

## STATE LEASING OF COUNTY COURT FACILITIES - BACKGROUND MEMORANDUM

House Bill No. 1186 (attached as an appendix) directs the Legislative Council to study the leasing or renting of county court facilities by the state or other political subdivision. The study is to include a study of the possibility of counties retaining a portion of fees collected by the counties in lieu of leasing or renting by the state or other political subdivision. As introduced, House Bill No. 1186 would have provided for a \$2 million appropriation to the Supreme Court for the purpose of providing funding for county office and court building projects. The bill was amended by the Senate to remove the appropriation and call for this study. In the testimony received by the standing committee, it was noted that North Dakota Century Code (NDCC) Section 27-01-01.1 requires each county to "provide the district court in that county with adequate chamber, court, and law library quarters, and lights and fuel and appropriate facilities for clerk of court services that are state funded pursuant to section 27-05.2-02." According to the testimony, however, there is not a clear delineation of responsibility between the state and counties for the provision and upkeep of these facilities. It was noted that the question of who should pay for major construction and remodeling of county facilities to meet the needs of the state judiciary should be revisited.

### BACKGROUND District Courts

On September 7, 1976, a new judicial article to the Constitution of North Dakota was approved by the people. Article VI, Section 1, 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.

At the time the new article was enacted, there were district courts, county courts of increased jurisdiction, county courts without increased jurisdiction, county justices, and municipal courts.

Article VI, Section 8, provides that the district court has original jurisdiction of all causes, except as otherwise provided by law, and such appellate jurisdiction as may be provided by law or by rule of the Supreme Court.

Article VI, Section 9, requires the state to 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 all court services of all

courts in the geographical area of 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.

Article VI, Section 9, also provides that the electors of the district choose district judges for terms of office of six years.

Article VI, Section 10, requires district court judges to be citizens of the United States and residents of North Dakota, be learned in the law, and to possess any additional qualifications prescribed by law.

### County Courts

In 1979 the Legislative Assembly passed Senate Concurrent Resolution No. 4089 which directed the Legislative Council to study the judicial system to determine if structural changes were necessary due to the adoption of the new judicial article. The 1979-80 interim Judiciary "A" Committee recommended, and the 1981 Legislative Assembly adopted, House Bill Nos. 1060 and 1061. The bills provided for one county court in each county instead of the multilevel system of county courts, county justice courts, and county courts of increased jurisdiction; provided county judges had to be law-trained and full time; and provided for the assumption by the state of many district court expenses. The expenses formerly paid by the county which were to be assumed by the state included juvenile court costs; salaries and operating expenses for court reporters, bailiffs, and judicial referees; mileage and compensation, and other related costs for jurors; and felony indigent defense costs. In exchange for the assumption of these county costs by the state, Section 37 of House Bill No. 1060, codified as NDCC Section 27-01-01.1, provided that "[e]ach county shall provide the district court in that county with adequate chamber, court, and law library quarters, and lights and fuel. . . ."

### 1991 Court Unification Legislation

In 1991 the Legislative Assembly enacted House Bill No. 1517, which provided a transition process for establishing a single trial court of general jurisdiction. The unification of the court system was to be accomplished through the elimination of county courts and the creation of additional district court judgeships from county court judgeships. In 1991 there were 53 district

and county court judges. Under unification the total number of district court judgeships was required to be reduced to 42 before January 1, 2001. The Supreme Court began eliminating judgeships, and by January 2, 1995, the primary implementation date for consolidation of trial courts, the number of judgeships was reduced to 47. At the end of 2000 the final judgeship was eliminated and the number of district judgeships was reduced to 42.

Section 206 of 1991 House Bill No. 1517 provided for a statement of legislative intent regarding the allocation of court revenues and expenditures between the counties and the state. Section 206 provided, in part:

**LEGISLATIVE INTENT.** The Legislative Assembly recognizes that this Act to implement article VI, section 1, of the Constitution of North Dakota, while it makes no present statutory change in the current distribution of court revenue, will result in the transfer of responsibility for certain court expenditures beginning January 2, 1995, from the counties to the state, including judicial compensation expenditures associated with the transition from county court judgeships to district court judgeships. **The counties will remain responsible for all county court services until January 1, 1995, and thereafter will remain responsible for all other substantial court expenditures, including costs associated with the provision of courthouse facilities and the office and staff of clerk of district court in each county.** . . . It is the intent of the legislative assembly that the transition to a single trial court of general jurisdiction include revision of the distribution of court revenues and legislative appropriations from the state general fund to provide a fair and equitable allocation of expenditures between the counties and the state. (emphasis supplied)

### **Office of Clerk of District Court**

Historically, the clerks of court had been elected county officials whose salaries are set by state law but were paid by the county. The duties of the clerk were prescribed by state law, and the duties of the clerk were essentially performed for the district court. In 1989 the Legislative Assembly enacted legislation that provided counties the option of seeking state funding for the clerk of district court. The legislation, codified as NDCC Section 11-17-11, provides that "the board of county commissioners of any county may initiate the option to transfer responsibility for funding for the clerk of district court to the state by the filing of written notice to the state court administrator . . . ."

In 1997 the Legislative Assembly expressed its intent to provide for the state funding of clerks of court by stating in Section 6 of 1997 Senate Bill No. 2002 that "the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund administration of the district courts."

In 1999 the Legislative Assembly enacted legislation to provide for the state funding of clerk of district court services. The legislation, codified as NDCC Chapter 27-05.2, provided for the transfer of the funding for clerk of district court services to the state effective April 1, 2001. The legislation provided that the options available to a county regarding state funding of clerk of district court services depended upon the number of full-time equivalent positions the Supreme Court determined to be necessary to provide adequate clerk of district court services. The legislation further required each board of county commissioners to notify the Supreme Court of its election to provide clerk of district court services, of its consent to the elected clerk of court and designated state to become state employees, or of its election to enter an agreement with the Supreme Court to provide funding for clerk of district court services by April 1, 2000. Of the 53 counties, three counties opted to fund their own clerk of court services; 11 counties opted to have the state provide clerk of court services; 38 counties opted to contract with the state; and one county did not make an election by the April 1, 2000, deadline and, therefore, is providing clerk of court services at its own expense.

### **PREVIOUS STUDIES AND RELATED LEGISLATION 1989-90 Interim**

During the 1989-90 interim the Budget Committee on Government Administration studied the issue of establishing a single trial court of general jurisdiction as a means to achieve statewide equality with respect to judicial compensation. The committee determined that to achieve statewide equality within the judiciary, a unified court system must be established. That committee recommended 1991 Senate Bill No. 2026 to abolish county courts as of January 1, 1995; to provide for the establishment of a single trial court system consisting of eight judicial districts; and to reduce the number of district court judgeships from 53 to 42 by December 31, 1998. The bill also provided that on January 1, 1995, county court judges elected in 1994 would become interim district court judges with limited original jurisdiction. If any interim district court judge were elected to a district court judgeship or if the interim district court judgeship was abolished, 80 percent of the court revenue deposited in the county treasury would be deposited in the state general fund. Although the bill failed to pass the Senate, its

provisions were essentially enacted as House Bill No. 1517, except that the number of district court judgeships was set at 44.

### **1991-92 Interim**

During the 1991-92 interim the Legislative Council's Court Services Committee, pursuant to House Concurrent Resolution No. 3046 and Senate Concurrent Resolution No. 4043, considered the unification of the state's judicial system. The interim committee recommended two bills that were enacted in 1993. Senate Bill No. 2032 provided that the authority of the Supreme Court to abolish the office of a district court judge may be exercised from July 1, 1999, until December 31, 2000, if on July 1, 1999, the number of district judges is more than 42 rather than 44.

Senate Bill No. 2032 provided that, effective January 2, 1995, not more than 70 percent of the chambers of the district judges may be located in cities with a population of more than 10,000 rather than a population of more than 7,500. The bill also provided that each district judge must reside within the district where the judge's chambers are located rather than within the county where the chambers are located.

### **1993-94 Interim**

During the 1993-94 interim the Legislative Council's Court Services Committee, pursuant to Senate Concurrent Resolution No. 4005, studied the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction. The committee also studied the funding of court unification and possible changes in filing fees or in the distribution of county court revenues in order to ensure that a unified, consolidated court system is accomplished. The committee recommended Senate Bill No. 2048 to provide that a person cited for a noncriminal traffic violation may appeal to the district court from the initial hearing held before a municipal judge, a magistrate, or other qualified person, including a district judge appointed by the presiding judge of the judicial district.

### **1995 Legislation**

In addition to Senate Bill No. 2048, which was recommended by the 1993-94 interim Court Services Committee, the 1995 Legislative Assembly enacted House Bill No. 1002. House Bill No. 1002 changed the fees in civil cases which may be charged by the clerk of district court. The bill also changed the distribution of the fees between the state and the counties. The bill required the clerk of court to pay to the State Treasurer for deposit in the state general fund \$14 of the \$80 fee for filing a case for decision that is not a small claims action or a petition for dissolution of marriage, annulment, or separation from bed and board. The bill also required the clerk of court to deposit the \$30 fee for

filing a motion to modify an order for alimony, property division, child support, or child custody with the State Treasurer for deposit in the state general fund. Effective July 1, 1997, the bill provided that \$50 of the \$80 fee for filing a case for decision that is not a small claims action and not a petition for dissolution of marriage, annulment, or separation from bed and board must be paid by the clerk of court to the State Treasurer for deposit in the state general fund. In addition, effective July 1, 1997, the bill provided that the \$50 fee for filing an answer to a case that is not a small claims action must be deposited in the state general fund. The bill also transferred the fee for filing an answer to a motion to modify an order for alimony, property division, child support, or child custody from the county to the state general fund, effective July 1, 1997.

### **1995-96 Interim**

During the 1995-96 interim the Legislative Council's Budget Committee on Government Finance, pursuant to Section 5 of 1995 House Bill No. 1002, 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 study included 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.

The committee reviewed the changes made by the 1995 Legislative Assembly to the fees in civil cases that may be charged by the clerk of district court. Under the 1995 legislation, effective July 1, 1997, all the revenues generated by the filing fee increases would go to the state general fund instead of being allocated between the counties and the state. The counties would continue to receive the revenues they were receiving from the original filing fees.

The committee indicated its support for legislation introduced during the 1997 legislative session which would bring the clerks of district courts into the unified judicial system. The committee also indicated its support for legislation introduced during the 1997 legislative session which would provide additional revenues to counties to help provide for adequate court facilities. The committee concluded that it was important to keep the counties involved in the court system in order to maintain their interest in providing adequate court facilities.

### **1997 Legislation**

The 1997 Legislative Assembly enacted Senate Bill No. 2002, which provided that counties were to use the provisions of NDCC Chapter 11-10.2 (County Officer Combination, Separation, and Redesignation), Chapter 11-10.3 (Multisubdivisions Office Combinations), or Chapter 54-40.3 (Joint Powers

Agreement) to combine or share the services of clerks of district courts and that the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund the administration of the district courts. The legislation further provided that (1) each county must have a register of deeds, and the register of deeds shall perform the functions of the clerk of district court in counties having a population of 6,000 or less, unless the board of county commissioners adopts a resolution separating the offices; (2) in a county having a population of more than 6,000, the offices of clerk of district court and the register of deeds may be combined into an office of register of deeds if the board of county commissioners adopts a resolution combining the offices; and (3) the distribution of fees for filing civil cases that are not small claims court actions would be revised:

- By increasing from \$10 to \$15 the amount of each \$80 fee which must be deposited in the civil legal services fund;
- By providing that any fees collected for deposit in the civil legal services fund which exceed \$400,000 in any biennium must be paid to the State Treasurer for deposit in the state general fund;
- By reducing the amount of the \$80 filing fee which must be paid to the State Treasurer for deposit in the state general fund from \$50 to \$45 for all civil cases except petitions for the dissolution of marriage;
- By providing, effective April 1, 1999, that \$65 of the \$80 fee for petitions other than dissolution of marriage must be paid to the State Treasurer for deposit in the state general fund; and
- By providing, effective April 1, 1999, for the filing of petitions for dissolution of marriage, that \$15 of the \$80 fee must be paid to the State Treasurer for deposit in the state general fund.

### **1997-98 Interim**

During the 1997-98 interim the Judiciary Committee, pursuant to House Concurrent Resolution No. 3001 and Senate Concurrent Resolution No. 4045, studied the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system and the issues and problems associated with the continued implementation of court unification.

In an attempt to address the clerk of court issue, the committee recommended that the North Dakota Consensus Council be involved to develop a plan regarding the number of, the duties of, and the funding of the clerks of district court. The clerk of court consensus process plan recommended that adequate and proper judicial services, including clerk of district court services, be provided in each county in the state and that funding for clerk of district court services be provided by the state judicial system in cooperation

with the boards of county commissioners in the counties of the state. The plan further provided that the options available to a county regarding state funding of clerk of district court services would depend on the number of full-time equivalent positions the Supreme Court determines is necessary to provide adequate clerk of district court services. The options available to the counties under the plan included state funding of clerk of district court services, a contract with the state for clerk of district court services, or providing the services at the county's own expense. The interim Judiciary Committee expressed its support during the 1999 legislative session for the plan developed by the clerk of court consensus process.

### **1999 Legislation**

The 56th Legislative Assembly passed House Bill No. 1275, legislation intended to implement the plan proposed by the clerk of court consensus process. The bill transferred funding for clerk of district court services to the state effective January 1, 2001, and provided for state funding of clerk of district court services. The bill provided that the options available to a county regarding state funding of clerk of district court services depended on the number of full-time equivalent positions the Supreme Court determines are necessary to provide adequate clerk of district court services. The bill also provided for the transfer of equipment between the county and the state, fees to be charged by the clerk of the district court for various filing services, and recordkeeping requirements of the clerk. The bill required each board of county commissioners to notify the Supreme Court of its election to provide clerk of district court services, of its consent to the elected clerk of court and designated staff becoming state employees, or of its election to enter an agreement with the Supreme Court to provide funding for clerk of district court services by April 1, 2000. The Legislative Assembly also passed House Bill No. 1002 which changed the effective date of the transfer of funding of clerk of district court services from January 1, 2001, to April 1, 2001.

### **1999-2000 Interim**

Pursuant to Section 4 of House Bill No. 1002 and House Concurrent Resolution No. 3067, the Judiciary Committee studied the impact of court unification on the judicial system and on the effective provision of judicial services to state residents and the committee reviewed and monitored the implementation of legislation enacted by the 56th Legislative Assembly regarding the delivery of clerk of district court services through state funding and alternative methods. An issue raised during the interim was who was responsible for handling the collection of restitution and the preparation of criminal judgments. The testimony

indicated that in some counties, the collection of restitution and the preparation of criminal judgments are performed by clerks of district court and in other counties by state's attorneys. According to the testimony, the Supreme Court planned to address that issue in the form of a rule that would propose both functions become clerk of district court functions.

### 2001 Legislation

The 2001 Legislative Assembly passed Senate Bill No. 2002, the appropriations bill for the judicial branch. The bill as introduced included a \$638,973 appropriation for the collection of restitution. The bill as passed included a \$50,000 appropriation for the collection of restitution in state-funded counties and a statement of legislative intent. Section 6 of Senate Bill No. 2002 provided "[i]t is the intent of the legislative assembly that the county and state offices performing restitution collection and enforcement activities as of April 1, 2001, continue to perform those activities until June 30, 2003."

### 2001-02 Interim

During the 2001-02 interim, pursuant to Section 7 of 2001 Senate Bill No. 2002, the Judiciary A Committee studied the implementation of clerk of court unification, including a review of the delivery of services by clerks of court and the responsibility for restitution collection and enforcement activities. By Legislative Council directive, the study was limited to a study of the responsibility of clerks of court for restitution collection and enforcement activities. The committee received testimony from the Supreme Court that there was considerable disparity among the counties regarding who is responsible for collecting restitution. In Burleigh, Cass, and Grand Forks Counties the collection of restitution has traditionally been the responsibility of the state's attorney. In Ward County the state's attorney is responsible for restitution collection for felony cases, and the clerk of district court is responsible for collection of restitution in all other cases. In all other counties, restitution is being collected by the clerk of district court offices. The North Dakota Century Code is silent regarding who is responsible for the collection of restitution. The committee recommended Senate Bill No. 2043, which provided that those county and state offices performing restitution collection and enforcement activities as of April 1, 2001, are to continue to perform those activities. Testimony in support of the bill indicated the bill would ensure that the structure regarding the collection of restitution which is currently in place would be retained.

### 2003 Legislation

The 2003 Legislative Assembly passed Senate Bill No. 2043, which provided that the county and state

offices performing restitution collection and enforcement activities as of April 1, 2001, are to continue to perform those activities. The bill also provided that in counties in which a county office performs those activities, the county may transfer responsibility for the activities to another office.

The 2003 Legislative Assembly also passed House Bill No. 1088. The bill provided that in all criminal cases, except infractions, upon a plea or finding of guilt, the court is required to impose a court administration fee in lieu of the assessment of court costs. The bill provided for a fee of \$125 for a Class B misdemeanor; \$200 for a Class A misdemeanor; \$400 for a Class C felony; \$650 for a Class B felony; and \$900 for a Class A or AA felony. The bill also provided for an additional \$100 court administration fee for all criminal cases except infractions. Of the additional \$100 court administration fee, the first \$750,000 collected per biennium must be deposited in the indigent defense administration fund, which must be used to contract for indigent defense services in this state, and the next \$460,000 collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fee must be deposited in each fund. The bill also created the Court Facilities Improvement Advisory Committee. The bill provided that money in the court facilities improvement and maintenance fund may be used by the Court Facilities Improvement Advisory Committee to make grants to counties to provide funds for court facilities improvement and maintenance projects.

### SUGGESTED STUDY APPROACH

The committee, in its study of the leasing or renting of county court facilities by the state or other political subdivision, may wish to approach this study as follows:

- Receive information and testimony from the Supreme Court regarding the status of the Court Facilities Improvement Advisory Committee and the funds contained in the court facilities improvement and maintenance fund.
- Receive information and testimony from the Supreme Court, the North Dakota Association of Counties, and county officials regarding the status of county court facilities, funding needs, and other concerns of the counties.
- Receive information on the fees collected by the courts.
- Develop recommendations and prepare legislation necessary to implement the recommendations.

ATTACH:1