an individual who, because of preexisting conditions, is refused coverage for long-term care insurance.
- Requires long-term care insurance plans to allow a provider of home and community-based care to meet a qualifying standard, such as a qualified service provider (an agency or individual limited to providing care that does not require nurse supervision or a license, but who meets competency standards established by the Department of Human Services) that is less extensive than the current licensing requirement.
- Allows an individual who purchases long-term care insurance to claim a tax credit of 25 percent of the premium up to a maximum of \$100 on the short-form income tax form.
- Allows a private business that offers long-term care insurance to its employees a tax deduction or credit.
- Provides, with specific exceptions, a person who transfers an asset for less than fair market value under certain conditions would have the right to get the asset back, thereby creating an asset that may be counted in determining Medicaid eligibility.

The estimated fiscal impact of allowing a 25 percent tax credit with a maximum of \$100 for purchasers of long-term care insurance is \$3.8 million to \$4.2 million per biennium. The fiscal impact of a Comprehensive Health Association-type program for long-term care insurance was unknown, but could be quite expensive.

## Recommendations

The committee recommends House Bill No. 1061 to extend medical assistance spousal impoverishment to include individuals who access home and community-based services.

The committee recommends Senate Bill No. 2042 to require insurance companies providing long-term care coverage for home and community-based services to pay providers meeting qualified service provider standards; to allow for an income tax credit on short-form income tax forms in the amount of 25 percent (not to exceed \$100 in any taxable year) of any premiums paid by the taxpayer for long-term care insurance coverage for the taxpayer, the taxpayer's spouse, parent, or stepparent; and to allow an employer who provides long-term care insurance to its employees to claim a credit in the amount of 25 percent (not to exceed \$100 per employee) of any premiums paid by the employer.

The committee recommends House Bill No. 1062 to provide that transfers made or obligations incurred are fraudulent as to medical creditors if the transfer was made without receiving equivalent value and the debtor was receiving or contemplated receiving medical care for which the assets of the debtor were unreasonably small in relation to the cost of the medical care, or the debtor believed or reasonably should have believed the debtor would incur debts beyond the debtor's ability to pay. If a debtor is found eligible for medical assistance, the Department of Human Services may bring an action in the name of the debtor. Certain transfers which would otherwise be fraudulent are defined as not being fraudulent if certain conditions are met; for example, transfers made to charitable organizations, transfers to family members that cumulatively do not exceed \$75,000, or transfers when the transferee purchases a long-term care insurance policy for the debtor. The bill also provides for the creation of a Medicaid education fund to develop educational materials and to provide educational services to inform potential recipients of medical assistance of the limits of taxpayer-supported medical services and defines what is included in a decedent's estate subject to claim under NDCC Section 50-24.1-07.

## CERTIFICATE OF NEED STUDY

### Background

Certificate of need is a regulatory review process under which health care facilities and organizations are required to obtain approval from the state for capital expenditures or expansions of services. Certificate of need laws are designed to reduce health care costs by reducing hospital expenditures that are believed to be unnecessary. The idea is that unrestricted spending by hospitals on capital construction and technology is the reason for the increasing cost of health care.

The National Health Planning and Resources Development Act of 1974 required states to enact certificate of need laws or risk the loss of federal

funds for health care. In response to the Act, every state except Louisiana enacted a certificate of need program. In the early 1980s, however, support for the certificate of need program decreased amid reports that certificate of need laws failed to restrain costs. In 1982 Congress removed the requirement that states enact certificate of need laws or risk loss of federal funds. In 1986 federal funds for certificate of need programs were eliminated. Today, certificate of need programs exist solely at state discretion.

Since the federal requirement to maintain a certificate of need program was removed, 12 states have repealed their certificate of need programs or allowed the programs to sunset. Some other states raised the capital expenditure threshold so all expenditures except for very large expenditures would be exempt from certificate of need review.

The states that no longer have a certificate of need program include North Dakota (effective April 1, 1995), Minnesota, South Dakota, Idaho, New Mexico, Arizona, Kansas, Texas, California, Colorado, Utah, and Wyoming.

Because of rising medical costs, some states have strengthened or are considering legislation to strengthen their certificate of need programs. For example, Georgia, West Virginia, and Delaware have strengthened their certificate of need laws by lowering the thresholds for review or adding more expenditures under the purview of certificate of need. Also, Florida, Indiana, Maryland, Missouri, Pennsylvania, and Tennessee have extended the expiration dates of their certificate of need programs. Although Minnesota has no certificate of need program, extensive capital expenditure review has been adopted in that state.

### Testimony and Committee Considerations

The committee received testimony indicating circumstances unique to North Dakota lessen the usefulness of the certificate of need process. North Dakota has never had a vested interest in hospital expenditures and expansions; therefore, there is very little incentive to regulate these activities in North Dakota. Furthermore, North Dakota is the only state that has lost population within the last 15 years, and will probably be at the peak of its elderly population during the next several years.

The committee also received testimony indicating that the State Health Council and the North Dakota Long-Term Care Task Force were studying the effect of the repeal of the certificate of need law and the moratorium on the licensing of additional long-term care bed capacity. The State Health Council recommended there is no need to resume certificate of need for acute care hospitals at the present time. The North Dakota Long-Term Care Task Force recommendations regarding the moratorium were presented to the interim Budget Committee on Home and Community Care.

### Conclusion

The committee makes no recommendation regarding certificate of need legislation.

## **BASIC HEALTH POLICY REPORT**

The committee received a report from the Commissioner of Insurance on the progress of the implementation of a basic health policy. The basic health policy is available to individuals or to employers with fewer than 25 employees who have not had health insurance for at least 12 months before applying for coverage. The policy is to be offered without mandated coverage for the care and treatment of substance abuse, for the care and treatment of mental disorders, for mammogram examinations, and for surgical and nonsurgical treatment of temporomandibular joint disorder and a craniomandibular disorder.

The commissioner reported Blue Cross Blue Shield of North Dakota is the only carrier that markets the plan, and since January 1, 1992, only five policies covering 11 individuals have been sold. No group plans have been sold, and no plans are currently in force concerning group plans. No rate increases have incurred on the product since first issuance of the policies on January 1, 1992.

The commissioner reported that the basic health policy has not been a success in the marketplace. The commissioner suggested that the continuation of the basic health policy program does not appear necessary because of insurance reforms. The basic health policy program is scheduled to sunset June 30, 1997.

## **PARTNERSHIP FOR LONG-TERM CARE PROGRAM REPORT**

The committee received a report of the Commissioner of Insurance on the progress of the partnership for long-term care program. Representatives of the commissioner disclosed that the program was never put into effect because Congress passed the Omnibus Budget Reconciliation Act of 1993, which contained provisions precluding the pursuit of the program. Because the federal law changed, the state had no further authority to pursue the program.

## **MISCELLANEOUS**

### **Postdelivery Length of Hospital Stay**

#### **Background**

In response to the national concern over what was being termed "drive-through deliveries," the committee reviewed practices relating to postdelivery length of hospital stay for mothers and newborns and postdischarge followup care.

#### **Length of Stay**

The committee received testimony that infant illnesses such as jaundice generally do not show up until the second or third day of life, and infant illnesses are decreased if a new infant stays in the hospital for a longer period because many of these illnesses would be diagnosed. The American Academy of Pediatrics recommends a minimum two-day hospital stay for a vaginal delivery and a four-day minimum stay for a Caesarean delivery.

The average postdelivery length of stay in North Dakota hospitals has declined from

2.66 days in 1991 to 2.49 days in 1994. Newborn jaundice accounts for almost 80 percent of North Dakota newborn readmissions for infants two to six days old. Despite a 6.4 percent decrease in length of stay, readmission numbers declined from 1991 to 1994. Compared to other states, North Dakota does not have a high newborn readmission rate. Testimony indicated the trend to reduce the length of hospital stay is not only for maternity care, but for all types of medical conditions.

Blue Cross Blue Shield of North Dakota pays all North Dakota hospitals on a diagnostic-related group (DRG) system. When a facility is paid on this system, it receives a preset payment amount regardless of how long the patient stays in the hospital. There are different DRG reimbursements for different types of deliveries. Testimony indicated that because Blue Cross Blue Shield of North Dakota bases its DRG payments on a 48-hour maximum for a normal vaginal delivery and a 96-hour maximum for an abnormal delivery or a Caesarean delivery, legislation based on those limits would probably not affect its policies.

A representative of insurers testified that any legislation should not interfere with a policyholder's choice to self-insure maternity costs. Maternity coverage in indemnity policies varies depending on the policy design.

#### **Postdischarge Followup**

A representative of the North Dakota Medical Association indicated the American Medical Association and the Academy of Obstetricians and Pediatricians support the idea of a home visit following discharge. The State Health Officer testified home nursing care can be as beneficial and more cost-effective than an extended hospital stay. The home visit is intended to benefit both the mother and the newborn.

The eight largest hospitals in the state have a postdischarge home visitation program. In rural areas, the visit may be in the form of a telephone call or through a local clinic or other health care service provider. The committee considered that in rural areas of the state adequate followup visits may not always be readily available, and rural mothers may not be good candidates to be discharged early.

#### **Recommendation**

The committee recommends Senate Bill No. 2043 to require health insurance policies and health service contracts to provide maternity benefits that cover 48 hours of inpatient care for normal vaginal deliveries and at least 96 hours of inpatient care following a Caesarean section. The bill provides guidelines to follow in order to go over or under the time requirements. If a mother and newborn are released before the 48- or 96-hour requirements, a postdelivery care visit must be provided. Additionally, the bill prohibits monetary incentives to encourage early discharge and prohibits penalizing a medical provider for following the time requirements. Finally, the maternity coverage required under the bill may not exceed policy aggregate limits for this coverage.

# JUDICIARY COMMITTEE

The Judiciary Committee was assigned three studies. House Concurrent Resolution No. 3005 directed a study of the problems associated with the unification of the state's judicial system into a single court of general jurisdiction, with emphasis on a review of venue statutes. Senate Concurrent Resolution No. 4012 directed a study of the feasibility and desirability of legislation governing the future negotiation, amendment, and renewal of tribal-state gaming compacts. Section 19 of Senate Bill No. 2080 (1995) directed a study of the impact of the North Dakota Supreme Court decision abolishing the doctrine of sovereign immunity. 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 assigned to the committee the responsibility for statutory and constitutional revision.

Committee members were Senators Wayne Stenehjem (Chairman), Les LaFountain, Carolyn Nelson, John T. Traynor, and Darlene Watne and Representatives Grant C. Brown, Linda Christenson, Rick Clayburgh, Lois Delmore, Dennis Johnson, William E. Kretschmar, and Darrell D. Nottestad.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## COURT UNIFICATION STUDY

### Background

The study of the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction was proposed by the Legislative Council's Court Services Committee during the 1993-94 interim. The Court Services Committee made the recommendation after receiving testimony that indicated the Supreme Court's Court Services Administration Committee had identified venue and jury pool selection as areas that may require further legislative action after implementation of court unification.

### District Courts

Section 1 of Article VI of the Constitution of North Dakota provides:

The judicial power of the state is vested in a unified judicial system consisting of a supreme court, a district court, and such other courts as may be provided by law.

Section 9 of Article VI provides that the state be divided into judicial districts by order of the Supreme Court. In 1979 the Supreme Court divided the state into seven judicial districts. In each judicial district there is a presiding judge who

supervises court services in the district. The duties of the presiding judge, as established by the Supreme Court, include convening regular meetings of the judges within the district to discuss issues of common concern, assigning cases among the judges of the district, and assigning judges within the district in cases of demand for a change of judge.

### County Courts

In 1981 the Legislative Assembly enacted legislation providing for one county court in each county instead of the multilevel system of county courts, county justice courts, and county courts of increased jurisdiction as existed at that time. The 1981 legislation also provided that county judges must be law-trained and full time and provided for the assumption by the state of many district court expenses.

County courts had jurisdiction over civil cases involving \$10,000 or less; criminal misdemeanors, infractions, and traffic cases; small claims cases involving \$3,000 or less; probate; testamentary, guardianship, and mental health commitment proceedings; appeals from municipal court; and any other cases assigned by the presiding district judge of the judicial district in which the county is located.

### Court Unification

In 1991 the Legislative Assembly unified the court system through elimination of county courts and the creation of additional district court judgeships from county court judgeships. In 1991 there were 53 district and county judges. Under unification, the total number of district court judgeships must be reduced to 42 before January 1, 2001. The Supreme Court began eliminating judgeships and by January 2, 1995, the number of judgeships was reduced to 47 (and will be reduced to 46 by July 1997). The primary implementation date for consolidation of trial courts was January 2, 1995.

### Testimony and Committee Considerations

#### Reduction of Judgeships

The Supreme Court reported that the reduction in the number of judgeships is on schedule and the court unification process is progressing well, due in part to the addition of another state trial court administrator who will provide the district court judges with more assistance on administrative duties. The use of law clerks and judicial referees in several districts in the state was reported to provide some relief from administrative duties and caseload for district judges. The Chief Justice of the Supreme Court testified that because judicial referees are not elected by the people, but are performing judicial duties, the court has been reluctant to increase the number of judicial referees.

Testimony received from district court judges indicated that although the reduction in the number of judgeships is on schedule, there are concerns regarding the feasibility of further reductions. District judges indicated that because of the increasing caseload of judges in urban areas and the extensive travel required by judges in rural areas, any further reduction in the number of judges would put a serious strain on the court system and would require major changes in the delivery of judicial services, especially in rural areas.

### **Court Unification and Family Law**

A representative of a family law task force formed by the Supreme Court and the State Bar Association testified concerning the impact of court unification on family law. The unification process has resulted in a new group of district judges (former county judges) hearing family law cases, providing some fresh approaches to old problems. Testimony indicated that persons who work in the domestic violence area are concerned about the availability of district judges to issue protective orders, particularly in rural areas. The task force, which was scheduled to disband in June 1996, may be recommending legislation regarding family law.

A district judge testified regarding the use of mediation in family law cases. A mediation program implemented a year ago by two district judges in one judicial district reported that approximately 25 cases had been mediated with an 80 percent to 85 percent success rate. Testimony indicated that because the North Dakota Rules of Civil Procedure are based on the federal rules, which are not designed to address domestic relations cases, the rules tend to promote an adversarial process that often complicates domestic relations cases. The use of mediation in domestic relations cases puts the parties into a situation where they are able to communicate without using a third person, such as an attorney. Mediation allows the parties to feel more a part of the decision, which often makes the parties more willing to comply with the terms of the agreement. Approximately 70 percent of the caseload in the state is in the domestic relations area. The district judge suggested that before the Legislative Assembly makes a decision to increase the number of district judges in the state, consideration should be given to alternatives, such as the use of mediation.

### **Venue**

Venue, a legal concept that governs the geographic area in which a suit or an action must be brought, is county-based in North Dakota. This means that the action must be brought in the county in which the action occurs unless the parties agree otherwise. Because of the reduction in the number of judgeships and the inadequacy of some courthouse facilities in the smaller counties, venue requirements may be difficult to satisfy in rural areas.

Testimony from district judges and

representatives of the judicial districts and the District Judges Association indicated that the judges generally support the concept of permitting the court to change the location of pretrial proceedings. The committee was advised that many pretrial proceedings are not being held in the county of venue, but rather are being conducted via telephone conferences. Judicial orders are being issued using telephonic methods and facsimile machines.

The committee received extensive testimony regarding the issue of granting to the court the authority to change the location of criminal and civil trials. Proponents argued that the adequacy of courthouse facilities for trials is a problem in many of the smaller counties. Those counties have neither the funds nor the number of cases to justify the renovations that are necessary. Proponents also argued that while a judicial presence in small counties is important, it is often more convenient for everyone involved to hold the trial in a larger city.

Opponents of the change of trial location issue argued that if a court is allowed to change the location of trials, the result may cause a loss of judicial presence in some counties and could result in the formation of trial centers in the larger cities. Opponents also claimed that moving a trial may cause some litigants to lose witnesses for whom the additional travel distance may be a hardship. A related question associated with moving trials is whether the clerk of court of the original county of venue would be required to travel to the new location or whether the clerk of court in the new location would be assigned the duties. Opponents indicated it is not necessary for every county to have adequate courthouse and housing facilities for conducting trials. If the judiciary establishes a standard for courtroom and housing facilities, each county could decide, based upon the standards, whether to provide the resources necessary to provide adequate trial facilities.

In the course of considering issues related to changing the location of pretrial proceedings and trials, the committee considered a bill draft that authorized a court to change the place of a pretrial hearing or proceeding from the location in which the matter was originally to be heard. The bill draft authorized a court to change the location of civil and criminal trials unless one of the parties objected to the change of location.

### **Jury Pool Selection**

Jurors are usually drawn from a pool of jurors in the county in which the trial is held. The state's declining population in some areas makes it difficult to draw an adequate jury pool. One solution that was identified for the jury pool problem would be to expand the area for jury pool selection beyond county lines and possibly include an entire judicial district.

Proponents of allowing a jury pool to be selected from the geographical area of the judicial district argued that the declining population in the smaller counties in the state, the large percentage of the

population over the age of 70 in those counties, and the nature of some cases has made it difficult to find a fair and impartial jury. One district judge suggested the establishment of multicounty jury pools from the counties within the district so that the population of the combined counties in the jury pool would equal at least a certain number, such as 8,000 to 10,000 persons.

Opponents of the expansion of the jury pool idea argued that to allow a jury pool to be selected from the entire district would cause an increase in workload and travel time for clerks of court as well as additional expenses for transporting witnesses and jurors. Several district judges pointed out that selecting a fair and impartial jury pool has not been a problem in their districts.

The committee considered a bill draft that authorized a court to select a jury pool from one or more counties in the judicial district if the population of the county is not more than 10,000 persons and the court determines that the number of prospective jurors within the county of venue is inadequate to obtain a fair and impartial jury. Information received by the committee indicated that based upon the 1990 census, 39 counties in the state have a population of fewer than 10,000 persons.

### **Recommendations**

The committee recommends House Bill No. 1063 to authorize a court to change the place of a pretrial hearing or proceeding from the location in which the matter was originally to be heard. The bill also authorizes a court to change the location of civil and criminal trials unless one of the parties objects to the change of location.

The committee recommends House Bill No. 1064 to authorize a court to select a jury pool from one or more counties in the judicial district if the population of the county is under 10,000 persons and the court determines that the number of prospective jurors within the county of venue is inadequate to obtain a fair and impartial jury.

## **TRIBAL-STATE GAMING COMPACT STUDY**

### **Background**

In 1988 Congress passed Public Law 100-497, the Indian Gaming Regulatory Act. The Act attempted to balance a tribe's sovereignty and the federal and state governments' rights to exercise some influence on Indian gaming. Congress wanted to protect the tribes and the general public from organized crime and other corrupting influences; ensure that gaming would be conducted fairly and honestly; ensure that the tribes would be the primary beneficiaries; and help promote tribal economic development, self-sufficiency, and strong tribal governments.

Generally, an Indian tribe is allowed to conduct on Indian lands those types of gaming that the state allows for non-Indians. Instead of being bound by state law in these operations, Indian gaming is subject to either federally approved

tribal ordinances or negotiated tribal-state compacts, depending on the types of gaming involved.

The Act provided for a three-tiered regulatory system. Class I games (traditional ceremonial games) may be conducted by the tribe without restrictions. Class II games (bingo and related games and certain card games) are allowed if the state "permits such gaming." Class III games (casinos, lotteries, parimutuel operations, blackjack, and slot and video machines) are allowed only if such activities are "located in a State that permits such gaming for any purpose by any organization, or entity, and . . . conducted in conformance with a Tribal-State compact entered into by the Tribe and the State."

The Act outlines a process by which states and tribes can negotiate the issue of Class III gaming in order that the interests of both parties will be considered. Under the Act, a tribe may not legally conduct casino-style gaming without a "compact" that both the tribe and the state have agreed will provide the framework for the conduct of tribal gaming. A tribal-state gaming compact must be approved by the Secretary of the Interior before tribal gaming can proceed.

In 1992 the Governor and tribal officials approved tribal-state gaming compacts allowing certain gaming activities to be conducted by the Devils Lake Sioux Tribe (now known as the Spirit Lake Nation), Turtle Mountain Band of Chippewa, Three Affiliated Tribes of Fort Berthold, and the Standing Rock Sioux Tribe. In 1993 a fifth tribal-state compact was signed with the Sisseton-Wahpeton Sioux Tribe.

### **1995 Legislation**

In 1995 the Legislative Assembly passed Senate Bill No. 2067, which would have provided for recognition of gaming compacts between the state and the Spirit Lake Nation, the Three Affiliated Tribes, the Standing Rock Sioux Tribe, the Turtle Mountain Band of Chippewa, and the Sisseton-Wahpeton Sioux Tribe. The bill also would have provided that any audit report submitted by a tribe to an agency of the state containing information on the use and compliance of the tribe's set-aside percentage of gaming revenue to economic development and social welfare purposes is open to the public, except for specific financial information contained in the audit report. The Governor vetoed the bill after the adjournment of the Legislative Assembly.

### **Testimony and Committee Considerations**

The committee received testimony and reviewed extensive information submitted by the tribes, the Governor's office, and the Gaming Section of the Attorney General's office with regard to all aspects of tribal gaming and the future negotiation, amendment, and renewal of tribal-state gaming compacts. The committee's considerations centered on five issues: pending federal legislation affecting tribal gaming; the United States Supreme Court decision *Seminole Tribe of Florida v. Florida*;

Indian gaming in the state; the role of the legislative branch in the compact negotiation process; and compulsive gambling.

### **Pending Federal Legislation**

The committee received testimony regarding pending federal legislation to amend the Indian Gaming Regulatory Act. The primary federal legislation being considered, S.487, the Indian Gaming Regulatory Act Amendments Act of 1995, was introduced by Senator John McCain of Arizona in March 1995. The bill, as amended, has been reported favorably by the Senate Indian Affairs Committee. The amended bill would replace the National Indian Gaming Commission with the Federal Indian Gaming Regulatory Commission. The commission would establish minimum federal standards for background investigations, internal control, licensing, and investigatory authority. The bill requires that at least two members of the commission have extensive experience in tribal government. The bill would establish minimum federal standards for licensing, conducting Class I, II, and III gaming on Indian lands, and reviewing contracts.

The latest major action on S.487, a report containing the amendments to the bill, was filed by the Senate Committee on Indian Affairs on March 14, 1996. As of this report, no further action had been scheduled on this bill.

### ***Seminole Tribe of Florida v. Florida***

The committee received testimony from a representative of the Attorney General concerning the United States Supreme Court recent decision in *Seminole Tribe of Florida v. Florida*, 116 S. Ct. 1114 (1996), and the impact of the decision on North Dakota and tribal gaming.

In *Seminole*, the Supreme Court held the 11th Amendment of the United States Constitution prohibits suits against states under the Indian Gaming Regulatory Act. The 11th Amendment provides:

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens or subjects of any foreign state.

The case arose in federal district court in Florida. The Seminole Tribe sued the State of Florida and its Governor under the Act, claiming Florida had refused to negotiate for inclusion of certain gaming activities in a tribal-state gaming compact. The tribe argued the state had violated the "requirement of good faith negotiation" contained in the Act.

The Court held that the 11th Amendment is a limit on the jurisdiction of federal courts under Article III of the United States Constitution. The Court, therefore, concluded Congress acted without authority when it authorized suits by tribes against states and those suits against unconsenting states are barred by the 11th Amendment.

The Court rejected an argument that the federal courts could exercise jurisdiction over suits against states to enforce the Act under a previous decision of the Court in which it was held that lawsuits against state officials in federal court may be allowed when the suit seeks only prospective injunctive relief. According to the Court, the option was not available because Congress had not intended injunctive relief to be available under the Indian Gaming Regulatory Act.

Testimony regarding the decision indicated that the decision is unclear as to whether Congress could amend the Act to invoke broad judicial powers in suits against the states under the injunctive relief theory. The effect the decision may have on tribal-state negotiations will depend upon the amendments to the Indian Gaming Regulatory Act.

### **Indian Gaming**

Representatives of the Gaming Section of the Attorney General's office reported that monthly compact compliance inspections have been performed by the Attorney General's office on each of the operating casinos. The Attorney General employs one full-time person to perform compliance audits on the casinos. This person's salary is paid from an escrow account set up by the tribes, as is required by the compacts. It was reported that the working relationship with the tribes has been positive. Except for a few minor violations, all tribes are complying with the provisions of their compacts.

During the course of the committee's study, committee members toured the Prairie Knights Casino and Lodge. The tour, conducted by the management of the casino, included a tour of the gaming floor, the eating establishments, and the casino lodge. A demonstration involving the testing of a slot machine was conducted by members of the Gaming Section.

### **Legislative Role in Gaming Compact Negotiations**

The Governor testified on the role of the Legislative Assembly in the tribal-state compact negotiation process. Regarding the legislative involvement in the negotiation process, the Governor offered the following suggestions:

- While direct legislative participation would be difficult, if not wholly unworkable, the Legislative Assembly could be consulted concerning negotiations. Consultation would allow for legislative input and guidance, while the Governor would have the flexibility and responsiveness that negotiation sometimes requires.
- The Governor should have final authority concerning the negotiations. The legislative leaders from both houses could be kept advised of the nature and progress of the negotiations, and the Governor could notify legislative leadership of negotiations once they have been initiated by either party.
- Regarding the compact negotiations, the

Legislative Assembly could consider whether to modify the state's open records and open meetings laws.

- Mandatory legislative approval or ratification of compacts would impinge upon the Governor's executive authority under the constitution, and would hamper the Governor's ability to negotiate with the tribes. Proper legislative consultation during negotiations would adequately address any issues that may arise during the process.

### Compulsive Gambling

Testimony indicated that compulsive gambling is an emerging mental health problem that mental health organizations frequently encounter in offering assistance to clients. Testimony indicated that the resources available in the state for persons in need of gambling addiction treatment and counseling services are extremely limited.

The majority of states that have legalized gaming have authorized funding for compulsive gambling education, treatment, or counseling programs. In many of these states, a set percentage or a set amount of gaming proceeds is required to be set aside to fund the programs. The testimony noted that in North Dakota none of the charitable gaming proceeds received by the state is used to fund compulsive gambling projects.

Committee members expressed concern over the impact compulsive gambling problems have on the gambler and the gambler's family. In addition, the committee determined that it is important that the state, in cooperation with the tribes, address the issue of compulsive gambling, and that the state should devote some of the taxes received from charitable gaming proceeds for compulsive gambling treatment and counseling services.

### Recommendations

The committee recommends that before the expiration of the first of the tribal-state gaming compacts in 2002, the Legislative Assembly should enact a statute that specifically provides authority to negotiate gaming compacts. Although the Governor has given assurance that any discussion regarding amendments to the compacts before 2002 will include involvement with the legislative branch of government, it may be necessary to enact such a statute in the 1997 legislative session.

The committee recommends that, if an agreement can be reached among interested parties before the 1997 legislative session, legislation be introduced to address whether it is necessary to have confidential tribal gaming information submitted to the state. If the confidential information is necessary, any proposed legislation should address the question of whether any information submitted to the state is subject to the state's open records laws.

The committee strongly urges the Legislative Assembly, in lieu of additional studies on compulsive gambling, to provide funding for the actual treatment and counseling services.

### Background

In September 1994, the North Dakota Supreme Court abolished the doctrine of sovereign immunity in a 4-1 decision. In *Bulman v. Hulstrand Constr. Co. and the State of North Dakota*, 521 N.W.2d 632 (N.D. 1994), the Supreme Court held that Section 9 of Article I of the Constitution of North Dakota "does not bestow exclusive authority upon the legislature to waive or modify sovereign immunity of the State from tort liability and does not preclude this Court from abolishing that common-law doctrine."

Section 9 of Article I of the Constitution of North Dakota provides:

All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct. (emphasis supplied)

The doctrine of sovereign immunity originated in common law and was included in the Constitution of North Dakota in 1889. Before *Bulman*, the North Dakota Supreme Court had held that Section 9 of Article I granted the Legislative Assembly exclusive authority to modify or waive sovereign immunity from tort liability. In *Bulman*, the Supreme Court indicated that previous decisions of the court misconstrued Section 9 of Article I and ignored the first sentence of that section which guarantees that "all courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay."

The court further stated that nothing in Section 9 of Article I "elevates the common law doctrine of sovereign immunity to constitutional status . . ." In addition, the court indicated that whatever justifications existed for sovereign immunity in the past are no longer valid in today's society.

Although the court abolished sovereign immunity, the court indicated that its decision should not be interpreted to import tort liability for the exercise of discretionary acts, including legislative and quasi-legislative acts and judicial and quasi-judicial acts. In addition, the court concluded that the abrogation of sovereign immunity should be prospective so that the Legislative Assembly may "implement and plan in advance by securing liability insurance, or by creating funds necessary for self-insurance." Thus, the court abrogated sovereign immunity for the *Bulman* parties and two other cases heard contemporaneously with *Bulman* and for any claims arising 15 days after adjournment of the Legislative Assembly in 1995.

### **1995 Sovereign Immunity Legislation**

In 1995 the Legislative Assembly enacted Senate Bill No. 2080, which established procedures for bringing claims against the state for personal injury or property damage. The bill limited recovery to a total of \$250,000 per person and \$750,000 for any number of claims arising from a single occurrence and prohibited punitive damages in actions against the state. A claimant is allowed to request the Legislative Assembly to provide for payment of any judgment in excess of the \$250,000 and \$750,000 damages caps. The bill also provided that an action for an injury proximately caused by the alleged negligence, wrongful act, or omission of a state employee occurring within the scope of the employee's employment must be brought against the state. The bill established notice requirements for bringing a claim against the state, established a procedure for the arbitration of claims, and provided for the establishment of a risk management fund. The Office of Management and Budget, through the risk management fund, is given the authority to decide which state agencies may purchase insurance or participate in government self-insurance pools, other than through the risk management fund.

The bill contained a contingent expiration date. Specifically, if the proposed constitutional amendment reinstating the Legislative Assembly's authority to provide for lawsuits against the state (Senate Concurrent Resolution No. 4014) was approved by the voters in the 1996 general election, the bill would expire as of August 1, 1997. The bill became effective on April 23, 1995, 15 days after the adjournment of the 54th Legislative Assembly. The constitutional amendment, which was measure No. 2 on the 1996 general election ballot, was not approved by the voters on November 5, 1996.

### **Testimony and Committee Considerations**

The committee worked closely with representatives of the Attorney General and the Office of Management and Budget to assess the impact of *Bulman* and the 1995 legislation.

### **Risk Management**

In response to an advertisement for a risk manager, the Office of Management and Budget received approximately two dozen applications from private companies to provide risk management services. The proposal from Alexander and Alexander was accepted. As is provided in the contract, an Alexander and Alexander employee is located in the Office of Management and Budget full time and serves as the state risk manager. The Office of Management and Budget has the option of hiring this Alexander and Alexander employee, should the office determine that the position should be filled by a state employee. The contract price for the two-year period is \$225,000, which includes the services of the full-time risk manager plus consultation support from Alexander and Alexander consisting of a six-member team of Alexander and Alexander

professionals assigned to the state project. In addition, Alexander and Alexander is responsible for analyzing risk exposure, developing risk management goals and policy statements, implementing a risk management work plan, and developing and implementing a loss control work plan and an administration work plan. The Office of Management and Budget also established a risk management advisory committee that includes insurance and risk management experts from the private sector to provide advice on setting up the program. Each state agency was asked to select a risk management contact person to work with the program.

The Office of Management and Budget reported that a temporary agreement was entered with the North Dakota Insurance Reserve Fund to manage claims through July 31, 1995. Following a request for proposals for claims administration, GAB Robins was selected as the claims administrator. GAB Robins began processing claims on August 1, 1995.

The risk manager conducted a review of liability insurance policies purchased by state agencies to determine whether the policies are necessary and should be renewed. As of July 1996, approximately 50 liability insurance policies were allowed to lapse with a premium savings of approximately \$115,000.

### **Claim and Litigation Activity**

Based upon the nature of each case, the risk manager determines the amount of reserves necessary for open and pending claims and lawsuits. When a claim is made to the Office of Management and Budget, it is sent to a third-party administrator for evaluation. Upon receipt of the evaluation, the Attorney General and the risk manager review the evaluation and confer with the agency to decide whether the claim should be paid.

Testimony indicated that as of September 1, 1996, 103 claims had been filed with the Office of Management and Budget. Of those claims, 64 claims were closed with no payment, seven were closed with payment, and 32 remained open. The total amount of claims paid totaled \$11,292. Of the 11 lawsuits filed against the state, seven remained open and four were closed without a dollar award.

The committee also received testimony regarding the value of the cases pending in the courts at the time of *Bulman*. The testimony indicated it would be difficult to provide information on the number, dollar value, and type of cases pending against the state because some of the cases may have been dismissed before *Bulman* was decided by the Supreme Court. Also, the North Dakota Supreme Court addressed the issue of the prospectivity of *Bulman* in *Burr v. Kulas*, 532 N.W.2d 388 (N.D. 1995). In *Burr*, the court affirmed that sovereign immunity was abrogated only for the *Bulman* parties and two other cases heard contemporaneously with *Bulman* and for any claims arising 15 days after adjournment of the 1995 legislative session. An appeal to the United States Supreme Court on the issue resulted

in a denial of certiorari; therefore, the prospectivity of claims is a dead issue.

### **Conclusion**

The committee makes no recommendation regarding the impact of the abolishment of sovereign immunity. Committee members generally agreed that the risk management fund is functioning well and few problems have arisen since its establishment.

### **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 government 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 and the commission is to include the Legislative Council's recommendations in the commission's report to the Legislative Assembly.

The state commission recommended seven uniform Acts to the Legislative Council. These Acts range from amendments to existing uniform Acts adopted in North Dakota to comprehensive legislation on subjects not covered by existing state law. The seven Acts were the Uniform Commercial Code Revised Article 5 (Letters of Credit); the Uniform Commercial Code Revised Article 8 (Investment Securities); the Uniform Prudent Investor Act; the Uniform Unclaimed Property Act (1995); amendments to the Uniform Interstate Family Support Act; amendments to the Uniform Partnership Act; and technical amendments to the Uniform Probate Code Article VI.

#### **Uniform Commercial Code Revised Article 5 (Letters of Credit)**

The National Conference of Commissioners on Uniform State Laws approved the Uniform Commercial Code Revised Article 5 (Letters of Credit) in 1995. The Act is a substantial revision of the Uniform Commercial Code Article 5, which was adopted in North Dakota in 1965.

The committee reviewed information comparing NDCC Chapter 41-05 (Uniform Commercial Code Article 5) with the provisions of Revised Article 5. Testimony in explanation of Revised Article 5 indicated that letters of credit are used to obtain payment as a backup to other kinds of credit extension. The Act was drafted to conform with international law and practice. Because of the expanded use of letters of credit in many large domestic commercial transactions over the past

two decades, a need arose to update the Uniform Commercial Code Article 5. Revised Article 5 authorizes the use of electronic technology, expressly permits deferred payment letters of credit and two-party letters of credit, provides rules for unstated expiration dates and perpetual letters of credit, and conforms to existing practice for assignment of proceeds.

Testimony in support of Revised Article 5 indicated that the current law, which was drafted almost 40 years ago, has become outmoded and no longer reflects commercial practice. Revised Article 5 would modernize and clarify the laws that deal with letters of credit. The testimony further indicated that Revised Article 5 has been enacted in 14 states, introduced in seven other states, and is being supported by the major organizations in the country which deal with letters of credit. There was no testimony in opposition to the Act.

#### **Uniform Commercial Code Revised Article 8 (Investment Securities)**

The Uniform Commercial Code Revised Article 8 (Investment Securities), which was recommended by the National Conference of Commissioners on Uniform State Laws in 1994, is a substantial revision of the Uniform Commercial Code Article 8, which was adopted by North Dakota in 1965.

The committee reviewed information comparing NDCC Chapter 41-08 (Uniform Commercial Code Article 8) with Revised Article 8. Testimony in explanation of Revised Article 8 indicated that the revision sets forth rules concerning the system through which securities are held, specifies the mechanisms by which ownership and other interests in securities are recorded and changed, and establishes the rights and duties of the parties who participate in the securities holding system. Revised Article 8 has been adopted in 13 states, including Minnesota and Illinois.

Testimony in support of Revised Article 8 indicated that the Act would establish customers' specific rights in their security accounts against their broker or dealer. The testimony further indicated that Revised Article 8 modernizes commercial law of security holdings, bases the rules on current practices, and establishes baseline duties of securities intermediaries to their customers.

It was suggested in testimony from the office of Securities Commissioner that the Act, which would amend NDCC Chapters 41-08 and 41-09, be amended to avoid confusion and unintended consequences for the regulatory provisions of NDCC Chapter 10-04. There was no testimony in opposition to the Act.

#### **Uniform Prudent Investor Act**

The National Conference of Commissioners on Uniform State Laws approved the Uniform Prudent Investor Act, which seeks to update trust investment law in recognition of changes that have occurred in investment practice. These changes have been influenced by the accepted body of knowledge described as "modern portfolio theory."

Testimony received by the committee indicated that the Act is generally consistent with the standard trust industry practice for the management of trust funds. The testimony further recommended a change to the Act's provisions on investment costs. The testimony indicated that the recommended change would provide the trustee and the customer with more flexibility about the matters that are to be considered to be material to a determination of what makes a cost "appropriate and reasonable." The committee does not recommend the suggested change. There was no testimony in opposition to the Act.

#### **Uniform Unclaimed Property Act (1995)**

The National Conference of Commissioners on Uniform State Laws approved the Uniform Unclaimed Property Act in 1995. The Act replaces the 1954 Uniform Disposition of Unclaimed Property Act and the Uniform Unclaimed Property Act (1981), which was adopted in North Dakota in 1985.

The committee reviewed information comparing NDCC Chapter 47-30.1, which contains the Uniform Unclaimed Property Act (1981) with the Uniform Unclaimed Property Act (1995).

Testimony in opposition to the Act indicated that various amendments have been adopted to North Dakota's unclaimed property law every legislative session since 1985. According to the testimony, the amendments were introduced and enacted to streamline and simplify the reporting requirements. As a result, North Dakota has been recognized as a leader among the states in adopting effective unclaimed property provisions. Testimony further indicated that if North Dakota adopted the 1995 version of the Uniform Unclaimed Property Act, the lost owner, and in certain cases, the holders would suffer.

#### **Amendment of the Uniform Interstate Family Support Act**

The Uniform Interstate Family Support Act, codified as NDCC Chapter 14-12.2, was enacted by the 1995 Legislative Assembly. The Act was enacted as a means of effectively addressing interstate child support matters. In July 1996, the National Conference of Commissioners on Uniform State Laws recommended amendments to the Uniform Interstate Family Support Act.

Testimony in explanation of the amendments to the Act indicated that recently enacted federal legislation (H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) requires each state to have in effect the Uniform Interstate Family Support Act together with any amendment officially adopted before January 1, 1998, by the National Conference of Commissioners on Uniform State Laws. Testimony in support of the amendments to the Act claimed that failure to comply with the federal requirement carries a penalty of a loss of at least five percent of the block grant funds otherwise available under the new temporary assistance to needy families program. The state could lose up to \$2.6 million per

biennium if the amendments to the Act are not enacted. The testimony further indicated that the 1995 Act has been effective in interstate child support matters and the changes proposed in the amendments will be as well. There was no testimony in opposition to the Act.

#### **Amendment of the Uniform Partnership Act**

The National Conference of Commissioners on Uniform State Laws recommended the limited liability partnership amendments to the Uniform Partnership Act in 1996. In 1995 the Legislative Assembly enacted a Limited Liability Partnership Act.

The committee reviewed information comparing NDCC Chapter 45-22 with the limited liability partnership amendments to the Uniform Partnership Act. Testimony in explanation of the amendments indicated that the amendment would extend the Uniform Partnership Act to include limited liability partnerships.

Testimony in opposition to the Act argued that the limited liability partnership legislation enacted in 1995 provides for consistent administrative requirements for both corporations and limited liability companies. The testimony further indicated that the team that drafted the 1995 legislation is working on legislation to be introduced to the 1997 Legislative Assembly which will further amend the 1995 legislation.

The committee suggested that any action on the limited liability partnership amendments to the Uniform Partnership Act be delayed until the next interim.

#### **Technical Amendments to Uniform Probate Code Article VI**

Technical amendments to the Uniform Probate Code Article VI were recommended by the National Conference of Commissioners on Uniform State Laws in 1995.

Testimony in explanation of the Act indicated that the technical amendments replace the phrase "type of account" with "terms of the account." According to the National Conference of Commissioners on Uniform State Laws, the change was recommended to avoid a possible restrictive meaning to the words "type of account," which was not the intention of the drafters. The committee received no testimony in opposition to the technical amendments to the Uniform Probate Code.

#### **Recommendations**

The committee recommends the Legislative Assembly adopt the Uniform Commercial Code Revised Article 5 (Letters of Credit). The Act would modify and clarify the laws that deal with letters of credit.

The committee recommends the Legislative Assembly adopt the Uniform Commercial Code Revised Article 8 (Investment Securities), amended to reflect concerns of the Securities Commissioner. The Act sets forth rules concerning the system through which securities are held and addresses the changes that have occurred as a result of

developments in the marketplace.

The committee recommends the Legislative Assembly adopt the Uniform Prudent Investor Act. The Act seeks to update trust investment law in recognition of the alterations that have occurred in investment practice.

The committee recommends the Legislative Assembly adopt the amendments to the Uniform Interstate Family Support Act. The amendments to the Act were recommended by the National Conference of Commissioners on Uniform State Laws as a means of avoiding federal preemption.

The committee recommends the Legislative Assembly adopt the technical amendments to the Uniform Probate Code Article VI. The amendments are intended to avoid a possible restrictive meaning to the words "type of account."

### **STATUTORY REVISION**

The committee continued the tradition of reviewing and making recommendations regarding revisions to the North Dakota Century Code that may be necessary in light of judicial decisions or constitutional amendments. The committee received and considered information and recommendations relating to a North Dakota Supreme Court decision in which a section of the North Dakota Century Code was declared unconstitutional and to an amendment to the Constitution of North Dakota which provided for a new executive branch article.

#### **Referendum Petition Submission Deadline - Recommendations**

The committee received testimony regarding the North Dakota Supreme Court decision *Husebye v. Jaeger*, 534 N.W.2d 811 (N.D. 1995), in which the court declared NDCC Section 16.1-01-09(7) unconstitutional. This section provided that an initiative, referendum, or recall petition must be submitted to the Secretary of State by 5:00 p.m. on the day designated as the deadline for submitting the petition. The issue before the court was whether Section 16.1-01-09(7) is in conflict with the constitutional provision that referral petitions be submitted within 90 days after the measure is filed. In *Husebye*, the court determined that the term "day" generally means the full 24-hour period running from midnight to midnight. Consequently, in requiring that petitions be submitted to the Secretary of State within 90 days, the constitutional provision gives a petitioner the full 24-hour period on the 90th day to submit petitions. Thus, the court held that Article III, Section 5, of the Constitution of North Dakota allows submission of referral petitions until midnight of the 90th day. The court concluded that Section 16.1-01-09(7) is in conflict with Article III, Section 5, of the Constitution of North Dakota, and therefore unconstitutional.

Legal research indicated the requirements for the filing of initiative petitions are similar to those for referendum petitions in that both types of petitions are provided for in Article III, Section 5, of the Constitution of North Dakota. Thus, a

challenge of the submission deadline for an initiative petition would likely result in a conclusion similar to the one in *Husebye*.

Testimony received by the committee regarding *Husebye* also indicated that under NDCC Section 16.1-01-09(1), the Attorney General and the Secretary of State must complete their review of a petition in not less than five nor more than seven business days. It was suggested that there is some uncertainty as to whether "business day," as it is used in this section, includes Saturdays.

The committee considered a bill draft that would have amended NDCC Section 1-03-04 to exclude Saturdays from the definition of business day. The definition would have applied to the entire code, however, testimony received by the committee indicated that the change to Section 1-03-04 would negatively impact business done on Saturdays by the banking industry. Consequently, the committee considered a bill draft that would exclude Saturdays as business days only as they apply to NDCC Section 16.1-01-09. The bill draft also provided that when certain acts are designated to be performed on a particular day, which falls upon a Saturday or a holiday, the act may be performed on the next business day with the same effect as if it had been performed upon the appointed day.

The committee recommends Senate Bill No. 2044 to provide that initiative and referendum petitions may be submitted to the Secretary of State until midnight on the day designated as the deadline for submission.

The committee recommends House Bill No. 1065 which excludes Saturdays as business days only as they apply to Section 16.1-01-09. The bill also provides that when acts are to be performed on a particular day that falls upon a Saturday or a holiday, the act may be performed on the next business day with the same effect as if it had been performed upon the appointed day.

#### **Governor and the Pardon Process - Recommendation**

At the June 1996 primary election, the electorate approved a new executive branch article. Under the provisions of the new article, the State Pardon Board is abolished and the Governor is granted the sole authority to grant pardons, reprieves, and commutations. The amendment further provides that the Governor may delegate this power in a manner provided by law.

A representative of the Governor's office recommended that the Governor be granted the authority to create a Pardon Advisory Board, whose duties would be to conduct hearings and make recommendations to the Governor on matters regarding pardons, reprieves, and commutations. The present State Pardon Board is composed of the Governor, the Attorney General, the Chief Justice of the Supreme Court, and two members appointed by the Governor. Because of constitutional concerns regarding the imposition of nonjudicial duties upon the Chief Justice, it was recommended that the Chief Justice not be a member of the

advisory board. The testimony further recommended that at least one member of the board be law-trained and that the Governor would recommend retaining the Attorney General as a member of the advisory board.

The committee recommends Senate Bill No. 2045 to permit the Governor to create a Pardon Advisory Board consisting of five members appointed by the Governor, one of whom must be law-trained. The bill repeals the chapter of the Century Code which deals with the State Pardon Board and creates a new chapter relating to the Pardon Advisory Board and the authority of the Governor to grant pardons, reprieves, and commutations.

### Technical Corrections - Recommendation

The committee continued the practice of reviewing the Century Code to determine if there are inaccurate or obsolete name and statutory references or superfluous language. The committee recommends Senate Bill No. 2046 to make technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change.

Section	Reason for Change
10-19.1-129(4)	The change corrects an incorrect statutory reference.
11-04-01	The change corrects an incorrect statutory reference.
11-18-14	The change deletes references to obsolete liens.
14-07.3-01	The change corrects an incorrect statutory reference.
15-27.6-13(4)	The change corrects a reference to the Education Standards and Practices Board made in 1993 S.L., ch. 171.
15-29-08(10)	The change corrects a reference to the Education Standards and Practices Board made in 1993 S.L., ch. 171.
15-37-01	The change corrects a reference to the Education Standards and Practices Board made in 1993 S.L., ch. 171.
15-45-02(1)	The change corrects a reference to the Education Standards and Practices Board made in 1993 S.L., ch. 171.
15-47-27.2(1)	The change corrects a reference to the Education Standards and Practices Board made in 1993 S.L., ch. 171.
15-47-46	The change corrects a reference to the Education Standards and Practices Board made in 1993 S.L., ch. 171.
16.1-16-02	Chapter 16.1-08 was repealed and replaced by Chapter 16.1-08.1 by 1995 S.L., ch. 207.
23-01-03	Chapter 23-17.2 was repealed by 1995 S.L., ch. 254.
23-03-07(4)	Section 15-47-23 was repealed by 1995 S.L., ch. 176.
24-01-13	Chapter 49-18 was repealed by 1995 S.L., ch. 450.
25-01.3-06(13)	Chapter 50-26 was repealed by 1995 S.L., ch. 458.

Section	Reason for Change
26.1-08-01(6)	Chapter 26.1-18 was repealed and replaced by Chapter 26.1-18.1 by 1993 S.L., ch. 292.
26.1-41-07	The added language was inadvertently left out of 1995 S.L., ch. 316.
26.1-47-01(4)	Section 26.1-18-01 was replaced by Section 26.1-18.1-01 effective August 1, 1993, and Section 26.1-15-01 was replaced by Section 26.1-15.1-02 effective January 1, 1988.
26.1-48-02	The error was contained in the legislation that created this section (1995 S.L., ch. 292).
27-01-10(3)	The county court was abolished by 1991 S.L., ch. 326.
28-20.1-02	The county court was abolished by 1991 S.L., ch. 326.
28-20.1-03(1)	The change corrects an error that has existed since this section was created by 1969 S.L., ch. 294.
30.1-10-03(7)	The change corrects an error contained in the legislation that created this section (1993 S.L., ch. 334).
32-03-19	The civil claims referred to in Sections 32-03-19 and 32-03-26 were abolished by Section 14-02-06.
32-03-26	The civil claims referred to in Sections 32-03-19 and 32-03-26 were abolished by Section 14-02-06.
35-21-01	The change deletes references to obsolete liens.
37-27-01(6)	A conference committee amendment changed the first reference of "six months" to "twelve months" but neglected to change the second reference to "six months."
38-08-04(5)	Three new subsections were added to Section 57-51.1-01 by 1993 S.L., ch. 577, causing a renumbering of the subsections which requires this amendment.
39-04-19(3)	The amendment corrects the reference to federal law.
41-01-28(9)	The amendment corrects the reference to federal law.
42-03-01	The county court was abolished by 1991 S.L., ch. 326.
43-03-03	The county court was abolished by 1991 S.L., ch. 326.
45-22-03(1)	The reference contains an incorrect cross-reference.
46-05-01	The change is the result of mail classification reform enacted by Congress, effective July 1, 1996, in which second-class mail was renamed "periodicals."
47-02-27.5(2)	The change is necessary to correct an error contained in 1991 S.L., ch. 484.
50-06-01.8	Section 50-01-09 was repealed by 1995 S.L., ch. 456, and was replaced by Section 50-01.2-03.
54-52-17(4)(a)	The change was made in 1993 S.L., ch. 533; however, the change was inadvertently omitted in the publication of the North Dakota Century Code.

# LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Council by law appoints a Legislative Audit and Fiscal Review Committee as a division of its Budget Section. The committee was created "[f]or the purposes of studying and reviewing the financial transactions of this state; to assure the collection and expenditure of its revenues and moneys in compliance with law and legislative intent and sound financial practices; and to provide the legislative assembly with formal, objective information on revenue collections and expenditures for a basis of legislative action to improve the fiscal structure and transactions of this state . . . ." (North Dakota Century Code (NDCC) Section 54-35-02.1)

In setting forth the committee's specific duties and functions, the Legislative Assembly said "[i]t is the duty of the legislative audit and fiscal review committee to study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, to confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state." (NDCC Section 54-35-02.2)

The Lieutenant Governor by law serves as chairman of the committee. In addition to Lt. Governor Rosemarie Myrdal, other committee members were Representatives Rex R. Byerly, John Dorso, John M. Howard, Lee Kaldor, Andrew G. Maragos, Ronald Nichols, Doug Payne, Mike Timm, Francis J. Wald, and Gerry L. Wilkie and Senators Aaron Krauter, Evan E. Lips, Duane Mutch, Ken Solberg, Bryce Streibel, and Harvey D. Tallackson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

During the 1995-96 interim, the State Auditor's office and independent accounting firms presented 103 audit reports. An additional 89 audit reports were filed with the committee but were not formally presented. The committee's policy is to hear only audit reports of major agencies and audit reports containing major recommendations. However, an audit report not formally presented could be presented at the request of a committee member.

The committee has the following duties and responsibilities:

1. Study and review audit reports as selected by the committee from those submitted by the State Auditor (Section 54-35-02.2).
2. Confer with auditors in regard to audit reports and, when necessary, confer with

representatives of the department, agency, or institution being audited (Section 54-35-02.2).

3. Receive and review annual reports on the status of the accounts receivable from the Department of Human Services and Developmental Center at Westwood Park, Grafton (NDCC Sections 25-04-17 and 50-06.3-08).
4. Receive the State Fair Association audit report (NDCC Section 4-02.1-18).
5. Receive annual audit reports of corporations receiving ethyl alcohol or methanol production subsidies (NDCC Section 10-23-03.2).
6. Determine, along with the State Auditor, what performance audits are to be conducted (NDCC Section 54-10-01).
7. Receive the performance audit of the Department of Public Instruction, which was to include a determination of the department's compliance with legislative intent (Section 11 of 1995 Senate Bill No. 2013).

## STATE AUDITOR

### Audit of the State Auditor's Office

North Dakota Century Code Section 54-10-04 requires the Legislative Assembly to provide for an audit of the State Auditor's office. The Legislative Council contracted with Eide Helmeke PLLP, Certified Public Accountants and Consultants, for an audit of the State Auditor's office for the years ended June 30, 1994 and 1995. The firm presented its audit report at the committee's January 9, 1996, meeting. In accordance with the terms of the contract between the Legislative Council and Eide Helmeke, the firm reviewed the audit procedures and practices of the State Auditor's office. The findings of the review by Eide Helmeke of the State Auditor's office audit procedures and practices included:

1. The State Auditor's office should modify the engagement risk checklist for unique operating environments and consider the use of specialists when assessing engagement risk on unique operating environments.
2. The State Auditor's office should develop a more comprehensive checklist for reviewing audit reports and disclosures for local government audit engagements. In addition, the State Auditor's office should implement a continuing review process whereby the financial statements and the audit reports be reviewed for accuracy and completeness by a person not involved with the respective audit.

The report also indicated that a prior finding, regarding the implementation of procedures by the

State Auditor's office to ensure that all representation letters are dated as of the date of the auditor's report, is still unresolved.

### **Suggested Guidelines for Performing Audits of State Agencies**

The committee reviewed information on guidelines that have been developed by the committee during past interims for audits performed by the State Auditor's office and independent certified public accountants. The guidelines require that audit reports include specific statements and recommendations regarding:

1. Whether expenditures were made in accordance with legislative appropriations and other state fiscal requirements and restrictions.
2. Whether revenues were accounted for properly.
3. Whether financial controls and procedures are adequate.
4. Whether the system of internal control was adequate and functioning effectively.
5. Whether financial records and reports reconciled with those of state fiscal offices.
6. Whether there was compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning.
7. Whether there was evidence of fraud or dishonesty.
8. Whether there were indications of lack of efficiency in financial operations and management of the agency.
9. Whether actions have been taken by agency officials with respect to findings and recommendations set forth in the audit reports for preceding periods.
10. Whether all activities of the agency were encompassed within appropriations of specific amounts.
11. Whether the agency has implemented the statewide accounting and management information system including the cost allocation system.
12. Whether the agency has developed budgets of actual anticipated expenditures and revenues on at least a quarterly basis and compares on at least a quarterly basis actual expenditures and revenues on the accrual basis to budgeted expenditures and revenues.

During report presentations, the State Auditor's office and independent certified public accountants reviewed findings relating to the 12 specific guidelines developed by the committee. Committee members expressed an interest in the following areas:

1. Having the financial information of each individual agency or institution available during the presentation of the agency's audit report.
2. Having agency personnel explain why prior audit recommendations have not been implemented.

### **Conclusions**

As a result of the committee's interest in the above areas, the committee took the following actions:

1. The committee approved a proposed change to the individual agency financial reports to include a schedule of revenues and expenditures, a schedule of appropriations, and notes. The committee also recommended that the individual agency financial reports include prior biennium expenditure information beginning with the 1997 biennium audit reports.
2. The committee requested that for future meetings agencies that have audit reports that indicate that prior years findings have not been implemented be requested to attend the meeting to explain to the committee why the prior year's recommendations have not been implemented.
3. The committee requested the Legislative Council chairman to have the Employee Benefits Programs Committee review the Job Service North Dakota retirement program with the intent that legislation be introduced by the Employee Benefits Programs Committee to merge the Job Service North Dakota pension plan into the Public Employees Retirement System plan. The Legislative Council chairman did not assign the request to the Employee Benefits Programs Committee.
4. The committee requested the Legislative Council chairman to have the Budget Committee on Agriculture and Information Services look into requiring that Job Service North Dakota use the statewide accounting and management information system. The committee also encouraged Job Service North Dakota to consider the use of the statewide accounting and management information system and the Information Services Division computer system. The Budget Committee on Agriculture and Information Services recommended that Job Service's exemption from the statutory requirement that state agencies use the Information Services Division be removed.  
At a later meeting of the committee a report was received from Job Service North Dakota on Job Service's computer system and software. The report indicated that Job Service is working on complying with the motions passed by this committee. The report indicated that Job Service is working with the Office of Management and Budget to move the agency accounting, accounts payable, and payroll to the statewide accounting and management information system. A target date of July 1, 1997, has been established for completion of the transition.
5. The committee informed the Veterans Home of the committee's concern regarding the need for improved financial controls and

fiscal reporting at the Veterans Home. The committee also recommended to the Emergency Commission that it not approve any future requests of the Veterans Home until the management and accounting procedures at the Veterans Home have improved.

6. The committee informed Job Service North Dakota of the committee's objection to Job Service North Dakota referring to a continuing appropriation to exceed line item appropriation limits since such limits should only be exceeded upon first having received approval from the Emergency Commission.
7. The committee rejected the University of North Dakota audit report for the year ended June 30, 1995, due to perceived deficiencies in the notes to the financial statements. The committee did not think the notes properly reflected the related party transactions between the University of North Dakota and the UND Aerospace Foundation. The audit report was revised and presented to the committee at its June 1996 meeting, at which time the committee approved the report.
8. The committee requested an Attorney General's opinion on whether the December 1993 issuance of \$9,173,000 of nonrecourse lease revenue bonds by the UND Aerospace Foundation and the related lease of the equipment by the University of North Dakota pursuant to the foundation's bond issue are within the limits of state law since the University of North Dakota is subject to debt limits, which may be applicable since it is making the lease payments (principal and interest) directly to the bond trustee.

#### **Comprehensive Annual Financial Report**

North Dakota Century Code Section 54-10-01 requires the State Auditor to provide for the audit of the state general purpose financial statements and a review of the material included in the Comprehensive Annual Financial Report (CAFR). The CAFR contains the audited financial statements for state agencies including the elected officials. The committee received and reviewed the state's June 30, 1994, and the June 30, 1995, CAFRs. The committee received information on how to best use the information contained in the CAFR. The CAFR includes an introductory section, a financial section, and a statistical section.

The committee reviewed the contents of the CAFR in regard to the lack of individual agency financial information. In the early 1980s the Legislative Audit and Fiscal Review Committee recommended that the state prepare a CAFR and that the CAFR include information at the agency or department level. Upon the request of this committee, the State Auditor's office, the Office of Management and Budget, and the Legislative Council staff developed individual agency financial information to be included in a supplemental

report to the CAFR.

The committee was informed that the additional information to be presented in a supplemental report to the CAFR could include a departmental statement of assets, liabilities, and fund equity and a departmental statement of revenues and expenditures. The additional information would be prepared from the same computer files used to prepare the CAFR and those computer files are audited by the State Auditor's office. The committee received a report containing the individual agency financial information for the fiscal year ended June 30, 1995, at its June 1996 meeting.

#### **Conclusion**

The committee approved the proposed change to include individual agency financial schedules in the CAFR. The individual agency financial information is to include a departmental statement of assets, liabilities, and fund equity and a departmental statement of revenues and expenditures.

#### **Performance Audits**

North Dakota Century Code Section 54-10-01 provides that the State Auditor is to provide for performance audits of state agencies as determined necessary by the State Auditor or the Legislative Audit and Fiscal Review Committee. A performance audit must include a review of elements of compliance, economy and efficiency, and program results to determine whether an agency has complied with applicable laws and legislative intent and is managing its resources efficiently, and whether the agency's programs are achieving the desired results.

The committee received the following performance audits during the 1995-96 interim:

1. Protection and Advocacy Project - The purpose of the audit was to assess the functioning of the governing board, the accuracy of program performance data, the perception of the project by the agencies and individuals it interacts with, and the efficient utilization of legal services. The audit also assessed how well the project was complying with its written policies and procedures for managing advocacy services and for compliance with other applicable laws, rules, and regulations. The major findings and recommendations indicated that the Committee on Protection and Advocacy was ineffective, the data collection system was inefficient and unreliable, the project had a negative image, legal services were not being utilized efficiently, and the case management policies and procedures needed strengthening.

The committee requested and received an Attorney General's opinion on whether the Protection and Advocacy Project violated state or federal laws when it destroyed records as reported in the performance audit. The opinion stated that the disposal of the

records in question was in accordance with the records management system established for the Protection and Advocacy Project by the Records Management Section under NDCC Chapter 54-46.

The committee also requested and received a letter from the United States Department of Health and Human Services on whether the Protection and Advocacy Project violated federal laws relating to the retention of records. The letter stated that the records in question should be maintained for three years, as stated in the performance audit, rather than for one year as the records retention policy of the Protection and Advocacy Project provided.

2. North Dakota Agricultural Mediation Service - The purpose of the audit was to assess the effectiveness and efficiency of the Agricultural Mediation Service program and its compliance with state laws, rules, and regulations and the costs and benefits of charging a fee for services. The major findings and recommendations related to improving the handling of the accounts receivable and the evaluation and necessity of continuing the legal and tax assistance program.
3. Department of Public Instruction - The committee approved the request of the State Auditor's office to combine the performance audit of the Department of Public Instruction requested by the Legislative Audit and Fiscal Review Committee and the performance audit of the Department of Public Instruction required by the Legislative Assembly in Section 11 of 1995 Senate Bill No. 2013. The combined performance audit covered all aspects of both individual performance audits. The purpose of the audit was to review the effectiveness and efficiency of the school approval and accreditation programs, individual qualifications for selected positions within the department, compliance with federal requirements, and monitoring of programs at elementary, middle/junior high, and high schools. The major findings and recommendations related to improving the approval and accreditation programs, complying with Central Personnel guidelines, and combining monitoring functions.

The committee requested that the chairman of the Legislative Council have either the interim Education Finance Committee or the interim Education Services Committee review the findings and recommendations contained in the performance audit. The performance audit was assigned to the interim Education Finance Committee. Please refer to that committee's report for any action taken by that committee on the performance audit of the Department of Public Instruction.

4. Status of recommendations contained in the statewide leasing performance audit - Five of the 16 recommendations were fully implemented, seven were determined to be partially implemented, three were determined to not be implemented, and one was determined to no longer apply.
5. Status of recommendations contained in the Motor Pool Services performance audit - Four of the 10 recommendations were fully implemented, five were determined to be partially implemented, and one was determined to no longer apply.
6. Status of recommendations contained in the Medicaid drug rebate performance audit - Ten of the 13 recommendations were fully implemented and three were determined to be partially implemented.
7. Status of recommendations contained in the child support enforcement program performance audit - One of the 15 recommendations was fully implemented, five were partially implemented, and nine were not implemented. Due to the large number of recommendations not being implemented, another followup report will be completed.
8. Status of recommendations contained in the Protection and Advocacy Project performance audit - Twenty-six of the 35 recommendations were fully implemented, seven were partially implemented, one was not implemented, and one was determined to no longer apply.

A copy of each of the performance audit reports is on file in the Legislative Council office.

#### **Other Reports**

The committee also received the following reports from the State Auditor's office:

1. Single Audit Report for the years ended June 30, 1994 and 1993 - The statewide single audit is the state's audit of all federal funds received by state agencies or institutions during fiscal years 1994 and 1993. The report includes sections which include a schedule of federal assistance, a report on internal control, and findings and questioned costs.
2. Limited Review Report on the Accounts Receivable/Third-Party Liability at the Department of Human Services - The report contained the results of the review of the accounts receivable/third-party liabilities at the Department of Human Services. The report was the result of the analysis of information obtained during the preliminary phase of a performance audit. During the preliminary phase of the performance audit, it was determined that the continuance of the performance audit would not result in significant improvements in efficiency or effectiveness, so the performance audit was not pursued.

3. State Agency Audit Followup Reports - The reports indicated which prior audit recommendations had not been implemented by agencies. The State Auditor's office requested approval from the committee to discontinue the state agency audit followup reports. The consensus of the committee was that the reports be continued.
4. Audit review fees charged to political subdivisions - The report reviewed the charging of fees to political subdivisions for reviewing their audit reports.
5. Report on the embezzlement of funds at Bismarck State College - The report informed the committee of the outcome of the investigation into the embezzlement of funds at Bismarck State College.
6. Workers Compensation Bureau previous performance audit - The committee requested and received a report on the previous performance audit of the Workers Compensation Bureau. The report indicated that the previous audit contained 15 recommendations and that the followup report indicated that 13 of the 15 recommendations had been addressed by the bureau.
7. Legislation to be introduced to the 1997 Legislative Assembly - The report summarized possible legislation to be introduced by the State Auditor's office to the next Legislative Assembly regarding the billing for audits and the contents of performance audits. The legislation would require state agencies to pay for audit services contracted for by the State Auditor's office. The legislation would also remove the specific elements of a performance audit currently contained in law and replace the specific elements with the provision that performance audits would have to be done in accordance with generally accepted auditing standards applicable to performance audits. Current law provides that performance audits must include a review of elements of compliance, economy and efficiency, and program results to determine whether an agency is complying with applicable laws and legislative intent and is managing its resources efficiently, and whether the agency's programs are achieving the desired results. The proposed change would allow for a performance audit to be of a specific element or all of the elements listed above.
8. Possible future performance audits - The report presented a list of possible future performance audits.

### **Conclusions**

In regard to the report on possible future performance audits, the committee prioritized the following performance audits:

1. A performance audit of the state's procurement practices (including the procurement practices of institutions under the control of the Board of Higher

Education), including the procurement of services and materials through contracts and leases. The committee also requested that the preliminary results of this performance audit be made available to the 1997 Legislative Assembly.

2. A performance audit of the state's (including institutions under the control of the Board of Higher Education) employee classification system and the structure of Central Personnel.

The committee also requested that the State Auditor's office conduct a risk analysis of the programs within the Department of Human Services and present the results of the risk analysis to the Legislative Audit and Fiscal Review Committee. It is the committee's intention to review the results of the risk analysis before requesting performance audits on programs within the Department of Human Services.

The committee also expressed its encouragement for a performance audit of the Workers Compensation Bureau to be conducted within the oversight of the State Auditor's office and that the audit be conducted by a third party to be selected by the State Auditor's office.

### **BANK OF NORTH DAKOTA AUDITS**

The committee reviewed the role of the State Auditor's office in the Bank of North Dakota's audit. The committee questioned the fact that the State Auditor's office does not have oversight authority over the audit of the Bank of North Dakota or its related entities and that the State Auditor's office cannot conduct performance audits of the Bank or its related entities.

The committee reviewed the possibility of changing the authority for the audit of the Bank and its related entities from the Industrial Commission to the State Auditor's office. This would also allow the State Auditor's office to conduct performance audits of the Bank and its related entities. The committee reviewed information on whether it is economical for the State Auditor's office to employ staff with the expertise needed to conduct the Bank's audit when it would be the only audit of its kind the State Auditor's office would perform. The committee reviewed the possibility of having the State Auditor's office have authority over the audit but not actually conduct the audit.

### **Recommendation**

The committee recommends House Bill No. 1066 to change the authority for the audit of the Bank of North Dakota and its related entities from the Industrial Commission to the State Auditor's office. The State Auditor's office authority for the Bank's financial audit relates only to contracting for the audit instead of actually performing the audit. The bill provides that the State Auditor's office may conduct the audit or contract for the audit of any separate funds or programs administered by the Bank. The bill also provides that the State Auditor's office may conduct performance audits of

the Bank of North Dakota and its related entities.

### REGIONAL PLANNING COUNCIL AUDITS

The committee reviewed the possibility of having the State Auditor's office audit regional planning councils. The committee requested that the State Auditor's office conduct an audit of each of the eight regional planning councils on a rotating basis, auditing two each year so that each council would be audited by the State Auditor's office once every four years. The State Auditor's office informed the committee that an Attorney General's opinion was requested regarding the authority of the State Auditor's office as it relates to the audits of regional planning councils. The Attorney General's opinion was that the State Auditor's office did not have the authority to audit the regional planning councils upon the request of the Legislative Audit and Fiscal Review Committee. However, the State Auditor's office could perform an audit of a regional planning council under the following conditions:

1. When ordered by the Governor;
2. When requested by the governing body of a political subdivision;
3. For political subdivisions listed in NDCC Section 54-10-14, upon petition of at least 35 percent of the qualified electors of the relevant political subdivision; or
4. At the discretion of the State Auditor for alleged improprieties.

The committee rescinded its request to have the State Auditor's office audit the regional planning councils and then reviewed the need to expand the authority of the State Auditor to include audits of regional planning councils.

#### Recommendation

The committee determined that because regional planning councils receive tax dollars, the State Auditor's office should have authority over their audits. It was reported to the committee that on average a regional planning council receives 40 percent of its funding from the federal government, 20 percent from state government, and 40 percent from local government.

The committee recommends Senate Bill No. 2047 to add regional planning councils to the list of political subdivisions that the State Auditor's office is responsible for auditing. The bill also requires each regional planning council to submit a copy of its annual audit to the Legislative Audit and Fiscal Review Committee.

### DEPARTMENT OF HUMAN SERVICES ACCOUNTS RECEIVABLE

North Dakota Century Code Sections 25-04-17 and 50-06.3-08 require that the Developmental Center at Westwood Park, Grafton, and the Department of Human Services present detailed reports to the Legislative Audit and Fiscal Review Committee of writeoffs of accounts receivable and the status of accounts receivable for each fiscal year.

The committee accepted detailed reports on the amounts of accounts receivable written off during the 1995-96 interim. The amounts are as follows:

	Fiscal Year 1995	Fiscal Year 1996
State Hospital	\$5,082,195	\$5,688,316
Developmental center	645,387	297,640
Human service centers	<u>142,452</u>	<u>113,061</u>
Total	\$5,870,034	\$6,099,017

### DEPARTMENT OF PUBLIC INSTRUCTION FOUNDATION AID PROGRAM

The committee received reports from the Department of Public Instruction on the department's foundation aid program underpayments to various school districts. The reports indicated that due to a computer programming error six school districts were underpaid a total of \$425,610 for the 1993-95 biennium. The six school districts are Bismarck, Fargo, Grand Forks, Devils Lake, Minot, and Jamestown. The committee was informed that an Attorney General's opinion was requested by the Department of Public Instruction and that the opinion was that the 1993-95 payment errors could not be corrected by the department during the 1995-97 biennium, but would require legislative action since it does not relate to the current biennium. The committee was informed that the Legislative Council's interim Education Finance Committee was addressing the issue.

The committee also received foundation aid status reports. The reports provided the committee with updates on the status of the foundation aid program. The reports were received in accordance with a recommendation made by this committee during the last interim. The committee also discussed the timing of the status reports. It was determined by the committee that the status reports should be provided to committee members and other legislators at least once every year.

### OTHER COMMITTEE ACTION

The committee also received information on:

1. The increases and decreases in the valuation of equity investments and on antidilution clauses for investments held by Technology Transfer, Inc.
2. An analysis of state agency and institution insurance policies.
3. The increases and decreases in the valuation of equity investments and on antidilution clauses for investments held by the North Dakota Development Fund, Inc. (formerly the North Dakota Future Fund, Inc.).
4. The state risk management fund, including the number of claims made against the fund, the total amount paid for claims, and the number of claims pending.
5. A report on state employee salary levels that are over the salary range maximum.
6. A report on actions taken by the interim

Education Finance Committee regarding the performance audit of the Department of Public Instruction.

Also, pursuant to Section 10-23-03.2, the committee was to receive the audit reports from corporations receiving ethyl alcohol or methanol production subsidies. During this interim, the committee did not receive any audit reports from corporations receiving ethyl alcohol or methanol production subsidies.

### **Conclusion**

In regard to the report on state employee salary levels that are over the salary range maximum, the committee requested that the director of the Office of Management and Budget send all agency directors not in compliance with NDCC Section 54-44.3-15, relating to state employees' pay levels that are not consistent with salary range guidelines, a letter notifying them of any noncompliance and requesting the agency directors to notify the director of the Office of Management and Budget on how they are going to come into compliance with the law.

# 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 necessary arrangements to facilitate the proper convening and operation of the Legislative Assembly. Legislative rules are also reviewed and updated under this authority. The Legislative Council 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, and to conduct the study directed by Senate Bill No. 2304 (access to telecommunications records of legislators and other public officials). The Legislative Council also designated the committee as the Technology Applications Committee under House Bill No. 1001 (with the responsibility to make recommendations on expenditures for and installation of computers for the Legislative Assembly). The Legislative Council delegated to the committee: (1) the power and duty of the Legislative Council under NDCC 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 the use of the legislative chambers and permanent displays in Memorial Hall; (2) the authority of the Legislative Council under NDCC Section 46-02-04 to determine the contents of contracts for printing of legislative bills, resolutions, and journals; and (3) the responsibility for administering 1985 Session Laws, Chapter 77; 1987 Session Laws, Chapter 29; and 1989 Session Laws, Chapter 25 (appropriations for improvements to the legislative wing of the State Capitol). The Legislative Council assigned to the committee the study directed by House Concurrent Resolution No. 3043 (legislative environment and process). The Legislative Council chairman also directed the committee to review Budget Section responsibilities and membership.

Committee members were Representatives John Dorso (Chairman), Tom D. Freier, Lee Kaldor, William E. Kretschmar, and Bill Oban and Senators William G. Goetz, Tim Mathern, Gary J. Nelson, David E. Nething, and Dan Wogsland. When meeting as the Technology Applications Committee, membership included Representative Rex R. Byerly and Senator Rod St. Aubyn.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. The committee distributed a 1995 legislative process questionnaire to all legislators. The survey asked specific questions on legislative procedures and also requested comments on how to improve the

legislative process. Portions of this report refer to the results of the survey.

## Journals

The committee discussed legislative rules referring to the delivery of daily journals and contracts with the printers. Senate and House Rules 204(2) require the printer to deliver the daily journals by 9:00 a.m., but the contract with the printer requires delivery by 8:00 a.m. Early delivery allows distribution of daily journals to legislators as soon as possible. The committee recommends amendment of Senate and House Rules 204(2) to provide for delivery by the time determined by the Legislative Council.

## Personal Privilege as an Order of Business

The committee discussed the appropriateness of designating a special order of business for a member to make a point of personal privilege. The practice in the House has been to go on a "special" order of business for matters that are not technically points of personal privilege and for special events, e.g., introduction of special guests and recognition of championship teams. The committee also reviewed the requirements for a question of personal privilege. Under *Mason's Manual of Legislative Procedure*, a question of personal privilege is a question affecting the rights, reputation, and conduct of a member in the member's representative capacity. Committee members were concerned over the potential for abuse if a special order of business is created for general comments by members; however, committee members also recognized the need to provide for valid questions of personal privilege. The committee recommends amendment of Senate and House Rules 301 to include in the fourth order (presentation of petitions and communications) a reference to personal privilege. The committee also recommends that information about the appropriateness of questions of personal privilege be given to legislators at the organizational session.

## Vote Requirements

During the 1979-80 interim, the Legislative Procedure and Arrangements Committee reviewed provisions in the Constitution of North Dakota and Senate and House rules which require majority votes or super majority votes of either the members-elect or the members present. That committee recommended creation of Senate and House Rules 318, which list those questions and provide cross-references to the constitutional provisions or legislative rules requiring the particular type of vote required.

The committee discovered that Senate and House Rules 329 and 402 and Joint Rules 202, 204, and 501 refer to majority or two-thirds votes but do not specify whether the requirements are of members present or members-elect. In addition,

Senate and House Rules 318 do not list rules that do not specify whether a vote requirement is of members present or members-elect. The committee recommends amendment of Senate and House Rules 318 (with the corresponding amendments to the substantive rules) to provide that it is a majority vote of the members present and voting to return a measure requested by the other house before action as provided in Joint Rule 204 and to request preparation of a fiscal note as provided in Joint Rule 501; that it is a majority vote of the members-elect to recede before a conference in a case where a majority governs as provided in Joint Rule 202; and that it is a two-thirds vote of the members-elect to recede before a conference in a case where two-thirds governs as provided in Joint Rule 202. The amendments would eliminate ambiguities by specifically identifying whether the requirement is of members present or members-elect. The references to members present or members-elect are intended to comport with historical interpretations of majority vote and two-thirds vote requirements.

The committee also recommends amendment of House Rule 318(4) to eliminate a reference to a two-thirds vote requirement after a previous motion to reconsider as provided by House Rule 346 because House Rule 346 does not impose that requirement. In addition, the committee recommends amendment of Senate and House Rules 329(4) and Joint Rule 203 to delete references to the two-thirds vote requirements to introduce delayed bills and the Delayed Bills Committees because those references repeat the procedure in Senate and House Rules 402 for approving introduction of delayed measures. Joint Rule 203 is not listed in Senate and House Rules 318 because those rules already refer to the substantive requirements of Senate and House Rules 402.

#### **Division of a Question**

The committee reviewed cases in which amendments have been divided and further action was necessary to result in a complete amendment. *Mason's Manual of Legislative Procedure* provides that to be divisible a question must include points so distinct and separate they will stand as complete propositions if other points are not adopted. Any correction necessary as the result of adoption of parts of a divided question can be only of a minor technical nature. The committee recommends amendment of Senate and House Rules 319 to include a statement that a question containing more than one proposal may be divided only if each resulting division is so distinct and separate it can stand as a complete proposition without being rewritten. This language is based on Section 313(1) of *Mason's* and is intended to emphasize the requirements that must be met for a question to be divisible.

#### **Withdrawal of Measures**

The committee continued its review of Senate and House rule differences and determined that

the procedure for withdrawal of a measure should be the same in each house. In the House, the committee chairman moves for return of a measure from committee for purposes of withdrawal, and the sponsor then requests unanimous consent to withdraw the measure. In the Senate, the sponsor of the measure moves for its return to the floor from the committee of referral, and then requests unanimous consent to withdraw the measure. The committee recommends creation of Senate Rule 330.1 (with a corresponding amendment to Senate Rule 318) to provide that after referral a measure may not be withdrawn without unanimous consent of the Senate, and amendment of Senate Rule 508 to delete the procedure of a member moving to have a measure recalled from committee for purposes of withdrawal. The proposed amendments revise the Senate rules so they closely parallel the House rules on the procedure for withdrawal of a measure. Under Senate Rule 508, as proposed for amendment, the motion to withdraw a measure could be made by the majority leader or by the committee chairman. As explained earlier, the practice in the House is for the committee chairman to make the motion.

The committee also discussed whether a member should be permitted to withdraw a measure that has been placed on the calendar after receipt of a committee report on that measure. At issue is the fairness in a committee holding a hearing and taking recorded action on a measure, and the sponsor then withdrawing the measure before the full house takes recorded action. Countervailing the fairness argument is the belief that a sponsor should be able to withdraw a measure before the house has taken action on the measure. House members on the committee favored the change, but Senate members did not. The committee recommends amendment of House Rule 328 to remove references to withdrawal of a measure and creation of House Rule 330.1 (with a corresponding amendment to House Rule 318) to provide a separate rule governing the procedure for withdrawing a measure. The new rule would continue the requirement that after referral as provided by House Rule 328, a measure may not be withdrawn without unanimous consent of the House, and would also add the restriction that a measure placed on the calendar after receipt of a committee report may not be withdrawn.

#### **Rereferral of Bills to Appropriations Committees**

The committee discussed the relationship between the deadlines for reporting bills of the other house out of committee and for rereferring bills to the Appropriations Committees. Of special concern was the problem caused by committees reporting bills without sufficient time for rereferral to and review by the Appropriations Committee. Committee members noted that deadlines in the rules are generally based on a 60-day session and discussed whether any new deadlines should reflect actual practice (so as to avoid the necessity for suspension) or should continue the 60-day concept to encourage action. Senate and House

Rules 329 require bills in the house of origin which must be rereferred to the Appropriations Committee to be rereferred by the 23rd legislative day. Senate and House Rules 507 require bills in the house of origin to be reported to the floor no later than the 31st legislative day and bills of the other house to be reported by the 55th legislative day. The committee recommends amendment of Senate and House Rules 329(4) to provide that bills of the other house which are required to be rereferred to the Appropriations Committee must be rereferred not later than the 47th legislative day. Under the recommendation, the eight-day period between rereferral and final reporting of bills in the house of origin is maintained for bills of the other house.

### **Amendment of Conference Committee Reports**

The committee discussed whether amendments reported from conference committees may be amended. Senate Rule 332 provides that any amendment may be received on the second reading of a bill or resolution and House Rule 332 provides that, other than for an amendment to the title, unanimous consent of the House is required for consideration of an amendment to a bill or resolution. Notwithstanding these rules, conference committee reports traditionally have not been amended. To ensure that no amendment of a measure reported from conference committee is in order, the committee recommends amendment of Senate and House Rules 332 to provide that no amendment of a measure reported from a conference committee may be made on second reading.

### **Remarks in the Journal**

The committee discussed the requirements for recording remarks in the daily journals. In addition to the requirements in the rules for recording various items in the journals, a tradition has developed of allowing any member to have remarks printed in the journal, either by motion or by request without objection. In light of a request during the 1995 session for placement of all comments that had been made during the preceding debate of a bill, committee members discussed various options to ensure that requests are capable of implementation, e.g., allowing only written remarks to be recorded in the journal, requiring advance notice of a request to record remarks in the journal, limiting a request to the member who made the remarks, and limiting the record to remarks rather than debate. The committee recommends amendment of Senate and House Rules 344 to provide that except for the majority or minority leader with respect to the remarks of a member of that leader's party, no member may request the remarks of any other member be recorded in the journal.

### **Notice of Intention to Reconsider a Question**

The committee discussed when notice of

intention to reconsider a measure should be given. Under Senate and House Rules 345 a bill or resolution is to be retained until the end of the next legislative day, except on the 33rd and after the 49th legislative days, when notice of intention to move reconsideration must be given. The rules imply that on the 33rd legislative day and after the 49th legislative day, measures are messaged immediately after second reading rather than held until the end of the next legislative day for purposes of reconsideration. The committee discussed the House practice of holding the measure until the end of the daily session, when notice should be given, problems caused by a member giving notice to the Secretary of the Senate rather than the majority leader after the daily session has adjourned (but before the desk force has left), and the need to eliminate unnecessary motions to transmit measures. The committee recommends amendment of Senate and House Rules 345 to provide that after second reading a measure is to be retained until the end of the next legislative day, but on the 33rd and after the 49th legislative days the measure is to be transmitted to the other house immediately upon adjournment of that day's session unless action on the measure is pending due to a motion to reconsider or unless the majority or minority leader has given notice of intention to move reconsideration of that measure.

### **Motion to Reconsider a Question**

During its review of Senate and House rule differences, the committee discussed the procedure for moving for reconsideration of a question. Under Senate Rule 346(3), after one motion to reconsider, a subsequent motion to reconsider requires a two-thirds vote. Under House Rule 346(4), after one motion to reconsider, a subsequent motion to reconsider may be made on the next day and requires only a majority vote. The usual practice in the House is reconsideration on the next day, rather than once on each day. The committee recommends amendment of Senate Rule 346 to allow a motion to reconsider a question once on the day of consideration of a question and once on the following day without requiring a two-thirds vote of the members-elect. The committee also recommends amendment of House Rule 346 to make technical changes so the language tracks the language of Senate Rule 346.

### **Announcement of Guests**

During its review of Senate and House rule differences, the committee discussed the ways the Senate and House announce guests. In the House, the Speaker announces the presence of groups. Under Senate Rule 358, the presence of guests in groups may be announced daily on the electronic message boards. The committee recommends amendment of House Rule 358 to allow the presence of guests in groups to be announced daily on the electronic message boards. This is viewed as making time taken to announce the presence of groups available for legislative business.

### **Bill Introduction Deadlines**

The committee discussed the effect of the Legislative Assembly convening on Monday, January 6, 1997. When the Legislative Assembly convenes on Tuesday, the fifth, 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 fifth, 10th, and 15th legislative days to the sixth, 11th, and 16th legislative days. This will continue the Monday deadlines during the 1997 session.

### **Resolution Introduction Deadlines**

The committee reviewed the deadlines for introducing concurrent resolutions directing Legislative Council studies. Senate and House Rules 402 designate the 34th legislative day as the deadline for introducing study resolutions. Senate and House Rules 507 require study resolutions to be reported from committee no later than the 37th legislative day. In many instances, this is too short a timeframe for consideration of the merits of a study resolution. The committee recommends amendment of Senate and House Rules 402 to designate the 31st legislative day as the deadline for introducing resolutions proposing Legislative Council studies and resolutions proposing constitutional amendments. The committee determined that the deadlines for both types of resolutions should continue to be the same.

### **Committee Membership - Committee on Committees**

During its review of Senate and House rule differences, the committee discussed the procedures for appointing committees and committee chairmen. Committee members noted the discussion generated during the 1994 organizational session when the Speaker of the House appointed committee chairmen different from those appointed by the House majority leader. House members also pointed out that during recent sessions the House has operated with an informal House Policy Committee to advise the leadership in appointing committees. The committee recommends amendment of House Rules 201 and 501 to remove the authority of the Speaker of the House to appoint committees. The committee also recommends amendment of Senate Rule 501 to provide for the majority leader to appoint the Committee on Committees and for a committee of seven, rather than eight, members. Four members must be from the majority party and three from the minority party. The committee also recommends amendment of House Rule 501 to create a House Committee on Committees that parallels its Senate counterpart.

### **Minority Leader as Committee Member**

During its review of Senate and House rule differences, the committee compared the provisions of Senate Rule 502 which authorize the minority leader to be appointed to standing committees with the provisions of House Rule 502 which do not allow the minority leader to be appointed to any standing committee. The committee recommends amendment of Senate and House Rules 502 to allow minority leaders to be appointed to standing committees. The language in Senate Rule 502 is revised to clarify that appointment of the minority leader to a standing committee is discretionary. The proposed amendment also refers to being appointed to "any committee" and thus a minority leader need not be appointed to two committees.

### **Committee Chairmen**

The committee discussed Senate and House Rules 503, which provide that the first-named member of a committee is the chairman, and the chairmanship devolves upon the next-named member in case of absence. The committee recommends amendment of Senate and House Rules 503 to provide that the majority leader appoints the chairman and vice chairman of each committee. In addition, the majority leader is authorized to designate a chairman if the appointed chairman and vice chairman are absent for an extended period of time. The proposed amendment specifically refers to a vice chairman and eliminates ambiguity caused when committee appointments are listed in alphabetical order.

### **Photography Committees**

The committee reviewed procedures to determine if any business during the regular session could be conducted before the session so as to make time available during the regular session for regular legislative matters. Under current procedures, the Photography Committees meet during the regular session and contract with a photographer to take photographs of legislators. Individual committee members are responsible for ensuring all legislators have photographs taken. The committee determined that this process could be moved to the interim--bids could be solicited and the contract awarded before the organizational session and photographs could be taken during the organizational session. This would also allow the photographs to be available earlier for legislative use. The committee recommends amendment of Senate and House Rules 501 to eliminate the Photography Committees. As part of this recommendation, the committee urges each caucus to designate a member to ensure that members of that caucus have their photographs taken.

### **Joint Constitutional Revision Committee**

The committee discussed the conflicts experienced during the 1995 session when committees met during the time designated for the Joint Constitutional Revision Committee to meet. Under Joint Rule 303, the Joint Constitutional

Revision Committee is to meet Wednesdays from 3:00 to 5:00 p.m. Under Senate and House Rules 504, any committee that meets on Wednesday and which has a member who is a member of the Joint Constitutional Revision Committee is not to meet during the time the Joint Constitutional Revision Committee meets. The committee reviewed the workload of the Joint Constitutional Revision Committee since 1985. The committee recommends repeal of Joint Rule 303, which establishes the Joint Constitutional Revision Committee, and corresponding amendments to Senate and House Rules 502 and 504 to delete references to the Joint Constitutional Revision Committee.

#### **Deadline for Reporting Constitutional Amendments**

The committee discussed the deadline for reporting proposed constitutional amendments from committee. As described earlier, the committee recommends moving from the 34th legislative day to the 31st legislative day the deadline for introducing resolutions directing Legislative Council studies and resolutions proposing amendments to the Constitution of the United States. The committee also recognized that the deadline for introducing resolutions proposing amendments to the Constitution of North Dakota is the 18th legislative day. The committee recommends amendment of Senate and House Rules 507 to require resolutions proposing constitutional amendments to be reported from committee no later than the 37th legislative day. This is the same deadline for reporting resolutions directing interim studies by the Legislative Council. Thus, the deadlines for introducing and reporting resolutions proposing Legislative Council studies or amendments to the Constitution of the United States and for reporting resolutions proposing amendments to the Constitution of North Dakota parallel one another, but the deadline for introducing resolutions proposing amendments to the Constitution of North Dakota remains as the 18th legislative day.

#### **Changes to Rereferred Measures**

During its review of Senate and House rule differences, the committee discussed Senate Rule 509, which provides that the Appropriations Committee may not change the intent of any measure rereferred to it after a hearing in another standing committee, unless necessitated by consideration of the appropriation contained in the measure. Committee members referred to the legislative process survey and comments by a number of legislators objecting to the practice by the House Appropriations Committee of changing the intent of measures heard by other standing committees. Senate members of the committee indicated that Senate Rule 509 reduces hostility between non-Appropriations Committee members and Appropriations Committee members. The committee recommends creation of House Rule 509 to provide that the Appropriations Committee may not change the intent of any measure rereferred to

it after a hearing in another standing committee of the House, unless necessitated by consideration of the appropriation contained in the measure.

#### **Printing of Measures**

The committee reviewed the effect of reducing the number of bills and resolutions printed under Joint Rule 603. For the 1995 legislative session, the number of resolutions printed without special order was reduced from 500 to 300. During the session, a number of special orders were made to print additional copies of resolutions. To avoid the need for a number of special orders to print resolutions on a regular basis, the committee recommends amendment of Joint Rule 603 to provide for 400, rather than 300, copies of resolutions to be printed.

The committee discussed the impact of one house amending a measure that had been engrossed by the other house. Of concern was the difficulty in determining the effect of amendments by the second house to an engrossed measure, when copies of the measure, as engrossed, were not generally available. The committee considered making 300 copies of engrossed measures available through the bill and journal room, but noted that 75 legislators would have access to engrossed measures, as well as to the version with amendments by the second house, through their personal computers. In addition, anyone with access to the on-line bill status system has access to engrossed measures. Committee members discussed the cost of providing copies of engrossed measures, the impact of computerization on the need for printed copies, and the effect of making copies of engrossed measures available through the bill and journal room rather than the Legislative Council office. The committee recommends amendment of Joint Rule 603 to provide 100 copies of each bill and resolution engrossed under Senate and House Rules 334 (measures are engrossed as of second reading) on request of the Chief Clerk of the House or the Secretary of the Senate. As in the case with bills and resolutions as introduced, the supervisor of the bill and journal room can order additional copies to meet demand.

#### **Consent Calendar Items**

The committee discussed the procedures for using a single vote to consider a number of amendments. In 1991, Joint Rule 206 was amended to provide for considering uncontested amendments on the consent calendar. The House used this procedure once and then initiated a procedure to "batch" amendments on sixth order. In 1995, House Rule 601 was amended to recognize the procedure to batch amendments on sixth order. Neither procedure has been used in the Senate. The committee recommends amendment of Joint Rules 206 and 207 (with corresponding amendments to Senate and House Rules 301) to eliminate consideration of uncontested amendments on the consent calendar.

#### **Consent Calendar Vote Requirements**

The committee discussed the vote requirements

for items on the consent calendar. Joint Rule 206 requires the consent calendar to include certain resolutions directing Legislative Council studies. Joint Rule 207 requires a roll call vote on items on the consent calendar, but Senate and House Rules 339 do not include study resolutions within requirements for recorded roll call votes. The committee recommends amendment of Joint Rule 207(2) and (3) to provide that a recorded roll call vote is necessary on items on the consent calendar only if a recorded roll call vote is required under Senate or House Rule 339. Thus, any conflict between Joint Rule 207 and the requirements of Senate or House Rule 339 is eliminated. Items on the consent calendar would be categorized so that items requiring recorded roll call votes and items not requiring recorded roll call votes would be voted on separately.

### **Introduction of Budget Bills**

The committee reviewed the procedure used to introduce bills implementing the recommendations of the Governor for appropriations for the next biennium. Under NDCC Sections 54-44.1-06 and 54-44.1-07, the budget bills are to be prepared for presentation to the Legislative Assembly at the organizational session. Under Joint Rule 208, executive agencies have until December 10 to file bills with the Legislative Council. Before recent sessions the Office of Management and Budget has requested, and received, dispensation to file appropriation bills after December 10. The committee discussed the fact that a bill filed by an executive agency is introduced by either the appropriate standing committee or a legislator, with a notation that the bill was requested by the agency. Committee members suggested appropriation bills implementing the Governor's budget recommendations should be identified as recommendations of the Governor. The committee recommends amendment of Joint Rule 208 to require the director of the budget to file with the Legislative Council by December 10 those bills making appropriations to implement the budget recommended by the Governor and to provide those bills are deemed introduced by the Appropriations Committee of the House or Senate at the request of the Governor. The amendment also provides that the appropriations bill for the judicial branch be introduced by the Appropriations Committee at the request of the Supreme Court and the appropriations bill for the legislative branch be introduced by the Appropriations Committee at the request of the Legislative Council. Notwithstanding the general deadline of December 10 for executive agencies to file bills, the committee recommends the Legislative Council staff be requested to receive appropriation bills implementing the Governor's budget for pre-filing until December 20, 1996, as described under **SESSION ARRANGEMENTS, Organizational Session Agenda.**

### **Fiscal Notes**

The committee reviewed the recommendation by the Advisory Commission on Intergovernmental

Relations to extend Joint Rule 502 to include school districts. The commission also recommended that if no state agency has primary responsibility to compile information to prepare a fiscal note under Joint Rule 502, the Legislative Council is to request a fiscal analysis from the appropriate representatives of counties, cities, and school districts.

The committee also discussed the feasibility of a dollar amount threshold before the provisions of Joint Rule 502 take effect, whether there should be a sampling of representatives and officials of political subdivisions to obtain an estimate of fiscal impact, and whether there should be a separate vote waiving the requirements of Joint Rule 502 before voting on final passage.

The committee recommends amendment of Joint Rule 502 to include school districts within the local entities that are subject to fiscal note requirements.

### **Legislative Rules Book**

Because of the recommended creation of a number of legislative rules, the committee approved a proposal to reprint the Legislative Rules Book, with appropriate grammatical, style, obsolete reference, and numbering changes to integrate new rules; reorder and renumber rules as appropriate; and reflect current procedures.

### **Television Camera Location**

The committee discussed the distractions caused by news media representatives operating television cameras during floor sessions. Distractions include obstructing members from seeing the Speaker or Chief Clerk, laying and taping cables, and removing cables that had been taped to the floor. Although the committee considered a rule to restrict the privilege of using television cameras on the floor during floor sessions, committee members suggested that representatives of the broadcast media meet with legislative leaders during the organizational session and discuss rules of decorum that could avoid unnecessary distractions.

### **Legislative Ethics Policy**

The committee recommends creation of Joint Rules 1001 through 1005 to establish a legislative ethics policy. Detailed discussion of these rules is in the portion of this report entitled **LEGISLATIVE ETHICS COMMITTEE - STUDIES.**

### **Other Rules Proposals Considered**

The committee reviewed several other proposed rules amendments. These included (1) amendment of Senate and House Rules 301, 335, and 601 and Joint Rule 207 to transpose the 10th and 11th orders of business so that consideration of the consent calendar would follow second reading of bills and resolutions in the house of origin, as is current practice (if adopted, long-standing reference to the 11th order would be obsolete); (2) amendment of Senate and House Rules 320 to allow one member to request a recorded roll call

vote without being supported by one-sixth of the members present (if adopted, a recalcitrant member could slow down the entire process); (3) amendment of Senate and House Rules 329 to revise the \$5,000 threshold in an appropriation clause which triggers automatic referral of the bill to the Appropriations Committees (if increased, strict compliance with the requirement could restrict current practices of the leaders in not referring some bills); (4) amendment of Senate and House Rules 350 and 601(3) to require a motion to act immediately on a measure placed on the calendar by motion (if adopted, two motions would be required to accomplish what one motion accomplishes under Senate practice, which is to give immediate consideration to a measure placed on the calendar by motion); (5) repeal of Senate and House Rules 408 to eliminate the requirement for a statement of intent on a proposed constitutional amendment (intent declared by the Legislative Assembly is more descriptive than intent declared by a third party); and (6) creation of Joint Rule 805 to restrict a representative of the media from operating a camera in front of the railing during a floor session (disruptive activities could be reduced by meeting with media representatives and discussing rules of decorum).

The committee also received information on final disposition of measures laid on the table; vote requirements for divided questions; the procedure for considering divided committee reports and the relationship between Senate and House Rules 601(4) and 602(2); contents of the Legislative Rules Book; House rules of decorum; and voting with a dark board.

## **LEGISLATIVE ETHICS COMMITTEE - STUDIES**

### **Background**

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. For the 1995-96 interim, the Legislative Council appointed the Legislative Management Committee as the Legislative Ethics Committee and assigned the committee the study of access to telecommunications records directed by Senate Bill No. 2304 (1995).

### **North Dakota Laws Affecting Legislative Ethics**

Article IV of the Constitution of North Dakota contains several provisions that govern activities of legislators. Legislators cannot hold full-time appointive state office established by law, nor can legislators be appointed to certain offices. Legislators cannot offer to trade or trade votes on legislative measures. A legislator expelled for corruption is not eligible to return to the Legislative Assembly, and each house may punish its members for contempt or disorderly behavior in its presence.

Numerous provisions of the North Dakota Century Code govern general activities of individuals and public officials. Sections in the

criminal code govern bribery and unlawful influence of public servants, confidential information and conflict of interest, interference with elections, and theft. With respect to election law, the conduct of legislators is affected by laws governing campaign contributions, campaign contribution statements, statements of interest, and corrupt election practices. In addition, other statutory provisions restrict use of state motor vehicles for private use or while engaged in political activities, prohibit expense reimbursement for time spent engaging in political activities, prohibit public employees from engaging in political activities while on duty or in uniform, restrict interest in public contracts, prohibit use of the Great Seal of the state for any political purpose, regulate legislative lobbying activities, and prohibit certain false statements in regard to any state agency.

### **Legislative Rules Affecting Legislative Ethics**

House and Senate Rules 321 provide that a member who has a personal or private interest in any measure must disclose that fact to the house and may not vote on that measure without the consent of the house. The rules define "personal or private interest" as an interest that affects the member directly, individually, uniquely, and substantially. A member who asks to be excused, or declines to vote, must state the member's reasons. Upon motion the question is put as to whether the member may vote and the question is decided without debate.

### **Access to Telecommunications Records**

The committee reviewed Article XI, Section 6, of the Constitution of North Dakota and NDCC Section 44-04-18, which require records of entities supported by or expending public funds to be open and accessible for inspection unless otherwise provided by law, and NDCC Section 44-04-18.6, which restricts access to certain legislative records. Of interest for purposes of the study of access to telecommunications records was the exemption to the open records requirements which is provided in Section 44-04-18.6 for "a record of telephone usage which identifies the parties or lists the telephone numbers of the parties involved." This exception does not apply to a governmental entity determining the proper use of telephone service.

The committee reviewed policies adopted by the Office of Management and Budget and the Information Services Division regarding telephone use and an opinion of the Attorney General which noted that telephone records of a state official (in this case the Commissioner of Labor) were not subject to any special exception to the open records requirements.

The committee also reviewed the type of information maintained with respect to calls to or from telephones in the Capitol.

### **Committee Discussion**

The committee reviewed laws and legislative rules affecting the conduct of members of the Legislative Assembly. The committee also

reviewed Maine's statutes that govern legislative ethics of the Maine Legislature.

The committee considered a policy statement on legislative ethics, based on the statement of purpose of the Maine law, as a means to set parameters on conduct that is not criminal. The debate on developing a code of ethics centered on the extent ethical standards and guidelines should be codified. Discussion ranged from support for a statement that sets out a behavioral standard, i.e., members must scrupulously avoid acts that may create an appearance of misconduct, to support for a set of specific standards, e.g., members may not attempt to use influence in any matter involving a substantial conflict between the member's personal interest and duties in the public interest. Although some members urged a code specifying prohibited conduct, other members expressed concern that conduct not specifically described as inappropriate would be considered appropriate, even if that conduct is not ethical.

The committee discussed whether any policy statement or code of ethics should be in statutory form, with a criminal penalty or other sanction. The committee determined that any ethical standard should be in legislative rule form so the Legislative Assembly could preserve the integrity of the legislative process under its constitutional authority to judge the qualifications of its members and to punish its members for contempt or disorderly behavior.

The committee also discussed the need for legislators to be informed of the laws governing the conduct of public officials.

### **Recommendation**

The committee recommends proposed Joint Rules 1001 through 1004. The proposed rules declare a legislative ethics policy, urge members to maintain ethical standards and recognize the importance of standards contained in the rules, urge members to apprise themselves of constitutional provisions and statutes that prohibit conduct for which criminal penalties may apply, and require the Legislative Council to conduct classes on legislative ethics and laws governing the activities and conduct of public officials. The Legislative Council is to conduct the classes during the organizational session and at other times as deemed appropriate.

## **TECHNOLOGY APPLICATIONS COMMITTEE - RECOMMENDATIONS**

### **Background**

During the 1987-88 interim, the Legislative Management Committee authorized four legislators in each house to use computer terminals in place of bill racks. The legislative applications available to those legislators were designated the Legislator's Automated Work Station (LAWS) system. This system allowed access to the text of bills and resolutions, bill status information, committee hearing schedules, daily calendars, and telephone messages. The LAWS system has been

enhanced and expanded over the years. During the 1993 session, 50 legislators had computer terminals.

During the 1993-94 interim, the Legislative Management Committee received information concerning conversion of the LAWS system to a personal computer-based system. The current host computer-based system uses terminals connected to the state's mainframe central processing unit. The system takes advantage of data bases prepared with mainframe applications and provides information to legislators with respect to legislative activity. Use of personal computers would allow legislators to view complex tables contained in statements of purpose of amendments, increase the number of versions of a measure available for viewing, increase printer capabilities, improve spreadsheet and word processing capabilities, and substantially increase legislators' access to information outside the Senate and House chambers.

In 1994 the Legislative Management Committee determined that the LAWS system should be continued for the 1995 session at the 1993 level--17 terminals on the Senate floor and 33 terminals on the House floor. This decision was made so that the resources thus saved would be available to defray costs of converting to personal computers after the 1995 session. That committee approved a LAWS personal computer pilot project in which four members of the Legislative Management Committee (one from each caucus) received IBM ThinkPad computers to assess the feasibility of making notebook computers available to legislators and of converting the LAWS system to a personal computer-based system.

During the 1995 session, the legislative leadership reviewed three proposals for converting to a personal computer-based environment. Two nationally recognized consultants proposed installation of a new system at a cost ranging from \$2.3 million to \$3.7 million. Rather than a new system, IBM proposed using the existing mainframe systems, but installing a graphical user interface (GUI), a wireless network for legislators to use notebook computers anywhere within the legislative wing, and installing a cable network for use by personnel placing information on the systems, and providing notebook-style personal computers to legislators. Under phase 2 of the IBM proposal, the bill drafting system and the Administrative Code publishing system would be converted from a mainframe to a personal computer-based application. The estimated cost of the IBM proposal ranged from \$1.2 million to \$1.5 million.

The Legislative Assembly made available \$550,644 to begin converting the legislative branch computer system to a personal computer-based system. The bill appropriating the funds established the Technology Applications Committee and gave it the responsibility to make recommendations on expenditures for and installation of computers for the Legislative Assembly.

## IBM Proposal

The committee reviewed the proposal IBM presented during the session because that proposal appeared to be the most feasible due to limited funds available for the conversion.

### Graphical User Interface

A graphical user interface would allow use of the mainframe systems through features available on personal computers. Thus, the bill status system and the LAWS system would remain as mainframe systems, but would appear as if they were personal computer applications. Basically, the "screens" available under the LAWS system would be converted from a function key environment to a pulldown menu and radio button environment. The committee reviewed initial screens developed under VisualLift software, which is a program that runs on the personal computer rather than the mainframe, and authorized implementation of the graphical user interface for the LAWS system.

Personal computers, necessary to obtain the features of graphical user interface software, allow additional features to be provided to enhance the LAWS system. The committee viewed a demonstration of DCF Viewer software that was on a personal computer loaded with an OS/2 Warp operating system. The software would allow display of full text of statements of purpose of amendments and the use of proportional spacing in bills, journals, and other legislative documents. This software also would reduce the number of times a bill is processed to enable its display in the LAWS system. After comparing printed examples of revised format to the current format, the committee approved the revised format of printed bills, resolutions, amendments, and journals.

### Wireless/Wired Local Area Network

A wireless local area network for legislators to use in connecting their personal computers to a server in the legislative wing was proposed as a means to provide mobility between the chambers and legislative committee rooms. The proposed wireless network would have used radio frequencies rather than infrared frequencies. Any access to a receiver or transmitter from beyond 800 feet would have required modems, which are included in the ThinkPads (the computers acquired for legislators).

A wireless local area network is used primarily for two reasons--to avoid problems encountered in wiring difficult buildings and to provide mobility to notebook users. The feasibility of a wireless network is greater if there is only messaging between the computer and the server. A wired network is more feasible if the computer user is making inquiries and receiving responses, if the information transmitted includes graphics or imaging, or if voice information is transmitted with electronic mail (e-mail). Information presented to the committee indicated that response time would be more than four times slower with a wireless network, with the actual length of delay depending upon the type of information transmitted.

Estimates indicated the cost of a wireless network would range from \$81,900 to \$182,000, not including the cost of providing personal computer cards to connect legislators' computers to the network (\$59,625 for 75 legislators' computers). Estimates indicated the cost of a wired network would range from \$60,802 to \$90,186, not including the cost of providing personal computer cards to connect the computers to the network (ranging from \$15,582 to \$34,026 for 106 computers in 1997).

Committee members discussed the feasibility of legislators using their computers during committee hearings. Concern was expressed over the distracting effect of members keying on computers rather than paying attention to individuals who were testifying before the committee.

The committee approved the installation of a wired local area network in the legislative chambers and other appropriate areas in the legislative wing. Ethernet was selected as the physical medium because Ethernet had improved substantially since July 1995, the installation cost was less than Token Ring, and the Information Services Division was currently supporting installation of Ethernet.

### Notebook Computers for Legislators

The savings from not expanding the use of LAWS terminals during the 1995 session, reducing the number of legislative session employees, and adjourning the 1995 Legislative Assembly ahead of schedule resulted in funds being available to support conversion to a personal computer-based system. As was described earlier in this report, all three proposals for conversion to personal computers included notebook-style computers for legislators. At the direction of the majority leaders, and with the affirmation of the Legislative Management Committee, 60 IBM ThinkPad 755CD notebook-style personal computers were acquired by July 1, 1995, at a cost of \$414,792.40. ThinkPads were chosen for legislators due to their features, their capability to meet present and future needs of legislators, past experience with the reliability of IBM hardware, and the ability to obtain local support and maintenance on short notice (due to the special needs of legislators during a session). ThinkPads with built-in CD-ROM drives were acquired to provide legislators with access to the North Dakota Century Code and the North Dakota Administrative Code under arrangement with The Michie Company, the publisher of the North Dakota Century Code.

During the study, the committee determined that an additional 15 ThinkPads could be acquired through a lease arrangement. The resulting total of 75 computers allows distribution to slightly over 50 percent of the legislators. This number was viewed as the upper limit for which support and assistance could be given during this biennium.

### Support Requirements

The IBM proposal emphasized that conversion to a personal computer-based environment would

change the type of support provided to legislators and legislative staff. Under a mainframe system, desktop support--design, acquisition, preparation, training, maintenance, backup, coordination, administration, and help desk--functions are primarily provided by the Information Services Division. Under a personal computer-based system, the processing unit (server) is usually housed in the agency and the agency is responsible for desktop support for the server, the network, and the personal computers. The estimate for desktop support that included training for legislators, help on legislator inquiries, and installation of new applications was \$200,000 to \$250,000 per biennium.

### **Information Technologies, Inc., Report**

The Legislative Council contracted with Information Technologies, Inc., a North Dakota-based computer consulting company, to review the computer applications of the Legislative Assembly and submit its report to the Legislative Management Committee.

### **Operating Systems**

The report described personal computer-based operating systems--Windows 3.1 with MS-DOS, Windows 95, Windows NT, OS/2 Warp, and Linux. The report concluded Windows 3.1 is a limited system and is being replaced by Windows 95; Windows 95 is the most prevalent system; Windows NT is the most technically advanced system and provides a high level of security; OS/2 Warp is a solid multitasking operating system; and Linux is a "free" system that requires substantial training. The committee selected Windows 95 as the operating system of personal computers used by legislators.

Client/server computing is a form of distributed processing where the frontend (the client) requests services of a backend (the server). Typically, the client is a desktop system, e.g., personal computers, and the server may range from a local data base server to a large mainframe. The report described client/server environments, including Token Ring and Ethernet as the physical medium and OS/2 LAN Server or Novell as the network operating systems. The report concluded the physical medium should be determined based on support provided by the Information Services Division and either operating system has been successfully installed in other state agencies.

As described earlier, Ethernet was selected as the physical medium of the local area network installed in the legislative wing. The network operating system installed on the server of the Legislative Council office is OS/2 LAN Server Advanced Version 4.0.

### **Support Requirements**

The report described support requirements of a personal computer-mainframe-client/server environment. Essential personnel include a data center manager, who is responsible for coordinating the direction of technological development; a business analyst, who is

responsible for coordinating development projects and software/hardware upgrades; a network analyst, who is responsible for ensuring the interconnection of the hardware resources; a data base administrator, who is responsible for installing and managing the data base management systems; a system administrator, who provides daily operational support, planning, maintenance, and control of shared computer systems; a mainframe support analyst, who is responsible for ensuring the ongoing support and operation of mainframe systems; an application development analyst, who is responsible for analyzing, designing, developing, testing, and documenting of automated functions operating in the new technical environment; and a desktop support analyst, who is responsible for supporting "shrink-wrap" applications, e.g., Lotus and Netscape Navigator. Testimony indicated that a typical ratio for support is one support position per 25 to 50 users, depending on the complexity of the software being used. Testimony also indicated that, at a minimum, a desktop analyst and network analyst are necessary to provide support for 60 legislators. Planning for the 1997 Legislative Assembly indicates there will be 97 personal computer users in the Legislative Assembly (including legislative session employees but not including Legislative Council staff).

### **Lotus SmartSuite and Netscape Navigator Software**

Much of the flexibility of using personal computers results from the software that can be installed on the computer, e.g., word processing for secretarial functions and spreadsheet for accounting functions. WordPerfect 6.1 was installed on the personal computers acquired for use by the secretarial service during the 1995 legislative session. This software was selected because of its preeminence in the "law office" environment. Lotus 1-2-3 has been used by the Legislative Council fiscal staff since the mid-1980s.

The initial configuration of the ThinkPads acquired for use by LAWS personal computer pilot project participants, by legislators, and by the Legislative Council staff provided for OS/2 Warp as the operating system, which included IBM Works as the word processing, personal scheduler, spreadsheet, and Internet access and browser software. Initial plans included installation of IBM WorkGroup software, which was released in May 1995. This software would have provided a conferencing function that allowed desktop collaboration by up to eight users; a fax function that let users send or receive faxes through their computers; scheduling functions that allowed group scheduling; e-mail that allowed distribution of any document in its original format; and document management that allowed storage and retrieval of spreadsheets, images, audio, video, and other types of documents. The plans also included adding WordPerfect 6.1 as a more comprehensive word processing software on computers used by personnel primarily responsible for preparing documents.

The selection of Windows 95 as the operating system of personal computers used by legislators necessitated a review of other software requirements. IBM Works and IBM WorkGroup were primarily OS/2 Warp operating system applications.

Lotus SmartSuite 96 and Netscape Navigator were selected for installation on the personal computers. Lotus SmartSuite 96 is a package of software applications--Lotus 1-2-3 is a spreadsheet application; Word Pro is a team-oriented word processing application; Approach is a data base management application; Freelance Graphics is a presentation development application; and Lotus Organizer is a personal and group scheduling application. Netscape Navigator is an Internet browser that lets the user access and use information on the Internet.

### **Legislative Branch World Wide Web Site**

The Internet is a worldwide network of computer networks that exchange information. Various services are available through the Internet, e.g., e-mail, on-line conversation, information retrieval, and bulletin boards. Many state legislatures provide information on their members, committees, and legislative proposals through the World Wide Web, which is a graphical interface to the Internet. Some states provide information through gopher connections, which provide only text, not graphics. The committee received information on Internet access provided through the North Dakota Information Network by the Information Services Division. Because the fee for accessing the North Dakota Information Network includes the cost for obtaining access to the Internet, there is no direct access or usage fee for Internet access through this network.

The committee reviewed various World Wide Web sites and the information available on those sites, e.g., information can be obtained on proposals under consideration by Congress or by other state legislatures.

The committee authorized development of a North Dakota Legislative Branch World Wide Web site, containing generally available information. As initially developed, the home page contains biographies and photographs of legislators, standing committee membership, Legislative Council studies, interim committee membership, notices of Legislative Council committee meetings, 1997 legislative deadlines, and information on how to contact a legislator, how a bill becomes a law, and how to testify before a legislative committee. As described later in this report, the committee also decided to make bill status information available through this site. The address of the home page is <http://www.state.nd.us/lr/> and can be readily accessed under the legislative branch section of the North Dakota state government home page.

### **Policy on Use of Personal Computers**

The committee discussed whether use of personal computers by legislators should be in

accordance with a written policy addressing legal and ethical issues.

The committee discussed whether any policy should describe state laws relating to use of state property for political purposes and political activities by public employees while on duty. Legislators are in a unique position with respect to political activities because legislative activities are by their nature political, e.g., voting on measures, consulting with other legislators regarding legislation, and caucus activities regarding the making of legislative policy. The committee determined that a description of applicable statutes would notify legislators of statutory restrictions on use of personal computers.

The committee discussed the extent any policy governing use of personal computers should govern privately owned personal computers and state-owned personal computers. Of special concern was the impact privately owned personal computers could have on the ability of legislative staff to provide support services to all users. The committee considered various methods of reducing any negative impact, e.g., requiring payment for acquiring access and obtaining training on use of legislative information systems, limiting the number of legislators allowed to use privately owned personal computers, and requiring any privately owned personal computer to be loaded with identical software conforming to software loaded on state-owned personal computers. The committee determined that a legislator using a privately owned personal computer to access legislative information systems is to pay a fee for training, installation service, and other support services necessary to access those systems, is responsible for acquiring any hardware and software required to access legislative information systems available to legislators, and may not use a privately owned personal computer in the chambers.

With respect to state-owned personal computers, the committee discussed the extent use should be limited to a legislator, whether that legislator could authorize a spouse, employee, or legislative employee to use the computer, and whether a legislator could authorize any entity to use the computer for any purpose, e.g., loan that computer to a state agency for that agency's use. The committee determined that an authorized user of a state-owned personal computer is a legislator who has been assigned a personal computer, any person authorized by that member to use that computer for legislative purposes for that member, and any other person specifically authorized by name by the Legislative Council.

Substantial discussion concerned authorized uses and the need for enhancing a legislator's ability to make policymaking decisions. Topics included whether a legislator should be able to do anything with the computer to make that legislator more proficient in computer use, whether a computer should be used only for direct legislative purposes, whether a legislator should be able to respond to constituents, and whether computers

should be used to manage time and resources in an efficient manner. The committee determined that use of the personal computer and installed software is not restricted so long as that use promotes computer use skills and does not interfere or inhibit legislative functions as approved by the Legislative Council. The committee also discussed methods of increasing a legislator's access to information. The committee determined that Internet access should be provided to legislators, but a legislator pay for access of more than 60 hours per month.

The committee discussed training courses and determined that an authorized user must complete training courses provided by the Legislative Council staff with respect to legislative information systems or other applications of installed software. Completion of the training courses is required to receive a personal computer and to receive technical assistance or software support from the Legislative Council staff.

The committee discussed the need for any policy to address ownership of and access to information, especially the application of public records statutes and the potential of e-mail to become public. The committee determined that the policy should refer to the effect of public records requirements on information entered on a personal computer and the potential for "private" e-mail messages to be public.

The committee determined that the Legislative Assembly or the Legislative Council is responsible for providing reasonable maintenance and support of personal computers provided by the Legislative Assembly or the Legislative Council and software provided by the Legislative Council. Upon payment of a fee, a legislator may request the Legislative Council to provide support for other hardware or software.

The committee discussed whether a user should be permitted to install any type of software on a personal computer, the expectation a user may have for Legislative Council support of software installed by that user, and the potential for adverse effects on software installed by the Legislative Council. The committee determined that a user may not install software on assigned hardware unless a copy of the license agreement for that software is filed with the Legislative Council, replace hardware without approval of the Legislative Council staff, provide to any other person any hardware or software assigned to that user, or provide any access to legislative information systems.

The committee determined that an authorized user is to notify the Legislative Council staff as soon as possible after any damage to or loss of the assigned personal computer or associated hardware. The user is responsible for damage or loss, other than damage or loss resulting from complying with policies or practices of the Legislative Assembly.

The committee discussed return of hardware and software and whether a personal computer should be made available for purchase by a

legislator upon resignation or retirement. The committee reviewed the effect such an option would have on the cost of providing a replacement computer to another legislator. The committee determined that hardware and associated equipment, along with software installed by the Legislative Council staff, must be returned to the Legislative Council upon the authorized user's death or resignation or retirement from the Legislative Assembly, and upon recall of the hardware or software for replacement or trade-in, upgrade of software, or for reassignment to another legislator. Before return of the hardware, the authorized user is to delete any unauthorized software, delete files personal to that user, and place the software in a condition as nearly as practicable to that received from the Legislative Council.

The committee approved a policy on use of personal computers by legislators as described in this portion. Each legislator is required to sign an acceptance of the policy and an acknowledgment of receipt of hardware and software before receiving a personal computer.

## **LEGISLATIVE INFORMATION SERVICES**

### **On-Line Bill Status System Access**

The bill status system began in 1969 as a Legislative Council computerized in-house report that provided day-old information concerning the progress of bills and resolutions through the legislative process. The system has grown to an on-line system providing up-to-the-minute information on the status of bills and resolutions for use by legislative personnel and outside users. Although most outside users are state agencies, a number of other types of entities have gained access through arrangements with the Legislative Council and the Information Services Division. In 1995, 75 entities other than state agencies were authorized access. Those users paid a \$250 subscription fee and monthly access fees and per second computer usage charges. The committee received information on the effect current procedures for direct or phone-in access, with a subscription fee, has had on personnel of the Legislative Council and the Information Services Division. A substantial amount of time is spent answering user support questions such as how to subscribe and how to configure hardware and software to obtain access. A survey of state agencies and private subscribers indicated that 87 percent of the state agencies and 80 percent of the private subscribers had access to the Internet.

The committee approved a policy of making access to the on-line bill status system during the 1997 session through the Internet, rather than through direct or phone-in access. The committee reviewed various options for recovering costs incurred in providing access to the on-line system and approved a subscription fee of \$400 for access to the bill status system through the Internet. Of that fee, \$250 would be allocated toward the

subscription and \$150 would be allocated toward the cost of mainframe access provided by the Information Services Division. State agencies paying monthly access fees and per second computer usage charges to the Information Services Division would be allowed access without paying the \$400 fee, as would any government entity having Internet access through the Information Services Division.

#### **Bill Status Report Subscription Fee**

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. In 1991 the number of printed reports distributed without charge was substantially reduced (state agencies no longer received a printed bill status report from the bill and journal room) and a subscription fee was first established. Twelve entities paid a \$130 subscription fee in 1991; 38 paid a \$150 subscription fee in 1993; and 46 paid a \$150 subscription fee in 1995 (six paid an additional \$110 to receive the 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 1997 bill status report and pay a \$220 subscription fee, \$330 if mailed (a state agency can print its own report through arrangements with the Information Services Division).

#### **Legislative Document Library Distribution Program**

Starting with the 1983 session, the Legislative Assembly has provided bills, resolutions, journals, and bill status reports to academic, special, and public libraries throughout the state. The program consists of sending on a weekly basis, through United Parcel Service, copies of introduced bills and resolutions, daily journals, and bill status reports. The documents were sent to 30 libraries in 1983; 46 in 1985; 45 in 1987; 51 in 1989; 21 in 1991; 20 in 1993; and 19 in 1995.

During the 1989-90 interim, the Legislative Management Committee reviewed the cost of providing this service and determined that participating libraries should pay the approximate cost of printing their bill status reports and the Legislative Assembly should continue to absorb the cost of the other documents plus the cost of shipping the materials. The subscription fee was \$130 in 1991; and \$150, with a \$25 late fee, in 1993 and 1995.

The committee discussed the effect making the bill status system, which includes bill text, available on the Internet. The committee surveyed the libraries that participated in the 1995 program to determine if the libraries would be interested in continuing the program due to the fact that the bill status system would be available on the Internet during the 1997 session. The survey results indicated that a majority of the libraries would continue to subscribe to the document distribution

program. The committee approved continuation of the program for the 1997 Legislative Assembly, with a subscription fee of \$220, and a \$25 late fee if the subscription is after the deadline for subscribing.

#### **Photocopied Bill and Resolution Subscription Fee**

Under Senate and House Rules 404, any statewide organization or association paying a subscription fee established by the committee may receive a copy of each introduced bill or resolution. The committee established a fee of \$650 for the 1997 session.

#### **Bill, Resolution, and Journal Subscription Fees**

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee adopted the policy that the bill and journal room should mail a small number of bills and resolutions at no charge to a requester. If the request is for a large number or for all of the bills and resolutions introduced, the requester should pay the postage. 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 the cost of mailing these documents. State agencies and institutions were not charged the fees, nor were representatives of the media as determined under Joint Rule 802.

The committee established the following fees with respect to receiving a copy of every bill and resolution introduced and printed or reprinted and a copy of the daily journal of each house during the 1997 session: \$135 for a set of bills and resolutions, \$245 if mailed; and \$65 for a set of daily journals of the Senate and House, \$175 if mailed. The fee for the journals includes final covers after the session adjourns. Anyone can still receive a limited number of bills and resolutions without charge.

The committee established a subscription fee of \$30 to receive the index to the Senate and House journals for the 1997 session.

#### **Committee Hearing Schedule and Daily Calendar Subscription Fees**

The committee decided to continue 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 the mailing of daily calendars or committee hearing schedules, the policy followed during the 1993 and 1995 sessions should continue and a fee should be imposed to cover the cost of mailing. The committee established a subscription fee of \$55 for mailing a set of daily calendars of the Senate and House and a subscription fee of \$30 for mailing a set of the weekly hearing schedules for Senate and House committees.

#### **Use of Fees for Legislative Services**

During its review of fees for providing copies of

legislative documents, the committee discovered that fees established under authority of NDCC Section 54-35-02 must be deposited in the general fund of the state treasury rather than be used by the Legislative Council. Committee members expressed support for continued improvements to and enhancements of legislative information systems and services provided by the Legislative Council. Fees for providing these services and for providing legislative documents were viewed as a means to allow additional enhancements, which would improve services available to legislators and ultimately the services available to the public.

The committee recommends that the Legislative Council be statutorily authorized to use the fees received for providing access to legislative information services and copies of legislative documents for improving and enhancing legislative information services and the preparation of legislative documents, without the need for specific appropriation.

## **CONTRACTS FOR PRINTING LEGISLATIVE DOCUMENTS**

### **Background**

Under NDCC Section 46-02-04, the Legislative Council is authorized to determine the contents of contracts for printing legislative bills, resolutions, and journals. The State Purchasing Division prepares the requests for bids for the printing of these items in October of the year preceding the legislative session.

### **Bills and Resolutions Contract**

Under the recommended amendment of Joint Rule 603, 500 copies of each bill and 400 copies of each resolution must be printed and additional copies may be ordered by the chief bill and journal room clerk. In addition, 100 copies of each bill and resolution engrossed before second reading and final passage must be printed on request. These changes were made to the contract for printing bills and resolutions.

When the committee reviewed the proposed contract for printing bills and resolutions, it was suggested that corner stapling rather than saddle stitching would reduce the cost of printing bills and resolutions. This was inserted as an option in the request for bids.

Also, the timeframe for the printer to deliver printed bills and resolutions was reduced from 36 hours for measures of 16 pages or fewer and 60 hours for measures over 16 pages to 24 hours and 48 hours, respectively. In addition, representatives of local printing companies suggested that the amount of the contract bond could be reduced to 50 percent of the previous contract amount. Upon failure of the successful bidder to complete the contract, this bond would be used to offset the costs incurred in obtaining a second printer to perform the contract. It was pointed out that any "premium" required to obtain that second printer would be minimal due to the competition for the contract, and the lowered bond amount would

translate to lower bids because of the lesser costs to the printers. The contract bond was reduced to 50 percent of the previous contract amount.

### **Daily Journals Contract**

Since the 1985-86 interim, the Legislative Management Committee (previously called the Legislative Procedure and Arrangements Committee) has reviewed the number of daily journals printed in accordance with the contract, the number of undistributed journals, and suggestions from legislative employees concerning the number of journals necessary for distribution. In 1987, the contract for the daily journals of each house provided for 2,000 journals of each house, rather than 2,300 House journals and 2,200 Senate journals. During the 1987 session, however, the number was reduced to 1,800, and this number was continued for the 1989 and 1991 sessions. In 1993, the number was reduced to 1,200; and in 1995 the number was reduced to 900. As in the past, the contract allows the total number of daily journals to be varied during the session, depending on need. Just as in the 1995 contract, 280 sets of journal covers are included in the contract for distribution to legislators and subscribers. For the reasons described under the subheading **Bills and Resolutions Contract**, the contract bond was reduced to 50 percent of the previous contract amount.

### **Bill and Journal Room Services**

The committee consolidated the contract for printing bills and resolutions and the contract for printing daily journals for the purpose of entering one contract for printing these documents and operating the bill and journal room. Further discussion of this contract is described under **SESSION ARRANGEMENTS, Bill and Journal Room Services**.

## **SESSION ARRANGEMENTS**

### **Time for Election of Legislative Leaders**

As a result of comments by a number of legislators in response to the legislative process survey, committee members discussed the feasibility of moving the election of leadership by the caucuses from the organizational session in December to the Legislative Council meeting in November.

The committee reviewed the timeline from election of legislators at the general election on November 5, 1996, through the organizational session scheduled for December 3-5, 1996. The committee also received information on the expenses allowed legislators to attend the Legislative Council meeting in November, the authority of the Legislative Council to make arrangements for the convening and operation of the Legislative Assembly, and the estimates of the cost for inviting new members to the Legislative Council meeting. No statute or rule governs the selection of majority and minority leaders and their assistants, but Section 8 of Article IV of the

Constitution of North Dakota requires the Speaker of the House to be elected at the beginning of the organizational session.

A primary reason for early election of leaders is the difficulty a potential leader has in hiring people and making decisions necessary for arranging for the legislative session before that individual is elected as majority leader. Committee members discussed the effect on the Legislative Council meeting if caucuses met during, rather than before, the Legislative Council meeting; whether the Legislative Council meeting could be moved closer to the organizational session to allow more time for new members to become acquainted with potential leaders without adversely affecting preparations for the organizational session; and the effect earlier decisionmaking, whether it be election of leaders or committee assignments, would have on time available during the organizational session for other items, e.g., computer training.

The committee recommends that new members be reimbursed expenses for attending the final Legislative Council meeting in November. This will provide a means for caucuses to meet and to elect their leaders on the eve of the Legislative Council meeting in November. If there is a pending election recount or election contest, the caucus involved should determine the procedure for that "member" to vote.

### **LAWS System**

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee authorized a review of the use of bill racks during the 1987 session to determine the feasibility of replacing legislators' bill racks with personal computer terminals. The review indicated bill racks were used to place notes and record votes on bills, add personal notes, and place telephone messages with the bills.

During the 1987-88 interim, the Legislative Procedure and Arrangements Committee approved development of the LAWS system on a pilot project basis for the 1989 session. The system contained four basic components--bill status, committee hearings, daily calendars, and personal services (which included telephone messages received by the telephone attendants). Four legislators in each house were given access to the LAWS system during the 1989 session.

During the 1989-90 interim, the Legislative Management Committee approved enhancement of the LAWS system to allow display of the full text of a bill page on one screen; access to individual roll call votes from almost every screen; faster access to move about the system; display of the current text of measures being considered on the calendar through use of the voting system, with the legislator merely pressing a designated key; computer searches of the Century Code; use of e-mail to send messages to other legislators with work stations; word processing capability; spreadsheet capability; and storage of telephone messages in caller sequence. For the 1991 session,

the committee approved expansion of the system to 24 work stations--eight in the Senate and 16 in the House.

During the 1991-92 interim, the Legislative Management Committee determined that the LAWS system should be expanded on a controlled growth basis, with usage voluntary and participation assigned through the caucuses. The committee approved expansion of the system to 50 work stations--17 in the Senate and 33 in the House--as well as a terminal and printer in each of the majority and minority leaders' offices.

During the 1993-94 interim, the committee approved a LAWS personal computer pilot project under which one member from each caucus received a notebook-type personal computer for use during the 1995 session and the 1995-96 interim. Fifty other legislators used terminals to access the LAWS system, with 17 terminals on the Senate floor and 33 terminals on the House floor.

After the 1995 session, the Legislative Assembly acquired 60 notebook-type personal computers for use by legislators. During the interim, the committee approved acquiring an additional 15 notebook-type personal computers for use by legislators, thus expanding the LAWS system to 75 legislators during the 1997 session--25 in the Senate and 50 in the House. A description of the capabilities of the computers and changes to the LAWS system for the 1997 session is contained in the portion of this report entitled **Technology Applications Committee - Recommendations**.

### **Legislators' Supplies**

The committee reviewed the policies regarding legislators' stationery. The committee also reviewed a proposal for providing preprinted postcards rather than stationery and envelopes, if requested by a legislator.

The committee approved use of 24-pound laser print paper for stationery due to its design for laser printers, copiers, and plain paper fax machines.

The committee approved the policy that Monarch stationery (with envelopes) be provided to each leader, assistant leader, and the Speaker of the House. The committee also approved the policy that the leaders receive as much regular stationery (and envelopes) as needed, and that other legislators are entitled to one ream of stationery (and envelopes) and can receive a second ream (and envelopes) on request.

The committee approved continuation of the policy of providing letter files to legislators.

### **Legislative Expense Reimbursement Policy**

Section 26 of Article XI of the Constitution of North Dakota provides that payment for necessary expenses of legislators may not exceed that allowed for other state employees. The 1985 Legislative Assembly authorized legislators to receive up to \$600 per month as reimbursement for lodging. During the 1985 session, reimbursement for expenses was made pursuant to policies established by the Office of Management and

Budget with respect to state employees who rent apartments while away from their usual work locations for extended periods of time. During the 1985-86 interim, the Legislative Procedure and Arrangements Committee adopted a policy that allowed these items as reimbursable lodging expenses during a legislative session: electricity and heat, water (including garbage collection and sewer charges), basic telephone service, and telephone installation charges; rental of furniture and appliances and transit charges for moving rental furniture and appliances; and repairs to structure, plumbing or electrical repairs, and repairs to furniture and appliances damaged during a legislator's tenancy. This policy was followed during the 1985-91 sessions. During the 1991-92 interim, the Legislative Management Committee decided that repairs for damage occurring during the legislator's tenancy should not be reimbursed, but otherwise the previous policy was followed during the 1993 and 1995 sessions. The committee recommends the policy followed during the 1995 session as the policy to be applied for determining reimbursable lodging expenses during the 1997 session.

### **Legislators' Photographs**

The committee approved the request for proposals for a photography contract. With respect to the House, the proposal provided for color proofs of 103 individuals; retouch of final prints; one composite color picture 44" by 56", proofed, framed, and ready to hang; and 103 copies of the composite picture 11" by 14" in size. With respect to the Senate, the proposal provided for color proofs of 55 individuals; retouch of final prints; one composite color picture 31" by 39", proofed, framed, and ready to hang; and 55 copies of the composite picture 11" by 14" in size. An added option was frames for the small composite, available for purchase by individual legislators. The photographs are to be taken during the organizational session in 1996 and the proofs delivered to legislators on January 6, 1997. The committee awarded the contract to Anderson Photography, Crosby.

### **Journal Distribution Policy**

The committee discussed the potential conflict between providing a subscription service to daily journals and providing free sets of journals for distribution at the request of legislators. The committee recommends continuation of the policy initiated in 1995 that the desk force inform legislators that a legislator may have daily journals sent to as many as three persons, but any additional journals may be sent for that legislator only upon the approval of that legislator's floor leader.

### **Television Coverage**

During the 1989 session, Bismarck-Mandan Cable TV engineered and delivered a live and tape-delayed evening presentation of the North Dakota Senate. A camera was positioned on alternating sides of the gallery, and viewers were

given the opportunity to observe the legislative process. During the 1991 and 1993 sessions, Bismarck-Mandan Cable TV, through Community Access Television, a nonprofit corporation responsible for programming the public access channel of Bismarck-Mandan Cable TV, provided television coverage of the Senate and House of Representatives on alternating weeks. During the 1995 session, Meredith Cable (formerly Bismarck-Mandan Cable TV) and Community Access Television provided similar coverage, and also distributed nine copies of tapes of the floor sessions to the nine largest cities in the state for rebroadcast by local cable companies on the next day.

The committee authorized Dakota Cable Communications (formerly Meredith Cable) and Community Access Television to continue to provide coverage of the 1997 Legislative Assembly under an arrangement similar to that provided during the 1995 session.

### **Incoming WATS Lines**

The committee reviewed information on usage of the six incoming WATS lines provided during the 1995 session for residents in the state to contact legislators or obtain information concerning legislative proposals. The information indicated six lines are adequate for handling the volume of calls received by the telephone attendants (during the 1995 session 41,668 calls were received, and during the 1993 session 62,320 calls were received). The committee recommends no change in the incoming WATS line service. The WATS number will be 1-800-ND-LEGIS (1-800-635-3447).

### **Legislators' Telephones**

The committee reviewed the fact that in the Senate 34 desks have telephones and 20 do not and in the House 67 desks have telephones and 41 do not. The committee authorized the installation of a telephone at each legislator's desk in the chambers.

### **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 session employment.

### **Session Employee Orientation and Training**

The committee reviewed the orientation and training provided to session employees immediately before the convening of the 1995 Legislative Assembly. That training had been expanded substantially from that provided before other sessions. Committee members expressed support for continuing to expand the training, especially for the employees using personal computers, to further enhance the ability of the Legislative Assembly to start the legislative process as early as possible.

The committee authorized the Legislative Council staff to conduct training sessions for

various session employees.

The committee recommends that the Employment Committees hire session employees to begin work at various times before the convening of the Legislative Assembly, depending on the nature of an employee's duties and the training recommended by the employee. The recommended starting dates range from December 9 to January 3, depending on the position.

### **Bill and Journal Room Services**

The committee reviewed the effect computerization has had on session employee positions and responsibilities. The committee focused its attention on the bill and journal room due to its function in distributing printed materials (in relation to making information available through computers) and the practice in recent sessions of reassigning some employees from the bill and journal room to other areas of need. The committee considered whether the number of employees in the bill and journal room could be reduced after the deadlines for introducing bills have passed; whether authority should be given to transfer Legislative Assembly employees from one work area or responsibility to another, as needed; and whether the contractor that prints bills or journals could operate the bill and journal room as part of its contract.

The committee approved a proposed invitation to bid to provide bill and journal room services as part of the contract to print bills, resolutions, and journals. The proposal was for the contractor to provide a basic level of service as specified in the contract.

The basic level of service under the proposal was for at least one person to organize and operate the bill and journal room Monday through Friday from December 9 through January 3, 1997, excluding Christmas Day and New Year's Day; for the bill and journal room to be open between 7:30 a.m. and 5:30 p.m. on days either house is in session; for at least one person to be in the bill and journal room anytime either house is in session after 5:30 p.m.; and for distribution of documents as soon as possible, according to a schedule in the contract. The proposal also required the contractor to provide photocopy and facsimile (fax) services to third parties, upon payment of a fee set by the contractor and retained by the contractor.

The concept that the printer of bills, resolutions, and journals could operate the bill and journal room at a level to reduce printing costs depended on the same person printing bills, resolutions, and journals. Under usual procedure, one contract was let for printing bills and resolutions and another contract was let for printing journals. The committee determined that one contract should be let for printing these documents and the number of documents printed above the basic level required by Joint Rule 603 should be left to the printer, depending on need to fulfill requests for copies.

The committee accepted the bid by Quality Printing, Bismarck, for printing bills, resolutions, and journals, and operating the bill and journal

room during the 1997 session.

### **Session Employee Numbers and Compensation**

The committee reviewed the number of employee positions during the 1993 and 1995 sessions, the impact computerization has had on both houses, and possible impact resulting from the creation of a generic "legislative assistant" position to allow easy transfer of an employee from one job function to another as necessary.

The committee reviewed a legislative session employee position plan that provided for six fewer positions in the Senate and five fewer positions in the House. For the Senate, the plan provided for two assistant sergeants-at-arms (rather than three), three pages and bill book clerks (rather than five), two bill room clerks (rather than three), and one journal room clerk (rather than three). The Senate would employ the "third" assistant sergeant-at-arms as supply room coordinator, rather than employ another person as coordinator. For the House, the plan provided for six pages and bill book clerks (rather than nine), two bill room clerks (rather than three), and one journal room clerk (rather than two). In 1999 the House would employ two assistant sergeant-at-arms rather than three, and would employ that "third" assistant sergeant-at-arms as supply room coordinator, rather than employ another person as coordinator. Basically, each house would have three assistant sergeants-at-arms, but would not hire an extra person when it was that house's turn to operate the supply room. The estimated savings in compensation resulting from the proposed reductions was \$41,754 (not including savings resulting from reduced workers' compensation, unemployment compensation, and Social Security contributions).

The rationale for reduction of page and bill book clerk positions was based on the increased number of legislators who will be using computers in the chambers. This increased use of computers will reduce the sets of bill books in the chambers, reduce the sets of journals in the chambers, increase use of e-mail to send messages, and increase use of the LAWS system to receive telephone messages.

The rationale for reduction of bill and journal room positions was based on employee suggestions over the years, and the fact that during recent sessions bill and journal room employees have been transferred to other areas that needed help.

The plan also recognized that during the 1997 session the House rather than the Senate would employ the payroll clerk and the chief telephone attendant, and the Senate rather than the House would employ the supply room coordinator (as described above) and the chief bill and journal room clerk.

After the initial plan was presented, the committee determined that positions assigned to the bill and journal room could be eliminated because of the contract with the printer to provide bill and journal room services. Thus, the Senate

would not employ the chief bill and journal room clerk and the two bill room clerks and one journal room clerk as proposed by the plan, and the House would not employ the two bill room clerks and one journal room clerk as proposed by the plan. The committee recommends that the Employment Committees provide for 42 Senate employee positions and 50 House employee positions.

North Dakota Century Code Section 54-03-10 requires the compensation of Legislative Assembly employees to be set by concurrent resolution. The committee reviewed a bill draft that would have eliminated the requirement that a concurrent resolution set the compensation for Legislative Assembly employees. The discussion focused on the hiring of an employee after passage of the concurrent resolution that designates employees, their positions, and their compensation. Committee members expressed concern that elimination of a requirement for joint action on setting compensation levels could result in different compensation levels between the houses. The committee recommends that the concurrent resolution establishing employee positions not include specific names or identify specific individuals. In this manner the problem with hiring an employee after passage of the concurrent resolution is resolved.

The committee also recommends that the concurrent resolution establishing employee positions authorize the Employment Committees to convert full-time positions to part-time positions, as appropriate. In addition, the committee recommends that the concurrent resolution provide for a generic position for employees not requiring technical skills and authorize transfer of those employees to work assignments as needed. The positions that will become "legislative assistants" were positions formerly classified as assistant sergeant-at-arms, desk page, page and bill book clerk, telephone attendant, telephone page, information desk attendant, and parking lot attendant. Because of the operation of the bill and journal room by a third-party contractor, the positions of bill room clerk and journal room clerk will not be available during the 1997 session, and the new position of legislative assistant does not include the responsibilities of those positions.

### **Secretarial Services**

The committee received a report from Jan's Secretarial Service concerning the secretarial services provided during the 1995 legislative session. The Legislative Assembly privatized secretarial services in 1995 instead of the Legislative Assembly operating a joint steno pool. The report suggested setting a base level of service of seven employees and one supervisor, hours of 7:30 a.m. to 5:30 p.m., and 24-hour turnaround service on projects. The committee recommends continuation of secretarial services to the Legislative Assembly on a private contract basis. The committee authorized the Legislative Council staff to prepare specifications including the suggested base level of service and solicit bids for

secretarial services for the 55th Legislative Assembly.

Committee members discussed the need to inform legislators of the private contractor arrangement for providing secretarial services. Of special concern was the need to emphasize the fact that secretarial service employees are not legislative employees, the hours of operation of the secretarial service, the normal turnaround time for projects, and the procedure for resolving any complaint. The committee approved a policy describing these matters, and requested distribution of this policy to legislators at the organizational session.

### **Committee Clerk Services**

The committee reviewed the duties of committee clerks, standing committee workload, and the compensation paid to committee clerks.

Committee chairmen assign general duties to committee clerks. For example, Senate and House Rules 506 require a committee chairman to ensure that minutes of committee hearings and deliberations are kept. Every chairman has assigned this responsibility to the respective committee clerk. Although the chairman assigns duties to the committee clerk, these duties and other responsibilities are performed under a written job description approved by the Legislative Management Committee. The job description is a 13-page description of duties and a step-by-step procedure manual for performing those duties. In addition, the job description contains all forms required for completing minutes, hearing schedules and notices, and reports.

Committee workload is difficult to measure. One factor is the number of bills and resolutions referred or rereferred to committee. In the Senate, total referrals and rereferrals during the 1995 legislative session ranged from 61 (Agriculture Committee) to 141 (Industry, Business and Labor Committee). In the House, total referrals and rereferrals ranged from 56 (Transportation Committee) to 137 (Judiciary Committee).

During the 1995 legislative session, daily compensation levels for committee clerks were \$62 (assistant committee clerks); \$70 (two-day committee clerks); \$74 (three-day committee clerks and assistant Appropriations Committee clerks); and \$78 (chief committee clerks and Appropriations Committee clerks).

Committee members expressed concern over the difficulty in employing qualified individuals as committee clerks. Additional responsibilities related to converting from a typewriter environment to a personal computer environment and requiring a more professional product with respect to content of minutes, as well as a limited pool of qualified applicants from the Bismarck-Mandan area, have reduced the number of qualified applicants for committee clerk positions.

"Privatization" of committee clerk services raises several issues and could affect substantially the relationship of committee chairmen and

committee clerks. Major issues include the fact that third-party contract employees would be subject to overtime pay for working over 40 hours per week (legislative employees are exempt from overtime pay requirements), third-party contract employees would not be provided on a partisan basis, third-party contract employees would be under employment policies of the contractor which may limit the ability of committee chairmen to assign tasks and non-job related duties, and special care must be taken in determining the chain of command for third-party contract employees.

The committee reviewed and approved an invitation to bid for providing committee clerk services on a limited basis. The committee determined that committee clerk services should continue to be provided as in the past, but bids for providing a limited number of committee clerk positions should be solicited and the bids retained on file as a "standby" option that is available if needed to fill a committee clerk position that is vacant during the 1997 session. The committee recognized the difficulty in addressing some of these issues raised by contracting with a third party for committee clerk services, e.g., without action by Congress, overtime pay for contract employees must be paid. Thus, the invitation to bid requests an hourly rate to be billed if overtime is required. Another concern is the chain of command and the invitation to bid specifies a procedure to ensure that work flows from the committee to the floor as smoothly as possible.

#### **Employee Benefits Programs Committee Powers**

The committee reviewed restrictions on the ability of legislators to introduce retirement or health insurance program bills. The committee considered a bill draft that would have replaced the requirement that a bill affecting a retirement program be accompanied by a report from the Employee Benefits Programs Committee before the bill may be introduced with a requirement that the committee is to submit its report on a measure before the measure is acted upon by a standing committee. The committee reviewed 1995 legislative action making a similar change to a law governing introduction of measures affecting workers' compensation law. Committee members determined that the law limiting introduction of retirement measures is important in emphasizing the need to consider actuarial impact of proposed legislation and that the restriction involves a legislative committee rather than an executive agency. The committee makes no recommendation for a change in the current procedure.

#### **Legislative Internship Program**

Since 1969 the Legislative Assembly has sponsored a legislative internship program in cooperation with the School of Law and 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 and has provided the students with a valuable educational experience. Until the 1995 Legislative Assembly, the allocation of interns among the three programs was six from the School of Law, four from the Department of Political Science at the University of North Dakota, and six from the graduate program at North Dakota State University. Ten interns were assigned to committees, one was assigned to each of the four caucuses, and two were assigned to the Legislative Council office.

Only eight interns participated in the 1995 program--three from the Law School, four from the University of North Dakota graduate school, and one individual who was not enrolled at either school. During the 1995 session, the caucuses were not provided with interns, but each leader was assigned an additional staff assistant.

The committee met with representatives of the universities and reviewed the status of the program. Representatives of the universities affirmed continued interest in the program and indicated there would be a renewed focus on the program. The committee approved continuation of the program for the 1997 Legislative Assembly, but revised the number of interns to 12 (no interns are to be provided to the caucuses), with eight from the School of Law, two from the graduate program at the University of North Dakota, and two from the graduate program at North Dakota State University. The stipend received by an intern was continued at \$4,725 for the 3.5-month program.

#### **Legislative Tour Guide Program**

For the past 10 legislative sessions a tour guide program has coordinated tours of the Legislative Assembly by high school groups. The tour guide program is extensively used by high school groups during the session, and other groups have been placed on the tour schedule at their request. Since 1987 two tour guides have been hired due to the heavy workload in scheduling tour groups. The committee approved the continuation of the legislative tour guide program for the 1997 session.

#### **Doctor of the Day Program**

The committee invited the North Dakota Medical Association to continue the doctor of the day program during the 1997 session.

#### **Chiropractic Services**

The committee received an offer from the North Dakota Chiropractic Association for complimentary chiropractic treatment to legislators on a daily basis during the 1997 legislative session. The offer depended on space being available in the legislative wing, and the committee reviewed a number of options for making space available. The options included using the press studio, a portion of the second floor legislators' study room, a portion of the Senate Conference Room, or a portion of the ground floor legislators' study room as the area for providing chiropractic services. The most feasible option appeared to be converting space in the

ground floor legislators' study, at an estimated cost of \$4,125. Before the committee made a decision, the association withdrew its offer in order to study the matter for a possible offer of services during the 1999 session.

### **Emergency Medical Technician Services**

The committee received an offer from the North Dakota EMS Association to provide two emergency medical technicians on a volunteer basis each day of the 1997 session. The technicians would have direct communication with the Division of Emergency Health Services of the Department of Health and would provide basic life support care until help arrived from the Department of Health. The technicians would be available in the legislative wing and would be identified by a special jacket. Space in the legislative wing to house the technicians or their equipment would not be required. The committee accepted the offer, with the understanding that the association would coordinate these services with the Division of Emergency Health Services and the North Dakota Medical Association.

### **Chaplaincy Program**

In cooperation with the Bismarck and Mandan Ministerial Associations, the House and Senate have chaplains open daily sessions with a prayer. Each chaplain receives a daily stipend of \$25. 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 session. The associations alternate as coordinator of the program. The Bismarck Ministerial Association coordinated the program during the 1995 session and the committee invited the Mandan Ministerial Association to coordinate the program during the 1997 session. The committee also requested the Legislative Council staff to notify all legislators before the convening of the session that they have until December 31, 1996, to schedule out-of-town clergy to deliver daily prayers during the 1997 session.

### **Organizational Session Agenda**

The committee approved a tentative agenda for the 1996 organizational session. Although based on the agenda for the 1994 organizational session, major changes resulted from the earlier selection of leaders (before the Legislative Council meeting in November rather than immediately before the organizational session in December) and the impact of their working on employment applications and committee assignments before the organizational session. Thus, time normally set aside for these matters was available for other items. The changes in the agenda include time set aside for legislators to have their photographs taken by the contract photographer, time set aside for legislators who have been assigned personal computers to receive training on the software installed on those computers, time set aside for discussion of proposed rules on legislative ethics,

and movement of the budget address by the Governor to Thursday morning which allows adjournment Thursday morning rather than Thursday afternoon.

The committee received a request from the Office of Management and Budget relating to the preparation of appropriation bills in time for the organizational session. Under NDCC Sections 54-44.1-06 and 54-44.1-07, the appropriation bills embodying the budget data and recommendations of the Governor for appropriations for the next biennium are to be presented to the Legislative Assembly at the organizational session. The Office of Management and Budget reported to the committee that the office could not meet the statutory deadline for the preparation of bills. The committee recommends the Legislative Council staff be requested to receive appropriation bills implementing the Governor's budget for pre-filing after the statutory deadline but by December 20.

### **State of the State Address**

During the 1995 session, the House and Senate convened in joint session at 1:45 p.m. on the first legislative day. Starting at 2:00 p.m., 10 escort committees were appointed to escort various officials, former officials, and spouses into the chamber. At 2:30 p.m. the Governor presented his state of the state address.

The committee discussed various options to reduce the ceremonial aspects of the state of the state address. The committee recommends appointment of four escort committees--one each for the Lieutenant Governor, the Chief Justice, former governors and chief justices and their spouses, and the Governor and his spouse. The committee also recommends that the pastor, spouse of the Lieutenant Governor, elected officials of the executive branch, associate justices of the Supreme Court, and members of the Governor's cabinet be seated in the House chamber before the joint session is convened.

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 1997 session (January 6, 1997).

### **State of the Judiciary Address**

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the North Dakota Supreme Court for the state of the judiciary address to a joint session on the second legislative day of the 1997 session (January 7, 1997).

### **Judiciary/Legislative Luncheon**

The Chief Justice of the North Dakota Supreme Court extended an offer from the North Dakota judiciary to host a luncheon preceding the traditional state of the judiciary address on the second legislative day. After discussing the feasibility of moving ceremonial functions, e.g., the state of the judiciary address, to the organizational session, the committee accepted the offer of the

North Dakota judiciary to host a judiciary/legislative luncheon at 12:00 noon on January 7, 1997.

### **Tribal Address**

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 and Legislative Management committees, a spokesman from the tribes addressed each house of the Legislative Assembly during the first week of the 1985-95 legislative sessions.

The committee authorized the Legislative Council staff to extend an invitation to representatives of the Indian tribes to make a presentation to each house of the 1997 Legislative Assembly on the third legislative day, similar to the presentation made during the 1995 session.

### **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 and its requirement that 12 agricultural commodity promotion groups file a uniform report at a public hearing before the standing Agriculture Committee of each house. The report must be filed between the first and 10th legislative day of the regular session. The committee designated Thursday, January 9 (the fourth legislative day), as the day for a joint hearing by the Senate and House Agriculture Committees to receive this report.

### **Salad Bar and Sandwich Cart Services**

The committee received a proposal from Facility Management to install two refrigerated salad bars in the legislative wing of the Capitol. One salad bar would be located in the hallway of the ground floor, between the public coat room and the northeast entrance to the Brynhild Haugland Room, and tables and seating would be placed on both sides of the ramp to the west doors. The other salad bar would be located in the west end of Memorial Hall, between the chambers, and would replace the sandwich cart placed near the information kiosk during lunch periods. The proposal was made as a means to alleviate the congestion in the cafeteria during lunch periods during the legislative session.

Committee members expressed concern over whether arrangements should be made to encourage members of the public to eat in

Memorial Hall and to encourage legislators to eat in the chambers. Concern was also expressed about the aesthetics of turning Memorial Hall into a "restaurant."

The committee authorized installation of a refrigerated salad bar on the ground floor, on the south side of the hall between the public coatroom and the northeast entrance to the Brynhild Haugland Room, and installation of tables and seating on both sides of the ramp to the west doors. The committee determined that the sandwich cart service provided on the first floor between the chambers should not be expanded at this time. In this manner, snack service will not be expanded in Memorial Hall, but salad bar service will be provided on the ground floor in an attempt to alleviate cafeteria congestion during the legislative session.

## **APPROPRIATIONS FOR IMPROVEMENTS TO THE LEGISLATIVE WING**

### **Background**

The major legislative wing renovation project dates back to the 1977 Legislative Assembly, which authorized construction of the judicial wing/state office building. In recent years various projects have been undertaken to continue the renovation of the legislative wing.

### **Brynhild Haugland Room Acoustics**

During the 1993-94 interim, the Legislative Management Committee reviewed five proposals to improve the acoustics of the Brynhild Haugland Room. That committee approved the installation of sound-absorbent surface on the ceiling over the table area and the installation of a curtain in front of the folding doors on the stage. These improvements were completed after the 1995 session.

### **Committee Room Bookcases**

When four two-day committees meet during the session, the three-ring binders used by members of the three-day committees using the same committee rooms are stacked in the window sills of the rooms. The committee authorized the purchase of bookcases for the Fort Union, Fort Totten, Peace Garden, and Prairie rooms for storage of legislators' three-ring binders when not used by the legislators.

### **Committee Room Wiring**

The committee discussed whether committee rooms should be wired for data transmission through the Legislative Assembly's local area network and for power needs of personal computers. Legislators with personal computers will have access to the Legislative Council's budget status system. In addition, the Office of Management and Budget informed the committee that legislators with personal computers would have access to the Statewide Integrated Budget and Reporting (SIBR) system, the executive budget

summary, the executive budget detail (the detailed budget books), and a budget tracking system of the Office of Management and Budget. Committee members discussed the potential for members of the Appropriations Committees to reduce the need for several sets of budget books on the committee tables as the result of gaining access to computerized budget data. The committee authorized the installation of electrical and data wiring in the Harvest Room, Roughrider Room, Sakakawea Room, and House Conference Room for use of personal computers by committee members, legislative fiscal analysts, and executive budget analysts.

### **Chamber Wiring and Desk Grommets**

After the committee determined that the local area network for legislators would be a wired network, the committee viewed options for legislators to plug their personal computers into the network in the chambers. Three options were reviewed--plugging electrical and data connections into outlets under each desk, remodeling the voting box to include electrical and telephone/data outlets, and installing a recessed, pop-up grommet at each desk which would contain electrical and data outlets and allow the cords to be stored off the desk's surface. The committee authorized the installation of a recessed, pop-up grommet at each legislator's desk in the chambers.

## **LEGISLATIVE ENVIRONMENT AND PROCESS STUDY**

### **Background**

House Concurrent Resolution No. 3043 directed a study of the legislative environment and process. The resolution recognized the needs to preserve the citizen legislature tradition in the state and continue the improvements to the legislative process made over the years.

### **Evolution of the Legislative Process**

The committee reviewed two areas in which changes to the legislative process have been recorded and are visible--constitutional provisions and Legislative Council activities.

Although adoption of a new Article IV of the Constitution of North Dakota may be viewed as a major improvement in the legislative process, major changes actually began in 1933 and extended through the 1970s, e.g., reducing from three to two the number of required readings of a bill, beginning legislators' terms on December 1 to allow for an organizational session, requiring open legislative sessions and committee meetings, and extending from 60 calendar to 80 legislative days the maximum length of a session.

The new Article IV provides substantial flexibility to meet and conduct business. Among the improvements are allowing a range in the number of members when reapportioning the Legislative Assembly, allowing for subdistricts of senatorial districts, allowing additional flexibility in determining the convening date, allowing a

procedure to call the Legislative Assembly back into session after adjournment, and removing specific restrictions on the formal requirements for bills. Since 1987, the Legislative Assembly has continued to propose constitutional amendments relating to the legislative process.

In 1945 the Legislative Research Committee was established with the authority to study any subject of potential legislation. During the 1953-54 interim, legislators other than members of the Legislative Research Committee participated in interim studies for the first time. In 1969 the name of the Legislative Research Committee was changed to the Legislative Council 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.

### **Legislative Procedure**

Either the Legislative Research Committee or the Legislative Council, usually through the Legislative Management Committee (or its precursor, the Legislative Procedure and Arrangements Committee) has made recommendations affecting the legislative process since the 1953-54 interim. Examples include establishment of an organizational session before the regular session, revisions to the standing and procedural committee structure, use of a consent calendar, installation of WATS telephone lines to obtain information or contact legislators, computerized preparation of legislative documents, and cost-saving revisions in publishing and employment procedures.

### **Testimony**

The committee received information from the Legislative Branch Consultation of the North Dakota Consensus Council with respect to themes to ensure an accessible, productive citizen legislature in the future. Themes described to the committee included balancing the tradition and desire for a citizen legislature with the need for productivity, using new technology to enhance legislative productivity, earning the public's trust through ethical behavior, providing opportunities for continuing education to enhance the expertise of legislators, and strengthening legislative leadership roles.

### **Conclusion**

Other than recommendations contained throughout this report which address the legislative environment and process, the committee makes no specific recommendation as the result of this study.

## **USE OF CHAMBERS AND MEMORIAL HALL**

### **Background**

In 1981 NDCC Section 54-35-02(8) was enacted to grant the Legislative Council control over the

legislative chambers and any permanent displays in Memorial Hall. The Legislative Council delegated this responsibility to the Legislative Procedure and Arrangements Committee and that committee adopted guidelines for use of the legislative chambers and displays in Memorial Hall.

### **Use of Legislative Chambers**

Under the guidelines, the first priority for use of the legislative chambers is for the legislative branch of state government. When the Legislative Assembly is not in session, the chambers may be used by other groups and organizations, subject to a number of requirements. The primary requirement is that any planned function be an educational activity, be a memorial for a person who has served in an elective national, state, or legislative office, or be sponsored by a governmental entity. Historically, "educational activity" has been interpreted to mean mock legislative sessions.

After the 1995 session, actions during a land sale conducted by the Board of University and School Lands in the House chamber resulted in reports of food and beverages being consumed in the House chamber, smoking in Memorial Hall, and legislators' terminals being moved onto the floor. As a result of these reports, the committee reviewed the guidelines for the purpose of determining the appropriateness of allowing the chambers to be used for nonlegislative functions.

The committee discussed the potential liability of allowing groups to use the legislative chambers. Some committee members expressed concern over the potential liability of the state if the chambers are used for nonlegislative functions. Some members also questioned the appropriateness of allowing private groups to use the chambers to develop proposals and then lobby the Legislative Assembly to enact those proposals.

The committee also discussed the costs incurred in allowing use of the chambers during the interim. These costs include items such as cleaning the chambers and related areas, utilities, and security for the participants as well as protection of the facilities.

The committee reviewed the policy of the Office of Management and Budget which requires any group using the Capitol grounds to sign a facility use agreement and to provide evidence of insurance coverage. If insurance coverage cannot be provided, the group must provide a waiver of liability, indemnification, and a medical release form for all participants. The Office of Management and Budget does not require a state agency to provide evidence of insurance coverage because the agency would have coverage through the state risk management fund.

Committee members also were cognizant of the need to balance the right of citizens to petition government against concerns over the potential liability of the state, costs incurred in allowing use of facilities, and restrictions on use.

During its review of the guidelines, the

committee approved requests for use of one or both chambers and some committee rooms by the North Dakota High School Activities Association (Student Congress) in 1995 and 1996, the North Dakota Intercollegiate State Legislature in 1995 and 1996, the Superintendent of Public Instruction for the State Young Citizens League Convention (spelling bee), the Hugh O'Brian Youth Foundation (legislative seminar), and the Silver-Haired Education Association (legislative session).

The committee revised the guidelines to provide that when the Legislative Assembly is not in session the chambers may be used by a state agency for official purposes of that agency, and by any other group or organization for mock legislative sessions only, 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 requesting use of the chambers. The revised guidelines also require a sponsor to pay to the Office of Management and Budget a fee determined by the Legislative Management Committee to recover the cost of providing security, janitorial, and other services. In addition, a sponsor other than a state agency is to sign a facilities use agreement required by the Office of Management and Budget. If the sponsor cannot obtain insurance as required by the Office of Management and Budget for activities on the Capitol grounds, each participant must sign a waiver of liability form as required by the Office of Management and Budget. The committee determined that the fee for use of the chambers under the guidelines is whatever fee is determined by the Office of Management and Budget (Facility Management) as necessary after consulting with the entity requesting use of the chambers. Thus, the fee would reflect costs associated with each user, depending on length and hours of use and whether any costs would be incurred to provide security, janitorial, and other services.

### **Displays in Memorial Hall**

Under guidelines adopted in 1981, any permanent display in Memorial Hall is to be reviewed annually. In 1982 the Legislative Procedure and Arrangements Committee approved relocating two statues to the Heritage Center. Since removal of the statues in 1984, Memorial Hall does not contain any permanent display.

### **REVIEW OF BUDGET SECTION RESPONSIBILITIES**

At the Legislative Council meeting to determine interim committee structure and committee studies and responsibilities, the Legislative Council reviewed the list of statutory responsibilities of the Budget Section. That list identified 24 "permanent" responsibilities (codified in the North Dakota Century Code) and 34 "temporary" responsibilities (contained in the Session Laws, but not of a general and permanent nature). As a result of reviewing the numerous statutory responsibilities given to the Budget Section, the

Legislative Council chairman directed the committee to review Budget Section responsibilities and membership.

During the interim, however, the Budget Section decided to review its assigned responsibilities for the purpose of determining whether some of those responsibilities could be combined or eliminated. As a result of that review, the Budget Section recommended a bill to eliminate five of its "permanent" responsibilities and three of its "temporary" responsibilities.

The committee reviewed the bill recommended by the Budget Section and makes no further recommendation.

## **MISCELLANEOUS MATTERS**

### **Sponsorship of Legislative Council Measures - Recommendation**

The committee discussed whether to continue the recommendation, first made during the 1993-94 interim, to place legislators' names on bills and resolutions recommended by interim committees. Individual names were on Legislative Council bills and resolutions through the 1975 legislative session, and then were placed on Legislative Council bills and resolutions during the 1995 session. Concern was expressed over the fact that some measures were identified with individuals representing only one political party, and thus those measures became identified with individual legislators named (and the party represented) rather than with the interim committees.

The committee recommends that the policy be discretionary with the respective committee chairman. An interim committee bill or resolution can include the names of up to six legislators who were members of the interim committee in addition to the name of the interim committee. The chairman of the interim committee is to select the names with the approval of the members listed. The chairman should consider both political parties and both houses in determining whom to list. Committee members who are not members of the Legislative Assembly in which the measure will be introduced cannot be listed on the measure. The legislators named on the Legislative Council recommendations will not be identified as sponsors in tables of sponsorship contained in the bill status report.

### **Great Plains Synfuels Plant Support**

In response to a request from the committee, the chairman of the Legislative Council sent a letter to the Department of Energy supporting the Great Plains Synfuels Plant. The assistant secretary for fossil energy responded to the letter and expressed the department's support of the plant.

### **Meeting with Legislative Compensation Commission**

The committee met with members of the Legislative Compensation Commission to discuss recommendations relating to legislative compensation. Committee members expressed support of

proposed legislation authorizing the Legislative Compensation Commission to determine levels of legislative compensation and expense reimbursement, subject to legislative veto by a 60 percent vote of either house. Committee members also suggested that the commission recommend to the 1997 Legislative Assembly legislation increasing the per diem for attending interim committee meetings, addressing costs rural legislators have compared to most urban legislators, and addressing monthly expense reimbursement during a legislative session.

### **2000 Census Redistricting Data Program**

Under Public Law 94-171, the Bureau of the Census invited states to participate in Phase 1 of the Block Boundary Suggestion Project of the 2000 Census Redistricting Data Program. The project provides for identifying geographic areas for specific tabulations of population during the 2000 census. North Dakota participated in a similar program for the 1990 census in order to receive population information for census blocks in certain areas of the state. The Bureau of the Census requested a decision by June 30, 1995, as to whether North Dakota would participate in this project. The committee approved participation in Phase 1 of the Block Boundary Suggestion Project.

### **Initiated Constitutional Measure Nos. 5 and 6**

The committee reviewed the text of initiated constitutional measure Nos. 5 and 6, which were on the ballot of the general election on November 5, 1996. Of particular concern was language both measures proposed to add to the Constitution of North Dakota. Both measures proposed creating new sections to different articles of the constitution, but the language of one measure repeated the other. In addition, the language contained statements described as editorializing about elected officials, their activities, and their actions.

Committee members expressed concern about provisions each measure contained which were repetitive and editorializing commentary; that measure No. 6 declared the people of the state the legislature for the purpose of proposing amendments to the Constitution of the United States while the United States Constitution provides the legislatures of the states are the entities that can propose a constitutional convention, provided exclusive jurisdiction over any challenge to the measure with the North Dakota Supreme Court, but prohibited the court from determining the constitutionality of the measure, and that placed certain statements on the ballot if a member of Congress failed to take certain actions; and that measure No. 5 returned the office of Commissioner of Labor to elected status.

Because of the concerns that the Attorney General would have to defend the initiated measures if challenged, the committee requested the chairman of the Legislative Council to request the opinion of the Attorney General as to the legal ramifications of the measures and an estimate of the costs of defending the measures.

# NORTH DAKOTA/SOUTH DAKOTA COMMISSION

The chairman of the Legislative Council established the North Dakota/South Dakota Commission in June 1996 to meet with South Dakota legislators and study ways that North Dakota and South Dakota can collaborate to provide government services more efficiently. North Dakota members of the commission were Representatives Catherine Rydell (Chairman), Tony Clark, James Kerzman, and William E. Kretschmar and Senators John M. Andrist, Randel Christmann, Elroy N. Lindaas, and Corliss Mushik. South Dakota members of the commission, appointed by the Executive Board of the South Dakota Legislative Research Council, were Representatives Mike Wagner (Chairman), Robert Duxbury, Rexford Hagg, and Garry Moore and Senators Barbara Everist, Gerald Lange, Donn Larson, and Jim Thompson.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## BACKGROUND

The 1996 South Dakota Legislature adopted House Bill 1107, which required the Executive Board of the South Dakota Legislative Research Council to appoint a legislative commission to meet jointly with a similar commission from North Dakota. In response to the action by the South Dakota Legislature and South Dakota Legislative Research Council, Senator Gary J. Nelson, Chairman of the North Dakota Legislative Council, established the North Dakota Commission.

Because the commission had no assigned study, the commission used most of its first two meetings to identify potential areas of study and to attempt to narrow its study focus. The commission decided to focus on these areas:

1. Education.
2. Highway maintenance near borders.
3. Insurance pools for workers' compensation and high risk health insurance.
4. Health laboratory services.

In addition, the commission received a request from the North Dakota National Guard to consider an interstate mutual aid compact. The commission also discussed the feasibility of continuing to study methods of cooperation between the states.

Other subjects discussed by the commission, but not studied, included corrections systems, occupational licensing, medical malpractice insurance pools, delivery of human services programs, and use of government services and facilities.

## EDUCATION

### Higher Education

The commission received testimony from representatives of the North Dakota State Board of

Higher Education and the South Dakota Board of Regents regarding the higher education systems in the two states. The testimony revealed that representatives of the two higher education systems have been communicating on an informal basis and through participation in the Western Interstate Commission on Higher Education. In addition, there are ongoing individual and institutional relationships.

Representatives of the higher education systems suggested that potential areas of cooperation between the two systems is best in the areas of cooperative purchasing arrangements, sharing of information systems, collaborative distance education programs, development and improvement of research infrastructure and research capabilities, and implementation of joint student followup processes. A representative of the Board of Higher Education assured the commission that the cooperative ventures can be undertaken without legislative action by the North Dakota Legislative Assembly. The representative of the Board of Regents indicated that South Dakota law may need revision to allow the Board of Regents to cooperate with North Dakota in the area of cooperative purchasing.

The commission considered a resolution draft that would urge the State Board of Higher Education to continue to pursue collaborative efforts with the South Dakota Board of Regents. Commission members generally agreed that the two higher education systems should continue to pursue cooperative ventures and examine methods to provide education services more efficiently and cost effectively. Commission members expressed concern regarding the continuation of low enrollment programs at the institutions of higher education and requested that the collaborative efforts include consideration of reciprocity between the states for certain low enrollment programs.

### Elementary Education

Commission members expressed concern regarding the lack of uniformity in teacher certification standards between the two states and difficulties in establishing standard tuition reciprocity agreements for the education of students in border school districts who are enrolled in a school district outside their state of residence.

The commission reviewed information and received testimony from a representative of the Education Standards and Practices Board regarding teacher certification. North Dakota standards for certifying teachers are among the most respected in the nation. Differences between the two states include the requirement in North Dakota that an applicant must have taken student teaching before receiving a certificate. Also, North Dakota grants special endorsements while South Dakota issues a single basic teaching certificate.

The commission received testimony that there would be opposition to any proposal to lower

teacher certification standards in North Dakota. Commission members generally agreed that the possibility of establishing uniform teacher certification standards between the two states was unlikely.

The commission received testimony regarding tuition reciprocity. Although there is a tuition agreement between the states, the state of South Dakota recently transferred the authority to make tuition agreements for the education of nonresident students to the local school districts. As a result, the Superintendent of Public Instruction and North Dakota school districts have experienced some difficulty in planning for and establishing appropriate tuition payments for North Dakota students attending schools in South Dakota because North Dakota law requires compliance with the agreement negotiated with South Dakota while South Dakota school districts are not bound by that agreement.

One solution to the problem may be to establish certain parameters and allow a North Dakota school district to directly negotiate an agreement with a South Dakota district so long as the agreement falls within those parameters. Commission members generally agreed that a problem exists with respect to tuition reciprocity, but believed that any action by the commission would be premature. The commission encouraged the Superintendent of Public Instruction to continue to search for solutions to the problem.

#### **Recommendations**

The commission recommends Senate Concurrent Resolution No. 4003 to encourage the North Dakota State Board of Higher Education to continue to pursue collaborative efforts with the South Dakota Board of Regents.

The South Dakota commission members will be recommending a bill to authorize the Board of Regents to enter cooperative purchasing agreements with the North Dakota State Board of Higher Education.

#### **HIGHWAY MAINTENANCE**

The commission received testimony that the North Dakota Department of Transportation had been communicating with representatives of the South Dakota Department of Transportation regarding sharing sand and salt stockpiles near the border and the reassignment of winter road maintenance responsibilities on sections of highways near the border.

Although the two departments apparently had reached an agreement to share seven salt and sand stockpiles and to further discuss the possibility of reassigning winter road maintenance responsibilities on five border highways, the South Dakota Department of Transportation later informed the North Dakota Department of Transportation that the agreement was "on hold."

North Dakota Century Code Section 24-02-02.2 allows the director of the department to contract with adjoining states and provinces to provide for the maintenance of highways located on or near

the border. The South Dakota commission members reviewed a bill draft that allowed the South Dakota Department of Transportation to undertake joint highway maintenance activities with adjacent states. Although concern was expressed regarding the apparent retraction of the proposed agreement by the South Dakota Department of Transportation, South Dakota commission members concluded that the bill draft would express the desire of the South Dakota Legislature to cooperate with the North Dakota Department of Transportation.

#### **Recommendation**

The South Dakota commission members will be recommending a bill to allow the South Dakota Department of Transportation to undertake joint highway maintenance activities with adjacent states.

### **INSURANCE POOLS**

#### **Workers' Compensation**

The commission received testimony relating to the feasibility of administration of a joint workers' compensation system. The North Dakota workers' compensation system differs from South Dakota in that South Dakota private insurers provide coverage while the North Dakota state-run system is monopolistic. Commission members expressed interest in either having the North Dakota Workers Compensation Bureau provide administrative services for South Dakota or in using the North Dakota system as a model for the establishment of a South Dakota system.

The South Dakota commission members considered a bill draft to require the South Dakota Department of Labor to meet with the North Dakota Workers Compensation Bureau to identify opportunities for the development and use by the two states of information systems and data tracking systems relating to workers' compensation. Commission members generally agreed that opportunities exist for cooperation between the states in the area of sharing of information relating to ratings systems. In addition, the commission members agreed that the experience of the North Dakota Workers Compensation Bureau could be beneficial to South Dakota legislators in determining the feasibility of establishing a state-run workers' compensation system in South Dakota.

#### **High Risk Health Insurance**

In 1981 the North Dakota Legislative Assembly created the Comprehensive Health Association of North Dakota (CHAND) to provide comprehensive health insurance coverage to North Dakota residents who had been denied health insurance or had restricted coverage due to health problems and were considered to be in a high risk category. Each accident and health insurance company that has a minimum of \$100,000 in premium volume annually in the state is required to participate in the CHAND by contributing to its funding through

an assessment based on the volume of the company's premiums. Each company that contributes to the CHAND is entitled to a premium tax credit equal to the company's assessment.

The commission received information that the feasibility of administration of a joint CHAND program would be dependent mainly upon the ability of South Dakota to provide a tax base to support the program.

#### **Recommendation**

The South Dakota commission members will be recommending a bill to require the South Dakota Department of Labor to study workers' compensation and identify opportunities for the development and use of information systems and data tracking systems by the two states.

### **HEALTH LABORATORY SERVICES**

#### **Commission Considerations**

The North Dakota Department of Health operates a microbiology laboratory, a chemistry laboratory, and a forensics laboratory. The department cooperates with South Dakota in several areas including providing antibody testing for vaccine preventable diseases, providing sexually transmitted disease testing for persons getting married in states with premarital testing laws, and providing assistance to the South Dakota forensic laboratory in criminal cases. Several areas in which the two states may provide assistance to each other were identified--testing at the North Dakota laboratory for chlamydia and gonorrhea, tuberculosis DNA probes, influenza typing, and hantavirus testing. Areas in which South Dakota could provide testing at the South Dakota laboratory include testing for endotoxin and cyanide in drinking water and viral and tissue culture testing.

The commission received testimony that representatives of the department would continue to communicate with South Dakota officials to discuss areas of potential cooperation. The testimony indicated that no legislation would be necessary to implement the cooperative activities under consideration.

Commission members expressed concern regarding whether the two state laboratories may be discouraged from cooperating due to a desire to protect resources invested in the laboratories. The commission considered bill drafts to allow agencies of the respective states to enter joint agreements with the other state to form a bistate authority to jointly exercise any function that the agency is authorized by law to perform. Proponents of the bill drafts contended that the bill drafts would allow state officials who are concerned with negative financial ramifications of cooperative ventures to form a separate authority that would consolidate administrative functions and more efficiently perform the governmental function while maintaining the revenue source.

#### **Recommendations**

The commission recommends Senate Bill No. 2048 to allow an agency, department, or institution of the state to enter an agreement with South Dakota to form a bistate authority to jointly exercise any function that the entity is authorized to perform. The bill provides that any agreement entered must be submitted to the Legislative Assembly for approval or rejection at the next regular or special session after the agreement is entered.

The South Dakota commission members will be recommending a bill to allow the establishment of an entity for the administration or provision of services with an agency of another state.

### **INTERSTATE MUTUAL AID COMPACT**

#### **Background**

The North Dakota National Guard requested consideration of a bill draft to adopt an interstate mutual aid compact. Several states, including South Dakota, have enacted laws adopting an interstate mutual aid compact. The compact would allow the National Guard to enter an agreement to provide emergency or disaster assistance to another state party to the agreement in the event of a natural disaster, technological hazard, manmade disaster, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack. The compact would also provide for mutual cooperation in emergency-related exercises, testing, or other training activities.

Supporters of the bill draft contended that the compact would provide an important tool to quickly address emergency situations. They emphasized that the state receiving the aid would be responsible for paying the expenses of the state providing the aid.

#### **Recommendation**

The North Dakota commission members recommend Senate Bill No. 2049 to adopt an interstate mutual aid compact.

### **CONTINUATION OF STUDY**

Because numerous opportunities for cooperation were identified in addition to the subjects on which the commission focused, the commission considered a resolution draft to direct a study of methods through which North Dakota and South Dakota can collaborate to deliver government services more efficiently. Commission members discussed various methods through which legislators may continue to study cooperative efforts, including meeting in conjunction with the Five-State Legislative Conference and establishment of a statutory commission.

Commission members generally agreed that continued study by an interim legislative commission would be the best approach to examine cooperative ventures in the future. South Dakota

commission members expressed concern, however, regarding the extent of cooperation by executive agencies in South Dakota with future studies.

**Recommendation**

The North Dakota commission members recommend Senate Concurrent Resolution

No. 4004 to direct the Legislative Council to establish a commission to study methods through which North Dakota and South Dakota can collaborate to deliver government services more efficiently. The South Dakota commission members also will be recommending similar legislation.

# REGULATORY REFORM REVIEW COMMISSION

The Regulatory Reform Review Commission is established by North Dakota Century Code (NDCC) Section 49-21-22.1. The statute directs the commission to review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1995 and 1999 legislative sessions. Also, the commission may review the effect of taxation laws on North Dakota telecommunications law during the same time period.

Under Section 49-21-22.1, the commission consists of one member of the Public Service Commission who has responsibility for telecommunications regulation, two members of the Senate appointed by the President of the Senate, and two members of the House of Representatives appointed by the Speaker of the House. Commission members during the 1995-96 interim were Representatives John Mahoney (Chairman) and Ben Tollefson; Senators David E. Nething and Rolland W. Redlin; and Public Service Commissioner Bruce Hagen.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## RECENT HISTORY OF NORTH DAKOTA TELECOMMUNICATIONS LAW

There have been several amendments to the telecommunications law since the beginning of deregulation in 1989.

### 1989 Senate Bill No. 2320

The commission was created in 1989 to review the deregulation of the telecommunications industry resulting from enactment of Senate Bill No. 2320 (1989). The commission consisted of the three Public Service Commissioners, two members of the Senate, and two members of the House of Representatives. This bill exempted telecommunications companies and services from rate or rate of return regulation by the Public Service Commission unless a telecommunications company notified the commission that it wanted to be regulated in this manner. For telecommunications companies with over 50,000 end users, the election not to be exempt from rate and rate of return regulation is a one-time, irrevocable decision. Although the Legislative Assembly has exempted essential telecommunications service and nonessential telecommunications service (service that is not included within the definition of essential telecommunications service) from rate or rate of return regulation by the commission, essential telecommunications service is still subject to a price cap based upon the essential telecommunications price factor. Essential telecommunications service is service that is necessary for switched access to interexchange telecommunications companies and necessary for

two-way switched communications for both residential and business service within a local exchange area.

### 1989-90 Interim and 1991 Session

During the 1989-90 interim, the commission reviewed the Public Service Commission's determination of the essential telecommunications price factor, Minnesota's incentive regulations, and recommendations of interested parties. Even though the commission did not recommend any legislation, the 1991 Legislative Assembly enacted three main bills that primarily affected Title 49 (no changes were made to the substantive provisions of Senate Bill No. 2320).

### House Bill No. 1556

This bill required telecommunications companies and rural telephone cooperatives offering telephone call identification services to allow a caller to withhold display of the caller's telephone number from the person receiving the telephone call placed by the caller.

### House Bill No. 1095

This bill required a person who makes telephones available to the public for intrastate telephone calls on that person's premises to ensure that the telephones allow the consumer to use access code numbers ("800," "950," or "10XXX 0+") to obtain access to the provider of operator services desired by the consumer, at a charge no greater than that charged for calls placed using the presubscribed provider of operator services.

### House Bill No. 1557

This bill required mutual aid telecommunications cooperatives and telecommunications cooperative associations to have the approval of two-thirds of the membership of the cooperative or association to sell a physical plant if the value of the plant is more than five percent of the value of the cooperative or association.

In addition, the enabling statute for the commission, NDCC Section 49-21-22, was amended to transfer responsibility for providing staff services for the commission from the Legislative Council to the Public Service Commission.

### 1991-92 Interim and 1993 Session

The study of telecommunications law by the commission during the 1991-92 interim resulted in two main recommendations incorporated into Senate Bill No. 2440. The first related to the banking of essential telecommunications price factor changes and the second related to uniform long-distance rates. These recommendations came after the commission reviewed the Public Service Commission's determination of the essential telecommunications price factor and the Public Service Commission's decision that ordered equal access (intraLATA) and unbundling for the

purpose of offering service on an equal and open nondiscriminatory basis. The 1993 Legislative Assembly enacted four bills that primarily affected Title 49.

#### **Senate Bill No. 2440**

Senate Bill No. 2440 changed the definition of "essential telecommunications price factor" for purposes of telecommunications regulation from the annual change in a company's input cost index reduced by 50 percent of that company's productivity incentive adjustment to a factor determined annually which is the lower of 41.6667 percent of the percentage change of the average annual gross national product price index or the percentage change of the average annual gross national product price index minus 2.75 percentage points for group I telecommunications companies or a factor determined annually which is the lower of 52.0834 percent of the percentage change of the average annual gross national product price index or the percentage change of the average annual gross national product price index minus 2.0625 percentage points for group II telecommunications companies. Group I telecommunications companies are those companies with over 50,000 subscribers and group II telecommunications companies are companies with 50,000 or fewer subscribers. The bill also revised the distinction between essential telecommunications services that are regulated or subject to the essential telecommunications price factor cap and nonessential services that are not subject to the essential telecommunications price factor cap. The bill also revised the definition of telecommunications services that are not subject to the telecommunications deregulation law, such as coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment, inside wire and premise cable installation and maintenance, and directory services that are not essential, such as "yellow pages" advertising and boldface or color listings in "white pages."

#### **Senate Bill No. 2317**

This bill exempted a public utility operated as a nonprofit cooperative or mutual telecommunications company or a telecommunications company having fewer than 3,000 local exchange subscribers from regulation under NDCC Chapters 49-02 and 49-21. However, these public utilities were still subject to Sections 49-21-01.4, 49-21-08, 49-02-02(7), 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10 regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies.

#### **Senate Bill No. 2385**

This bill provided that dialing parity on an intraLATA basis, otherwise known as 1+intraLATA equal access, may not be required to be provided by any company providing local exchange service. This bill is effective through July 31, 1999. This bill reversed a Public Service Commission

ruling that forced U S West to open its "short haul" long-distance markets to other telephone companies.

#### **Senate Bill No. 2393**

This bill reduced to one the number of Public Service Commissioners on the commission and required the Legislative Council to provide staff services.

#### **1993-94 Interim and 1995 Session**

The study of telecommunications law by the commission during the 1993-94 interim resulted in the recommendation of two bills--Senate Bill Nos. 2078 and 2079. The commission made these recommendations after reviewing federal legislation and reviewing the North Dakota Supreme Court decision *MCI Telecommunications Corp. v. Heitkamp*, (523 N.W.2d 548 (1994)). This case related to a challenge of Senate Bill No. 2385 (1993), which provided that dialing parity on an intraLATA basis may not be required to be provided by any company providing local exchange service. The statute withstood challenge on special law and unlawful delegation of legislative authority grounds. The 1995 Legislative Assembly enacted four bills that primarily affected Title 49.

#### **Senate Bill No. 2078**

This bill included pay phones within regulation for the purpose of requiring access code numbers to the operator services desired by the consumer.

#### **House Bill No. 1274**

This bill required telecommunications companies to allow callers on a per line basis to withhold display of a caller's telephone number from the telephone instrument of the individual receiving the telephone call placed by the caller. The bill required telecommunications companies to provide this option without charge on a per call basis and without charge on a per line basis to residential customers and business customers with special needs.

#### **House Bill No. 1459**

This bill increased the size of a telecommunications company not subject to regulation by the Public Service Commission from a company having fewer than 3,000 local exchange subscribers to a company having fewer than 8,000 local exchange subscribers. As a result of this bill, only the three largest telephone companies are under the Public Service Commission's control--U S West, Souris River Telecommunications in Minot, and the North Dakota Telephone Company in Devils Lake.

#### **Senate Bill No. 2079**

This bill reestablished the commission until 1999.

#### **TAXATION**

The commission reviewed the effect of taxation laws on North Dakota telecommunications law by jointly meeting with the Taxation Committee. The Taxation Committee studied the implications of North Dakota tax policy on the telecommunications

industry and the need for tax reform in the telecommunications industry. The commission attended the portion of every Taxation Committee meeting, except the background meeting, which related to the taxation of the telecommunications industry. The recommendation of the Taxation Committee relating to the taxation of the telecommunications industry is described in the report of the Taxation Committee.

### **FEDERAL LEGISLATION**

On February 8, 1996, President Clinton signed the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56. The Act was the first major change to the federal telecommunications law since 1934. The Act delegates the responsibility of resolving certain disputes to a "state commission," revises the concept of universal services (thereby encouraging the states to form their own universal service funds), and provides for a process by which rural telephone companies may seek protection from competition by applying to the "state commission."

The major change provided by the Act is the opening of local exchange markets to competition. Once a statutory checklist that ensures competition has been satisfied, local exchange carriers may enter the interLATA interexchange market. The statutory checklist includes the requirement of interconnection at any technically feasible point, unbundling, cost-based pricing, and the offering of wholesale rates, all subject to rules to be adopted by the Federal Communications Commission.

On August 8, 1996, the Federal Communications Commission adopted rules on the subject of interconnection. On October 15, 1996, the Eighth Circuit Court of Appeals partially stayed the implementation of the rules.

### **Testimony and Discussion**

The commission received testimony on developments before and after the passage of the Act and accompanying rules. The commission also was informed of the sections of state law which were preempted by the Act and of state laws that were allowed or suggested by the Act.

The commission considered a proposal from the Public Service Commission which would have authorized the Public Service Commission to take necessary and appropriate administrative action to implement the Act. The commission also considered a proposal that would have incorporated all of the provisions of the Act into this state's law and kept this state's provisions on the price cap and the price complaint system. Proponents of the Public Service Commission proposals described the proposal as providing flexibility. Opponents described the proposal as allowing the Public Service Commission to overregulate the telecommunications industry.

The commission considered a bill draft proposed by representatives of the North Dakota Association of Telephone Cooperatives and U S West. The bill draft implemented the Act and removed the essential telecommunications price factor; incorporated federal definitions into this state's

law; authorized the creation of an intrastate universal service fund administered by the Public Service Commission or the Public Service Commission's contractee; provided for the procedures for the Public Service Commission's new powers under the Act, which include mediation and arbitration; allowed the phasing in of a retail price change over a period of two years; removed the ability of consumers to complain about the fairness or adequacy of a retail price for an essential service; provided procedures and standards for Public Service Commission decisions on interconnection, access, wholesale services, and collection; required competition with a rural telephone company to be on a service area basis and not a service basis; and extended the life of the Regulatory Reform Review Commission to the year 2002.

Proponents indicated the bill draft selectively incorporated portions of the Act which are tailored to the unique rural setting of this state. Proponents also indicated the bill draft offered protection from "cherry picking" and encouraged real competition. Opponents suggested the bill draft was anticompetitive.

The essential telecommunications price factor is the price cap. Only two companies are under the price cap for local service access in this state. The proponents of the price cap indicated the price cap is needed until there is competition. Opponents of the price cap suggested the price cap be removed so that prices can be set in relation to costs, e.g., some local services are underpriced because toll access and business service subsidizes local service, so local service rates may rise with cost-based pricing. Opponents of the price cap also indicated that under the bill draft the Public Service Commission still would have jurisdiction over the reasonableness of prices.

The bill draft required a potential competitor with a rural telephone company to make a bona fide request to the Public Service Commission to enter the market. A bona fide request would require the competitor to offer at least all essential services and all federal universal service support mechanisms to all the customers in the service area. U S West would be the only company open to competition on a service-to-service basis.

The bill draft also required a carrier that requests any proceeding before the Public Service Commission to pay all costs unless it is "manifestly unfair." Any pro rata share that would be assessed to any other carrier could not be assessed on the basis of size, number of customers, or the financial strength of the carrier.

### **Recommendation**

The commission recommends House Bill No. 1067 to implement the federal Telecommunications Act of 1996. The recommended bill is the proposal developed by the North Dakota Association of Telephone Cooperatives and U S West. Because the bill was proposed to the commission late in the interim, the commission plans to meet after the biennial meeting of the Legislative Council in November 1996 to consider amendments to the bill.

# TAXATION COMMITTEE

The Taxation Committee was assigned six studies. Senate Concurrent Resolution No. 4048 directed a study of the implications of North Dakota tax policy on the telecommunications industry and an assessment of the need for tax reform in the telecommunications industry. Senate Concurrent Resolution No. 4015 directed a study of the property tax assessment system of the state, with emphasis on the potential benefits to the system from improved technology and sharing of resources. Senate Concurrent Resolution No. 4051 directed a study of property tax assessment for irrigated and nonirrigated agricultural land. Senate Concurrent Resolution No. 4016 directed a study of tax preferences, with emphasis on property tax preferences that may be granted at the discretion of political subdivisions or that were created as economic development incentives. Senate Concurrent Resolution No. 4024 directed a study of the fiscal impact of major economic development projects on political subdivisions. The chairman of the Legislative Council directed the committee to study the application of the farm building property tax exemption.

Committee members were Representatives Mike Timm (Chairman), Dan J. Austin, Wesley R. Belter, Chris Christopherson, Everett Dobrinski, Eliot Glassheim, Mick Grosz, Pam Gulleon, Lee Kaldor, George Keiser, Bruce Laughlin, Eugene J. Nicholas, Alice Olson, Earl Rennerfeldt, Mark Sitz, and Gerry L. Wilkie and Senators Randel Christmann, Meyer Kinnoin, Aaron Krauter, Ed Kringstad, Byron J. Langley, Jens Tennefos, Steven W. Tomac, and Herb Urlacher.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## TELECOMMUNICATIONS TAX STUDY

### Background

Telecommunications companies doing business in North Dakota are generally subject to the same tax imposition as other businesses except with regard to property and gross receipts taxes. Telecommunications companies, except cooperatives, are subject to real property taxes. Telecommunications companies, except cooperatives, are also subject to personal property taxes that apply only to public utilities including gas, pipeline, power, telegraph, and telecommunications businesses. A telecommunications cooperative pays a gross receipts tax in lieu of real and personal property taxes. The dual tax structure for telecommunications businesses differs in tax burden and allocation. Real and personal property taxes of noncooperative companies are allocated among taxing districts in which property is located. Gross receipts taxes of cooperatives are allocated entirely to school districts, based upon the number

of stations served by a cooperative within each school district. The gross receipts tax is imposed at rates from .5 percent to two percent, depending on the number of stations served per mile of line.

The dual tax structure for telecommunications businesses has existed in North Dakota since 1931. The gross receipts tax is recognized as imposing a lower tax burden than real and personal property taxes. The reduced tax burden for telephone cooperatives was established to recognize increased costs and to encourage establishing telephone service in rural areas. In 1969 the personal property tax was eliminated for all taxpayers except public utilities. In 1969 the only telecommunications company to which the personal property tax applied was AT&T, which enjoyed monopoly status in North Dakota, except in areas served by cooperatives.

A 1984 federal court decision ordered divestiture by AT&T of its 22 Bell operating companies. As part of that decree, the United States was divided into geographical areas to be served by former Bell operating companies (such as U S West), referred to as local exchange carriers. Under the decree, local exchange carriers were generally prohibited from entering the long-distance marketplace between the geographical areas known as local access transport areas or LATAs and interexchange companies such as AT&T were generally limited to providing service between LATAs and were prohibited from providing basic local exchange services. The demise of the AT&T monopoly led to the entry of numerous interexchange telecommunications carriers into the interexchange telecommunications market to compete with AT&T. In many instances these carriers operate as "resellers," meaning they lack the physical facilities to transmit telecommunications and lease transmission facilities from other carriers and resell the use of those facilities to their own customers.

Two recent events in North Dakota led to this study. Senate Bill No. 2464 was defeated during the 1995 legislative session. The bill was introduced on behalf of AT&T and would have eliminated North Dakota's personal property tax for telecommunications carriers. Arguing in support of the bill, AT&T representatives said the taxation of personal property of AT&T began at a time when the company enjoyed monopoly status. Representatives of AT&T said the monopoly status is gone, substantial competition exists, and competitors of AT&T are not subject to the personal property tax because resellers are able to do business in the state with virtually no property presence. AT&T representatives argued that North Dakota tax policy treats competitors in different manners and discourages investment in facilities within the state. Representatives of U S West and the North Dakota Association of Telephone Cooperatives opposed Senate Bill

No. 2464 and suggested that a thorough study should be undertaken on telecommunications industry taxation. The other event leading to this study was the sale of 68 local exchanges by U S West to members of the North Dakota Association of Telephone Cooperatives. This sale and the potential that these exchanges would be converted to cooperative status, subject to gross receipts taxes rather than property taxes, held the potential for a substantial revenue loss for political subdivisions.

Under sales and income taxes, telecommunications carriers are treated in a fashion similar to other businesses. Most telephone cooperatives are established as nonprofit corporations and are not subject to corporate income taxes. Sales taxes apply to telecommunications services, except sales taxes do not apply to interstate calls.

### **Current Tax Structure Problems**

Imposition of real and personal property taxes is described as a barrier to investment by telecommunications carriers in North Dakota. Modern telecommunications equipment, such as microwave relays, can be located in adjacent states that impose no property taxes on telecommunications property. The future telecommunications industry is expected to have a decreased reliance on property and states will see diminishing property tax revenue from the industry. It was suggested that a more stable revenue source for state and local governments would be a sales or gross receipts tax, which keeps pace with economic activity within the industry without regard to property values.

Current law does not adequately address existence of resellers for property tax purposes. Resellers lease lines from a facilities-based telecommunications carrier and resell the use of those lines to their customers. Only the amount paid by the reseller to the lessor company can be considered income to the lessor. The tax assessor may not consider the reseller's net profit from use of the lines in valuation decisions.

Current law exempts cellular companies having 700 or fewer subscribers from central assessment of real and personal property taxes. This exemption is significant because North Dakota Century Code (NDCC) Section 57-02-08(25) exempts personal property from taxation unless a public utility is subject to central assessment. The personal property tax exemption applies to the Federal Communications Commission license, which may have a value in the millions of dollars. A cellular operator having 700 or more subscribers and subject to personal property taxes may be required to pay a great deal more tax than a cellular operator having 700 or fewer subscribers. The exemption for smaller cellular operations causes local assessors difficulty in determining which towers and other real property are subject to local assessment and which ones are to be centrally assessed.

Evolution of the telecommunications industry

has blurred the distinction between property subject to central assessment and property subject to local assessment. The growth in the number of telecommunications providers and the variety of properties they own and services they may offer were not imagined or addressed when current law was created. Power, cable television, and computer services companies and other businesses are entering the telecommunications industry and current law does not contemplate telecommunications carriers being engaged in other enterprises.

North Dakota telecommunications tax policy has not kept pace with other states. With deregulation of the telecommunications industry, telecommunications providers have lost the guaranteed rate of return available in a regulated environment. Other states have modified tax systems to recognize this loss. As of 1994, North Dakota was one of only 11 states that imposed personal property taxes for telecommunications carriers (while general businesses were exempt) or assessed telecommunications provider property at a higher percentage of value than property of other businesses.

### **Sale of U S West Exchanges**

In November 1994 it was announced that members of the North Dakota Association of Telephone Cooperatives had agreed in principle to purchase 68 local exchanges from U S West. The purchase involved transfer of ownership of almost 49,000 access lines in North Dakota. In 67 of the 68 transfers, the acquired exchange was adjacent to the acquiring cooperative company. This was described as a benefit to North Dakota because dwindling rural population was increasing per member operating costs and acquiring additional service territory would allow cooperatives the economy of sharing equipment and personnel. The sale of U S West exchanges was approved by the Public Service Commission, and the Federal Communications Commission approved the sale in April 1996.

The sale of 68 U S West local exchanges to telephone cooperatives could result in a change in the tax status of each of those exchanges. The annual loss of property tax revenue from the changed tax status was estimated at more than \$1.1 million. This loss would be offset by annual gross receipts tax increases of approximately \$400,000 but that amount would be allocated entirely to school districts. Under these estimates, school districts would incur a net loss of revenue because school districts receive more than 50 percent of property tax revenues statewide, so school districts would lose \$550,000 or more in property tax revenue and gain \$400,000 in gross receipts tax revenues annually. The other political subdivisions in the areas served by the transferred exchanges would lose \$500,000 or more annually in property tax revenues from property of those exchanges. The annual net loss of revenue to political subdivisions from the sale was estimated at approximately \$738,000.

## **Federal Telecommunications Act of 1996**

In February 1996, Congress enacted the most substantial deregulatory restructuring of the telecommunications industry in history. The federal Telecommunications Act of 1996 creates an interconnection requirement that forces telecommunications carriers to allow other carriers access to their networks and switching elements at just, reasonable, and nondiscriminatory costs. This will increase competition in the industry by allowing numerous carriers to offer the same services to the same customers. To further remove market entry barriers, the Act allows local exchange companies to provide interexchange services and allows interexchange carriers to enter local exchange markets. The Act allows cable television companies to offer telecommunications services and allows telecommunications carriers to offer cable television services.

The Act guarantees universal service to assure consumers in rural or high-cost areas access to the same telecommunications services available elsewhere. The Act requires the Federal Communications Commission to determine what services are to be included in universal service. A fee is to be collected from all consumers in the nation for deposit in the universal service fund and payments from the fund will be made to telecommunications service providers in high-cost areas.

The Act nullifies all state and local laws, regulations, or other legal requirements that would deter competition in telecommunications. States may impose regulations to promote universal service, protect public safety and welfare, ensure the quality of telephone service, and safeguard consumers, as long as the regulations do not favor one telecommunications carrier over another.

### **Committee Considerations**

There were 212 telecommunications carriers registered with the Public Service Commission as of November 1, 1995.

Sales taxes on telecommunications services totaled more than \$5.8 million for 1994, which represents slightly more than two percent of statewide taxable sales. Telecommunications corporations paid approximately \$1.5 million in corporate income taxes for tax year 1993, which represents approximately 4.6 percent of total collections. For 1994, telecommunications businesses paid more than \$7.7 million in property taxes and more than \$700,000 in gross receipts taxes for cooperatives, for a combined total of approximately \$8.4 million, which represents approximately 2.1 percent of statewide property taxes and taxes in lieu of property taxes.

Determining the proportion of property taxes on telecommunications carriers attributable to personal property is difficult because telecommunications carriers subject to central assessment have been taxed on real and personal property and reports they have filed do not distinguish property types. It was estimated that 1994 personal property taxes for

telecommunications carriers in North Dakota totaled \$3.5 million to \$7.15 million.

The committee reviewed a recent Ohio telecommunications tax study. A 1994 court decision determined Ohio's manner of taxing telecommunications property was a denial of equal protection under the United States Constitution. The Ohio study reviewed taxation of the telecommunications industry in that state and resulted in 1995 legislation to assess property of telecommunications carriers on the same basis as property of other businesses.

### **Bill Draft Consideration**

The committee requested representatives of telecommunications carriers and political subdivisions to meet and recommend changes to the tax structure for the telecommunications industry. A proposal was made jointly by representatives of U S West and the North Dakota Association of Telephone Cooperatives. Although AT&T began working on the proposal with the group, AT&T dropped out of deliberations and ultimately opposed the recommendation.

The proposal called for eliminating distinctions between cooperatives and other business forms by imposing a two percent gross receipts tax for all telecommunications carriers, eliminating real and personal property taxes for all telecommunications carriers, and imposing state sales taxes on interstate calls. The proposal was designed to be revenue neutral, based on the proposal proponents' estimates of revenue loss of \$8.4 million from property tax exemptions and revenue gains of \$2.3 million from sales taxes on interstate calls and \$6.1 million from the gross receipts tax. The telecommunications carriers making the proposal made no recommendation on how funds would be allocated to political subdivisions to replace lost revenues. The proposal called for imposing taxes on sales of all two-way communications transmissions, to allow the law to be flexible enough to apply to future technologies and so that all competing technologies would be subject to the same tax treatment.

The proposal shifted the tax burden within the telecommunications industry, even though the proposal was revenue neutral. Representatives of U S West said shifting the tax burden within the industry was necessary to rectify current inequities and the proposed tax would apply equally to all competitors. They said much of the reduction of U S West's tax burden occurred due to the sale of local exchanges. They said the shift of tax burden to resellers of telecommunications services is appropriate because resellers have escaped property tax imposition under current law. Several telephone cooperatives would be subjected to a higher rate of gross receipts taxes under the proposal because they are taxed at rates less than two percent under current law.

The Tax Department estimated the overall fiscal effect for the proposal at a loss of \$7.4 million per year in personal property tax revenues, a loss of over \$900,000 per year in real property tax

revenues, total gross receipts tax revenues of almost \$6.3 million per year, and sales tax revenues from interstate calls of approximately \$2.2 million per year.

Although the proposal was intended to be revenue neutral statewide, elimination of property taxes, expansion of the gross receipts tax, and changes in its allocation would make it extremely difficult to provide each political subdivision with the same revenue it had under previous law prior to the sale of the exchanges. Groups representing political subdivisions suggested that allocation within counties should be on the same basis as property tax revenues. Representatives of political subdivisions opposed exemption of real property of telecommunications carriers on the grounds that services provided by political subdivisions to owners of real property justify retaining local assessment and taxation of that property.

Representatives of an economic development association opposed imposing sales taxes on interstate calls. They said taxing these calls would have a chilling effect on business location and expansion decisions for businesses having a high volume of interstate calls. Committee members also expressed concerns about the impact of gross receipts taxes on businesses having high usage of telecommunications services.

Telecommunications carrier representatives asked that gross receipts taxes not apply to universal service fund collections mandated by federal law and transferred to the universal service fund.

At its final meeting, the committee received conflicting estimates of the fiscal effect of the proposal. By some estimates, it appeared the proposal would have a revenue gain of \$1 million per year. Committee members stated opposition to having a proposal with a net increase in taxes and approved a motion to eliminate the provision imposing sales taxes on interstate calls.

#### **Committee Recommendation**

The committee recommends House Bill No. 1068 to restructure taxation of the telecommunications industry. The bill eliminates central assessment of telecommunications carrier property, eliminates personal property taxes for telecommunications carriers, and retains real property taxes on telecommunications carriers, subject to local assessment and levies. The bill imposes a tax of two percent of the adjusted gross receipts of any telecommunications carrier doing business in the state. Adjusted gross receipts means the gross receipts of the carrier from telecommunications service charges minus state and local taxes on those charges and minus amounts paid by the carrier to another carrier for directory assistance. Telecommunications service includes transmitting for consideration of any two-way communication, including interstate telecommunications service billed to a station in this state. Taxable telecommunications service charges include the charge for the content of the transmission. A hospital, hotel, motel, or similar place of

accommodation selling telecommunications service is subject to gross receipts taxes to the extent it imposes separately stated charges for the service. Amounts collected for or from the universal service fund are not included in gross receipts.

The bill requires telecommunications carriers to file gross receipts tax returns with the Tax Commissioner. The Tax Commissioner is to review the return and report to the State Board of Equalization, which is to assess the tax after consideration of any protest by the taxpayer.

The bill limits gross receipts taxes imposed upon any customer to \$20,000 per calendar year. Any charges for that customer beyond that amount are exempt and the gross receipts from exempt sales of the providing telecommunications carrier are exempt.

The bill entitles a telecommunications carrier to a credit against gross receipts taxes in the amount of real property taxes paid during the calendar year on property directly used in telecommunications operations. This credit may be fully or partially transferred between a parent and subsidiary telecommunications carrier.

The bill allocates revenue from the gross receipts tax to counties in the proportion that telecommunications property tax and gross receipts tax revenues within the county bears to all such revenues statewide in 1997. The purpose of this allocation is to assure each county the same proportion of all telecommunications taxes that it received before the changes made by the bill. The bill provides a continuing appropriation to the Tax Commissioner for allocation to counties to avoid the need for biennial legislative appropriations to distribute the revenues. Revenues received at the county level must be allocated within the county on the basis on which general property tax revenues are apportioned and distributed in the county. The bill becomes effective in taxable year 1998.

### **PROPERTY TAX ASSESSMENT SYSTEM STUDY**

#### **Background**

Property tax liability is determined by multiplying applicable taxing district mill rates times the taxable value of the property. All locally assessed property taxes are collected by the county and distributed among taxing districts according to their interests in the revenues. Property taxes are due January 1 following the year of assessment and are payable without penalty until March 1 of the year they are due. If property taxes are paid in full by February 15, the taxpayer is entitled to a five percent discount. Penalties begin to accrue if property taxes are not paid by March 1 but taxpayers have the option of paying property taxes in installments.

The mill rate for a taxing district is established through the budget process. Each taxing district prepares a proposed budget based on anticipated expenditures for the upcoming fiscal year. Hearings are held on the budget and adjustments may be made. The deadline for amendments to

budgets and for sending copies of the levy and budget to the county auditor is October 10. From October 10 to December 10 the auditor prepares tax lists, which must be delivered to the county treasurer by December 10 and mailed to property owners by December 26.

The amount budgeted by a taxing district may not result in a tax levy exceeding the levy limitations established by law. Since 1981, the Legislative Assembly has provided optional authority to levy a percentage increase in dollars over a base year levy dollar amount. This method is an alternative to the use of statutory mill levy limitations. Most taxing districts in the state use this optional method of determining the maximum levy. Under Senate Bill No. 2081 (1995), taxing districts may elect to levy two percent more in 1995 and two percent more in 1996 than the amount that was levied in the base year. The bill provides that for taxable years after 1996, taxing districts may elect to levy the amount levied in dollars in the base year, but without a percentage increase.

To determine the mill rate for a taxing district, the county auditor determines whether the amount levied is within statutory limitations on the amount levied in dollars and divides the total property taxes to be collected for the taxing district by the taxing district's total taxable valuation. This results in a percentage that is the mill rate for the district.

Real property must be assessed with reference to its value on February 1 of each year. All property must be valued at its true and full value. True and full value is defined as the value determined by considering any earning or productive capacity, the market value, and all other matters that affect the actual value of the property. For agricultural property valuation is determined by a productivity formula. The assessed valuation of property is 50 percent of the true and full value. Taxable valuation of property is nine percent of assessed valuation for residential property and 10 percent of assessed valuation for agricultural, commercial, and centrally assessed property. Taxable valuation is the amount against which the mill rate for the taxing district is applied to determine tax liability for individual parcels of property.

True and full value of residential and commercial property is established by local assessors. True and full value of railroad, public utility, and airline property is centrally determined by the State Board of Equalization.

True and full value of agricultural property is based on productivity as established through computations made by the North Dakota State University Department of Agricultural Economics based on the capitalized average annual gross return of the land. Annual gross return for rented land is determined from crop share or cash rent information and for other land is 30 percent of annual gross income for cropland used for growing crops other than sugar beets or potatoes, 20 percent of annual gross income for cropland used for growing sugar beets or potatoes, and

25 percent of gross income potential based on animal unit carrying capacity of the land for land used for grazing animals. Average annual gross return for each county is determined by totaling annual gross returns for the county for the most recent six years, discarding the highest and lowest annual gross returns from those years, and dividing the resulting figure by four. Average annual gross return is then capitalized using a 10-year average of the most recent 12-year period for the gross Farm Credit Services mortgage rate of interest. Personnel from North Dakota State University determine an average agricultural value per acre for cropland and noncropland on a statewide and countywide basis. This information is provided to the Tax Commissioner by December 1 of each year and then provided by the Tax Commissioner to each county director of tax equalization. The county director of tax equalization provides each assessor with an estimate of the average agricultural value of agricultural lands within the assessor's district. The assessor must determine the relative value of each assessment parcel within that district. In determining relative values, local assessment officials are to use soil type and soil classification data whenever possible.

Property of railroads, public utilities, and airlines is assessed by the State Board of Equalization. The assessment process for centrally assessed property differs from the procedure for locally assessed property. The owner of centrally assessed property must file an annual report with the Tax Commissioner by May 1. The Tax Commissioner prepares a tentative assessment for the property by July 15. Notice of the tentative assessment is sent to the property owner at least 10 days before the State Board of Equalization meeting on the first Tuesday in August. At the State Board of Equalization meeting, testimony is received on the value of centrally assessed property and assessments are finalized. The Tax Commissioner certifies the finalized assessments to the counties, to reflect the portion of centrally assessed property for each property owner which is taxable in that county.

Airlines serving North Dakota cities pay a property tax computed by averaging mill levies in all the cities served by an airline and applying the average levy against the taxable valuation of the property of the airline in North Dakota. Taxes imposed on an airline are collected by the State Treasurer and distributed to cities in which the airline operates, to be used exclusively for airport purposes.

Some enterprises make payments in lieu of taxes. Cooperative telephone companies pay a gross receipts tax at a rate based on the number of telephones per mile of line. This tax is paid to counties and the revenue is allocated entirely to school districts.

Rural electric cooperatives pay a gross receipts tax in lieu of property taxes for all property except land. The tax rate is one percent in the first five years of operation and two percent thereafter.

Rural electric cooperatives with generating facilities are subject to a transmission line tax of \$225 per mile on transmission lines of 230 kilovolts or more.

Coal conversion facility taxes are paid in lieu of property taxes. These taxes are allocated according to state law and provide revenues to affected taxing districts.

Property owned by certain state agencies and by certain federal agencies is subject to payments in lieu of property taxes.

Equalization is the process provided by law to adjust property assessments to be consistent with market value or agricultural value. Property owners who are dissatisfied with assessment levels may initially present their concerns for review by the township board of equalization or the city board of equalization in April. The board of county commissioners meets in June to equalize among assessment districts in the county. The State Board of Equalization meets in August to equalize among counties and districts within a county.

### **Association of Counties Study**

Senate Concurrent Resolution No. 4015 directed the Legislative Council to receive the report on the study conducted by the North Dakota Association of Counties regarding improving technology to improve the property tax assessment system and allow sharing of information and resources among state and local governments. The resolution stated that grant funding was received by the association to conduct a study on improving technology and sharing of resources among state and local governments. The association sought committee members to serve on its task force to study this topic. The request was denied by the Legislative Council chairman. No further action was reported by the association.

### **Assessing Officers' Concerns**

Under Senate Bill No. 2081 (1995), assessment officials in the state must establish assessed valuations for all tax-exempt property in the state by 1998. Assessment officials expressed a number of concerns about this requirement, including a shortage of staff and budget among assessment officials, opposition of city and county governing bodies to paying the increased costs of these assessments, fear of property owners that assessment of exempt property is the first step toward taxing that property, and problems with assessing highway rights of way and other governmental property for which assessors perceive no benefit in determining values.

Association of Assessing Officers representatives agreed that association members could establish valuations for exemptions of limited duration. Association representatives opposed assessing all exempt property but agreed that it would be useful to determine values for property exempted by cities or counties under discretionary authority provided by law for specific purposes. Assessments were conducted by local assessors and survey results were compiled by the Tax

Commissioner. The association survey focused on exemptions allowed by law for new residential property, property used for day care, pollution abatement improvements, residential and commercial property improvements, and exemptions and payments in lieu of taxes for new and expanding businesses. Forty-seven counties and 11 cities responded to the survey request. From these responses, it was estimated that more than \$261 million of property is exempt under these exemptions, which totals about 1.4 percent of all valuation in the state.

Association of Assessing Officers representatives said the requirement of assessing all exempt property is more extensive than necessary. Association representatives said this would include establishing values for all federal, state, and political subdivision land and buildings, churches, all farm buildings, Indian reservation land and buildings, hospitals, day cares, streets, alleys, state and federal highways, county and township roads and rights of way, and other property. Association representatives said asking local assessors how they would accomplish these assessments yielded responses from many that they would quit before going through conflicts with their neighbors to establish values, especially for farm residences and buildings.

Committee members discussed with assessment officials possibilities of eliminating some exempt property from the property that must be assessed under the law. It was also discussed whether there is a possibility of establishing estimated valuations for property without onsite assessment.

### **Agricultural Property Valuation**

The 1996 valuations for agricultural lands statewide increased by more than 12 percent under the agricultural property valuation formula, causing considerable concern and causing many people to question why the increase was so substantial. The effect of the increase was softened somewhat during actual assessments as finalized by the State Board of Equalization, but actual assessments of agricultural land still increased over nine percent statewide in 1996.

Representatives of the North Dakota State University Department of Agricultural Economics reviewed the computation of agricultural property valuations under the statutory formula. The formula requires use of six years of agricultural production statistics from which the high and low production years are dropped and the remaining four years are averaged. For 1996 assessments, the 1988 drought year was replaced by 1994, which was a good crop year. The capitalization rate for agricultural property is an average of 10 of the most recent 12 years of the former Farm Credit Services mortgage rate of interest for North Dakota. The high and the low years are dropped from consideration and in this assessment year a high interest rate year dropped out of the formula and was replaced by a low interest rate year. The combination of a reduced capitalization rate and increased production averages yielded substantial

increases in valuations for 1996.

Comparing valuations for property classifications shows that during the late 1980s and early 1990s residential and commercial property valuations statewide increased while agricultural property values decreased. In 1994 and 1995, increases in agricultural values were less than half of the increases in residential and commercial property values. Shifts in property tax burden among classifications of property occur if all property does not increase uniformly in valuation. When agricultural property valuations were falling and residential and commercial property valuations were increasing, the tax burden shifted away from agricultural property. The 1996 increase in agricultural property valuation caused a shift of some of that burden back toward agricultural property.

Examination of agricultural property valuation changes in each county indicates that the lowest agricultural value increases per acre occurred in eastern North Dakota and the highest increases occurred in western North Dakota. The reason for this difference is that the drought of 1988 was more severe in western North Dakota and that drought year has now worked through and dropped out of the computation of values.

An increase in assessed value of taxable property does not translate into an increase in property taxes. The level of tax is determined by the political subdivision's budget and levy. The committee examined data indicating that a 12 percent increase in agricultural property valuation does not translate into a 12 percent increase in taxes. Depending upon the mix of property types within the taxing district, an increase of 20 percent or more in agricultural property valuation may translate into an increase of less than one percent in property tax liability or may amount to a more substantial increase, but it is very unlikely that the increase in taxes would exactly match the percentage increase in valuation.

The committee reviewed assessments of agricultural property for Richland County. Since 1972, Richland County has used a soils committee to assist in agricultural property valuation. The soils committee has nine members, each representing four townships. The soils committee serves in an advisory capacity to the board of county commissioners and has the primary duty of reviewing soil type valuations and recommending necessary changes. Use of modifiers to adjust the value of cropland within a soil classification was said to be important to establishing fair valuations for certain properties.

The committee reviewed the use of modifiers for valuing agricultural property under state law and guidelines. The Tax Commissioner encourages assessment officials to use modifiers when needed to account for unusual conditions such as wet areas, saline, rocks, wooded areas, inaccessibility, nonconformance, or unusable tracts.

## Assessment Automation

Property appraisal relies on analysis of a variety of property characteristics and their effects on sales prices. Use of an automated system allows uniform application of these factors. The committee reviewed automation of assessments in Fargo. The Fargo city assessor uses computer applications to produce the assessment roll, maintain and track exemptions and value trends, prepare the sales ratio study, produce automated appraisals, track building permit work and appeals, and provide the public with responses to information requests. The Fargo city assessor is developing software for local assessment officials after finding no suitable prepackaged software assessment systems on the market.

## Suggestions to the Committee

The committee received requests from several township officials to limit the annual increase in statewide agricultural property valuations. The committee considered a bill draft that limited the increase or decrease in valuation of agricultural property in any year.

Representatives of the North Dakota Farm Bureau opposed limiting agricultural property valuation changes on the grounds that this would distort the valuation formula. They suggested that the extent of valuation changes could be reduced by expanding the number of years of data used in the valuation formula from six to eight or 10 years.

The committee obtained estimates that use of an eight-year average would have decreased 1996 cropland valuation by 4.36 percent and decreased noncropland valuation by 1.55 percent, and use of a 10-year average would have decreased 1996 cropland valuation by approximately five percent and decreased noncropland valuation by approximately seven percent. These changes would have lessened the 12 percent valuation increase for agricultural property that occurred in 1996.

The committee obtained information on how these suggested changes and resulting decreases in agricultural valuations would affect shifting of taxes among property classifications. Using eight years of data would shift over \$700,000 of annual property taxes from agricultural land to other property classifications and using 10 years of data would shift more than \$900,000 of annual property taxes from agricultural land to other property classifications.

The data used for these computations using eight or 10 years of data brought the 1988 drought year back into the computation, which had the effect of substantially reducing agricultural valuations statewide. Committee members expressed concern about going to a 10-year average if it meant pulling years back into the formula which caused the recent fluctuation in valuations when they were dropped from the computation. Committee members suggested that bringing years back into the computation could be avoided by

phasing in future years' data by adding one year of data to the computation each year until 10 years of data is used in the formula.

### **Recommendation**

The committee recommends House Bill No. 1069 to extend the number of years of production data used in the agricultural property valuation formula from six years to 10 years and retain the provision that the highest and lowest production years are discarded and the remaining years are averaged. The bill makes this change in increments by use of seven years' data in 1997, eight years' data in 1998, nine years' data in 1999, and 10 years' data after 1999. This means 1989 will be the first year used in the valuation formula through the 2000 valuation.

The committee makes no recommendation regarding the suggestion of the North Dakota Association of Assessing Officers that the requirements of assessing all exempt property be eased or removed from law.

## **IRRIGATED LAND ASSESSMENT STUDY**

### **Background**

True and full value of agricultural property is the capitalized average annual gross return as determined by the North Dakota State University Department of Agricultural Economics. The formula is described under **PROPERTY TAX ASSESSMENT SYSTEM STUDY** in this report. The county director of tax equalization, whenever possible, is required to use soil type and soil classification data from detailed and general soil surveys to establish values for assessment districts. Each local assessor adjusts the relative values of assessment parcels.

Agricultural property valuation concerns arose before the 1995 legislative session primarily in Sargent and Barnes counties, where recent sharp increases in agricultural property valuations occurred. In Sargent and Barnes counties, soil conditions exist which allow property that would otherwise have very low productivity to produce substantial returns from irrigated crops, particularly potatoes. The production from irrigated land is used to determine the countywide gross return for the year, which is used in the valuation formula to determine the countywide agricultural property valuation. This valuation, increased by production from irrigated land, is applied to all property in the county. Use of only soil survey information in determining values would produce a relatively low value for the poor quality soils of the irrigated lands. The statutory provision requires use of soil surveys to establish valuations for soil types and there is no statutory provision requiring increased valuations to recognize the existence of irrigation. Countywide average agricultural property values are increased by production from irrigated lands and when the increase is not directly assessed against irrigated acreage, nonirrigated agricultural property is given a higher taxable valuation. Irrigated land is

some of the most productive in the county and increases county valuations but it is valued among the least productive properties in the county. This results in a shifting of tax burden to nonirrigated farmland. This is the subject of controversy that was intended to be addressed by Senate Bill No. 2524 (1995).

Senate Bill No. 2524 provided that 50 percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of average agricultural value per acre for cropland for the county as determined by the North Dakota State University Department of Agricultural Economics. The 1995 legislation is effective only for taxable years 1995 through 1997 and then becomes ineffective.

### **Committee Consideration**

Although Sargent and Barnes counties were the source of debate leading to 1995 legislation, this study was of statewide interest because every county in the state has issued irrigation permits and has irrigated cropland in production. The amount of cropland and soil conditions determine the impact irrigation has on countywide agricultural valuations. Williams County placed higher valuations on irrigated land before the productivity method of valuing agricultural lands became law and still follows that practice. Most counties have not adjusted property valuations to recognize irrigation effects, under the premise that irrigation is a management decision, like fertilization or tillage practices, and is not a component of property valuation.

The committee discussed using the availability of water for irrigation as a means of determining values for agricultural lands. This approach was characterized as unfair to a farmer who does not wish to irrigate. It was suggested that the issuance of a water permit might be a fairer basis to trigger valuation changes attributable to irrigation because the property owner initiates issuance of a permit.

Farmers with acreage under irrigation informed the committee that their net income does not exceed that of dry land farmers but, because of added cost of irrigation, their risk of loss is greater. They said the adjustments from the 1995 legislation seemed to end complaints that were heard about agricultural valuations before the 1995 adjustment.

Representatives of the North Dakota State University Extension Division and Agricultural Economics Department reviewed a report on the economics of irrigation. The report contained an estimate that 55 percent of increased production is eaten up in irrigation costs for dry beans and potatoes. Authors of the report stated that the 50 percent exclusion for income from irrigated land in the 1995 legislation was close to the correct level of exclusion.

Senate Bill No. 2524 reduced agricultural property valuations in 32 of 53 counties, with maximum decreases of 3.3 percent in Benson and

Cass counties.

The median sale price of land with irrigation potential was 23 percent higher than the price of land with no irrigation potential. Land under irrigation had a median sale price 55 percent higher than land with no irrigation potential. Median taxable value for land with irrigation potential was 11 percent higher than land without irrigation potential but the taxable value of irrigated land was 29 percent below the true and full value of land without irrigation potential. The lower taxable value for irrigated land may result because land under irrigation is generally of a poor soil quality, which under the assessment formula receives a lower valuation.

### **Recommendation**

The committee recommends House Bill No. 1070 to make permanent the changes enacted by Senate Bill No. 2524 (1995). The bill eliminates 50 percent of the annual gross income from irrigated land from consideration in computing average agricultural value per acre for cropland for the county as determined by the North Dakota State University Department of Agricultural Economics. This would extend the application of Senate Bill No. 2524 to taxable years after 1997.

## **TAX PREFERENCES AND ECONOMIC DEVELOPMENT IMPACT STUDIES**

### **Background**

The committee conducted its studies of tax preferences and impact of large economic development projects jointly because the studies involved consideration of many of the same issues. With respect to property taxes, economic development incentives are exemptions or payments in lieu of taxes that may be granted for new industries, new residential property, residential or commercial building improvements, and tax increment financing. With respect to income taxes, preferences exist allowing credits or deductions to encourage seed capital investments, Myron G. Nelson Fund investments, venture capital corporation investments, nonprofit development corporation contributions, and sale or lease to a beginning farmer or business.

Under NDCC Section 40-57.1-03, payments in lieu of taxes on a new industrial project are to be apportioned in the same manner as property taxes. This section was amended by House Bill No. 1275 (1995) to allow a school district and any other taxing district to agree with the city or county on a different allocation of revenues. This section was also amended by Senate Bill No. 2322 (1995) to require a city or county considering a property tax exemption or payments in lieu of taxes for a new industry to include a representative appointed by each affected school district and township as nonvoting ex officio members of its governing body. Senate Bill No. 2322 is effective only through July 31, 1997.

House Bill No. 1520, enacted during the 1994 special legislative session, substantially revised

NDCC Chapter 40-57.1 and created a payments in lieu of taxes option that could be used in combination with, or in place of, property tax exemptions for new industry projects. Payments in lieu of taxes may be allowed by a city or county governing body for any revenue-producing enterprise in lieu of the ad valorem taxes that would otherwise be due on buildings, structures, fixtures, and improvements used in operation of the project. The amount of annual payments in lieu of taxes from a project may be set at any amount by the governing body of the city or county. The right to make payments in lieu of taxes may be granted for up to 20 years from the date of commencement of project operations.

The valuation of property subject to payments in lieu of taxes is not to be considered in valuation of the taxing district in which the project is located for purposes of determining the mill rate for the district. Payments in lieu of taxes must be subtracted from the taxing district's budget before the remaining amount is certified as a tax levy to be spread against valuation of property in the district. Thus, revenue from payments in lieu of taxes cannot be used as "off budget" revenues and any amount received must be used to offset budgeted expenditures of the governing body of the city or county and any other political subdivision receiving the revenue. The occasions of the greatest property tax impact of a project making payments in lieu of taxes upon other taxpayers would be when payments in lieu of taxes received by the political subdivision are substantially more or less than budgeted expenditures that are attributable to services provided to the project.

### **Committee Consideration**

The committee reviewed a November 1994 Tax Commissioner report on income and property tax exemptions. The report reviewed a survey of businesses with property or income tax exemptions in 1992, regarding the reasons for locating in North Dakota. The most frequent responses as to why a business located in North Dakota included quality of life, market, work force, expansion, raw materials, and location. Eight percent of respondents cited business climate or tax structure as a location factor and six percent cited tax incentives as a location factor. Committee members pointed out that when factors relating to taxation are combined, they appear to be more significant to location decisions than the individual responses would indicate. Economic development officials pointed out that if all other location factors are equal, having the ability to match tax incentives available in other states becomes critical to attracting new businesses.

The committee reviewed a survey conducted by the Fargo-Cass County Economic Development Corporation on economic development incentive usage. Representatives of the corporation said granting of tax incentives will not make a bad economic project into a good one but there are occasions when tax incentives can be judiciously used to influence location of good economic

projects. Once selection of sites is narrowed to a few candidates, tax incentives can play a role in the final location decision for the business. It is at this level of location decisions when it becomes important for economic development officials to be able to match the tax climate or incentives available in competing states. Corporate representatives said the economic development incentives made available by the Legislative Assembly are useful, workable tools.

The Fargo-Cass County Economic Development Corporation is working on computer software that could be used by political subdivisions to measure potential cost and benefit of tax incentives for a new business. This software is intended to give political subdivisions an opportunity to quantify revenue losses from proposed tax incentives versus long-range benefits to the community and state of establishing a new business.

The committee reviewed a Tax Department report on usage and revenue losses for each income tax credit or deduction intended as an economic development incentive.

The committee reviewed information on the extent and amount of property exempted from property taxes under statutory provisions intended to promote economic development. The information is described under **PROPERTY TAX ASSESSMENT SYSTEM STUDY** in this report.

The committee reviewed a report presented by the Department of Economic Development and Finance analyzing real and personal property taxes, workers' compensation insurance rates, state and local sales taxes, unemployment insurance, and corporate income taxes for Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming. North Dakota has a very low property tax burden compared to the other states in the survey. North Dakota workers' compensation rates are higher than most of the states compared but are lower than the rates in South Dakota and Montana. Workers' compensation rates compared in the report were for agricultural manufacturers and rates for other industries may differ. North Dakota unemployment insurance rates are among the highest of the states compared. North Dakota sales and use tax burdens are relatively low compared to the states in the comparison, especially when consideration includes the sales tax exemption for new manufacturing machinery. Combining all of the categories considered, North Dakota compares favorably to the other states. Tax incentives were described as very important in efforts to attract and retain businesses.

The committee reviewed a study on the impact of the ProGold facility on Wahpeton and Richland County which was prepared by a faculty member from the North Dakota State University Department of Agricultural Economics before the decision to locate the facility in Wahpeton. The report estimated direct new expenditures in several economic sectors totaling approximately \$113 million per year during plant construction and \$76 million per year during plant operation.

The report estimated secondary employment from the facility will total approximately 2,700 jobs beginning in 1997. The report estimated approximately \$250 million per year in economic development impact will be attributable to existence of the facility. The report estimated a net gain of about \$3.2 million per year in state tax revenues during operation of the facility. The report estimated Richland County finances would have a net gain of about \$30,000 per year. The report did not include estimates of property taxes from the facility because the report was prepared before it was known what tax status the plant would have.

A Richland County official said the ProGold facility has agreed with the county to make payments in lieu of taxes over a period of 20 years. For two years, no payments will be made on the facility and for a period of 18 years annual payments of \$299,000 will be made. The tax payments were determined by estimating the taxes that would be due over the second 10 years of operation of the facility and spreading that amount of taxes over a period of 18 years. Taxes of \$88,000 per year will also be paid on the land on which the facility is located.

Committee members toured the ProGold facility with representatives of Richland County. The committee received information on road improvements that have been made and will be necessary in connection with the facility. The committee received a briefing on operation of the facility including a description of the process for production of high fructose corn syrup and of the truck and train traffic into and out of the facility. The facility will use 2.6 million gallons of water per day but will recycle more than 50 percent of its water consumption to reduce the amount drawn from the Red River. The facility will have its own water treatment facility which the operators believe will return water to the river as good in quality as the water taken from the river.

The committee received a report from the Bismarck city assessor on all exempt property within the city. The two-year residential property exemption in Bismarck was discontinued in 1995. Exemptions for improvements to commercial and residential property totaled more than \$200,000 in property tax revenue lost for 1992, more than 90 percent of which was for commercial property improvements. Use of the exemption for new businesses varies from year to year.

A representative of the North Dakota School Boards Association informed the committee that the association approved a resolution to seek legislation allowing school district property tax levies to be unaffected by city or county decisions to grant property tax exemptions for new businesses.

### Conclusion

The committee makes no recommendation with regard to its studies of tax preferences and the impact of major economic development projects on political subdivisions. The committee received no

suggestions for legislation regarding either study.

## FARM BUILDINGS EXEMPTION STUDY

### Background

Farm residences and farm buildings other than residences are exempt from property taxes under NDCC Section 57-02-08(15). The provision relating to farm residences is much more detailed than the provision relating to farm buildings other than residences and provides criteria to determine what is a farm and who is a farmer and imposes income limitations on persons who qualify for the exemption for their residence. The exemption for farm buildings other than residences does not apply to any structure or improvement used in connection with a retail or wholesale business other than farming, any structure on platted land within the corporate limits of a city, or any structure located on railroad-operating property. It is the exemption for farm buildings other than residences that the committee was directed to study.

A 1968 Attorney General's opinion indicated that raising animals may not always qualify as farming for purposes of the farm buildings exemption. The opinion attempted to differentiate between traditional farming and industrial operations such as livestock feeder operations. The opinion stated that the source of feed for animals may determine whether an operation is a farm or an industrial operation.

The North Dakota Supreme Court decision in *Butts Feed Lots v. Board of County Commissioners*, 261 N.W.2d 667 (1977) concluded that a feedlot operation was an industrial activity and the property did not qualify for the farm buildings exemption. The Supreme Court found that contract feeding of cattle not owned by the owner of the facility is an industrial activity and that raising cattle owned by the owner of the facility is an industrial activity if the feed for the cattle is not grown onsite. The Supreme Court also said an operation may be industrial if replacement animals are not raised onsite. The Tax Commissioner adopted guidelines that are intended to follow the 1968 Attorney General's opinion and the 1977 Supreme Court decision. The guideline for animals raised and owned by the operator provides that the feed must be primarily grown by the person raising the animals and the enterprise must be operated in connection with or incidental to an ordinary farming operation.

### Committee Considerations

This study arose because of events that have transpired in Richland County, although the topic is of application in each county in the state. In 1995, a large turkey-raising operation was established on a section of land in Richland County. The operator has constructed 35 large turkey barns on the property. Richland County officials assumed that the property would not qualify for the farm buildings exemption under the *Butts* analysis. During consideration of this issue,

however, Richland County officials recognized that several existing operations that raise turkeys, cattle, or pork would also become taxable under the Tax Commissioner's guidelines adopted to implement the *Butts* decision. Several issues arose regarding application of these guidelines in specific instances and Richland County officials decided to seek a legislative solution to clarify when the farm buildings exemption applies.

North Dakota Turkey Federation representatives said most of their members make the majority of their income from raising turkeys. North Dakota turkey growers produce about 1.5 million turkeys per year, not including the production from the new Richland County operation, which will produce an additional one million turkeys per year. Some members of the federation raise turkeys exclusively and other members raise turkeys and corn or grain. Federation members said in some cases grinding one's own feed is the best management decision but most often purchased feed yields the best profits. Federation representatives recommended that all turkey-raising operations should qualify for the farm buildings exemption. They indicated there does not appear to be any reasonable basis to distinguish among operations for exemption purposes.

North Dakota Corn Growers Association representatives recommended that feedlots and poultry operations should qualify for the farm buildings exemption without limitation.

The committee toured Richland County turkey-raising operations. One operator said his farm has the capacity to grow and process feed for turkeys but it is more economical to buy processed feed. Finishing barns for raising turkeys are capable of holding approximately 10,000 turkeys and cost approximately \$200,000 to construct.

The committee toured the new Richland County turkey-raising operation, which is composed of approximately 35 turkey barns, each approximately 660 feet by 60 feet. The operation does not grow corn or grain and the operator does not reside onsite, although trailer homes are onsite for employees.

Richland County officials said the impact to Richland County's road budget for maintenance of the road to the new turkey facility exceeds normal costs of maintenance for a county road by approximately \$28,000 per year. The road in question is subjected to high-volume truck traffic due to the existence of the turkey-raising operation. Committee members asked whether granting county authority to levy special assessments for road damages would alleviate the problem. Richland County officials said levying special assessments in the situation at hand would not resolve the problem because several properties under different ownership abut the road but traffic attributable to only one property is responsible for road deterioration.

The committee considered several factors to distinguish industrial or commercial operations from agricultural operations, but none of the

factors appears suitable. Basing the exemption upon whether the farm owner owns the animals that are being fed would require monitoring ownership of animals. Basing qualification for the exemption on the source of feed, as was done by the Supreme Court in the *Butts* decision, requires monitoring feed and may force operators to grow their own feed when it could be a better management decision to purchase feed from off the farm. Basing the exemption on whether the owner lives on the site might interfere with domestic situations and unduly restrict a person's freedom to choose where to live. Limiting the number of paid employees could result in loss of jobs for employees above the limit. Limiting the value of farm buildings to be exempt would require assessment of all farm buildings. Causing excessive road repairs for the county or township could involve arbitrary decisions on who is responsible for road damage. Limiting the number of animals raised would require establishment of an accurate count of animals at any time of year and different limitations would be required for different kinds of animals. Basing the exemption on whether replacement animals are raised on the farm, as was discussed by the Supreme Court in *Butts*, was described as inappropriate for some kinds of animals.

The committee discussed eliminating the farm buildings exemption and offsetting the property tax increase by a corresponding reduction in taxes

against agricultural land. This would eliminate the need to determine who qualifies for the farm buildings exemption. However, this would reduce the tax burden for persons who own agricultural land but have few or no buildings or do not actively farm the land, including nonresident landowners.

Richland County officials urged the committee to seek a legislative solution to the farm buildings exemption problem. Richland County officials conducted a survey of all 53 counties and found several cattle feeding operations and operations producing hogs, chickens, eggs, bees, llamas, emus, and turkeys that have buildings that are subject to property taxes. They reported that many county tax officials agree that many more operations would be considered industrial enterprises and subjected to taxes on farm buildings if the *Butts* rationale were strictly observed.

### **Conclusion**

The committee makes no recommendation on the farm buildings exemption study. The committee found no workable, fair suggestion that would improve on the criteria established under the Supreme Court's *Butts* decision. Committee members expressed preference for retaining the current law, with flexibility for application by local governing bodies, over establishing statutory criteria that might be excessively rigid and unfair in some situations.

# WATER RESOURCES COMMITTEE

The Water Resources Committee was assigned two studies. Senate Concurrent Resolution No. 4053 directed a study of the state's water laws concerning their effect on the efficient use of water and their effect on the holders of senior water rights. Senate Concurrent Resolution No. 4033 directed a study of financing and funding needs for development and completion of the state's water resources infrastructure and methods for development of a program to provide financing and funding of water supply facilities in this state.

Committee members were Representatives Alice Olson (Chairman), Duane L. DeKrey, Loren DeWitz, Everett Dobrinski, David Drovdal, Dale Henegar, Kit Henegar, Leonard J. Jacobs, Edward H. Lloyd, and Jim Torgerson and Senators William G. Goetz, Joel Heitkamp, Byron J. Langley, Bryce Streibel, John T. Traynor, and Herb Urlacher.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1996. The Council accepted the report for submission to the 55th Legislative Assembly.

## NORTH DAKOTA WATER LAW STUDY

### Background

Senate Concurrent Resolution No. 4053 reflected the Legislative Assembly's concern over instances in which the holder of a senior water right has invested money in a capture system that is not adequate to fully use the available water and the holder of a junior water right subsequently impacts the availability of water to the senior appropriator. In order to prevent waste and to foster and promote the efficient use of scarce water resources, state law provides that a senior right to appropriate water does not include the right to prevent changes in the condition of water occurrence or to prevent a later appropriator from lowering a water table, artesian pressure, or water level if the senior appropriator can reasonably acquire water under the changed conditions. Under this law, the holder of the senior water right can be required to incur expenses to enable the senior user to capture the water to which that person has a senior right.

### General Surface Water Appropriation Law

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 have rejected the doctrine of riparian rights and have adopted instead 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 the prior appropriation doctrine 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 locus 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 (NDCC) 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.

### General Ground Water Appropriation Law

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. Nebraska, however, 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, Wyoming, as well as North Dakota, apply this doctrine.

#### **North Dakota Water Law**

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 the applicants, then the State Engineer must follow the priority established by NDCC 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; and (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 stream flow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire his water under the changed conditions.

#### **Priority of Surface Water Rights and Ground Water Rights in Other Western States**

Nearly all of the western states have adopted the prior appropriation doctrine for allocating and prioritizing the use of their surface waters although several states, such as California, constructed their prior appropriation systems upon an earlier riparian system after it was discovered that the riparian system does not work well in the arid west. Even in the dual system states, however, the prior appropriation doctrine is the key to understanding their surface water appropriation systems. Concerning ground water, 14 of the 17 contiguous western states have applied the prior appropriation doctrine to their ground water resources.

South Dakota follows the prior appropriation doctrine in that the priority of the water right is measured from the filing of an application. Concerning ground water, South Dakota Codified Laws Section 46-6-3 provides that "subject to vested rights and prior appropriations,

groundwaters of the state may be appropriated . . . ."

Montana Code Annotated Section 85-2-401 provides that "as between appropriators, the first in time is the first in right." This section contains language nearly identical to NDCC Section 61-04-06.3 and provides further that "priority of appropriation does not include the right to prevent changes by later appropriators 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, if the prior appropriator can reasonably exercise his water right under the changed conditions. Priority of appropriation made under this chapter dates from the filing of an application for a permit . . . ." Although Montana has a separate system of water courts to adjudicate disputes concerning water in that state, the prior appropriation doctrine is the basis for the allocation of water in Montana.

Wyoming has adopted the prior appropriation doctrine in Section 3 of Article 8 of the Constitution of Wyoming. Wyoming Statutes Section 41-3-903 extends the prior appropriation doctrine to ground water.

Idaho Code Section 42-226 declares that ground waters are public waters in Idaho. However, this section provides that a reasonable exercise of the prior appropriation doctrine may not be used to block full economic development of underground water resources. Based upon this provision, Idaho extends the prior appropriation doctrine applicable to its surface water to its ground water resources. However, the doctrine as applied to ground water resources is not a pure prior appropriation system, and a senior appropriator's rights may be modified to promote the full use of underground water resources.

Nevada Revised Statutes Section 534.020 declares that the state's underground waters belong to the public and are subject to appropriation for beneficial use.

New Mexico Statutes Annotated Section 72-12-1 declares that underground waters in New Mexico are public waters and provides that "the water of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries, are hereby declared to be public waters and to belong to the public and to be subject to appropriation for beneficial use." Concerning the right to use waters, Section 72-12-2 provides that beneficial use is the basis, the measure, and the limit to the rights to the use of underground waters.

#### **Well Interference Conflicts**

##### **Rules of Liability**

Courts in the United States have applied six rules of liability to resolve well interference conflicts or competing uses to ground water. These rules are based upon the type of water appropriation law followed by the jurisdiction, the nature of surface ownership, common law, and statutory law.

Under the absolute ownership theory of ground water appropriation, there is no liability for interfering with the production of another's well. Each landowner has the right to take whatever water may be pumped from the land and competing landowners are often said to engage in a race to the bottom of the aquifer.

In reasonable use jurisdictions, overlying landowners can generally pump as much ground water as they wish without legal liability. However, if a junior appropriator's water withdrawals reduce a senior appropriator's ground water production, the junior will not be liable if the junior appropriator is using the water on the overlying land and the use is not wasteful. The key to applying the reasonable use doctrine is whether the water is used on the overlying land. If water is put to a beneficial use on the land, it is considered reasonable while any use off the land is considered unreasonable unless the water is used for purposes incidental to the beneficial enjoyment of the overlying land. If the junior water use is found to be unreasonable, the junior user may be liable for damages if there is sufficient water in the aquifer to satisfy both users or enjoined if the aquifer is insufficient to supply both uses.

The correlative rights doctrine or California rule of correlative rights (named for the state that has adopted this theory) is designed to accommodate all overlying owners when water supply is insufficient to meet the reasonable needs of all, and when conflicts among overlying users occur, each is entitled to that person's proportionate share of the available supply. Therefore, in the event of a conflict, all users must ratably reduce their use of water.

Michigan, Ohio, and to some extent Nebraska have adopted Section 858 of the Restatement (2nd) of Torts. This section balances the equities and hardships among competing users and imposes liability only for withdrawals that affect other users unreasonably. Section 858 provides, in part:

**858. Liability for Use of Ground Water**

(1) A proprietor of land or his grantee who withdraws ground water from the land and uses it for a beneficial purpose is not subject to liability for interference with the use of water by another, unless

(a) the withdrawal of ground water unreasonably causes harm to a proprietor of neighboring land through lowering the water table or reducing artesian pressure,

(b) the withdrawal of ground water exceeds the proprietor's reasonable share of the annual supply or total store of ground water, or

(c) the withdrawal of the ground water has a direct and substantial effect upon a watercourse or lake and unreasonably causes harm to a person entitled to the use of its water.

The final rule of liability is based upon the prior appropriation doctrine. However, the rule can be divided into a pure prior appropriation (or junior

liable) rule and a modified prior appropriation rule under which the senior appropriator may be required to take some action to exercise that person's water right. Under a pure prior appropriation rule, prior appropriators who have put the water to a beneficial use are entitled to have subsequent appropriators restrained from drawing the water out of and lowering the static head pressure of the underground basin from which the two appropriators pumped water. This rule has been criticized by several commentators because it protects wasteful or inefficient uses and does not allow a scarce resource such as ground water to be put to a full beneficial use.

Many states have modified the pure prior appropriation rule as applied to ground water. This is the approach adopted in North Dakota and Montana, as well as other western states. Under a modified prior appropriation rule, senior appropriators are only entitled to be protected to the extent of reasonable ground water pumping levels and are not absolutely protected in either their historic water levels or historic means of diversion. Senior appropriators may have to accept some modification of their rights in order to achieve the goal of full economic development of the state's ground water resources. Some states have adopted well spacing or ground water withdrawal limitations, maintenance of reasonable pumping depths, or preferences under which an inferior use may be prior to the superior use. Statutes that establish preferences usually do so for ground water used for domestic purposes. Another method to resolve ground water disputes under the prior appropriation rule is in Oregon and Wyoming, where the state engineer is authorized to require that pumping be rotated to minimize well interference conflicts.

**Critical Ground Water Area Legislation**

Several western states have enacted critical area statutes, which authorize creation of areas within which special rules may be established to deal with well interference by limiting withdrawals through enforcing priorities, pumping rotation, or reducing currently authorized withdrawals. Generally, these statutes contain procedures under which critical ground water areas may be designated and the criteria that the administrative agency enforcing the area is required to use to designate the areas as a critical ground water area. Criteria may include instances where withdrawals are approaching or exceeding the natural recharge of the aquifer (overdraft or mining), declining water levels, user conflicts, degradation of water quality, and surface subsidence caused by ground water withdrawals. Such statutes have been enacted in Arizona, California, Colorado, Hawaii, Idaho, Kansas, Nebraska, Montana, Nevada, New Mexico, Oklahoma, Oregon, Texas, Washington, and Wyoming. The statutes contain various development or use controls. Development controls include requiring permits for new wells, permit denials, well spacing, and well drilling moratoria. Use controls include enforcement of existing

priorities, reduced withdrawal levels, rotated pumping, reduced pumping agreements, and purchase and retirement of ground water rights.

### Testimony

One of the criteria that the State Engineer is required to use when issuing a water permit is whether the rights of a prior appropriator will be unduly affected. The committee received testimony that this term is vague and that a senior appropriator may incur substantial expense as a result of the activities of a subsequent or junior appropriator. One suggestion presented to the committee was that entities acquiring large amounts of water be required to provide funds for a contingency fund to reimburse prior appropriators for any expenses they incur in deepening or modifying wells.

The director of the Water Appropriation Division of the State Water Commission testified that the operation of North Dakota's rule of reasonable capture under which the priority of appropriation does not include the right to prevent changes in the condition of water occurrence (such as increasing or decreasing stream flow, or the lowering of a water table, artesian pressure, or water level by later appropriators, if the prior appropriator can reasonably acquire water under the changed conditions) has worked well in that it has provided equity and a level playing field for all water users in a specific area. The committee received testimony that requiring a senior appropriator to set that person's pumps deeper or to construct a well deeper in the same aquifer is not viewed as an unreasonable requirement. However, if a well penetrates an aquifer and it is efficient and there is no opportunity to construct the well deeper or make it more efficient, then a junior appropriator would have to reduce or discontinue that person's pumping in order to not unduly affect the senior appropriator. Testimony by representatives of the State Water Commission indicated that the rule of reasonable capture recognizes that the state's water resources are limited and that they should be used to the greatest extent possible consistent with the public interest and that a standard that places an equal responsibility on each water user to capture the needed water is a fair basis for determining when a senior appropriator has been unduly affected and the priority in time system must be applied.

### Conclusion

The committee makes no recommendation concerning the study of the state's water laws concerning their effect on the efficient use of water and their effect on the holders of senior water rights.

## WATER RESOURCE DEVELOPMENT FINANCE STUDY

### Background

The financing of water projects is a multilevel system consisting of federal, state, local, and

private sources. However, because of decreased federal participation in funding water projects, state and local governments are being required to contribute a larger share of money for necessary capital improvements. To adequately respond to water resource needs, both of a water quantity and water quality nature, state and local governments must come up with large amounts of capital to finance necessary water projects.

## Methods of Financing Water Projects

### Bonds

The primary means of acquiring capital in a majority of states is by debt financing through the issuance of bonds by state or local governments. The two types of bonds most often used are general obligation bonds and revenue bonds. General obligation bonds are backed by the full faith and credit of the issuer. Although these bonds have a more favorable interest rate, constitutional and statutory limits exist on the amount of debt issuing governmental entities may incur.

Section 13 of Article X of the Constitution of North Dakota provides that the state may issue or guarantee the payment of bonds provided that issues in excess of \$2 million are secured by first mortgages upon real estate or upon real and personal property of state-owned utilities, enterprises, or industries. The state may not issue or guarantee bonds on state-owned utilities, enterprises, or industries in excess of \$10 million. State general obligation bonds must be accompanied by the levy of an annual tax sufficient to pay the bonds within 30 years. In *State ex rel. Lesmeister v. Olson*, 354 N.W.2d (N.D. 1984), the North Dakota Supreme Court held that a bond issuance scheme enacted in 1983 and codified as NDCC Chapter 61-24.4 violated the constitutional debt limit established by Section 13 of Article X of the Constitution of North Dakota. Chapter 61-24.4 provided for funding of the Southwest Pipeline Project by bonds backed by oil extraction tax proceeds.

Section 15 of Article X of the Constitution of North Dakota provides that general obligation debt of a political subdivision may never exceed five percent of the assessed value of the taxable property within the political subdivision but any incorporated city, by two-thirds vote, may increase the debt limit by three percent on assessed value beyond the five percent limit.

Because of the restrictions on the use of general obligation bonds, many governments use revenue bonds, which are paid exclusively from the earnings of a specific enterprise. Since the full faith and credit of the issuing entity is not pledged, generally fewer restrictions exist on the use of this financing mechanism. The interest rate, however, is not as favorable as that on general obligation bonds.

The Colorado Water Conservation Board has identified one problem with the issuance of revenue bonds--it is increasingly difficult to find water projects whose benefits are so highly valued

that those benefits can generate the revenue necessary to repay a project's cost. The board concluded that revenue financing would be a significant source of capital only in the case of large municipal or industrial water projects, and to some extent, in cases where projects have a hydropower component to generate sufficient revenue to finance the revenue bonds.

### **Economic Development Funds**

Some states have established economic development funds to provide state assistance to local governments or private sponsors in the development of water resource development projects. This assistance may take the form of loans or grants for a portion or all of the costs of the project. These funds can be financed in several ways--state general obligation bonds, revenue bonds, general fund appropriations, tax surpluses, sales and use taxes, mineral leasing funds, and energy development trust funds.

Because of the high cost associated with water resource development projects, in most states grants and loans from an economic development fund are usually made for only a portion of the total project cost.

As an alternative to grants and loans, some states use the money in their fund to buy municipal bonds for a special municipal project. Local governments benefit from having to pay less interest than they would in the municipal bond market. Another alternative is to use the fund's money for a portion of construction costs, take title to the project, and then sell it back to the sponsor over a long period of time.

### **Bond Banks**

The premise of a bond bank is to mitigate the economic inefficiencies of small bond issues which is accomplished by a legislatively created state authority that purchases local bond issues with the proceeds of the bank's bonds. Through the bond bank, the cost to local governments of issuing debt is lowered. At the same time, the expertise in dealing with debt is improved.

The North Dakota Municipal Bond Bank, established under NDCC Chapter 6-09.4, is empowered to purchase securities from various political subdivisions.

### **Enterprise Authorities**

Enterprise authorities can be established at either the state or local level. At the state level, an authority can be created to issue its own bonds, build projects and lease them to municipalities, make loans and grants to municipalities, and buy the municipalities' bonds. At the local level, a number of local governments band together into a quasi-governmental authority with powers to issue its own debt instruments. This sort of district generally uses revenue bonds.

### **Bond Guarantee Fund**

A state bond guarantee fund guarantees repayment of all interest and principal on local

obligations. The fund lowers the interest rate on locally issued bonds and thus increases their marketability. An example of such a program in North Dakota is the industrial development revenue bond guarantee program found in NDCC Chapter 6-09.2.

### **User Fees**

One approach to raising capital is to apply user fees--which include power sales revenues, water sales revenues, and recreational facility use charges--to the funding of water projects. This approach shifts a greater burden of project costs to the beneficiaries. Although they may not finance new projects entirely, user fees can provide partial financing as well as aid in access to capital markets. User fees also can relate prices directly to consumption. A General Accounting Office study found that user fees promote actions to improve conservation, reduce leakage, and control other problems. In turn, these actions can sometimes eliminate the need for constructing new systems. Better management associated with user fees may also lessen the need for rehabilitating a system during its lifetime. Problems associated with user fees include the question of fairness in their imposition and possible negative economic development of private enterprises using water resources.

### **Leasing**

A finance mechanism that has been gaining in popularity is the use of leasing arrangements.

A governmental entity can arrange for construction of a new facility through a lease-purchase agreement, which is in substance a purchase or long-term conditional sale. Under this format, a government lessee pays for the facility over a long-term period. When the facility is paid for, title switches to the lessee. As with a sale-leaseback agreement, the lessee shares the lessor's tax benefits through lower lease payments.

An operating lease arrangement offers several advantages. Because of the tax benefits to the private lessor, e.g., a depreciation allowance and tax-exempt income, the lessor can lease the property to the lessee at a relatively low cost. This arrangement also avoids any debt obligation on the government's part. Problems with leasing arrangements may include:

- Political resistance to the sale of public property.
- Resistance to private ownership and operation of traditionally publicly owned and operated services.
- Statutory or constitutional restrictions on long-term contracting by local governments.

Under a sale-leaseback arrangement, a governmental entity would sell a water facility to a private entity and lease the system from that entity. The arrangement would be an operating lease whereby the governmental entity would operate the facility and the lessor would be responsible for maintenance, insurance, and taxes. The lessor could claim tax benefits such as

depreciation. The governmental entity would share in these benefits by paying a low lease payment as well as receiving the benefits of a lessor-maintained system.

### **Privatization**

An additional financing mechanism is privatization of water facilities under which private water companies own, develop, and operate water storage and delivery systems. Privatization has a number of advantages, including the fact that private firms can raise the necessary capital without the restrictions of local debt or expenditure limits. Second, the private bond market may be better than the public market. Because of the need to operate at a profit, private firms might be better able to use new technologies, introduce worker incentive programs, and eliminate or reduce unneeded contracts.

Privatization may be inappropriate in areas where profit margins are low and where political and economic barriers exist. These barriers include greater consumer costs; problems controlling, monitoring, and evaluating the performance of contractors; opposition from government workers; and opposition from the public, which may desire to avoid giving up historically publicly provided services.

### **State Water Resource Programs**

The State Water Commission has broad powers to develop the waters of the state for domestic, agriculture, and municipal needs, irrigation, flood control, recreation, and wildlife conservation.

North Dakota Century Code Section 61-02-46 authorizes the commission to issue revenue bonds for the purpose of paying the costs of any one or more of the "works" authorized under the chapter. North Dakota Century Code Section 61-02-68.1 authorizes the State Water Commission to issue finance notes to provide owners with tax-exempt construction period financing for "works."

The State Water Commission is also charged with the planning and construction of the Southwest Pipeline Project. North Dakota Century Code Section 57-51.1-07 allocates 10 percent (20 percent from July 1, 1995, to June 30, 1997) of the moneys deposited in the oil extraction tax development fund to the sinking fund established for payment of the North Dakota water development bonds, Southwest Pipeline series, and any moneys in excess of that needed to pay the principal and interest on those bonds is deposited in the resources trust fund. The money in the resources trust fund is available by legislative appropriation to the State Water Commission for water supply facilities, including rural water systems.

North Dakota Century Code Section 6-09.5-03 establishes a community water facility loan fund with a ceiling of \$10 million in the Bank of North Dakota. All of these loans are supplemental to loans made by the Farmers Home Administration. Under NDCC Section 6-09.5-07, a community water facility loan may not exceed 50 percent of the

project costs and is issued at three percent interest.

Under NDCC Section 61-30-03, the Department of Health is authorized to issue grants for not more than 25 percent of the project cost for lake protection and rehabilitation purposes. These grants may be issued only when federal funding is available.

North Dakota Century Code Section 61-31-03 establishes the state waterbank program for the acquisition of wetland areas.

North Dakota Century Code Chapter 61-29 establishes the Little Missouri River Commission to preserve the Little Missouri River as nearly as possible in its present state, which means that the river will be maintained in a free-flowing natural condition. The commission has only advisory powers and duties over the Little Missouri River and its tributary streams.

North Dakota Century Code Chapter 61-28.2 establishes the water pollution control revolving loan fund. This fund is designed to provide funds to political subdivisions for the planning, design, construction, and rehabilitation of wastewater treatment facilities and other lawful activities connected with this program. The fund consists of funds capitalized by federal funds, matching state funds when required, and by any other funds generated by the operation of the revolving loan fund.

North Dakota Century Code Chapter 61-21.1 authorizes the Industrial Commission to issue bonds pursuant to NDCC Chapter 4-36 for the purpose of making loans to lenders and requiring the proceeds of the loans to be used by the lenders to make loans to landowners for water projects. A water project and the cost of works undertaken pursuant to Chapter 61-21.1 must be approved by the State Water Commission before a loan to finance the cost of works is eligible to be made by a lender with the proceeds of a loan from the Industrial Commission.

## **Local Water Development**

### **Statutory Programs**

North Dakota Century Code Chapter 61-16 creates water resource districts. A district's powers are very broad and generally include the local control and regulation of water within each district. Each district has the power to accept funds from federal, state, public, or private sources and has the power to borrow money for projects undertaken. North Dakota Century Code Section 61-16.1-15 authorizes a district to issue improvement warrants, revenue bonds, and special assessments and to levy general taxes. Section 61-16.1-16 states that each district's revenue bonds may not be issued for amounts in excess of \$10 million. Section 61-16.1-34 provides that improvement warrants issued by districts are to be paid by special assessments in amounts as necessary for a project. Interest rates on the improvement warrants may not exceed 12 percent per annum; however, there is no ceiling if they are sold to the state or at public sale. The

improvement warrants must be payable within a maximum of 30 years. Section 61-16.1-36 authorizes districts to issue refunding warrants.

North Dakota Century Code Chapter 61-21 governs drainage projects. Under this chapter, drainage projects come under the jurisdiction and administration of water resource districts. Water resource districts may finance drainage projects by the issuance of drainage revenue bonds which may carry an interest rate of not greater than 12 percent; however, there is no ceiling if the bond issue is sold at public sale or if it is sold to the state. These drainage bonds must be sold as general obligation bonds and are governed as such by provisions of NDCC Chapter 21-03. Section 61-21-50 authorizes the payment of drain costs by the issuance of a warrant. The maximum interest rate that this warrant may carry is 12 percent per annum with no ceiling if it is sold at public sale or sold to the state. The cost of paying warrants and revenue bonds is paid by special assessment against the benefited lands. Section 61-21-46 places a maximum levy for the cleaning and repairing of a drain. This levy may not exceed \$1.50 per acre for agricultural land and \$1 for each \$500 of taxable valuation for nonagricultural land.

North Dakota Century Code Chapter 61-07 establishes local irrigation districts that have the general authority to engage in works necessary to establish and construct a complete set of irrigation works. Under this chapter, the irrigation district may plan for the finance of works, which may include issuance of bonds, warrants, and the creation of water user funds to pay for costs from water rentals or user charges.

North Dakota Century Code Chapter 61-08 governs the fiscal affairs of irrigation districts. Under this chapter, irrigation district bonds may not carry an interest rate in excess of 12 percent per annum with no interest ceiling if sold at public sale or if sold to the state. Irrigation districts may issue improvement warrants to finance the purchase of works already constructed or for constructing new works. These improvement warrants must be paid by special assessments levied against the benefited lands. Improvement warrants may be issued in anticipation of taxes and by levy of an assessment over a period not to exceed 30 years from the date of issue. The improvement warrants may not be issued in excess of the purchase price or the construction contract price. The interest rate on improvement warrants may not exceed 12 percent per annum, and there is no ceiling if sold to the state or at public sale. Section 61-08-25 provides that bonds, warrants, and contracts are payable from special assessments on real property of the district, water charges, sale of water, or a combination of all three. Section 61-08-34 authorizes an irrigation district to issue refunding bonds (payable not more than 40 years from issue) and the interest may not be higher than the bonds which are refunded. The amount refunded may not be greater than the amount of the outstanding bonds.

North Dakota Century Code Chapter 61-24

creates the Garrison Diversion Conservancy District, which has the general authority and duty to promote the establishment and construction of the Garrison Diversion Unit of the Missouri River Basin Project. Under this chapter, the district has the authority to levy one mill annually within the district to pay expenses and accumulate funds for district purposes.

North Dakota Century Code Chapter 61-12 creates boards of flood irrigation. An irrigation board may assess benefited land for the cost of construction and maintenance of flood irrigation projects. The costs and expenses of a flood irrigation project undertaken by a flood irrigation district are paid by warrant. The board may also issue bonds with interest rates not to exceed 12 percent per annum with no ceiling if they are sold to the state and the bonds must be paid in a period not to exceed 20 years for flood irrigation projects. These bonds are paid out of taxes levied or to be levied.

North Dakota Century Code Chapter 61-04.1 creates the Atmospheric Resource Board as a division of the State Water Commission. Section 61-04.1-23 authorizes the creation of local weather modification authorities. An authority may certify annually to the board of county commissioners a tax of up to seven mills to be used only for weather modification activities in conjunction with the state.

North Dakota Century Code Chapter 61-24.5 establishes the Southwest Water Authority to supply water to southwestern North Dakota. The authority is authorized to levy a tax not to exceed one mill annually to support the authority.

North Dakota Century Code Chapter 61-24.6 establishes the Northwest Area Water Supply Advisory Committee to construct, operate, and manage a project to deliver water throughout northwestern North Dakota.

North Dakota Century Code Section 40-05-02 (17), (18), and (19) authorize municipalities to engage in activities necessary to supply water reasonably sufficient for the needs of the habitants of the city. Under Section 40-05-01, a city has broad authority to finance water projects. A city may borrow money on the credit of the corporation for corporate purposes and may issue bonds as limited by NDCC Title 21. The city may also issue refunding bonds and certificates of indebtedness as provided and limited in Title 21.

### **Private Programs**

North Dakota Century Code Chapter 61-13 authorizes the existence and formation of private irrigation corporations. These corporations are given the authority to borrow amounts, whether in excess of capital stock or not, for corporate purposes.

An additional private source of water development is the rural water system. These systems engage in the planning and construction of rural water systems for their members who pay for the services provided. The State Water Commission is empowered to render some

assistance to rural water systems and is authorized under NDCC Section 57-51.1-07 to use a portion of the resources trust fund for rural water systems.

### **Methods Used to Finance Water Resource Development Projects in Other States**

Montana uses coal severance taxes and oil, gas, and coal extraction taxes to finance water resource development projects. These mineral taxes are placed in a resource indemnity trust fund, which is used to finance a water resource development fund.

Wyoming has dedicated the proceeds of a 1.5 percent excise tax on coal and a 0.167 percent severance tax on oil and gas to fund grants and loans for the construction of water resource development projects.

Utah established a revolving construction loan fund in 1948 to finance irrigation projects. The fund is self-perpetuating and loans moneys at no interest for a set number of years. Utah established a city water loan program in the early 1970s to finance water resource development projects for cities. In 1978 Utah sold \$70 million in bonds to establish a loan fund for larger water projects. Repayments are used to fund future water resource development projects. The Utah Board of Water Resources also funds state water projects. The state uses general fund moneys to finance 75 percent of the cost of a project by buying bonds from a city or water district or entering into a contract with a private irrigator under a loan buyback or repurchase agreement. The state acquires title to the water rights, right of way, and to the project. Utah also has community impact boards that may be involved in the financing of water resource development projects. The projects are funded with oil and gas lease rentals and bonuses and oil and gas royalties. Projects are constructed in the county where the leases are located or the oil and gas is produced.

South Dakota has established three methods for financing water resource development projects. The consolidated water facilities construction fund is financed by general fund revenues appropriated by the South Dakota Legislature on a year-by-year basis for small water resource development projects. The revolving loan fund consists of funds received from the Environmental Protection Agency and funds that the state has placed in this fund to match the federal funds to finance wastewater treatment projects. The state water resources management program, which finances rural water systems and flood control projects, uses state assistance as well as federal matching funds.

Nebraska has established the Nebraska development fund to finance the construction of water resource development projects. This fund is financed from the state general fund. The United States Army Corps of Engineers is cost-sharing with the state of Nebraska on three flood control projects--two river levees and the channelization of the Missouri River through Omaha. The portion of the state's share not financed through the Nebraska development fund is financed by the municipality and natural resource district

benefited by the project. The local share is financed by property taxes and special assessments of the benefited property.

Missouri has a dedicated sales tax of one-tenth of one percent to fund conservation activities, parks, and resources projects. This dedicated sales tax was adopted as a constitutional amendment in 1984 and was slated to expire after five years. However, the sales tax was renewed by the people of Missouri in 1988 for a period of 10 years and is effective through November 7, 1998.

Kansas has established a state water plan fund, water marketing program, and a water assurance program that affect the financing of water resource development projects. The state water plan fund is financed from the state general fund, an economic development fund, various user fees, and pollution fines collected by the Kansas Department of Health and Environment. The fund receives approximately \$15 million a year and is used primarily for studying the future water needs of Kansas. Under the Kansas water assurance program, the Kansas Water Office can issue bonds to finance projects to assure local entities of the availability of a water supply. The bonds are financed from the state general fund.

Other Great Plains and western states use a variety of methods to finance water resource development projects. It appears that certain states, i.e., Montana, Wyoming, and Colorado, have opted to use extraction or severance taxes on minerals to finance water projects while other states, e.g., Arizona, Nebraska, and New Mexico, finance their water resource development projects with general fund revenues derived from sales and income taxes or require local participation which is usually financed by local property taxes or special assessments. Some states use the proceeds of bond issues, e.g., Texas (general obligation bonds) and Idaho (revenue bonds).

### **Testimony and Committee Activities**

#### **Tours**

The committee held 10 meetings throughout the interim and toured the Devils Lake Basin, the Oakes Test Area, the Fargo water treatment plant, the Dickinson water treatment plant, Southwest Pipeline facilities, and several Garrison Diversion Unit features.

In Devils Lake, the committee attended a meeting of the Devils Lake Basin Interagency Task Force concerning Devils Lake Basin flooding. The committee received testimony from a number of individuals and government officials concerning the impact of flooding at Devils Lake.

In Oakes, the committee toured the Oakes Test Area and received testimony from a number of individuals and organizations on the importance that the production of high-value crops and development of value-added agriculture, dependent upon the availability of water, have meant to economic development in the area.

In Fargo, the committee attended the annual joint meeting of the North Dakota Water Resource

Districts Association, the North Dakota Water Users Association, and the North Dakota Rural Water Systems Association; met jointly with the State Water Commission; and toured the new \$61 million Fargo water treatment plant. The committee also received extensive testimony concerning flooding in the Red River Valley and the difficulty that many municipal surface water treatment systems are having in complying with the Environmental Protection Agency's surface water treatment rule and the difficulty they will have in complying with the enhanced surface water treatment rule and disinfectants-disinfection byproducts rule. The committee received testimony that ground water resources are limited in the Red River Basin and that only minor ability for additional development exists, that many of the largest and most developed aquifers are vulnerable to contamination, and that their limited quantity and vulnerability to contamination shows the need for a diligent water resource management plan and strong wellhead protection program. The committee learned that surface water deficiencies have been projected in the Red River Valley even when using pessimistic population and industrial growth projections, and that the poor quality of the surface water has and will continue to require costly and sophisticated treatment.

The superintendent of the Grand Forks water treatment plant testified that the city of Grand Forks will need to spend approximately \$83 million to upgrade its plant and bring it into compliance with current and future Environmental Protection Agency rules.

In Minot, the committee received information concerning the Northwest Area Water Supply Project and testimony from representatives of a number of communities in northwestern North Dakota concerning the benefits to be realized from the project. The State Water Commission has selected three regional systems to serve the 10-county Northwest Area Water Supply Project area.

Under the project, raw water would be withdrawn from the Missouri River, Lake Sakakawea, and Lake Audubon for treatment at upgraded and expanded lime-softening water treatment plants located at Williston, Parshall, and Minot. The three water treatment plants would be modified to expand plant capacity to meet system needs, existing facilities would be updated and rehabilitated to improve reliability and to meet applicable safety requirements, and processes would be upgraded to meet present and/or anticipated future state and federal water quality regulations. An extensive pipeline transmission and storage system would convey finished water throughout the project area.

The west system service area includes all of Williams, Divide, and Burke counties and a portion of Mountrail County. The required intake and treatment capacity for this system would be 13 million gallons per day with nine million gallons per day to supply major users, the city of Williston and Williams Rural Water Association, and

four million gallons per day to supply an additional 12 communities and the rural users in the service area. The additional users in the west system include Bowbells, Crosby, Grenora, Powers Lake, Ray, Stanley, and Tioga. Several smaller cities and towns within the area along with the proposed Writing Rock Rural Water Association would also be served.

The Parshall system service area includes portions of Mountrail, Ward, and McLean counties. The required intake and treatment capacity for this system would be 1.5 million gallons per day with one million gallons per day allocated to supply Parshall, New Town, Makoti, and Plaza; and .5 million gallons per day to supply other users in the counties, including the proposed Mountrail rural water system.

The east system service area includes the northern portion of McLean County; all of Pierce, McHenry, Renville, and Bottineau counties; and the eastern two-thirds of Ward County. A total of 20 communities with municipal distribution systems would be served. The major users would include Minot (which also serves the Minot Air Force Base and a portion of the north prairie rural water system), Kenmare, Rugby, and Bottineau; the existing rural water systems of Upper Souris and All Seasons Water Users Associations; and three proposed rural water systems, one around Lake Metigoshe, one in Pierce County, and one in the northern extension of the McLean-Sheridan system. The total estimated cost of the Northwest Area Water Supply Project is \$163,900,000. The projected water rate is \$2.25 per thousand gallons.

In Dickinson, the committee toured the Dickinson water treatment plant and several Southwest Pipeline Project features. The committee learned that the Southwest Pipeline Project is approximately 60 percent complete. The project is serving 15 communities and water is available to over 1,000 residences in southwestern North Dakota. Once completed, the project is anticipated to serve 26 cities and over 2,000 rural residences. To date, \$94.3 million has been expended on the pipeline, which includes \$65.7 million in federal funds and \$26.6 million in state funds. However, the committee learned that funding for the project is at a crossroads. The committee learned that the share of the \$200 million of Garrison municipal, rural, and industrial water supply program funds allocated to the Southwest Pipeline Project has been expended. The State Water Commission is pursuing alternative funding sources from the Rural Development Administration while promoting, with the Garrison Diversion Conservancy District, changes to the Garrison Diversion Unit Project that would increase the \$200 million ceiling.

### **Devils Lake**

The committee was informed that as of August 1995, the Devils Lake Basin had sustained \$23,331,379 in flood damages to land resources and transportation infrastructure. Team IX of the Interagency Task Force estimated that if the lake

reaches 1,438 feet mean sea level, flood damage will total \$74,441,338, and that if the lake reaches 1,443 feet mean sea level, flood damage will reach \$179,752,083.

The committee received information that as of October 8, 1996, the level of Devils Lake was 1,437.4 feet mean sea level. It is anticipated that the lake will rise during late fall and during the winter and will probably be at 1,438 feet mean sea level during the spring of 1997. The committee was informed that there is a 90 percent chance that the lake will rise again next year and that there is a 10 percent chance that the lake will rise three feet next year. The United States Army Corps of Engineers is raising the dikes protecting the city of Devils Lake from 1,440 feet mean sea level to 1,445 feet mean sea level at a cost of \$7 million.

The committee received the Devils Lake emergency outlet plan prepared by the United States Army Corps of Engineers. The plan was released on August 13, 1996. The plan examines engineering feasibility, effectiveness, and potential impacts in the Devils Lake Basin. The plan, following the twin lakes route, involves pumping Devils Lake water into a series of three pools created by earth-filled dams. The pools would act like a stepladder to successfully raise water to the top of a divide between the Devils Lake Basin and the Sheyenne River Valley. At that point, water would flow down to the Sheyenne River in an open channel. An outlet capacity of 200 cubic feet per second was used based upon available information regarding the river's channel capacity and ambient water quality in the lake and river. The cost of planning, engineering, designing, constructing, managing, acquiring real estate, quantifying environmental mitigation, and construction is approximately \$21 million. The annual operation and maintenance costs are estimated at \$700,000 when the project is operating seven months per year and about \$200,000 when the project is not pumping. The plan identifies two implementation timelines. The first is a 60-month timeline assuming that activities are accelerated but normal project criteria is satisfied, including preparation of an environmental impact statement, design documents, standard real estate acquisition, and contracting procedures, and a two-year construction schedule following timely congressional authorization and appropriations. The other is an accelerated 29-month schedule, which assumes specific congressional emergency authorization and appropriations. The emergency plan would require waiving requirements for the planning and design process, real estate acquisitions, and contracting procedures. In addition, National Environmental Policy Act requirements would have to be modified. The plan anticipates that construction under an accelerated schedule would cost more than under the 60-month timeline.

#### **Proposed Garrison Diversion Completion Legislation**

The committee received information concerning

proposed federal legislation to complete the Garrison Diversion Project. The Garrison Diversion Conservancy District, working with the Governor and the Congressional Delegation, has proposed to downsize and complete the project to provide a multiuse water supply to central and eastern North Dakota. Under the proposal, \$400 million of federal appropriations would be used to complete a principal water delivery system to provide reliable, high-quality water to the Red River Valley, Devils Lake Basin, and the Oakes Test Area. The facilities contained in the proposal are the Lonetree Pipeline and repairs to and construction of remaining works necessary to make the McClusky and New Rockford canals operational; Lonetree Pipeline treatment system; Devils Lake management and an inlet-outlet works; the Turtle Lake water management plan; the James River Feeder Canal, James River channel improvements, and refuge bypass facilities; and a Sheyenne River pipeline from the New Rockford Canal and Sheyenne River improvements.

Under the proposal, the state would be responsible for matching 15 percent of the reimbursable project costs. The state, or its designee, would also be responsible for construction, operation, and maintenance of the project. The cost of existing facilities would be deemed sunk costs and, as such, nonreimbursable. A portion of the Pick-Sloan power revenues, allocated for aid-to-irrigation, would be converted to a multipurpose water development fund. These funds would be used for development and utilization of the major municipal, rural, and industrial water systems.

Examples of programs identified by the North Dakota Water Coalition that these funds would be used for include a municipal, rural, and industrial program for the Southwest Pipeline Project, Northwest Area Water Supply Project, Red River Water Supply Project, water conservation programs, as well as other municipal, rural, and industrial water supply projects; a Devils Lake Basin water management program; final destination tourism and recreation programs; wildlife and environmental programs; a Turtle Lake management program; James River operating plan; and assistance for high-value crop production and value-added agricultural processing opportunities. Additionally, money from the water-power fund would be used for Indian municipal, rural, and industrial water systems on the Fort Berthold and Standing Rock reservations and on the Spirit Lake Nation. These projects would meet economic, public health, and environmental needs of these areas.

#### **North Dakota Water Priorities Plan**

The committee received the North Dakota water priorities plan prepared by the North Dakota Water Coalition. The North Dakota Water Coalition is composed of approximately 30 statewide organizations, regional entities, municipalities, and other groups in the state. The

cost of water priorities identified by the coalition is outlined in the following table (it should be noted that the coalition has not yet determined the local

and state cost-share and thus these figures are estimates developed by the coalition):

Region	Local	State	Federal	Total
<b>IMMEDIATE PRIORITIES (1997-99)</b>				
Garrison Principal Supply Facilities			<u>\$400,000,000</u>	<u>\$475,000,000</u>
Devils Lake Basin	\$ 9,401,500	\$14,893,500	\$ 44,725,000	\$ 69,020,000
Indian water needs	0	0	?	?
James River Basin	990,000	100,000	1,560,000	2,650,000
Northwest North Dakota	5,212,500	2,950,000	1,700,000	9,862,500
Red River Valley	27,136,080	4,600,950	44,254,270	75,991,300
Sheyenne River Basin	9,320,800	10,465,000	11,687,200	31,473,000
Souris River Basin	12,605,000	1,100,000	20,345,000	34,050,000
South Central/Missouri River	2,117,500	125,000	5,590,000	7,832,500
Southwest North Dakota	<u>3,710,000</u>	<u>7,435,000</u>	<u>17,715,000</u>	<u>28,860,000</u>
Immediate Priorities Total (excluding Garrison)	<u>\$70,493,380</u>	<u>\$41,669,450</u>	<u>\$147,576,470</u>	<u>\$259,739,300</u>
<b>SHORT-TERM PRIORITIES (2000-05)</b>				
Garrison Principal Supply Facilities			<u>\$400,000,000</u>	<u>\$475,000,000</u>
Devils Lake Basin	\$ ?	\$ ?	\$ ?	\$ 100,000
Indian water needs	0	0	?	?
James River Basin	?	?	?	4,000,000
Northwest North Dakota	850,000	100,000	1,300,000	2,250,000
Red River Valley	127,089,875	27,837,000	176,703,625	331,630,500
Sheyenne River Basin	6,012,050	1,275,000	5,175,950	12,463,000
Souris River Basin	20,641,500	1,558,500	36,780,000	58,980,000
South Central/Missouri River			3,000,000	3,000,000
Southwest North Dakota		<u>20,650,000</u>	<u>20,650,000</u>	<u>41,300,000</u>
Short-Term Priorities Total (including Garrison)	<u>\$154,594,425</u>	<u>\$126,420,500</u>	<u>\$643,609,575</u>	<u>\$928,723,500</u>
<b>LONG-TERM PRIORITIES (2006-25)</b>				
Additional work is being done to identify specific cost estimates on long-term priorities.				

### Garrison Diversion Unit Repayment Issues

The committee received information concerning the requirements under the Pick-Sloan program for the Western Area Power Administration to repay the federal investment in the program's hydropower facilities.

The committee learned that under current repayment criteria, approximately \$454 million of the federal investment in the Pick-Sloan program's hydropower facilities and water storage reservoirs is unrecoverable because a portion of these completed facilities were intended for use with irrigation facilities that have not been completed and are no longer considered feasible. If the Western Area Power Administration is required to recover this investment through power revenues, it could result in increased rates for North Dakota preference power users. In addition, as the overall federal investment in the other aspects in the completed hydropower facilities increases because of changes such as renovations and replacements, the amount of the federal investment that is unrecoverable will increase.

The committee learned that pursuant to a General Accounting Office report, changes to the terms of repayment to recover any of the \$454 million investment would require congressional action. The Governmental Accounting Office reported that consistent with previous congressional action concerning the program,

Congress could direct the Western Area Power Administration to recover the investment through power revenues and to take action to minimize any impact on power rates.

The committee learned that estimating the potential impact on the rates of recovering the investment through power revenues is speculative and could vary significantly depending on, among other things, the terms of repayment and the amount the Western Area Power Administration passes on to its customers. The committee learned that the General Accounting Office had reported to the Subcommittee on Water and Power Resources, Committee on Resources, United States House of Representatives, that assuming that the Western Area Power Administration passes the entire amount on to its power customers, the wholesale power rate could increase by as much as 14.6 percent. The Governmental Accounting Office report stated that recognizing that the program incorporates agreements reached decades ago, any changes between the program's power and irrigation purposes may also necessitate reviewing other aspects of the agreements--specifically, the agreements involving areas that accepted permanent flooding from dams in the anticipation of the construction of irrigation projects that are now not likely to be constructed.

The Legislative Council staff, representatives of the Attorney General's office, and representatives

of the Garrison Diversion Conservancy District explored potential options to determine responsibility for repayment of moneys expended on the Garrison Diversion Unit Project. These options included alleging that federal agencies are acting contrary to federal reclamation law because they have not recovered the costs of the Pick-Sloan program as required under federal reclamation law, pursuing a declaratory judgment declaring the rights and obligations of the parties for repayment of Garrison Diversion Unit Project construction costs, and alleging a breach of contract. The committee was informed that any litigation would be complex, time-consuming, and expensive and that the type of action would necessarily depend on the desired remedy and likelihood of success.

### **Committee Considerations**

The committee considered a bill draft that directed the State Water Commission to develop and implement a comprehensive statewide water development program and to design the program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.

The bill draft appropriated \$41,669,450, the amount identified by the North Dakota Water Coalition as required to fund the state's share of the cost of North Dakota's immediate water priorities, from the general fund.

The committee learned that the Office of Management and Budget is estimating total oil extraction tax revenues for the 1997-99 biennium of \$38,310,000. Thus, under the allocation of the oil extraction tax development fund in effect for the 1997-99 biennium, 70 percent (\$26,817,000) would be placed in the general fund, 10 percent (\$3,831,000) would be placed in the foundation aid stabilization fund, 10 percent would be placed in the common schools trust fund, and 10 percent would be placed in the resources trust fund. The committee learned that making permanent the reallocation of the oil extraction tax development fund enacted by the 1995 Legislative Assembly would provide an additional 10 percent to the resources trust fund for water development during the 1997-99 and future bienniums. The committee amended the proposal to make the reallocation of moneys in the oil extraction tax development fund enacted by the 1995 Legislative Assembly (60 percent for the general fund, 10 percent for the foundation aid stabilization fund, 10 percent for the common schools trust fund, and 20 percent for the resources trust fund) permanent.

The committee considered a water finance bill draft that also would have established a statewide water development program. However, under this proposal, the program would have been funded by an increase in the personal income tax, an increase in the state sales tax, or water user fees, or a combination of the three funding sources, for a period of 20 years.

The committee received information from the Tax Commissioner that a one-fourth of

one percentage point increase in the sales tax rate would generate approximately \$17.5 million per year and that a one-fourth of one percent increase in the short-form individual income tax rate (and corresponding increases in the long-form rate brackets) would generate approximately \$2.75 million per year.

The committee also received information from the State Water Commission that estimated the potential revenues from alternative levels of water user fees for industrial, agricultural, municipal and rural, and recreational users and potential revenues from fee increases for hunting and fishing licenses, boat registrations, and park entrances.

Several members of the committee questioned financing the statewide water development program from the general fund ending balance because funds available due to a large ending balance may be used to address other needs of the state such as primary and secondary education and human services. The committee eliminated consideration of water user fees early in its deliberations because of the difficulty of implementing an equitable system. The committee amended the proposal to finance the appropriations from a one percent increase in the personal income tax and a one-eighth of one percent increase in the state's sales tax.

The committee considered a bill draft that provided a contingent plan for construction of an outlet from Devils Lake to the Sheyenne River. Under the proposal, the State Engineer would be required to construct an outlet from Devils Lake to the Sheyenne River if the level of Devils Lake reaches 1,440 feet mean sea level. The proposal contained a contingent appropriation of \$25 million from the general fund and \$75 million from federal funds for constructing the outlet. The general fund appropriation would be available to match federal funds in the ratio of one to three.

The committee amended the bill draft to include the cost of ensuring the delivery of an adequate supply of good quality water for human consumption incurred by any municipality or rural water system as a result of the construction of an outlet from Devils Lake to the Sheyenne River within the cost of the outlet project. The committee received testimony that construction of an outlet is essential to alleviate flood damage caused by the rising level of Devils Lake.

The bill draft was opposed by landowners along the Sheyenne River downstream from where an outlet would enter the Sheyenne River and a member of the Ransom County Board of County Commissioners. Testimony indicated that property owners on the Sheyenne River downstream from Devils Lake are also experiencing flooding and that an outlet from Devils Lake would exacerbate flood damage to those property owners and that any outlet proposal must address the concerns of those residents.

The committee amended the bill draft to increase the level that Devils Lake must attain before the State Engineer is required to construct

the outlet from 1,440 feet mean sea level to 1,445 feet mean sea level.

The committee considered a bill draft that established a Devils Lake Basin Water Authority. Under the proposal, the Devils Lake Basin Water Authority would consist of that part of Benson, Cavalier, Nelson, Pierce, Ramsey, Rolette, Towner, and Walsh counties which is within the hydrologic boundaries of the Devils Lake Basin. For purposes of the proposal, hydrologic boundary means a natural ridge on the land surface that divides one drainage area from another.

The board of county commissioners of each county comprising the Devils Lake Basin Water Authority would determine by resolution, before October 1, 1997, whether to join the authority. The authority encompassing the entire land area within the hydrologic boundaries of the Devils Lake Basin would become operative when counties comprising 66 percent of the geographic land area of the Devils Lake Basin have determined by resolution of the board of county commissioners to join the authority.

The Devils Lake Basin would be divided into the Calio, Comstock, Devils Lake, Edmore, Hurricane Lake, Mauvais Coulee, St. Joe, South Slope, Starkweather, and Stump Lake subbasins and each subbasin would constitute a water resource district with the same authority, powers, and duties as a water resource district under NDCC Chapter 61-16.1. Existing water resource districts or portions of a district that are located within the boundaries of the authority would be dissolved when the authority becomes operative. If a current water resource district lies inside as well as outside the boundaries of the authority, that portion lying outside the boundaries of the authority would constitute the existing water resource district and that portion lying within the boundaries of the authority would be divided into subbasin districts as provided in the proposal.

Any outstanding obligations, property, and equipment would be allocated based upon the property benefited by any project or apportioned to the subbasin district or districts in the same proportion that the property located within the subbasin district or districts bears to the existing water resource district. However, the proposal provided that no water resource district could be dissolved if the district had any outstanding warrants, bonds, or other obligations unless the authority provided for a continuance of assessments upon properties within the dissolved district for the payment of outstanding obligations or for an assumption of the obligations by the newly created district and the spreading of any assessments on properties within the newly created district. The new district would be required to continue all sinking funds created for the payment of the obligations until the liquidation of the obligations.

The authority would be governed by an 11-member board of directors. Each director would have to be a county commissioner and would have to reside within the area comprising the authority.

Two directors would be chosen from Ramsey County, two from Benson County, two from Towner County, one from Cavalier County, one from Nelson County, one from Pierce County, one from Rolette County, and one from Walsh County.

The board would have the power to sue and be sued in the name of the authority; exercise the power of eminent domain; have quick-take authority; appoint and fix the compensation of employees to conduct the business and affairs of the authority; accept on behalf of the authority appointment of the authority as fiscal agent of the United States or the State Water Commission; make collections of money for and on behalf of the United States or the State Water Commission in connection with any project; sell or exchange any property purchased or acquired by the authority; construct, acquire, purchase, lease, alter, repair, modify, operate, develop, and maintain any project, or any part of any project; determine whether a project has basinwide significance; issue and sell evidences of indebtedness; refund and refinance outstanding evidences of indebtedness; pledge any and all income and revenues derived by the board to secure the payment of redemption of evidences of indebtedness issued and sold by the board; pledge all or any part of any assessments levied by the board to secure the payment or redemption of evidences of indebtedness issued and sold in anticipation of the levy and collection of assessments; oversee each subbasin water resource district board and approve any project of basinwide significance; and exercise the same authority, powers, and duties as a water resource district under NDCC Chapter 61-16.1.

For purposes of the proposal, project would mean any project relating to the management, conservation, protection, development, and control of water resources, for preventing flood damage in the Devils Lake Basin, or protecting and promoting the health, safety, and general welfare of the people of the Devils Lake Basin. Under the proposal, the authority would be authorized to levy a tax of up to two mills annually for the payment of administrative expenses of the authority. The authority also would be authorized to finance improvements by special assessments levied against lands and premises benefited by a project. Finally, the proposal required that applications proposing drainage of Devils Lake Basin-wide significance be approved by the authority.

Proponents of the bill draft noted that the Devils Lake Joint Water Resource Board cannot raise enough funds to construct flood control projects of the magnitude needed to deal with the current Devils Lake flood and that one board can obstruct development throughout the entire basin. Proponents testified that the bill draft is an attempt to manage water based upon hydrologic boundaries as opposed to political boundaries.

Opponents of the proposal argued that providing Ramsey, Benson, and Towner counties with two representatives on the board while providing the other counties in the authority with only one representative on the board gives the

former counties disproportionate representation on the board and that each county should have the same representation on the board. Also, the committee received testimony that upper basin counties would not receive any benefit from being included within the authority and that the authority should not have the power to levy property taxes to support its activities. The committee also received testimony that the current system of water management through boards of county commissioners, county water resource district boards, and the State Water Commission is working well and the creation of an authority to manage water in the Devils Lake Basin is unnecessary. Proponents responded that counties that have all or substantially all of their land area within the boundaries of the authority should have greater representation and that managing water along hydrologic, as opposed to political, boundaries would benefit all of the counties in the basin.

The proposal was supported by the Lake Emergency Management Committee, Ramsey County Board of County Commissioners, Benson County Board of County Commissioners, and the city of Devils Lake. The proposal was opposed by the Cavalier County Board of County Commissioners, the Cavalier County Water Resource District Board, Landowners Association of North Dakota, and the North Dakota Farm Bureau.

The committee received a bill draft relating to establishing a water supply for eastern North Dakota as a critical priority. This proposal had been considered by the Garrison Diversion Overview Committee and forwarded to the Water Resources Committee for its consideration. The bill draft directed the State Water Commission to

continue to cooperate with the Garrison Diversion Conservancy District in addressing this critical priority. The proposal was supported by the State Engineer, Garrison Diversion Conservancy District, North Dakota Water Users Association, and the city of Fargo.

### **Recommendations**

The committee recommends House Bill No. 1071 to provide for a statewide water development program. The bill directs the State Water Commission to develop and implement the program and design the program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and its claim to, its proper share of Missouri River water. The bill reallocates the oil extraction tax development fund to provide that 20 percent of the fund is allocated to the resources trust fund. The bill contains an appropriation of \$41,669,450 from the general fund to fund the program.

The committee recommends House Bill No. 1072 to provide a contingent plan for construction of an outlet from Devils Lake to the Sheyenne River. The bill provides that if the level of Devils Lake reaches 1,445 feet mean sea level, the State Engineer is required to construct an outlet from Devils Lake to the Sheyenne River. The bill contains an appropriation of \$25 million from the general fund and \$75 million from special funds derived from federal funds to finance construction of the outlet.

The committee recommends Senate Bill No. 2050 to create the Devils Lake Basin Water Authority.

The committee recommends House Bill No. 1073 to establish a water supply for eastern North Dakota as a critical priority.

# STUDY RESOLUTIONS AND ASSIGNMENTS FOR THE 1995-96 INTERIM

The following table identifies the bills and resolutions prioritized by the Legislative Council for study during the 1995-96 interim under authority of North Dakota Century Code (NDCC) Section 54-35-03. The table also identifies statutory and other responsibilities assigned to interim committees and identifies the interim committee assigned the study or responsibility.

Bill or Resolution No.	Subject Matter (Committee)	Bill or Resolution No.	Subject Matter (Committee)
1089, § 15	Study the proper role of the administrative hearings process in suspension or revocation of motor vehicle operators' licenses in light of recent court decisions on double jeopardy issues (Criminal Justice Committee)	1001, § 4	Appoint a technology applications committee during the 1995-96 interim from members of the Budget Section. The committee is to make recommendations on expenditures for and installation of computers for the Legislative Assembly. (Legislative Management Committee)
2008, § 7	Study the services provided by the Public Service Commission, their cost and effectiveness, and the need for continuing the services as a result of regulatory changes at both the state and federal level (Government Organization Committee)	1001, § 5	Study the membership, duties, and responsibilities of all boards, councils, committees, and commissions of state government (Government Organization Committee)
2013, § 10	Study the library system in North Dakota, including the role and mission of the State Library, cooperative library ventures, and research and information systems (Budget Committee on Government Services)	1002, § 5	Study the unified court system with emphasis on the distribution of court revenues and the allocation of the costs of the system between the counties and the state (Budget Committee on Government Finance)
2063, § 8	Study the equitable provision of services to students who are gifted and talented, the equitable funding of such programs, and whether those services should be funded independently of or together with services provided to students who are disabled (Education Services Committee)	1005, § 11	Study the services provided by the North Dakota State University Extension Service and the Agricultural Experiment Station, the degree of duplication, their cost and effectiveness, the necessity for their continued existence, and options for consolidation (Budget Committee on Agriculture and Information Services)
2080, § 18	Study the impact of the North Dakota Supreme Court decision abolishing the doctrine of sovereign immunity during the 1995-96 interim (Judiciary Committee)	1006, § 6	Study the licensing of home health care providers during the 1995-96 interim (Budget Committee on Home and Community Care)
2304	Study access to telecommunications records of legislators and other public officials (Legislative Management Committee)	1050, § 39	Study the feasibility and desirability of requiring mental health services and alcohol and drug addiction relating services to be included as health insurance covered services (Insurance and Health Care Committee)
2403, § 3	Study the feasibility and desirability of the Workers Compensation Bureau establishing a system through which injured workers whose disability benefits cease upon reaching retirement age under 1995 House Bill No. 1228 would receive a pension or an annuity in lieu of further disability benefits; and review the different		

**Bill or  
Resolution  
No.**

**Subject Matter  
(Committee)**

**Bill or  
Resolution  
No.**

**Subject Matter  
(Committee)**

	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 workers the pension or annuity would be paid (Commerce Committee)	3006	Study the feasibility and desirability of utilizing institutions of higher education to provide educational options and opportunities for North Dakota high school students (Education Services Committee)
2460, § 1	In conjunction with the Department of Human Services and the Health Council, study, hold hearings, and prepare a comprehensive report on the appropriate quantity, distribution, and use of the state's resources and services in addressing the needs of the elderly residents of this state (Budget Committee on Home and Community Care)	3008	Study the feasibility and desirability of implementing recommendations by the North Dakota Health Task Force for improving the health status of North Dakotans, monitor the rate of health care cost increases, review the impact of newly enacted programs to improve the health status of North Dakotans, and address unmet medical needs in rural areas (Insurance and Health Care Committee)
2460, § 1	In conjunction with the Health Council, study, hold hearings, and prepare a comprehensive report on the certificate of need process and other means of planning and decisionmaking in relation to growth of the health care industry in North Dakota (Insurance and Health Care Committee)	3016	Study the feasibility and desirability of providing a community notification process by which communities would be informed of the release of a convicted sexual offender and of persons charged with or convicted of sexual offenses (Criminal Justice Committee)
2519, § 9, § 6	Study the financing of elementary and secondary schools and availability of state support for school construction; review the formulas used to equalize state aid, including formulas for student transportation and special education, funding sources that would be alternatives to property tax, and any other issues related to the financing of elementary and secondary schools; and review supplemental payments to high school districts (Education Finance Committee)	3021	Study the issues and concerns relating to fetal alcohol syndrome (Budget Committee on Human Services)
		3023	Study the availability, coverage, and regulation of long-term care insurance (Insurance and Health Care Committee)
		3043	Study the legislative environment and process (Legislative Management Committee)
3002	Monitor the continued development of a continuum of services for the mentally ill and chemically dependent and the changes in the role of the State Hospital and expanded community services, including psychosocial clubs and the clubhouse projects (Budget Committee on Government Services)	3045	Study the responsibilities of county social service agencies as they are distinguished from the responsibilities of regional human service centers and the Department of Human Services (Budget Committee on Human Services)
		4001	Study dispositional alternatives available in cases involving sexual offenses against children, the disposition of cases involving perpetrators who do not attend court-ordered treatment, and the courts' use of and compliance with North Dakota Century Code Chapter 12.1-35 and Rule 803(24) of the North Dakota Rules of Evidence (Criminal Justice Committee)
3005	Study the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction, with emphasis on a review of venue statutes (Judiciary Committee)		

<b>Bill or Resolution No.</b>	<b>Subject Matter (Committee)</b>	<b>Bill or Resolution No.</b>	<b>Subject Matter (Committee)</b>
4003	Study the feasibility and adaptability of a long-term funding initiative to make available housing for families who are low income, homeless, or disabled or who require transitional housing to assist them toward independent living (Budget Committee on Government Services)		related dementias and the needs of caregivers and families of patients with Alzheimer's and related dementias (Budget Committee on Home and Community Care)
4007	Study the delivery and effectiveness of, and costs associated with, professional growth and development programs for teachers (Education Services Committee)	4033	Study the financing and funding needs for development and completion of the state's water resources infrastructure and methods for development of a program to provide financing and funding of water supply facilities in this state (Water Resources Committee)
4008	Study the state's investment process and the investment of state funds (Budget Committee on Government Finance)	4047	Study refugee resettlements in the state and define and identify the net fiscal effects of refugees and other limited English proficient or language minority students on school districts and the providers of social services (Budget Committee on Human Services)
4010	Study international trade agreements and their effect on this state (Commerce Committee)		
4012	Study the feasibility and desirability of legislation governing the future negotiation, amendment, and renewal of tribal-state gaming compacts (Judiciary Committee)	4048	Study the implications of North Dakota tax policy on the telecommunications industry and determine the need for tax reform in the telecommunications industry (Taxation Committee)
4015	Study the property tax assessment system of the state, with emphasis on the potential benefits to the system from improved technology and sharing of resources (Taxation Committee)	4051	Study property tax assessment for irrigated and nonirrigated agricultural land (Taxation Committee)
4016	Study tax preferences, with emphasis on property tax preferences that may be granted at the discretion of political subdivisions or that were created as economic development incentives (Taxation Committee)	4053	Study the state's water laws concerning their effect on the efficient use of water and their effect on the holders of senior water rights (Water Resources Committee)
4024	Study the fiscal impact of major economic development projects on political subdivisions (Taxation Committee)	4058	Study the feasibility and desirability of providing out-of-home mental health services to severely emotionally disabled children without requiring the relinquishment of custody by parents (Budget Committee on Government Services)
4027	Study the operation of and services provided by the Information Services Division, the use and proliferation of personal computers throughout state government, and the feasibility and desirability of contracting for data processing services (Budget Committee on Agriculture and Information Services)	<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
		4-02.1-18	Receive annual audit report from State Fair Association (Legislative Audit and Fiscal Review Committee)
		4-19-01.2	Approve use of moneys deposited in State Forester reserve account (Budget Section)
4030	Study the continuum of care for North Dakotans with Alzheimer's and		

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>	<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
10-23-03.2	Receive annual audit report from corporation receiving ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)	28-32-02	Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)
15-10-12.1	Approve any gift of a higher education facility (Budget Section)	28-32-02	Establish standard procedures for administrative agency compliance with notice requirements of proposed rulemaking (Administrative Rules Committee)
15-10-14.2	Meet with the State Board of Higher Education in October 1996 and every six years thereafter to review the status of the university system and to establish long-term goals and objectives, meet with the board in October 1997 and every six years thereafter to receive directions, criteria, and timelines developed by the board, and meet with the board in each intervening year to receive progress report from board (Legislative Council)	28-32-02	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)
15-10-18	Approve nonresident student tuition fees (Budget Section)	28-32-03.3	Determine whether an administrative rule is void and suspend the rule (Administrative Rules Committee)
15-22-01.1	Acknowledge receipt of county plan assigning duties of county superintendent of schools (Education Services Committee)	28-32-03.3	Determine whether to disapprove a finding by the Committee on Administrative Rules that an administrative rule is void (Legislative Council)
20.1-02-05.1	Approve comprehensive statewide land acquisition plan established by director of the Game and Fish Department and every land acquisition of more than 10 acres or exceeding \$10,000 by Game and Fish Department (Budget Section)	28-32-15	Receive notice of appeal of an administrative agency's rulemaking action (Administrative Rules Committee)
25-04-02.2	Authorize Developmental Center at Westwood Park, Grafton, to provide services under contract with a governmental or nongovernmental person (Budget Section)	36-01-08.3	Receive annual report from the State Board of Animal Health (Budget Committee on Agriculture and Information Services)
25-04-17	Receive report on writeoff of patients' accounts at Developmental Center at Westwood Park, Grafton (Legislative Audit and Fiscal Review Committee)	46-02-04	Determine contents of contracts for printing of legislative bills, resolutions, and journals (Legislative Management Committee)
25-04-20	Approve sale, lease, or other management of the property of Westwood Park by the Westwood Park Assets Management Committee (Budget Section)	50-06-05.1	Approve termination of federal food stamp or energy assistance program (Budget Section)
26.1-45.1-07	Receive annual report from Commissioner of Insurance on the progress of the partnership for long-term care program (Insurance and Health Care Committee)	50-06.3-08	Receive annual report from Department of Human Services on writeoff of recipients' or patients' accounts (Legislative Audit and Fiscal Review Committee)
		50-06.4-04	Approve expenditure of moneys in the traumatic brain injury fund (Budget Section)
		50-24.1-01.3	Approve expenditure of civil penalties by Department of Human Services to protect residents of deficient nursing facilities (Budget Section)
		52-02-17	Receive report from Job Service North Dakota on condition of job insurance

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>	<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
	trust fund if balance is projected to go below \$40,000,000 (Budget Section)	54-27-23	Approve use of cash flow financing (Budget Section)
54-06-25	Receive recommendations of State Employees Compensation Commission at the biennial meeting at which the Council receives interim committee reports (Legislative Council)	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)
54-10-01	Determine frequency of audits of state agencies (Legislative Audit and Fiscal Review Committee)	54-34.3-04	Receive annual reports from the Department of Economic Development and Finance on loan performance and performance of the department (Commerce Committee)
54-10-01	Determine necessary performance audits by State Auditor (Legislative Audit and Fiscal Review Committee)	54-35-02	Review uniform laws recommended by Commission on Uniform State Laws (Judiciary Committee)
54-14-01.1	Periodically review actions of the Office of the Budget (Budget Section)	54-35-02	Establish guidelines for use of legislative chambers and displays in Memorial Hall (Legislative Management Committee)
54-14-03.1	Receive reports on fiscal irregularities (Budget Section)	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)
54-16-01	Approve excess transfers from state contingency fund (Budget Section)	54-35-02.2	Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review Committee)
54-16-04	Approve transfers of spending authority from the state contingencies appropriation after \$500,000 has been transferred (Budget Section)	54-35-02.4	Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans (Employee Benefits Programs Committee)
54-16-04	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)	54-35-02.6	Study and review administrative rules and related statutes (Administrative Rules Committee)
54-16-04	Approve transfers exceeding \$50,000 from one fund or line item to another unless necessary to comply with court order or to avoid imminent threat to safety or imminent financial loss to the state (Budget Section)	54-35-02.7	Overview the Garrison Diversion Project and related matters (Garrison Diversion Overview Committee)
54-16-04.1	Approve Emergency Commission authorization of any state officer to spend federal moneys not appropriated by the Legislative Assembly (Budget Section)	54-35-02.8	As the Legislative Ethics Committee--Consider or prepare a legislative code of ethics (Legislative Management Committee)
54-16-04.2	Approve Emergency Commission authorization of a state officer to receive moneys from any source for new or existing programs (Budget Section)	54-35-11	Make arrangements for 1997 session (Legislative Management Committee)
54-27-22	Approve use of capital improvements planning revolving fund (Budget Section)	54-35.2-02	Study local government structure, fiscal and other powers and functions of local governments, relationships

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>	<b>1985 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
	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)	Chapter 77	Administer legislative wing improvements appropriation (Legislative Management Committee)
		<b>1987 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
54-35.2-02.1	Receive annual report from the Advisory Commission on Intergovernmental Relations on planning grants administered by the commission (Budget Section)	Chapter 29	Administer legislative wing improvements appropriation (Legislative Management Committee)
		<b>1989 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
54-35.2-02.1	Administer grants to political subdivisions for projects to improve efficiency of local governments (Advisory Commission on Intergovernmental Relations)	Chapter 25	Administer legislative wing and Capitol grounds improvements appropriation (Legislative Management Committee)
54-44.1-07	Prescribe form of budget data information prepared by the director of the budget (Budget Section)	Chapter 63	Approve expansion of Oxford House (Budget Section)
		<b>1991 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
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)	Chapter 319	Receive final report from Commissioner of Insurance relating to basic health insurance coverage (Insurance and Health Care Committee)
54-44.1-13.1	Approve reduction of budgets due to initiative or referendum action (Budget Section)		
		<b>1993 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
54-52.1-08.2	Approve terminology adopted by Public Employees Retirement Board to comply with federal requirements (Employee Benefits Programs Committee)	Chapter 22	Approve terms of conveyance of property by the Board of Higher Education to Ramsey County (Budget Section)
57-01-11.1	Receive requested reports on auditing enhancement program and settlement of tax assessments (Budget Section)	Chapter 493	Receive reports from Tax Commissioner, executive director of Job Service North Dakota, and director of Department of Economic Development and Finance with respect to jobs training program (Budget Section)
65-02-08	Approve fee schedules for medical and hospital services proposed for adoption by the Workers Compensation Bureau (Administrative Rules Committee)	Chapter 669	Hold legislative hearings on block grants (Budget Section)
65-02-13.1	Receive annual report from the Workers Compensation Bureau regarding any reinsurance contract by the bureau (Budget Section)		
65-08.1-02	Authorize establishment of casualty insurance organization to provide extraterritorial workers' compensation insurance (Budget Section)		

<b>1995 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>	<b>1995 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
Chapter 13	Approve program-based budgeting line item transfers of 10 percent or more by the Highway Patrol (Budget Section)	Chapter 35	Receive special education regional coordinator positions report from Superintendent of Public Instruction (Budget Section)
Chapter 14	Approve program-based budgeting line item transfers of 10 percent or more by the director of the Department of Transportation (Budget Section)	Chapter 35	Receive performance audit report on Department of Public Instruction (Legislative Audit and Fiscal Review Committee)
Chapter 15	Approve program-based budgeting line item transfers of 10 percent or more by the Commissioner of University and School Lands (Budget Section)	Chapter 37	Approve expenditure exceeding \$50,000 of income in excess of estimated income appropriated to the Office of Management and Budget (Budget Section)
Chapter 16	Receive State Auditor's report on the performance review of the Children's Services Coordinating Committee (Budget Section)	Chapter 37	Approve program-based budgeting line item transfers of 10 percent or more by the director of the Office of Management and Budget (Budget Section)
Chapter 18	Approve transfer of appropriation authority by the director of the Department of Corrections and Rehabilitation (Budget Section)	Chapter 37	Approve program termination due to reduced federal funding and approve program changes due to federal block grant program changes (Budget Section)
Chapter 18	Approve program-based budgeting line item transfers of 10 percent or more by the Department of Corrections and Rehabilitation (Budget Section)	Chapter 37	Approve any upgrade or enhancement of more than \$50,000 to the Information Services Division's mainframe computer (Budget Section)
Chapter 22	Approve salaries and wages line item transfer for deputy director position by the Board for Vocational and Technical Education (Budget Section)	Chapter 37	Approve college or university expenditure of more than \$50,000 from internal service or revolving funds (Budget Section)
Chapter 25	Receive report from the Attorney General on any deficiency appropriation to the bonding fund (Budget Section)	Chapter 37	Receive periodic reports from the Office of Management and Budget concerning program-based performance budgeting pilot project (Budget Section)
Chapter 26	Approve program-based budgeting line item transfers of 10 percent or more by the State Auditor (Budget Section)	Chapter 37	Receive State Radio Communications and 911 system operation options plan from the Adjutant General (Budget Section)
Chapter 31	Receive report from the executive secretary of the Soil Conservation Committee on options to integrate the committee with another state agency (Budget Section)	Chapter 37	Receive report from the Office of Management and Budget on alternative methods for budgeting for the compensation of accrued annual leave and sick leave (Budget Section)
Chapter 34	Receive report from the Department of Human Services on its plan for funding of nursing home inflationary increases in costs (Budget Section)	Chapter 37	Receive State Auditor's report summarizing analysis of internal service funds, revolving funds, and

**1995 Session  
Laws  
Citation**

**Subject Matter  
(Committee)**

related funds at each college or university (Budget Section)

Chapter 39 Receive report from the Adjutant General on the funds received and spent for the Veterans Cemetery (Budget Section)

Chapter 44 Receive report from the Office of Management and Budget on its space utilization study for the second floor at 6117 East Main in Bismarck (Budget Section)

Chapter 44 Approve State Historical Society's use of nonground floor storage at 6117 East Main in Bismarck (Budget Section)

Chapter 45 Approve program-based budgeting line item transfers of 10 percent or more by the Parks and Recreation Department (Budget Section)

Chapter 48 Receive profit or loss statements from ethanol plants receiving incentives from the ethanol plant production incentive program (Budget Section)

Chapter 49 Receive report from the Workers Compensation Bureau on its expenditures for critical salary adjustments (Budget Section)

Chapter 250 Receive report from the state trauma program coordinator on effectiveness of the state trauma system (Budget Section)

Chapter 267 Receive report from the Committee on Protection and Advocacy regarding progress in addressing performance audit and special masters reports (Budget Section)

Chapter 453 Review operation and effect of North Dakota telecommunications law (Regulatory Reform Review Commission)

Chapter 459 Receive report from the Department of Human Services on the implementation status of the welfare reform demonstration project during the 1995-96 interim (Budget Section and Budget Committee on Human Services)

**ADDED COMMITTEE  
RESPONSIBILITIES**

The following table identifies additional assignments by the Legislative Council or the Legislative Council chairman to interim committees. The table lists the subject matter and the interim committee to which it was referred:

<b>Responsibility</b>	<b>Interim Committee</b>
Monitor status of state agency and institution appropriations	Budget Committee on Government Finance
Review and report on budget data prepared by the director of the budget	Budget Section
Monitor implementation of block grants under 1995 Senate Bill No. 2063	Education Finance Committee
Review report on performance audit of the Department of Public Instruction	Education Finance Committee
Study state government employee assistance programs	Employee Benefits Programs Committee
Statutory and constitutional revision	Judiciary Committee
Review legislative rules	Legislative Management Committee
Review Budget Section responsibilities and membership - Legislative Council directive	Legislative Management Committee
Study and identify ways that North Dakota and South Dakota can collaborate to deliver government services more efficiently	North Dakota/South Dakota Commission
Study application of the farm building property tax exemption	Taxation Committee

**STUDY RESOLUTIONS NOT  
PRIORITIZED**

The following table lists the resolutions not prioritized by the Legislative Council for study during the 1995-96 interim under authority of NDCC Section 54-35-03. The subject matter of many of these resolutions is the same or similar to the subject matter of resolutions that were given priority or of study assignments by the Legislative Council.

<b>Bill or Resolution No.</b>	<b>Subject Matter</b>
3003	Study methods to improve the cost effectiveness and efficiency of the Department of Human Services child support collection system and any anticipated impact on the health and

**Bill or  
Resolution  
No.**

**Subject Matter**

**Bill or  
Resolution  
No.**

**Subject Matter**

	welfare of the child and review the roles of clerks of court, regional child support enforcement units, and the Department of Human Services in providing a coordinated and effective child support enforcement program	4017	necessitated by the implementation of middle school concepts Study the coroner system in the state, the issuance of death certificates, and whether certain information in death certificates should be exempt from open records requirements
3004	Monitor the development and operation of criminal justice information systems in North Dakota and study policies and issues relating to the confidentiality, dissemination, and retention of criminal justice information	4020	Study zoning and real estate tax laws to assess the desirability of enacting legislation relating to the housing needs and preferences of senior citizens
3022	Study the structure and function of local public health units	4021	Study the fiscal note process
3033	Study the role and mission of the Milk Stabilization Board	4025	Study access to computer data bases or electronically filed or stored information by state agencies
3038	Study the extent and value of elementary and high school student participation in school-sanctioned extracurricular activities, the effect of extracurricular activities on the education of individual students and on teachers and administrators, and the financial impact of extracurricular activities on school district and family budgets	4026	Study the present and future role of the State Mill and Elevator
3039	Study the feasibility and desirability of establishing four major regional air transportation terminals in the state and of developing a system of intrastate commuter air and ground transportation to serve those regional facilities	4032	Study the library system in North Dakota, including the role and mission of the State Library, cooperative library ventures, and research and information systems to determine if the citizens of this state have access to essential library services that are delivered efficiently
3040	Study the feasibility and desirability of merging the State Gaming Commission and the State Racing Commission into a single commission	4045	Study the effects of blackbirds on agricultural crop production, the level of depredation in the state, and the short-term and long-term effects of continued depredation on the species, the environment, and rural North Dakota in general
4002	Study the implementation of the 1993-94 interim Budget Committee on Youth Services recommendations to enhance the children's services delivery system in North Dakota	4046	Study the feasibility and desirability of providing, in cooperation with tribal governments, gambling addiction treatment and counseling services to state residents
4004	Study the needs of school districts regarding buildings and facilities and the role of the state in the construction, maintenance, and renovation of school buildings and facilities	4049	Study issues relating to child support
4006	Study statutory and systemic changes	4050	Study the feasibility and desirability of implementing measures to facilitate and encourage the Tourism Department, the Council on the Arts, and the State Historical Society of North Dakota to work together and to develop jointly new and innovative products
		4052	Study the capital repair, maintenance, and construction requirements of

**Bill or  
Resolution  
No.**

**Subject Matter**

- institutions under the State Board of Higher Education
- 4055 Study the feasibility and desirability of establishing an administrative process for the enforcement of child support obligations
- 4056 Study North Dakota's wetlands laws
- 4059 Study the impact of nonpublic schools on the state and the feasibility and desirability of offering assistance to the parents of nonpublic schoolchildren
- 4060 Study the laws related to sex offenders, including consideration of options for involuntary treatment of civilly committed or criminally incarcerated sex offenders
- 4061 Study the statutes of this state to determine if there are obsolete, redundant, or inaccurate laws that should be eliminated
- 4062 Study the effectiveness of economic development programs in creating quality jobs, the relationship between economic development efforts and welfare reform efforts, and ways in which economic development programs can be structured to help recipients of aid to families with dependent children achieve self-sufficiency
- 4064 Study the North Dakota Educational Telecommunications Council
- 4065 Study the state employee classification system and the benefits provided to state employees
- 4066 Study the feasibility and desirability of consolidating the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement

# 1997 NORTH DAKOTA LEGISLATIVE COUNCIL BILL AND RESOLUTION SUMMARIES

## HOUSE

**House Bill No. 1030 - Administrative Rules Consideration.** This bill allows the Administrative Rules Committee to hold a rule for consideration of voiding the rule and eliminates the requirement that a rule to be voided must be acted on within 90 days after its effective date. A rule held for consideration may not be held beyond the first committee meeting following the next regular legislative session. (Administrative Rules Committee)

**House Bill No. 1031 - Effective Date of Administrative Rules.** This bill delays the effective date of nonemergency administrative rules from the month after the rules are published to the month after the Administrative Rules Committee has completed its review of the rules. (Administrative Rules Committee)

**House Bill No. 1032 - Multiple Prime Bid Requirement for Public Improvement Contracts.** This bill amends the multiple prime bid requirement to provide that multiple prime bids must be obtained when any individual general, electrical, or mechanical portion of a public building contract is in excess of \$100,000 rather than the current \$50,000 amount. (Advisory Commission on Intergovernmental Relations)

**House Bill No. 1033 - Plans and Specifications for Public Improvement Contracts.** This bill requires the governing body of a public entity to procure plans, drawings, and specifications for a public improvement project from a licensed architect or registered professional engineer when the estimated cost of the project is in excess of \$100,000 rather than the current \$50,000 amount. (Advisory Commission on Intergovernmental Relations)

**House Bill No. 1034 - Information Technology Systems and Services.** This bill requires state agencies to prepare information technology strategic plans and to comply with statewide information technology policies and standards, provides that the Information Services Division and the Board of Higher Education plan and coordinate their information technology systems and services, provides for information technology management and system reviews, and updates terminology in the Century Code relating to information technology. (Budget Committee on Agriculture and Information Services)

**House Bill No. 1035 - North Dakota Library System.** This bill establishes a North Dakota Library Coordinating Council, provides for regional library cooperatives including multitype library authorities, repeals sections relating to the

Statewide Library Planning Committee and printing costs of the State Library, and provides an appropriation of \$125,000 for Internet access grants for libraries and for interconnection of library data bases. (Budget Committee on Government Services)

**House Bill No. 1036 - Treatment Services for Children With Serious Emotional Disorders.** This bill requires the Department of Human Services to establish a statewide program to provide out-of-home treatment services for a child with a serious emotional disorder without requiring the parents to transfer legal custody of the child. (Budget Committee on Government Services)

**House Bill No. 1037 - Long-Term Care Bed Moratorium.** This bill makes permanent the moratorium on basic care and long-term care bed capacity and requires the Department of Human Services to establish pilot projects to meet the service needs of the Alzheimer's and related dementia population. (Budget Committee on Home and Community Care)

**House Bill No. 1038 - Case Management Pilot Projects.** This bill defines case management and requires the Department of Human Services to establish a project designed to provide an expanded case management system for individuals in need of long-term care services. (Budget Committee on Home and Community Care)

**House Bill No. 1039 - Nursing Home Occupancy Rate Limitations.** This bill allows the Department of Human Services to waive the imputed minimum occupancy level requirement for a nursing home that the department determines to be providing significant home and community-based services to encourage the development of home and community-based services as an alternative to nursing home care. (Budget Committee on Home and Community Care)

**House Bill No. 1040 - Nursing Home Inflationary Adjustments.** This bill requires the Department of Human Services to provide inflationary increases for nursing home care based on the average of the increase in the DRI nursing home input price index and the increase in the consumer price index for all urban wage earners and clerical workers (CPI-W). (Budget Committee on Home and Community Care)

**House Bill No. 1041 - Economic Assistance Programs Funding.** This bill requires counties, effective January 1, 1998, to assume the financial responsibility for the costs of administering certain economic assistance programs and requires the

state to assume complete financial responsibility for the grant costs of medical assistance and basic care and contribute additional support of administrative costs for counties with Indian land. (Budget Committee on Human Services)

**House Bill No. 1042 - DUI Administrative Hearings.** This bill allows a local prosecutor to assist in the administrative hearing for driving while under the influence which occurs in the prosecutor's jurisdiction. (Criminal Justice Committee)

**House Bill No. 1043 - Alcohol Evaluation for DUI.** This bill requires an alcohol evaluation before the return of an operator's license when the license is suspended or revoked through an administrative hearing for driving while under the influence. (Criminal Justice Committee)

**House Bill No. 1044 - Sex Offender Registration.** This bill requires individuals convicted of a relevant offense in municipal court to register as if convicted in district court. (Criminal Justice Committee)

**House Bill No. 1045 - Court Jurisdiction Over Sex Offenders.** This bill clarifies district court jurisdiction over a person at least 20 years of age who committed an offense while under 18 years of age. (Criminal Justice Committee)

**House Bill No. 1046 - Risk Assessments for Gross Sexual Imposition.** This bill requires a risk assessment as part of the presentence investigation for an individual charged with gross sexual imposition. (Criminal Justice Committee)

**House Bill No. 1047 - Commitment of Sex Offenders.** This bill provides for the involuntary civil commitment of a sexually dangerous individual. (Criminal Justice Committee)

**House Bill No. 1048 - Sex Offender Registration and Notification.** This bill keeps this state's sex offender registration law in compliance with the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and an amendment to it, Megan's Law. This bill requires a sexually violent predator to register for at least 10 years and until a court determines the offender is no longer a sexually violent predator and requires relevant and necessary information on offenders to be released by law enforcement. (Criminal Justice Committee)

**House Bill No. 1049 - Child Victim and Witness Protection.** This bill requires the court to protect a child victim or witness from repeated or lengthy interrogation, testimony, or discovery proceedings. (Criminal Justice Committee)

**House Bill No. 1050 - Foundation Program Equalization Factor.** This bill sets the equalization factor at 16 mills and incorporates income in the equalization factor for the foundation aid program. (Education Finance Committee)

**House Bill No. 1051 - Reimbursement of School Districts.** This bill reimburses school districts having alternative high schools in amounts equal to the payment shortages incurred by the districts as a result of a computer programming error during the 1993-95 biennium. (Education Finance Committee)

**House Bill No. 1052 - Contingent Per Student Payment.** This bill provides for contingent per student payments from any funds remaining in the grants - foundation aid and transportation program at the end of the biennium. (Education Finance Committee)

**House Bill No. 1053 - Services to Gifted Students.** This bill appropriates \$400,000 to the Superintendent of Public Instruction for educational services to gifted and talented elementary and secondary students, encourages the delivery of such services to students in small, rural school districts, and encourages collaboration and cooperation among educational service providers to make the most efficient use possible of available funds. (Education Services Committee)

**House Bill No. 1054 - Teacher Professional Development.** This bill appropriates \$640,000 to the Superintendent of Public Instruction for the purpose of funding teacher learning centers. (Education Services Committee)

**House Bill No. 1055 - Compensatory Time for Teachers.** This bill allows school boards to subtract compensatory time for parent-teacher conferences held outside normal school hours from the 180-day minimum school term. (Education Services Committee)

**House Bill No. 1056 - Wetlands Mediation Advisory Board - Repeal.** This bill abolishes the Wetlands Mediation Advisory Board. (Government Organization Committee)

**House Bill No. 1057 - State Outdoor Recreation Interagency Council - Repeal.** This bill abolishes the State Outdoor Recreation Interagency Council. (Government Organization Committee)

**House Bill No. 1058 - Environmental Advisory Board - Creation.** This bill replaces the Water Pollution Control Board and the Air Pollution Control Advisory Council with an Environmental Advisory Board to advise the Department of Health on issues relating to water pollution control and air pollution control. (Government Organization Committee)

**House Bill No. 1059 - Poultry Advisory Board - Repeal.** This bill abolishes the Poultry Advisory Board. (Government Organization Committee)

**House Bill No. 1060 - State Banking Board and State Credit Union Board - Transfer of Responsibilities.** This bill transfers responsibilities from the State Banking Board and State Credit Union Board to the banking commissioner and removes the requirement that the Governor make appointments to the Credit Union Board based upon recommendations from the North Dakota Credit Union League. (Government Organization Committee)

**House Bill No. 1061 - Medical Assistance Eligibility.** This bill extends medical assistance spousal impoverishment to include individuals who access home and community-based services. (Insurance and Health Care Committee)

**House Bill No. 1062 - Medical Assistance Fraudulent Transfer of Assets.** This bill

provides that transfers made or obligations incurred are fraudulent as to medical creditors if the transfer is made without receiving equivalent value and the debtor was receiving or contemplated receiving medical care for which the assets of the debtor were unreasonably small in relation to the cost of the medical care. The bill also provides for the creation of a Medicaid education fund to develop educational materials and to provide educational services to inform potential recipients of medical assistance of the limits of taxpayer-supported medical services. (Insurance and Health Care Committee)

**House Bill No. 1063 - Location of Pretrial Hearings, Proceedings, and Trials.** This bill authorizes a court to change the place of a pretrial hearing or proceeding from the location in which the matter was originally to be heard and authorizes a court to change the location of civil and criminal trials unless a party objects to the change of location. (Judiciary Committee)

**House Bill No. 1064 - Jury Pool Selection.** This bill authorizes a court to select a jury pool from one or more counties in the judicial district if the population of the county is under 10,000 persons and the court determines that the number of prospective jurors within the county of venue is inadequate to obtain a fair and impartial jury. (Judiciary Committee)

**House Bill No. 1065 - Excluding Saturday as Business Day.** This bill provides for the exclusion of Saturdays as business days as it applies to the review period for referendum or initiative petitions and provides that when acts are to be performed on a particular day that falls upon a Saturday or a holiday, the act may be performed on the next business day with the same effect as if it had been performed upon the appointed day. (Judiciary Committee)

**House Bill No. 1066 - Bank of North Dakota Audit.** This bill changes the authority for the audit of the Bank of North Dakota and its related entities from the Industrial Commission to the State Auditor's office. The bill provides that the State Auditor's office has the authority to contract for the Bank's financial audit and may conduct or contract for the audit of any separate funds or programs administered by the Bank. The bill also provides that the State Auditor's office may conduct performance audits of the Bank of North Dakota and its related entities. (Legislative Audit and Fiscal Review Committee)

**House Bill No. 1067 - Telecommunications.** This bill implements the federal Telecommunications Act of 1996. (Regulatory Reform Review Commission)

**House Bill No. 1068 - Telecommunications Industry Taxation.** This bill eliminates personal property taxes, imposes or retains real property taxes, and imposes a two percent gross receipts tax on all telecommunications carriers. The bill provides a gross receipts tax credit for real property taxes paid on property directly used in telecommunications operations. Gross receipts tax revenues are allocated to counties in proportion to

each county's share of statewide telecommunications carrier property tax and gross receipts tax revenues received in 1997. (Taxation Committee)

**House Bill No. 1069 - Years of Data in Agricultural Property Valuation.** This bill extends from six years to 10 years the years for which agricultural production statistics are used in the formula to establish true and full value of agricultural lands for property tax purposes. The change is phased in by adding a year of production statistics to the formula each year until 10 years of statistics are used in the formula for taxable year 2000. (Taxation Committee)

**House Bill No. 1070 - Irrigated Lands Assessment.** This bill makes permanent the law that was to be effective through taxable year 1997 to exclude 50 percent of annual gross income from irrigated cropland in computing average agricultural value per acre for cropland for counties. (Taxation Committee)

**House Bill No. 1071 - Statewide Water Development Program.** This bill provides for a statewide water development program funded by a \$41,669,450 general fund appropriation. (Water Resources Committee)

**House Bill No. 1072 - Devils Lake Outlet.** This bill provides a contingent plan for construction of an outlet from Devils Lake to the Sheyenne River. (Water Resources Committee)

**House Bill No. 1073 - Water Supply for Eastern North Dakota a Critical Priority.** This bill establishes water supply for eastern North Dakota as a critical priority. (Water Resources Committee)

**House Concurrent Resolution No. 3001 - Clerk of District Court Study.** This resolution directs the Legislative Council to study the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system. (Budget Committee on Government Finance)

**House Concurrent Resolution No. 3002 - State's Investment Process Study.** This resolution directs the Legislative Council to study the state's investment process as it relates to the state bonding fund and the fire and tornado fund and monitor the performance of all investments of the State Investment Board and the Board of University and School Lands. (Budget Committee on Government Finance)

**House Concurrent Resolution No. 3003 - Case Management and Long-Term Care Bed Conversion Study.** This resolution directs the Legislative Council to monitor the implementation of the projects developed by the Department of Human Services relating to converting existing bed capacity for use by Alzheimer's and related dementia persons and the testing of an expanded case management system for elderly persons and disabled persons. (Budget Committee on Home and Community Care)

**House Concurrent Resolution No. 3004 - Elderly and Disabled Services Study.** This resolution directs the Legislative Council to study expanding home and community-based service

provider availability, availability of geropsychiatric care, and the feasibility of combining service reimbursement payment sources for elderly and disabled services. (Budget Committee on Home and Community Care)

**House Concurrent Resolution No. 3005 - American Indian Long-Term Care Study.** This resolution directs the Legislative Council to study American Indian long-term care needs and access to appropriate services, including the

relationship between state service units and the reservation service systems. (Budget Committee on Home and Community Care)

**House Concurrent Resolution No. 3006 - Long-Term Care Financing Study.** This resolution directs the Legislative Council to study the long-term care financing issues and the feasibility of a managed care system for long-term care services. (Budget Committee on Home and Community Care)

# SENATE

**Senate Bill No. 2021 - Consolidation of Mill Levies for Cities, Counties, and Park Districts.** This bill eliminates several special mill levies for cities, counties, and park districts and allows those entities to include levies for those specific purposes within their general mill levy. The bill also provides a growth factor through which the maximum number of mills that may be levied by cities, counties, and park districts is tied to the consumer price index. (Advisory Commission on Intergovernmental Relations)

**Senate Bill No. 2022 - City, County, and Park District Mill Levy Limit Suspension.** This bill eliminates all mill levy limitations for a period of two years for cities, counties, and park districts. The suspension would be effective for the first two taxable years beginning after December 31, 1996. (Advisory Commission on Intergovernmental Relations)

**Senate Bill No. 2023 - Budget Section Duties.** This bill eliminates Budget Section duties relating to reviewing actions of the Office of the Budget, receiving reports on the auditing enhancement and new jobs training programs, approving the expenditure of certain special funds by the Department of Human Services, approving transfers from the state contingencies appropriation, authorizing the Board of Higher Education to transfer property to Ramsey County, and authorizing the University of North Dakota to spend funds to expand the Oxford House. (Budget Section)

**Senate Bill No. 2024 - NDSU Extension Service.** This bill changes the name of "county agent" to "extension agent," extends the time allowed for an extension agent to file a report with the county auditor from monthly to at least annually, and removes legislative intent language relating to area resource centers. (Budget Committee on Agriculture and Information Services)

**Senate Bill No. 2025 - Agricultural Experiment Station.** This bill changes the names of the Main Research Station and research centers, removes the authority of the Williston Research Center to accept grant funds, removes statutory reference to the Board of Visitors of the North Central Research Center, and removes the provision that the Agricultural Experiment Station director is under the direction of the president of North Dakota State University. (Budget Committee on Agriculture and Information Services)

**Senate Bill No. 2026 - Zoning Regulations for Manufactured Homes.** This bill prohibits a city, township, or county from restricting the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home. (Budget Committee on Government Services)

**Senate Bill No. 2027 - Home Health Care Registry.** This bill establishes a registry system of home health care providers to be administered by the Department of Human Services. (Budget Committee on Home and Community Care)

**Senate Bill No. 2028 - Fetal Alcohol Syndrome Services.** This bill defines fetal alcohol syndrome and designates the Fetal Alcohol Syndrome Center at the Department of Neuroscience at the University of North Dakota School of Medicine as the lead agency for coordinating fetal alcohol syndrome and fetal alcohol effect related activities. (Budget Committee on Human Services)

**Senate Bill No. 2029 - Assistance for Refugee Students.** This bill provides payments to school districts for refugee students with difficulty speaking, reading, writing, and understanding English. An additional \$475 for each student is to be provided annually by the Superintendent of Public Instruction and provides an appropriation of \$100,000 from the general fund to the Superintendent of Public Instruction to provide educational assistance through adult learning centers to eligible refugee adults having limited English proficiency. (Budget Committee on Human Services)

**Senate Bill No. 2030 - Juvenile Offender Data Base.** This bill provides for central data collection on certain juvenile offenders. (Criminal Justice Committee)

**Senate Bill No. 2031 - School District Transportation Payments.** This bill allows a school district that has contracted for transportation services to determine its actual costs for the first year it provides its own transportation services by using the higher of its transportation operating expenditures or the statewide average cost of transportation during that first year. (Education Finance Committee)

**Senate Bill No. 2032 - School Fire Inspections.** This bill requires the State Fire Marshal to inspect each elementary and secondary school in the state at least once every three years, prepare an inspection report noting deficiencies, and take appropriate action to ensure the deficiencies are remedied. (Education Finance Committee)

**Senate Bill No. 2033 - Postsecondary Enrollment Options.** This bill allows the enrollment of 11th and 12th grade students in courses at postsecondary institutions and, upon successful completion of the courses, to obtain both high school and postsecondary credit for their efforts. (Education Services Committee)

**Senate Bill No. 2034 - State Employee Assistance Program.** This bill requires the Public Employees Retirement System Board to establish an employee assistance program available to persons in the uniform group insurance medical and hospital benefits coverage group. (Employee Benefits Programs Committee)

**Senate Bill No. 2035 - Reclamation Research Advisory Committee - Repeal.** This bill abolishes the Reclamation Research Advisory Committee. (Government Organization Committee)

**Senate Bill No. 2036 - Authority of Public Service Commission to Regulate Railroads.** This bill authorizes the Public Service Commission, to the extent not inconsistent with federal law, to regulate railroads within the state to the extent the railroad activities constitute intrastate commerce. The bill also authorizes the commission to represent the state's shipping interests in direct negotiations with rail carriers and in proceedings before Congress, federal agencies, and courts. (Government Organization Committee)

**Senate Bill No. 2037 - Regulation of Railroads by the Public Service Commission - Limited Liability of Owner or Operator of Railroads.** This bill repeals various statutes relating to the regulation of railroads to remove references to authority of the Public Service Commission in areas in which the commission is no longer authorized to regulate due to federal preemption. The bill also relocates a section of law relating to the limitation of liability of the owner or operator of a railroad for an injury to an individual riding on a locomotive or railroad car without the authority of the owner or operator. (Government Organization Committee)

**Senate Bill No. 2038 - Licensing of Storage Companies as Public Warehouses - Repeal.** This bill repeals the requirement that public storage warehouses be licensed by the Public Service Commission. (Government Organization Committee)

**Senate Bill No. 2039 - Fees for Testing or Calibrating Weighing and Measuring Devices.** This bill requires the Public Service Commission to charge a fee equal to the cost of operating a motor vehicle used in conducting a special test that is required in addition to the regularly scheduled annual test of a weighing or measuring device. The bill also establishes an \$8 fee for the test of a hanging scale of 50-pound capacity or less. (Government Organization Committee)

**Senate Bill No. 2040 - Group Health Policy Mental Disorder Coverage.** This bill requires that group mental health policy coverage include residential treatment and deletes the definition of "partial hospitalization." (Insurance and Health Care Committee)

**Senate Bill No. 2041 - Group Health Policy Substance Abuse Coverage.** This bill requires that group health substance abuse policy coverage include licensed addiction treatment programs and provides that medically necessary treatment services provided under partial hospitalization no longer must be provided under the supervision of a licensed physician. (Insurance and Health Care Committee)

**Senate Bill No. 2042 - Long-Term Care Insurance.** This bill requires insurance companies providing long-term care coverage for home and community-based services pay providers meeting qualified service provider standards; allows for an income tax credit on short-form income tax forms in the amount of 25 percent (not to exceed \$100 in any taxable year) of any

premiums paid by the taxpayer for long-term care insurance coverage for the taxpayer, the taxpayer's spouse, parent, or stepparent; and allows an employer who provides long-term care insurance to its employees to claim a credit in the amount of 25 percent (not to exceed \$100 per employee) of any premiums paid by the employer. (Insurance and Health Care Committee)

**Senate Bill No. 2043 - Postdelivery Length of Hospital Stay.** This bill requires health insurance policies to provide maternity benefit coverage for 48 hours of inpatient care for normal vaginal deliveries and at least 96 hours of inpatient care following a Caesarean section. (Insurance and Health Care Committee)

**Senate Bill No. 2044 - Referendum and Initiative Petition Submission Deadline.** This bill provides that initiative and referendum petitions may be submitted to the Secretary of State until midnight on the day designated as the deadline for submission. (Judiciary Committee)

**Senate Bill No. 2045 - Pardon Advisory Board.** This bill permits the Governor to create a Pardon Advisory Board consisting of five members appointed by the Governor, one of whom must be law-trained, and repeals the chapter of the Century Code which deals with the State Pardon Board. (Judiciary Committee)

**Senate Bill No. 2046 - Technical Corrections Act.** This bill eliminates inaccurate or obsolete name and statutory references or superfluous language in the Century Code. (Judiciary Committee)

**Senate Bill No. 2047 - Regional Planning Council Audits.** This bill adds regional planning councils to the list of political subdivisions that the State Auditor's office is responsible for auditing. The bill also requires each regional planning council to submit a copy of its annual audit to the Legislative Audit and Fiscal Review Committee. (Legislative Audit and Fiscal Review Committee)

**Senate Bill No. 2048 - Exercise of Joint Authority by North Dakota and South Dakota.** This bill allows an agency, department, or institution of the state to enter an agreement with South Dakota to form a bistate authority to jointly exercise any function that the entity is authorized to perform. The bill provides that any agreement entered must be submitted to the Legislative Assembly for approval or rejection at the next regular or special session after the agreement is entered. (North Dakota/South Dakota Commission)

**Senate Bill No. 2049 - Interstate Mutual Aid Compact.** This bill adopts an interstate mutual aid compact for emergency or disaster assistance. (North Dakota/South Dakota Commission)

**Senate Bill No. 2050 - Devils Lake Basin Water Authority.** This bill creates the Devils Lake Basin Water Authority. (Water Resources Committee)

**Senate Concurrent Resolution No. 4001 - Mental Health and Foster Care Services Study.** This resolution directs the Legislative

Council to monitor mental health and foster care services and methods used to place children and set levels of reimbursements for residential child care facilities and residential treatment centers. (Budget Committee on Government Services)

**Senate Concurrent Resolution No. 4002 - Education Title Study.** This resolution directs the Legislative Council to study those provisions of North Dakota Century Code Title 15 which relate to elementary and secondary education. (Education Finance Committee)

**Senate Concurrent Resolution No. 4003 - Urge State Board of Higher Education to**

**Pursue Collaborative Efforts.** This resolution urges the State Board of Higher Education to continue to pursue collaborative efforts with the South Dakota Board of Regents. (North Dakota/South Dakota Commission)

**Senate Concurrent Resolution No. 4004 - Delivery of Government Services Study.** This resolution directs the Legislative Council to study methods through which North Dakota and South Dakota can collaborate to deliver government services more efficiently. (North Dakota/South Dakota Commission)