

JOURNAL OF THE HOUSE

Fifty-third Legislative Assembly

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Bismarck, January 6, 1993

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

The prayer was offered by the Rev. Steve Odegard, Free Lutheran Church, Fargo.

The roll was called and all members were present except Representatives Gorder, Grosz, Jacobs, Martin, and Nicholas.

A quorum was declared by the Speaker.

REPORT OF PROCEDURAL COMMITTEE

MR. SPEAKER: Your procedural Rules Committee (Rep. Kretschmar, Chairman) appointed to recommend legislative rules, has had the same under consideration and recommends that the House and Joint Rules of the Fifty-second Legislative Assembly as adopted on Thursday, December 6, 1990, and amended on January 10 and 15, 1991, with the following new rules and amendments, be adopted as the permanent rules of the House for the Fifty-third Legislative Assembly, and that the reading of this report be dispensed with:

SECTION 1. AMENDMENT. House Rule 312 is amended as follows:

312. ORDER OF MOTION. When a question is under debate, no motion may be received, except to fix the time to which to adjourn; to adjourn; to lay on the table; to move the previous question (which four motions must be decided without debate); to move to postpone to a day certain; to refer ~~or~~ and to amend. These motions have precedence in the order in which they are named. No motion to postpone to a day certain or to refer, having been decided, may be entertained again on the same day.

SECTION 2. AMENDMENT. Subsections 1, 2, and 4 of House Rule 318 are amended as follows:

1. The following questions require a majority vote of the members of the House present and voting:
 - a. Adoption of amendments, as provided in House Rule 601.
 - b. Reconsideration of the adoption of an amendment, as provided in House Rule 346.
 - c. Order to a chairman to report a measure back from committee, as provided in House Rule 507.
 - d. Action, other than referrals or rereferrals to the Appropriations Committee on certain measures, as authorized in House Rule 330.
 - e. To have the Speaker refuse to sign any bill the Senate refuses to return, as provided in House Rule 348.
 - f. Adoption of propositions of a divided question if the division would require a majority vote of the members present, as provided in House Rule 319.

- g. Adoption of conference committee reports, as provided in House Rule 605.
 - h. Any question for which another vote is not required by the Constitution or another rule.
2. The following questions require a majority vote of the members-elect of the House:
- a. Passage of bills, as provided in Section 13, Article IV, of the Constitution and House Rule 338.
 - b. Ratification of amendments to the Constitution of the United States, as provided in House Rule 338.
 - c. Passage of proposed amendments to the Constitution of North Dakota, as provided in Section 16, Article IV, of the Constitution.
 - d. Adoption of propositions of a divided question if the division would require a majority vote of the members-elect, as provided in House Rule 319.
 - ~~e.~~ e. To constitute a quorum, as provided in House Rule 103.
 - ~~e-~~ f. Suspension of further proceedings under a call of the House, as provided in House Rule 303.
 - ~~f-~~ g. Election of certain House employees, as provided in House Rule 206.
 - ~~g-~~ h. Reconsideration of questions other than adoption of amendments if before the end of the next legislative day, as provided in House Rule 346.
 - ~~h-~~ i. Adoption of a clincher motion, as provided in House Rule 347.
4. The following questions require a two-thirds vote of the members-elect of the House:
- a. Initiated and referred measures amended or repealed within seven years after enactment or approval, as provided in Section 8, Article III, of the Constitution and House Rule 338.
 - b. Emergency clauses, as provided in Section 13, Article IV, of the Constitution.
 - c. Adoption of propositions of a divided question if the division would require a two-thirds vote of the members-elect, as provided in House Rule 319.
 - d. Reconsideration after a clincher motion, as provided in House Rule 347.
 - ~~d-~~ e. Reconsideration after the next legislative day or after a previous motion to reconsider, as provided in House Rule 346.
 - ~~e-~~ f. Second reading same day as report, as provided in House Rule 336.
 - ~~f-~~ g. Suspension of requirement that copies of amendments be distributed before acted on, as provided in House Rule 601.
 - ~~g-~~ h. Suspension of the rules, as provided in House Rule 324.

- ~~h-~~ i. Vetoed measures, reconsideration, as provided in Section 9, Article V, of the Constitution.

SECTION 3. AMENDMENT. House Rule 330 is amended as follows:

330. BILLS MEASURES REFERRED TO APPROPRIATIONS COMMITTEE.

1. ~~All bills or resolutions carrying~~ Every bill providing an appropriation of five thousand dollars or more must be referred or rereferred to and acted on by the Appropriations Committee and before final action by the House thereon, unless otherwise ordered by a majority vote of the members present.
2. A bill or resolution required to be referred or rereferred to the Appropriations Committee which received a do not pass recommendation from committee and which then is passed by the House is deemed reconsidered and must be referred to and acted upon by the Appropriations Committee if that bill or resolution has not been referred or rereferred to the Appropriations Committee before passage. The Appropriations Committee shall report the bill or resolution back to the House for action in accordance with these rules.
3. All House bills required to be rereferred to the Appropriations Committee, except bills introduced after the deadline for introduction of bills by the Delayed Bills Committee or on two-thirds vote of the House, must be rereferred not later than the twenty-third legislative day. If an appropriation bill is not reported to the floor and rereferred as required herein, the bill is deemed rereferred and is under the jurisdiction of the Appropriations Committee at the end of the twenty-third legislative day.

SECTION 4. A new House rule is created as follows:

REREFERRAL TO COMMITTEE. A measure that is to be rereferred to a committee as the result of a committee report or House rules must be rereferred to the committee after action on any amendment recommended by the committee report or before any vote on the committee report if no amendment is recommended. When the report of the committee of rereferral is presented to the House, the Chief Clerk shall announce every report to the House which was made on that measure.

SECTION 5. AMENDMENT. House Rule 339 is amended as follows:

339. RECORDED ROLL CALL VOTES. Except as provided in House Rule 315, no action by the House which may result in final disposition of a bill, a resolution that provides for the expenditure of money, or a resolution proposing a constitutional amendment, may be taken except by a recorded roll call vote, and the vote of each member, or a record of the member's absence or failure to vote, must be recorded in the journal. As used in this rule, "final disposition" includes any procedure that, barring reconsideration, results in the House being unable to give further consideration during that legislative session to the particular measure that was under consideration.

SECTION 6. A new House rule is created as follows:

RETURN OF HOUSE MEASURE WITH AMENDMENT. Upon the return to the House of a House bill or resolution that was amended and passed by the Senate, the Speaker shall refer the measure to the chairman of the standing committee that reported the measure to the House. The chairman, by motion on the floor, shall recommend whether to concur in the amendments. If the recommendation is to not concur and to appoint a conference committee, the Speaker shall appoint a conference committee.

SECTION 7. A new House Rule is created as follows:

CONCURRENCE IN SENATE AMENDMENTS. Upon adoption of a motion to concur in amendments adopted by the Senate and explained to the House, the bill or resolution must be placed on the calendar for second reading and final passage. A measure placed on the calendar under this rule may be acted on immediately after placement on the calendar.

SECTION 8. AMENDMENT. Subsection 2 of House Rule 401 is amended as follows:

2. Any bill or resolution may have, following and separate from the name or names of the House of Representatives sponsor or sponsors, ~~the names name of no more than three cosponsors~~ each sponsor from the Senate. A bill or resolution may not have more than six members of the Legislative Assembly as sponsors.

SECTION 9. AMENDMENT. Subsection 1 of House Rule 402 is amended as follows:

1. No bill may be introduced after the ~~eleventh tenth~~ legislative day and ~~after the convening of the regular session~~ no member other than the Majority and Minority Leaders may introduce more than five bills as prime sponsor after the ~~sixth fifth~~ legislative day, nor may any resolution, except those resolutions hereinafter provided for, be introduced after the eighteenth legislative day, except upon approval of a majority of the Delayed Bills Committee or upon two-thirds vote of the House.

SECTION 10. AMENDMENT. Subsection 2 of House Rule 404 is amended as follows:

2. Each bill and resolution must have typed on it the name of ~~the member or members, but no more than five from the House, nor more than three from each house on jointly sponsored bills or resolutions, or committee~~ each sponsor introducing the bill or resolution.

SECTION 11. AMENDMENT. Subsections 2, 3, and 4 of House Rule 501 are amended as follows:

2. The five-day standing committee is Appropriations: (~~23~~ 22 members) ~~All bills calling for appropriations in excess of five thousand dollars. Bills and resolutions referred or rereferred under House Rule 330.~~ Except for the committee chairman, each member of the committee must be appointed to one of the following divisions of the committee:
 - a. Education and Environment.
 - b. Human Resources.
 - c. Government Operations.
3. The three-day standing committees are:
 - a. Education: (~~17~~ 15 members)

Public Schools; Libraries; and Institutions of Higher Learning.
 - b. Finance and Taxation: (~~16~~ 15 members)

Public Debt; Taxes and Tax Laws.
 - c. Human Services and ~~Veterans Affairs~~: (~~15~~ 14 members)

Human Services; Public Health; and Public Safety; Temperance; Matters affecting the Military and Veterans.

- d. Industry, Business and Labor: (~~16~~ 15 members)

Banks and Banking; Corporations; Insurance; Matters pertaining to Private Business and Industry; Workers' Compensation; Unemployment Compensation; Labor Laws and kindred subjects.

- e. Judiciary: (~~16~~ 14 members)

Elections and Election Privileges; Judiciary.

4. The two-day standing committees are:

- a. Agriculture: (~~17~~ 15 members)

Agriculture; Livestock; Drainage and Irrigation; Warehouse and Grain Grading.

- b. Government and Veterans Affairs: (14 members)

State and Federal Affairs; Government Pensions and Benefits; Military and Veterans Affairs; Industrial Commission and institutions under its supervision; and State Historical Society and State Parks.

- c. Natural Resources: (~~16~~ 15 members)

Game and Fish; Public Lands; Mines and Mining; Gas and Oil; Forestry.

- ~~e-~~ d. Political Subdivisions: (~~17~~ 15 members)

Cities; Counties; Townships; Park Districts; Apportionment.

- ~~d-~~ State and Federal Government: (15 members)

~~State and Federal Affairs; Director of Institutions and Industrial Commission and institutions under their supervision; State Historical Society and State Parks; Immigration and Statistics.~~

- e. Transportation: (~~15~~ 14 members)

Highways and Bridges; Railroads; Motor Vehicles; Airlines and Airports.

SECTION 12. AMENDMENT. Subdivisions e and g of subsection 2 of House Rule 601 are amended as follows:

- e. If the committee report is for amendment and then rereferral to another committee, the measure must be rereferred to the appropriate committee after adoption or rejection of the amendment. If, after adoption or rejection of the amendment, a measure is subject to rereferral under House Rule 330, the measure must be rereferred to the Appropriations Committee, regardless of whether the report provides for rereferral.
- g. On motion a measure must be placed on the calendar for second reading and final passage immediately after action is taken on the amendment. After the thirty-second legislative day all House bills, and after the fifty-fifth legislative day all measures, must be placed on the calendar for second reading and

final passage immediately after action is taken on the amendment. A measure placed on the calendar under this subdivision may be acted on immediately after placement on the calendar.

SECTION 13. AMENDMENT. House Rule 602 is amended as follows:

602. DIVIDED COMMITTEE REPORT.

1. In case all the members of any committee required or entitled to report on any subject referred to them, cannot agree upon any report, the majority and minority may each make a special report, and any member or members dissenting, in whole or in part, from the reasoning and conclusions of both the majority and minority may also present to the House a statement of reasonings and conclusions; and all reports, if decorous in language, and respectful to the House, must be entered at length in the journal, and must be announced by the Chief Clerk as provided in House Rule 601.
2. The majority report is either the report signed by the largest number of committee members or the report signed by the committee chairman if that report is one of two or more reports signed by the largest and an equal number of members. Except as provided in House Rule 601, the majority report must be placed on the calendar for consideration before consideration of any minority report. Minority reports must be placed on the calendar in order in accordance with the number of committee members signing the reports, with the report signed by the largest number of members being placed on the calendar first.
3. If one or more of the reports presented pursuant to this rule recommended an amendment to the legislative measure under consideration, the Chief Clerk, during the fifth order of business, shall announce the fact that a divided committee report has been received, including a report, or reports, for amendment. The amendments, except as provided in subsection 3 of House Rule 601, must then go on the calendar under the sixth order of business in accordance with subsection 2 of House Rule 601.
- ~~3- 4.~~ If more than one amendment is recommended by divided reports relating to a particular measure, the Speaker shall direct that they be placed on the calendar in order in accordance with the number of members signing the report, with the amendment recommended by the report signed by the largest number of committee members being placed on the calendar first. If the reports recommending amendment are signed by an equal number of members, the Speaker shall determine by some other equitable method the order in which they will be placed on the calendar during the sixth order of business this rule.
- ~~4- 5.~~ The Speaker shall also rule, ~~in the case of a divided committee report recommending two or more amendments, as to the effect of the passage adoption of the first amendment report on each subsequent amendment recommended to that particular legislative measure report.~~

SECTION 14. A new Joint rule is created as follows:

TRANSMITTAL OF BILLS WITH EMERGENCY CLAUSES. If a bill with an emergency clause has passed without the vote required to carry the emergency clause, the bill must be transmitted to the other house without the emergency clause.

SECTION 15. AMENDMENT. Subsection 1 of Joint Rule 203 is amended as follows:

1. No bill that has passed one house may be sent to the other house for concurrence after the thirty-fourth legislative day, except ~~by a bill introduced after the first fifteen legislative days~~ by with the approval of the Delayed Bills Committee or introduced with the concurrence of two-thirds or more of the numbers of the house of introduction.

SECTION 16. AMENDMENT. Joint Rule 206 is amended as follows:

206. CONSENT CALENDAR.

1. Each standing committee may report an uncontested amendment, ~~an uncontested bill, an uncontested or~~ resolution, or a contested resolution out of committee and may include in its report a recommendation for placement on the consent calendar.
2. As used in this rule, "uncontested amendment, ~~uncontested bill, or uncontested resolution~~" means any ~~committee report for~~ amendment, bill, or resolution, except ~~those containing appropriations~~ an amendment or a bill providing an appropriation, which makes or receives a do pass or do pass as amended recommendation from the committee of referral, by unanimous vote of the members present provided a quorum is present. As used in this rule, "contested resolution" means any resolution that receives a do pass or do pass as amended recommendation from the committee of referral, ~~by any vote other than a unanimous vote of the members present provided a quorum is present.~~
3. Following the presentation of a committee report recommending placement on the consent calendar, all amendments, bills, or resolutions recommended by the committee for placement on the consent calendar must be placed on the consent calendar.
4. A resolution directing a Legislative Council study which receives a do pass or do pass as amended recommendation from the committee of referral must be placed on the consent calendar, regardless of whether the committee report recommends placement on the consent calendar.
5. Any consent calendar amendment, bill, or resolution that is amended from the floor must be taken off the consent calendar and must be placed on the regular calendar.
- ~~5-~~ 6. Upon objection of ~~one-third of the members elect~~ any member to the placement or retention of any uncontested amendment, ~~uncontested bill, or uncontested resolution on the consent calendar, or upon objection of any member to the placement or retention of,~~ any contested resolution, or any Legislative Council study resolution on the consent calendar, the bill or resolution must be taken off the consent calendar and must be placed on the regular calendar.
- ~~6-~~ 7. No item on the consent calendar may be considered for adoption on the same legislative day it is placed on the consent calendar.

SECTION 17. AMENDMENT. Subsections 6 and 7 of Joint Rule 301 are amended as follows:

6. The conference committee report shall first be submitted to the house having possession of the bill or resolution over which the difference has arisen ~~where it shall be acted on and notice of such action transmitted to the other house.~~ The house shall act

on the report and, if appropriate, shall proceed to take action on the bill or resolution.

7. ~~When the other house has also acted on the report, that house shall notify~~ After action on the report and, if appropriate, on the bill or resolution, the house having possession of the bill, ~~which house shall, if appropriate, proceed to take action on the bill and shall transmit it~~ shall transmit it ~~the bill or resolution~~ to the other house for appropriate action.

SECTION 18. AMENDMENT. Joint Rule 501 is amended as follows:

501. FISCAL NOTES.

1. ~~All bills and resolutions introduced into either house~~ Except for a measure appropriating a specific dollar amount, every bill or resolution ~~having an effect of five thousand dollars or more on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, must have a fiscal note attached to the bill or resolution which must~~ describes that effect and which is prepared as provided in this rule.
2. a. ~~The determination as to~~ Legislative Council shall determine whether a fiscal note is required ~~must be made by the Legislative Council~~ for those bills or resolutions any bill or resolution prepared by the Legislative Council staff, or by the The chairman of the committee to which a bill or resolution is referred ~~shall determine whether a fiscal note is required for those bills or resolutions~~ a bill or resolution not prepared by the Legislative Council, or not bearing a fiscal note.
 - b. ~~Bills or resolutions~~ A bill or resolution to which ~~amendments have been made~~ an amendment having a fiscal effect of five thousand dollars or more ~~has been approved~~ must have a fiscal note attached upon request of the chairman of the committee considering the bill or resolution, or by request of the majority of the members of the house in which the bill is considered at the time of second reading.
 - c. The chairman of a committee may request the aid of the Legislative Council in making a determination as to whether a bill or resolution requires a fiscal note.
3. a. ~~Fiscal notes~~ A fiscal note must be prepared by the state agency or department responsible for collecting or expending the revenues affected ~~or whose appropriation is affected~~ or jointly by affected departments or agencies, at the request of the Legislative Council or the chairman of the committee considering the bill or resolution.
 - b. ~~Requests for fiscal notes~~ A request for a fiscal note must be in writing, addressed to the designated agency or department, and upon a proper request form, and must be accompanied by ~~a reproduction~~ copy of the bill or resolution having the fiscal effect.
 - c. The Legislative Council shall prepare all necessary forms for the implementation of the fiscal note procedure.
 - d. Each agency or department to whom a request for a fiscal note is made shall state on a fiscal note form the fiscal impact ~~in dollar amounts~~ of the bill or resolution being considered. The fiscal impact must be stated in dollar amounts; identify

the impact on revenues; identify the impact on expenditures; identify the impact for the current biennium, the upcoming biennium, and the next succeeding biennium; and identify the effect on the appropriation for the state agency or department for the current, upcoming, and next succeeding bienniums.

- e. If the agency or department of whom a fiscal note is requested is unable to provide specific information upon the fiscal impact of the bill or resolution, the agency or department shall make an estimate of the impact according to such available information it may have or be able to obtain and shall state that the figures provided are an estimate.
 - f. If ~~such~~ the agency or department is not able to make an estimate, it shall state that fact.
4. a. ~~All~~ Every fiscal notes note must be prepared in triplicate and must be returned to the Legislative Council or the committee chairman making the request, whichever the case may be, not later than five days from the date of the request.
 - b. One copy of the fiscal note must be attached to the original bill or resolution, one copy must be filed with the Bill Clerk of the house wherein the bill or resolution originated, and one copy must be filed in the Legislative Council office.
5. Any bill or resolution requiring a fiscal note must be stamped or have written on its cover a notation to the effect that a fiscal note is required.
 6. ~~Reports or committees~~ A committee report must include a notation that a specific bill or resolution carries a fiscal note.
 7. Upon second reading and final passage of ~~all bills and resolutions~~ a bill or resolution carrying a ~~fiscal notes note~~ fiscal note, the Secretary of the Senate or the Chief Clerk of the House, whichever the case may be, shall read the fiscal note in its entirety at the time of the reading of the title of the bill or resolution to be voted on.

SECTION 19. AMENDMENT. Joint Rule 603 is amended as follows:

603. PRINTING AND DISTRIBUTION OF BILLS, RESOLUTIONS, AND JOURNALS.

1. Eight hundred copies of each bill, and five hundred copies of each resolution, must be printed, unless the house of introduction orders a greater or lesser number to be printed.
2. Bill room employees, under the supervision of the Chief Clerk or the Secretary of the Senate, as the case may be, may, as time and physical space allow, set aside not more than five copies one copy of each bill or resolution, ~~or to be delivered to any person who subscribes to receive a copy of each bill and resolution introduced.~~ The Legislative Management Committee of the Legislative Council shall establish appropriate fees for this service. Not more than five copies of a limited number of specified bills and resolutions, to may be delivered to certain specified persons who personally request the bills and resolutions.
3. ~~Persons on an approved list who subscribe to receive a set of bills and resolutions~~ as of the first day of the regular session have priority for receiving bills and resolutions pursuant to this rule.

4. This rule does not apply to the staff of the Legislative Council which may have such number of bills set aside as are necessary to aid it in carrying on legislative business.
5. Bill room employees may not distribute more than five bills to any one person, except to legislators, legislative employees, ~~and~~ members of the Legislative Council staff, and persons who subscribe to receive more than five sets of bills and resolutions.
6. The journals of the Senate and House must be printed as provided in Senate Rule 204 and House Rule 204, and bill room employees shall distribute copies of daily journals.

SECTION 20. Joint Rule 901 is created as follows:

901. SEXUAL HARASSMENT POLICY.

1. The Legislative Assembly is committed to providing a healthy and appropriate work environment for legislators, legislative employees, and other state employees which is free from sexual harassment. Sexual harassment in any manner will not be tolerated.
2. Sexual harassment includes verbal abuse of a sexual nature, graphic verbal comment about a person's body, physical touching of a sexual nature, sexual advances and propositions, sexually degrading words used to describe an individual, display in the workplace of any sexually suggestive object or picture, and any threat or insinuation, either explicitly or implicitly, that a person's refusal to submit to a sexual advance will adversely affect that person's employment, evaluation, wages, duties, work shifts, or any other condition of employment or career advancement.

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

SPECIAL ORDER OF BUSINESS

REP. FREIER MOVED that a committee of two be appointed to escort Wilbur D. Wilkinson, Chairman of the Three Affiliated Tribes, Fort Berthold Reservation to the rostrum, which motion prevailed.

SPEAKER R. BERG APPOINTED Reps. Allmaras and Bernstein to such committee and Mr. Wilkinson was escorted to the rostrum.

The Color Guard, Myron Johnson, Curtis M. Young Bear, Jr., James Johnson, Virgil Chase, James Chase, and Howard Crows Flies High presented the colors. Other tribal officials in attendance at the rostrum were John J. Rabbithead and Spencer Wilkinson.

The Oakdale Drum Group, Arthur Clyde Smith, and Kenny Smith from Mandaree, North Dakota, presented the Flag Song.

TRIBAL-STATE RELATIONS

**Wilbur Dale Wilkinson, Chairman
of the Mandan, Hidatsa, Arikara Nation**

Governor Schafer, Mr. Speaker, Distinguished Representatives, Ladies and Gentlemen: I am Wilbur Dale Wilkinson, Tribal Chairman of the Three Affiliated Tribes; the Mandan, Hidatsa, and Arikara Nation. I want to thank Debbie Painte, the Executive Director of the North Dakota Indian Affairs Commission, Chairman Mushik and the Interim Legislative Management Committee for extending this invitation to the Indian Nations of North Dakota. I welcome this opportunity to address the North Dakota House of Representatives on the state of affairs between the Indian Nations and the State of North Dakota.

There are many issues that exist between the sovereign Indian Nations of Fort Berthold, Standing Rock, Fort Totten, Turtle Mountain, and Sisseton and the State of North Dakota - issues that can and must be overcome if we are to progress, grow and prosper and create the opportunities our people need and deserve.

This can only happen if we work together with a common goal; recognizing and understanding what the Indian Nations and the state has to offer in building a better life, a better tomorrow for our elders, our children, and ourselves.

I was at a meeting where many problems were being discussed and I asked the question - what are we trying to do, who or what is stopping us, who is the enemy? The answers varied - some said our opponents, some said the newspapers, some said the Republicans, some said the Democrats, some said the State of North Dakota, some said the federal government. They were all wrong! The enemy we must combat is ignorance, unemployment, injustice, lack of economic growth, a depressed farm economy, and poverty.

Jurisdictional issues of cross deputization, extradition, taxation, TERO, redistricting, economic development, unemployment, housing, poverty; all are complex problems that the governments of the Indian Nations and the state must resolve. It all begins with recognizing the sovereignty of Indian Nations. The state must recognize and appreciate the contributions that Indian Nations have made to the economy of North Dakota.

- Millions of Bureau of Indian Affairs dollars
- Millions of Tribal dollars
- Millions of Department of Defense dollars
- Millions of Indian Housing Authority dollars
- Millions of Indian Health Service dollars

All spent in North Dakota stores, small businesses, and contractors; creating thousands of jobs and generating revenues in state taxes.

This money is brought into North Dakota because we are Indian Nations with treaties with the United States of America. The true beneficiaries are the non-Indian businesses of North Dakota.

The impediments to progress have been challenges to tribal sovereignty.

We have tribal laws that apply to all persons doing business on Indian reservations. The challenges made by non-Indians living amongst us on our reservations are the most controversial.

- Reservation Telephone Co-op Lawsuit - challenging the tribal possessory interest tax. Even after the tribes exempted co-ops from paying the tax, the reservation telephone co-op commenced a lawsuit against the tribes.
- Duncan Oil Lawsuit - challenging the tribes' authority to lien tax and challenging the tribes' right to tribal employment rights laws on the reservation. Non-Indian people live and do business on our reservation because they want to, therefore, they are subject to our tribal laws. In turn, if an Indian lives off the reservation, they are subject to the laws of North Dakota.
- Extradition - most of you may have read in the newspapers that the States Attorney of Ward County was seeking extradition of my nephew to face state felony charges. It made front page news. When my nephew waived his right to an extradition hearing and was extradited to Ward County, the States Attorney and the Judge, on the front page of the newspaper reported that they would release my nephew if I would go up and ask the Judge to release him.
- In gaming, the tribes sought to create jobs, bring in revenues to the tribes, but first a compact had to be negotiated with the State of North Dakota. Two tribes had been waiting years for the state to negotiate and consummate a gaming compact. A lawsuit was filed

to compel the state to negotiate. This action was precipitated by the state's move to bring in the United States Attorney, United States Marshal, Bureau of Indian Affairs criminal investigators to shut down tribally-operated gaming. Following the filing of the lawsuit, the gaming compacts were consummated between the tribe and state.

- Growing North Dakota which is a bold and innovative law designed to stimulate the economy of North Dakota and North Dakota reservations, the law contained an Indian set-aside provision. The Indian leaders supported this bill, testified and lobbied for its purpose. Once enacted into law the administrative regulations and interpretation made it prohibitive for Indian tribes to truly benefit from the well-intended legislation. To be successful there must be a willingness to negotiate, to compromise, to set aside our differences and do what is just, to do what is morally right.

On Fort Berthold by working together with the people of North Dakota, the state leaders, the Rural Electric Cooperatives, Congressional leaders, we were able to accomplish what could not be done for fifty years. That was seeking financial compensation and a commitment by the Congress of the United States to replace the lost infrastructures of the tribe when the Garrison dam was built and the Garrison reservoir created. Our people lost 156,000 acres of prime bottom land for the alleged public good. By working together, by seeking justice, we were able to obtain equitable compensation. Our efforts culminated with passage of H. R. 429, now Public Law 102-575.

This Public Law establishes a \$149.2 million recovery fund for our people and returns approximately 45,000 acres of land, tribal to individual Indians and non-Indian landowners.

The State of North Dakota, as a matter of unity, recognized tribal court judgments.

The State of North Dakota recognized tribal governments' inherent authority to create business corporations and the recognition of these corporations as foreign corporations by the State of North Dakota and allowing tribally chartered corporations to obtain North Dakota contractors' licenses.

The tribal municipal, rural and industrial water projects on the reservation, bringing in millions of dollars to build the necessary infrastructures to bring quality water to our communities and homes, all contribute to the benefit of all North Dakotans.

The people of North Dakota can maintain the belief that all Indian people do not work and get a public assistance check every month and Indian people can maintain the belief that all North Dakotans are farmers that do not work and live off the United States Department of Agriculture public assistance dole by getting government deficiency payments or we can understand each other and realize that their stereotypes are not true and that we all have problems and concerns that are common to Indians and non-Indians and by recognizing this, we can work together toward finding positive solutions.

Thank you.

MOTION

REP. FREIER MOVED that the printed remarks of Mr. Wilkinson be printed in the Journal, which motion prevailed.

REP. FREIER MOVED that the escort committee escort the guests from the rostrum, which motion prevailed.

REPORT OF PROCEDURAL COMMITTEE

MR. SPEAKER: Your procedural Rules Committee (Rep. Kretschmar, Chairman), appointed to recommend legislative rules, has had the same under consideration and recommends that the House and Joint Rules of the

Fifty-second Legislative Assembly as adopted on Thursday, December 6, 1990, and amended on January 10 and 15, 1991, with the following new rules and amendments, be adopted as the permanent rules of the House for the Fifty-third Legislative Assembly, and that the reading of this report be dispensed with:

SECTION 21. Joint Rule 804 is amended as follows:

804. SMOKING IN AREAS USED BY LEGISLATIVE ASSEMBLY. The legislative study room on the first floor of the state capitol is a designated smoking area during a legislative session for members of the Legislative Assembly, guests specifically invited by members of the Legislative Assembly, and ~~state employees of the legislative branch.~~ No other space in the state capitol which is used by the Legislative Assembly, including the chambers, committee rooms, halls, passageways, and restrooms, may be designated as a smoking area.

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

FIRST READING OF HOUSE CONCURRENT RESOLUTION

Reps. Wald, Brown, Martin, Wardner and Sens. Goetz, Urlacher introduced:
HCR 3010: A concurrent resolution congratulating Wayne Herman on winning the Professional Rodeo Cowboys' Association world bareback rider championship.
Was read the first time.

MOTION

REP. FREIER MOVED that the rules be suspended, that HCR 3010 not be printed, not be referred to committee, be read in its entirety, not be printed in the Journal, and placed on the calendar for second reading and final passage, which motion prevailed.

SECOND READING OF HOUSE CONCURRENT RESOLUTION

HCR 3010: A concurrent resolution congratulating Wayne Herman on winning the Professional Rodeo Cowboys' Association world bareback rider championship.

The question being on the final adoption of the resolution, which has been read.

HCR 3010 was declared adopted on a voice vote.

MOTION

REP. WALD MOVED that the rules be suspended and that HCR 3010 be messaged to the Senate immediately, which motion prevailed.

MESSAGE to the SENATE from the HOUSE (Roy Gilbreath, Chief Clerk)

MADAM PRESIDENT: The House passed and your favorable consideration is requested on: HCR 3010.

REPORT OF PROCEDURAL COMMITTEE

MR. SPEAKER: Your procedural Committee on Arrangements for House Committee Rooms (Rep. Wald, Chairman) recommends that the House use the following committee rooms during the Fifty-third Legislative Assembly:

COMMITTEE	MEETING DAYS	ROOM
Appropriations	MTWThF	Roughrider
Education and Environment Division		Roughrider
Government Operations Division		House Conference
Human Resources Division		Sakakawea
Education	MTW	Pioneer
Finance and Taxation	MTW	Fort Totten

Human Services	MTW	Fort Union
Industry, Business and Labor	MTW	Peace Garden
Judiciary	MTW	Prairie
Agriculture	ThF	Peace Garden
Natural Resources	ThF	Pioneer
Political Subdivisions	ThF	Prairie
Government and Human Services	ThF	Fort Union
Transportation	ThF	Fort Totten
Constitutional Revision	TBA	Senate Conference

REP. WALD MOVED that the Report of the Procedural Committee on Arrangements for Committee Rooms be adopted, which motion prevailed on a voice vote.

MOTIONS

REP. FREIER MOVED that the absent members be excused, which motion prevailed.

REP. FREIER MOVED that the House be on the Ninth order of business, and at the conclusion of the Ninth order, the House stand in recess until 1:45 p.m., to receive the Senate in Joint Session and at the conclusion of the Joint Session, the House stand adjourned until 1:45 p.m., Thursday, January 7, 1993.

FIRST READING OF HOUSE BILLS

Rep. Payne introduced:

HB 1216: A BILL for an Act to amend and reenact section 57-40.4-01 of the North Dakota Century Code, relating to extension of the statute of limitations regarding a refund of motor vehicle excise tax to a purchaser who is permanently physically disabled or a disabled veteran; to provide an effective date; and to declare an emergency.

Was read the first time and referred to the **Finance and Taxation Committee**.

Reps. Wald, Tollefson and Sens. Freborg, Keller introduced:

HB 1217: A BILL for an Act to create and enact a new section to chapter 9-10 of the North Dakota Century Code or, in the alternative, a new section to chapter 32-03.2 of the North Dakota Century Code, relating to liability for damages in automobile accidents.

Was read the first time and referred to the **Industry, Business and Labor Committee**.

Reps. Keiser, Cleary introduced:

HB 1218: A BILL for an Act to create and enact a new section to chapter 43-28 of the North Dakota Century Code, relating to civil liability of members of the state board of dental examiners; and to amend and reenact sections 43-20-02, 43-20-03, 43-20-05, 43-20-07, 43-20-12, 43-28-15, and 43-28-18 of the North Dakota Century Code, relating to the licensure of dental hygienists and to the practice of dentistry.

Was read the first time and referred to the **Judiciary Committee**.

Reps. Oban, Gates, Cleary and Sens. Evanson, Marks, Mathern introduced:

HB 1219: A BILL for an Act to create and enact a new paragraph to subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to points assigned for failure to yield to a pedestrian; and to amend and reenact subsection 2 of section 39-06.1-06 and paragraphs 16 and 17 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to statutory fees and points assigned for failure to yield the right of way to a pedestrian.

Was read the first time and referred to the **Transportation Committee**.

Reps. D. Olsen, A. Olson introduced:

HB 1220: A BILL for an Act to amend and reenact section 39-06.1-06 of the North Dakota Century Code, relating to statutory fees for violating speed limits; and to declare an emergency.

Was read the first time and referred to the **Transportation Committee**.

Reps. Kelsch, Carlisle, Coats and Sens. Evanson, Mushik introduced:

HB 1221: A BILL for an Act to repeal section 54-06-02 of the North Dakota Century Code, relating to the place of residence of state officers; and to declare an emergency.

Was read the first time and referred to the **Judiciary Committee.**

Reps. Wald, Dorso, Mahoney and Sens. Dotzenrod, Maxson, Tallackson introduced:

HB 1222: A BILL for an Act to create a North Dakota workers' compensation extraterritorial insurance company; to amend and reenact section 54-17-07 of the North Dakota Century Code, relating to the duties of the industrial commission; and to provide an effective date.

Was read the first time and referred to the **Industry, Business and Labor Committee.**

FIRST READING OF HOUSE CONCURRENT RESOLUTIONS

Reps. D. Olsen, Kelsch introduced:

HCR 3011: A concurrent resolution supporting the efforts of the North Dakota Health Task Force in addressing health care issues, in defining basic health care, in developing a workable plan for health care delivery, in establishing priorities, and in developing funding mechanisms for health care.

Was read the first time and referred to the **Human Services Committee.**

Reps. Dorso, Kaldor, Price and Sens. Urlacher, Dotzenrod introduced:

HCR 3012: A concurrent resolution for the amendment of section 4 of article III of the Constitution of North Dakota, relating to signature requirements for petitions to initiate or refer measures.

Was read the first time and referred to the **Judiciary Committee.**

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

JOINT SESSION

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

REP. FREIER MOVED that a committee of two be appointed to escort Lt. Governor Myrdal to the rostrum, which motion prevailed. Speaker R. Berg appointed Reps. Monson and Hagle to such committee and Lt. Governor Myrdal was escorted to the rostrum.

SPEAKER R. BERG INTRODUCED Lt. Governor Myrdal to the Assembly and turned the gavel over to her.

REP. FREIER MOVED that a committee of two be appointed to escort the Honorable Edward T. Schafer, Governor, to the rostrum, which motion prevailed. The Chair appointed Sen. Malewaja and Rep. Carlisle to such committee and the Honorable Edward T. Schafer, Governor was escorted to the rostrum.

LT. GOVERNOR MYRDAL INTRODUCED Governor Schafer to the Assembly.

SEN. GRABA MOVED that a committee of two be appointed to escort Chief Justice Gerald W. Vandewalle to the rostrum, which motion prevailed. The Chair appointed Sen. Grindberg and Rep. Austin to such committee and Chief Justice Vandewalle was escorted to the rostrum.

SEN. W. STENEHJEM MOVED that a committee of two be appointed to escort the Justices of the North Dakota Supreme Court to the rostrum, which motion prevailed. The Chair appointed Sen. Scherber and Rep. A. Carlson to such committee and the justices were escorted to the rostrum.

REP. FREIER MOVED that a committee of two be appointed to escort the other elected state officials to their seats in the front of the chamber, which

motion prevailed. The Chair appointed Rep. C. Carlson and Sen. Marks to such committee and the other elected state officials were escorted to their seats in the front of the chamber.

LT. GOVERNOR MYRDAL INTRODUCED Chief Justice Vandewalle to the Assembly.

STATE OF THE JUDICIARY MESSAGE
Message by Chief Justice W. Gerald Vandewalle

Lieutenant Governor Rosemarie Myrdal; Speaker of the House, Rick Berg; Governor Ed Schafer; members of the North Dakota Senate and House of Representatives; state officials; my judicial colleagues; ladies and gentlemen.

Ralph Erickstad gave the first State of the Judiciary message some 20 years ago. For the first time since the inception of the State of the Judiciary, he will not appear before you to give that oral message. He has, however, prepared a written report of the status of the judiciary through 1992. I sincerely commend it to you for its perceptive look not only at the judiciary but this state and nation, and not only for its factual report of the activities of the judicial branch of government but also for its philosophical and historical perspective as well.

I particularly urge those of you who sit on judiciary committees to study it in depth for it is a textbook outline of the functioning of the judiciary. Although Ralph Erickstad will not speak to you today, he is present in the chamber and I ask that you recognize him and his wife, Lois, for their lifelong devotion to the judiciary and this state and for being steadfastly kind and decent people.

I also ask that you recognize our District Court Judges and County Court Judges seated in the balcony. When the Legislative Assembly expanded the press area, it reduced the space available and we no longer can seat our judges in the well of the House. However, if you persist in the forced reduction in the number of judges, we shall soon be able to again have them back on the floor.

It is fitting that we also take a moment to recognize other members of our judicial family. Would the members of the Board of Governors of the State Bar Association of North Dakota, the members of the State Bar Board, the members of the Judicial Conference, other than the judges who have previously been recognized, and the chairs of the Supreme Court committees, please stand.

Alexander Hamilton described the Judiciary as "the least dangerous" branch of government. Chief Justice Edward Robertson Jr., of Missouri, when addressing that state's legislature, indicated that the founders apparently wanted it that way for they knew what happened when judges had too much power - the Old Testament book of Ruth reminds us "in the days when the judges ruled there was a famine in the land." My colleagues will assure you that I believe in literal translations and since North Dakota had a bumper crop last year, it is safe to say we judges have not assumed the reins of power.

I do not intend to repeat what former Chief Justice Ralph Erickstad has written in his message. I will comment on some of the legislation proposed by the Judiciary and share with you some of my views for the place of the Judicial Branch of government in our state, both immediate and in the future. We have a plate of legislation, most of it noncontroversial, for which we ask your approval - not to make us more powerful but hopefully to make us more efficient in the delivery of legal services. There are several bills that you will be considering during this legislative session which have been approved for introduction by either the Supreme Court or the North Dakota Judicial Conference. Legislation approved by the Supreme Court was introduced at the request of the court under the pre-session introduction privilege available to the Supreme Court and executive agencies.

The legislators who served in 1991 will be readily familiar with House Bill No. 1517, the bill that started us on the path of establishing a one-level trial court and which is to be fully implemented by the year 2001. Those of you who are serving your first term will quickly become familiar with the issues of that legislation. I hesitate to refer in a later session to a bill number of a previous session because the later session will have a bill of the same number but probably a different subject. Consequently, I will refer to the legislation as the one-level trial court legislation.

That legislation requires us to reduce the number of trial judges from 53 to 42 by the year 2001, by attrition if possible. We have faced four judicial vacancies by resignation: District Judge Hatch in Linton - we did not direct that the position be filled; District Judge Wilson in Williston - we did not direct that the position be filled; District Judge Hoberg at Jamestown - we did direct that this position be filled; and County Judge Gary Holum at Minot whose position we also ordered filled. We have thereby reduced the number of judges to 51. The vacancy caused by Justice Neumann's election to our court and his subsequent resignation as a District Judge is pending.

Because vacancies do not always occur where positions can be cut, the County Judge at Minot is an example, we have recommended two bills that provide better use of the attrition rationale. One bill provides that if an incumbent judge does not stand for reelection, that position may, after a hearing, be declared vacant by our court. The other provision permits our court, again after a hearing, to move a judgeship from one location in the state to another. We urge your approval of these additional tools as we strive to reduce the number of judges in accordance with the legislation passed at the last session.

The one-level trial court legislation requires that thirty percent of the judges be chambered in rural cities of 7,500 population or less. Senate Bill No. 2033, which would increase that population figure to 10,000, at the request of the Legislative Council's Interim Court Services Committee, has been introduced.

We also seek your support of a bill to continue the intermediate Court of Appeals and remove the 250 case disposed-of-by-opinion provision that governs the use of the court. That limitation has little to do with the need to use the court at a given time. As an example, we have had several changes in justices this year. Justice Gierke left last spring and although he did not leave a large backlog of opinions to be written, those that were left were divided among the remaining four justices. In addition, until Justice Johnson was appointed and assumed office, the cases we heard after Justice Gierke left were divided among the remaining four justices rather than the five we normally have. Again, this past month we had two changes. Justice Johnson did not have a large backlog, but the cases he did not finish and the opinion assignment for the December caseload were again divided among four justices rather than five. Justice Erickstad was named a surrogate judge and will continue to work on opinions assigned to him prior to his retirement. I state these instances to note that although our caseload shows some signs of lessening, at any given time circumstances may demand the greater use of the intermediate court for a short period of time to reduce the pressure on the remaining justices. It is a safety valve, one which we have not abused and will not abuse, but one that should be available to us in situations such as I have described or when an extended illness besets one or more members of the court. We believe you will trust us to use this authority when needed without artificial and meaningless conditions attached to that use.

A bill will also be introduced concerning venue of actions in adjoining counties with county seats in close proximity. This is a very limited solution to a larger issue of venue and we may in future sessions request that you study the venue statutes in North Dakota, many of which were adopted by territorial legislatures when travel was by rail or horse and buggy.

Additional bills to be introduced deal with transferring from magistrates to clerks of court certain nonjudicial functions, such as preservation of election ballots; establishing procedures for reimbursement of indigent defense costs; revising statutes permitting judges to hold lawyers, litigants, and witnesses in contempt; authorizing the issuance of domestic violence orders as part of an interim order in a divorce matter; requiring that search warrants be authorized only by law-trained judges; repealing the procedure governing demands for change of judge in cases involving modification of orders for child support, child custody, alimony, and property division; and adding judges to the list of persons whom it is a class C felony to assault. We submit these bills for your favorable consideration.

In recognition of the severe but apparently chronic economic picture, and notwithstanding that North Dakota ranks 47th in the nation in Appellate Court salaries and 46th in District Judge and Trial Court salaries, we are presenting no bills for increased judicial salaries other than as proposed by the executive budget, nor are we proposing any change in judicial retirement benefits at this time.

Judges salaries aside and notwithstanding that the North Dakota courts are a separate and co-equal branch of government, it is obvious that we are dependent on you for adequate funding to fulfill our obligations under the Constitution. The judiciary's budget for the 1991-93 biennium was seven-tenths of one percent of the total general and special funds appropriation of the state.

Looking forward beyond this session, and in addition to the implementation of the one-level trial court legislation, we will be considering such matters as:

Clerks of Court

North Dakota has 53 county clerks of court. As part of its responsibility for the overall maintenance of the judicial system and recognizing the need to strengthen the tie the clerks have with the changing court structure, the Supreme Court will continue to improve technical support and educational programming services to the clerks of our state. This will ensure state uniformity and consistency of practices and procedures in the offices of Clerk of Court.

Judicial Education

As a result of the past support by former Chief Justice Ralph J. Erickstad, judicial education has become an essential component of the North Dakota judicial system. Even in times of economic hardship, the ability to provide quality in-state education is a cost benefit to both the employees and the taxpayers of our state.

Originally, the Supreme Court sponsored educational programs for limited judicial and nonjudicial groups. However, with the assistance of federal grants supported by state funds, the Supreme Court presently sponsors programs for all members of the North Dakota judicial system.

As the need for judicial education continues to grow, so does the need to reinforce the public's perception that fair justice exists in our courts. It must be demonstrated through the system that North Dakota is a safe place to live and raise your children. Through efficiently run courts, a public awareness program, and fair and impartial judges, we can promote an even higher standard of justice in our state.

Juvenile Court Information System

The number of juveniles referred to the juvenile courts has increased by nearly thirty percent in the last ten years. Despite this increase, our juvenile court staffing level has remained constant. The result has been added pressure and workloads to staff. In order to assure the best use of our staff, to measure the effectiveness of programs and services, and to

point out emerging areas of concern, we are developing an information system that will allow us to track our activities and outcomes. The system is being developed within our present appropriations and is based upon the experience of other states. Once completed, the information gathered should help us better utilize our limited resources in this important area.

Lawyer Discipline

Lawyer discipline and regulation of the legal profession have been persistent issues of public concern in recent years. Interest in this area within the legal community was recently demonstrated when the American Bar Association published its report of the Commission on Evaluation of Disciplinary Enforcement. This report, widely known as the "McKay Report", proposes a substantial restructuring of the lawyer disciplinary process. The report, as well as a variety of other issues related to lawyer discipline, will be the focus of a joint bench/bar commission study of North Dakota's lawyer disciplinary system. The formation of the joint commission was recently approved by the Supreme Court in response to a petition of the SBAND Board of Governors which requested that the joint study effort be undertaken. This study promises to be the most thorough review to date of this state's lawyer disciplinary system. The other members of the Supreme Court and I look forward to receiving the study commission's findings and recommendations.

Let me return for a moment to the one-level trial court legislation. We recognize that when the costs of operating district courts were assumed by the state in 1983 there was less apparent need for contact between the district judges and the county commissioners. With the county judges becoming district judges, there may well be an increasing perception that local government has little significance in the delivery of judicial services. I do not agree with that perception. Indeed, for the foreseeable future counties will bear the responsibility of providing an adequate court facility, one which secures the safety of litigants, witnesses, the public and, yes, the judges.

I believe a rural community is disadvantaged by the loss of professional people such as teachers, clergy, and judges who no longer reside in their community. Their contribution to the life of that community is more than being in the schoolroom during school hours, conducting a religious service, or being in a courthouse when a trial is held. We will not be able to assure a resident judge in each community.

Nevertheless, because I believe the county commissioners have a real concern about the delivery of judicial services to their county, I will request our presiding judges or their designates to make themselves available to discuss with county commissioners matters of mutual concern in the delivery of judicial services to the county. A fine example of that cooperation is the relationship between the District Court, represented by Judge Michael McGuire, and Cass County in pursuing efforts to secure the safety of all participants in the judicial process in the Cass County court facility.

I stand here today, to assure you that constitutional government is alive and well in North Dakota. As legislators you deserve much of the credit. We also claim part of that credit for ourselves. Woodrow Wilson observed at the beginning of this century that "so far as the individual is concerned, a constitutional government is as good as its courts. No better, no worse."

I am grateful for the privilege you have given the judicial branch to deliver this message. You have difficult decisions to make in the days ahead. The continued success of our government is dependent on those decisions. On behalf of my colleagues in the judicial branch, we wish you well. May all your deliberations be graced with wisdom, and may all your decisions rest upon a genuine concern for those whose lives they will affect. Thank you.

REP. BELTER MOVED that the address of Chief Justice Vandewalle be printed in the Journal, which motion prevailed.

MOTION

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

LT. GOVERNOR MYRDAL declared the Joint Session was dissolved.

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

ROY GILBREATH, Chief Clerk