JUDICIARY COMMITTEE

The Judiciary Committee was assigned four studies. Section 22 of House Bill No. 1167 directed a study of the charitable gaming laws and rules to determine whether the laws and rules regarding taxation, enforcement, limitation, conduct, and play of charitable gaming are adequate and appropriate. House Concurrent Resolution No. 3001 directed a study of the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system. Senate Concurrent Resolution No. 4045 directed a study of state funding of the office of clerk of district court, the issues and problems associated with the continued implementation of court unification, and the effective provision of judicial services to the citizens of this state. Senate Concurrent Resolution No. 4036 directed a study of the level of and remedies for discrimination in this state. 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.

The Legislative Council chairman directed the committee to study the authority of the Attorney General to enter contingent fee agreements with private attorneys and to conduct public hearings on statewide primary and general election ballot measures.

Committee members were Senators Wayne Stenehjem (Chairman), Marv Mutzenberger, Carolyn Nelson, Rolland W. Redlin, John T. Traynor, and Darlene Watne and Representatives Charles Axtman, Duane L. DeKrey, Lois Delmore, G. Jane Gunter, Kathy Hawken, Roxanne Jensen, Scot Kelsh, William E. Kretschmar, Andrew G. Maragos, Shirley Meyer, Paul Murphy, Darrell D. Nottestad, Leland Sabby, Allan Stenehjem, and Gerald O. Sveen. Senator James A. Berg was a member of the committee until his death on September 20, 1997.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

CHARITABLE GAMING STUDY

The goals of this study were to determine whether the laws and rules regarding taxation, enforcement, limitations, conduct, and play of charitable gaming are adequate and appropriate.

Background

During the first legislative session after statehood (1889-90), an attempt was made to establish the Louisiana lottery, which was seeking a new home in light of the impending revocation of its charter in its state of origin. The scandal and controversy following this attempt led to the state's first constitutional amendment, which outlawed all forms of lotteries and gift enterprises.

In 1976 the constitutional prohibition was amended to allow the Legislative Assembly to authorize public-spirited organizations to conduct games of chance when the net proceeds of the games are devoted to public-spirited use. Temporary laws were passed by the 1977 and 1979 Legislative Assemblies and "permanent" legislation was enacted in 1981 (NDCC Chapter 53-06.1).

Since 1981, several Legislative Council interim committees have studied charitable gaming. Many of the changes that have been made to the charitable gaming law resulted from Legislative Council recommendations. The changes have primarily affected the kinds of games that can be held, the kinds of organizations that can hold them, the allocation of expenses of conducting the games, the administration and enforcement of the charitable gaming law, and the taxation of gaming proceeds.

In 1991 a State Gaming Commission was created consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. The bill provided that the Gaming Commission would share authority with the Attorney General to impose fines on organizations, distributors, and manufacturers who violate any provisions of law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of any provision of law or rule. In 1993, however, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

Beginning in 1993, as a means of preventing and detecting cheating in the game of twenty-one, organizations with adjusted gross proceeds exceeding $10,000 per quarter and that accepted wagers exceeding $2 are required to install surveillance equipment. In 1995 the definition of eligible use for gaming proceeds was expanded to enable net proceeds to be used to relieve, improve, and advance the physical and mental conditions, care and medical treatment, health and economic interests of injured or disabled veterans. In 1997 the Legislative Assembly appropriated funds to the Department of Human Services to

contract with qualified treatment service providers for compulsive gambling prevention, awareness, crisis intervention, rehabilitation, and treatment services.

Testimony and Committee Considerations

The committee received testimony and reviewed extensive information submitted by the Gaming Division of the Attorney General's office and representatives of the Charitable Gaming Association of North Dakota with regard to many aspects of the charitable gaming industry. The committee's considerations centered on four issues trends in the charitable gaming industry; revitalization of charitable gaming; limits on bingo prizes; and participation in a multistate lottery.

Trends in the Charitable Gaming Industry

Representatives of the Gaming Division of the Attorney General's office and various representatives of charitable gaming organizations reported on trends in and concerns of the charitable gaming industry in the state. The testimony indicated that although charitable gaming has evolved into an industry that was not envisioned 20 years ago, a great deal of money has been given to worthwhile causes as a result of the gaming.

The Gaming Division estimated that 5,000 to 6,000 persons are employed by the charitable gaming industry in the state. The wages for gaming employees range from minimum wage to ten dollars per hour plus tips. Because of the low unemployment rate in many parts of the state, it is often difficult to hire and retain persons who are willing to work for minimum wage.

Testimony from the Gaming Division indicated that, with the exception of sites with pull-tab dispensing devices, charitable gaming proceeds have been flat over the last three years. The testimony indicated that the lack of gaming activity in the state could, in part, be attributed to tribal casino gaming and the severe weather and flooding in 1997. The Gaming Division testified that between 1992 and 1997, 135 organizations discontinued gaming in the state. A survey of the those organizations indicated that the reasons for discontinuing gaming included personnel problems, too much paperwork, not making money, the club closed or group disbanded, lost sites, lost business to casinos, and lack of interest.

Testimony from representatives of the charitable gaming industry indicated that charitable gaming is one of the most heavily taxed industries in the state and that any further increases in taxes may result in the closing of some sites.

The committee received testimony from various gaming organizations on the costs involved in setting up a new gaming site. Depending on the site, it can take from six months to two years to recoup the cost of setting up a new site. Because of the cost of video surveillance equipment required for sites that conduct blackjack, it is difficult to make a profit on that game.

The committee received testimony regarding the use of video surveillance equipment at sites that conduct the game of twenty-one. Testimony from the Gaming Division and representatives of the gaming industry indicated that video surveillance equipment has not been as effective as originally hoped. Since the implementation of the 1993 law requiring the equipment, an estimated $1.5 to $2 million has been invested in the equipment that is used at 275 sites and 550 tables. The testimony indicated that video surveillance equipment has been a deterrent to theft and cheating, especially for the smaller organizations that have fewer persons available to supervise the tables.

The committee also received testimony regarding how organizations address the issue of under and excess gaming expenses. "Under" expenses refers to the amount an organization's actual expenses are below the allowable expense limit. Organizations may use this amount for any purpose. "Excess" expenses refers to the amount that an organization's actual expenses exceed the allowable expense limit. Organizations must reimburse this amount to their gaming accounts to disburse to eligible uses. The allowable expense limit for organizations is 50 percent of the first $200,000 of adjusted gross proceeds and 45 percent of adjusted gross proceeds exceeding $200,000. Allowable expenses also include the cost of video surveillance equipment for twenty-one and two and one-half percent of pull tab gross proceeds.

Testimony from representatives of the gaming industry indicated some organizations are able to rely on outside sources of funds, e.g., membership dues, fund raisers, and state grants, to reimburse its excess gaming expenses. Testimony further indicated that higher expenses may be due to increases in the minimum wage, the low unemployment rate, the need to hire additional personnel, the costs of games and supplies, security expenses, and video surveillance.

Revitalization of Charitable Gaming

The committee received testimony from representatives of the charitable gaming industry indicating that steps need to be taken to revitalize the charitable gaming industry. The testimony indicated that the numerous regulations, the lack of flexibility in the conduct and play of games, the high taxes, and the competition from the tribal casinos have contributed to the slump in charitable gaming in the state.

Representatives of the charitable gaming industry offered a legislative proposal that removed statutory provisions on the conduct and play of certain games of chance. The proposal would allow the Gaming Commission to permit variations to the game of poker and twenty-one. Proponents testified that the changes would allow the industry to work with the Gaming Commission to make rules for games of chance. The proponents indicated that presently, any minor change requires legislative action and administrative rulemaking, which may take up to three years. Proponents claimed that this proposal would make the gaming industry more responsive to its customers and would not increase wager limits.

Other testimony on the proposal indicated that any changes to the game of poker and twenty-one would be an expansion of gaming.

Limits on Bingo Prizes

The committee received testimony from representatives of several gaming organizations regarding the levels of prize payout for bingo. The testimony indicated that some sites were requiring organizations to offer certain levels of prize payout for bar bingo. According to the testimony, some bar establishments require organizations to offer bingo prizes at a level the organization is unable to afford which results in the organization being forced to give up the site to another organization that is able to offer the higher prizes. The concerned gaming organizations indicated that bingo is the only charitable game in which the maximum prize is not regulated.

The committee considered a bill draft that provided that a licensed organization's total bingo prizes could not exceed its gross proceeds for a 90-day period. The bill draft also provided that if bingo is not the primary game at a site and the site is leased by a licensed organization, the organization may not pay prizes in which the total prizes exceed 90 percent of bingo gross proceeds for a 90-day period. The committee received testimony from the Gaming Division that the changes proposed in the bill draft were being addressed by administrative rule. The committee concluded that the subject matter of the bill draft is of a technical nature that would more appropriately be addressed by administrative rule rather than by statute.

Multistate Lottery

The committee received testimony from the Gaming Division regarding the multistate lottery game known as "Powerball." Powerball is an on-line national lottery game. Thirty-seven states and the District of Columbia have legalized lotteries, 21 of which participate in Powerball. Some states have independent lottery games. Testimony indicated participation by North Dakota in the Powerball lottery would generate an estimated $5.1 million in income or approximately 30 percent of gross proceeds. It was estimated that North Dakotans spend $5 million on Powerball in other states. Because the Constitution of North Dakota prohibits a lottery, a constitutional amendment would be necessary before a Powerball-type game could be conducted in the state.

Testimony from representatives of the charitable gaming industry indicated that there is a concern that a lottery would decrease interest in charitable gaming. Unless charitable gaming is somehow involved in the lottery, the representatives testified that the charitable gaming industry would be opposed to the state's participation in the multistate lottery.

Recommendations

The committee recommends House Bill No. 1041 to remove statutory provisions on the conduct and play of games of chance and allow the Gaming Commission to adopt the rules for those games. The bill provides that in addition to traditional straight poker, which may only be played on two occasions per year, the Gaming Commission may adopt rules that would permit an organization to conduct certain poker variations. The bill also removes several standard rules of conduct and play for the game of twenty-one.

The committee recommends House Concurrent Resolution No. 3008 to amend the Constitution of North Dakota to permit the Legislative Assembly to provide by law for participation by the state in a multistate lottery. The proposed constitutional amendment, if approved by the Legislative Assembly, would be submitted to the voters in the general election in 2000.

COURT UNIFICATION AND CLERK OF DISTRICT COURT FUNDING STUDY

The committee was assigned House Concurrent Resolution No. 3001, which directs a study of the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system, and Senate Concurrent Resolution No. 4045, which directs a study of the state funding of the office of clerk of district court, the issues and problems associated with the continued implementation of court unification, and the effective provision of judicial services to the citizens of this state. Because of similarity in the studies directed by these resolutions, the committee decided to combine the two studies into one comprehensive study.

The study of the funding of the clerk of district court through the unified judicial system was proposed by the 1995-96 interim Budget Committee on Government Finance as a result of its 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.

Background District Courts

The Constitution of North Dakota, 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.

Article VI, Section 9 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 legislation also provided that county judges had to 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 as were assigned by the presiding district judge of the judicial district in which the county was 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 law provides that the total number of district court judgeships must be reduced to 42 before January 1, 2001. The Supreme Court has been eliminating judgeships. As of November 1998, the number of judgeships has been reduced to 44, with one additional judgeship to be eliminated at the end of 1998. The primary implementation date for consolidation of trial courts was January 2, 1995, the day after the completion of the terms of all county court judges.

Office of Clerk of District Court

Historically, the clerks of court have been elected county officials whose salaries are set by state law, but are paid by the county. The duties of the clerk are prescribed by state law, and the duties of the clerk are 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 "[t]he board of county commissioners of any county may initiate the option to transfer responsibility for funding of the clerk of district court to the state by the filing of written notice to the state court administrator . . . ."

In Section 6 of 1997 Senate Bill No. 2002, the Legislative Assembly expressed its intent to provide for the state funding of clerks of court. Section 6 provides:

- It is the intent of the fifty-fifth legislative assembly that counties use the provisions of chapters 11-10.2, 11-10.3, and 54-40.3 to combine or share the services of clerks of district court and 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 addition to the issue of state funding of clerks of court, 1997 Senate Bill No. 2002 addressed the issue of the combining or sharing of the services of clerks of court. This legislation, codified as NDCC Section 11-10-02, provides that in counties having a population of not more than 6,000, the register of deeds must perform the functions of the clerk of court unless the board of county commissioners adopts a resolution separating the offices. Before the passage of this legislation, in counties with a population of not more than 6,000, the clerk of court was required to be the register of deeds unless the board of county commissioners adopted a resolution separating the offices. Section 11-10-02 also provides that in a county with a population of more than 6,000, the offices of clerk of court and register of deeds may be combined into an office of register of deeds if the board of county commissioners adopts a resolution to combine the offices.

Testimony and Committee Considerations Fees Charged by Clerks of District Court

During the course of studying issues relating to the clerks of district court, the committee received testimony regarding a number of services and filings provided by the clerk of district court for which a minimal fee or no fee is assessed. The committee received recommendations of filing fees that could be imposed or increased to generate additional revenue including the fees for foreign judgments, annual reports, and petitions for subsequent administration.

The committee received testimony from a representative of the Supreme Court regarding the estimated revenue that would be generated from the implementation of new fees or by increasing fees.

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. With the number of judgeships reduced to 44, it was reported that caseload problems exist in some districts and that additional caseload problems may arise as population shifts occur in some parts of the state. The court further reported that because of conflicts of interest, there are a significant number of recusals by district judges, and the list of alternative judges is small.

The committee also received testimony from the Supreme Court and the National Center for State Courts on the results of a weighted caseload study conducted by the National Center for State Courts. The study methodology involved using case weights for particular categories of case types which were calculated by determining the average time for individual case events and the frequency with which these events actually occurred. The case weights were then multiplied by the number of filings to determine the amount of judicial resource time required to process the caseload. To determine judicial resource needs, the amount of judicial resource time required to process the caseload was compared to the amount of judicial resource time available. It was pointed out that the findings are only a guide and subjective elements such as fluctuations in population in some parts of the state, an increase in aging population, and a decrease in the juvenile population all have an impact on judicial caseloads. The National Center's final determination was that there are 3.84 more full-time equivalent judges in the state than are needed to handle the state's caseload. At the time the study was conducted, there were 46 district judgeship positions. Following the reduction in the number of judgeships to 44, the committee received testimony that the number of excess judgeships needed to handle the state's caseload was adjusted to 2.84.

Clerk of District Court Consolidation Study

The committee received testimony regarding the results of the *North Dakota Clerk of Court Consolidation Study* conducted by the National Center for State Courts. The study was conducted in response to a request from the Supreme Court for the National

Center for State Courts to conduct a study of the clerks of district court to evaluate the most effective structure for the provision of court support services to the judiciary and the public it serves. The testimony indicated that the study was conducted to respond to the need for further planning and the development of implementation strategies pursuant to 1997 Senate Bill No. 2002. The study addressed the issues of state funding of clerks of district court and their personnel in the judicial branch personnel system and the consolidation of clerks of district court offices.

The study involved a review of 154 full-time and 50 part-time positions within the North Dakota Clerk of District Court offices, a total of 177.8 full-time equivalent (FTE) positions. Through interviews with judges and administrative and clerical personnel throughout the courts and clerk of district court offices, from data gathered through the questionnaire of clerk of district court personnel, and from consultation with the Clerk of Court Study Advisory Committee, the National Center developed a plan for clerk of district court restructuring, including new state job classifications and pay plans.

The National Center reported that 23 counties could have their clerk of district court functions consolidated. The consolidated counties would have their court support functions restructured while maintaining public access to the courts without full-scale clerk of court operations. The study also indicated that the registers of deeds in the 23 counties could handle court filings and other tasks. The state could consider reimbursing the 23 counties for a .25 FTE mid-level clerk salary for assisting in filing of documents, assisting clients in emergency matters, and accessing and shipping files. The study further recommended that in the remaining 30 counties, the Supreme Court should bring all court-related clerk of district court operations and personnel within the North Dakota Judicial Personnel System as state employees.

The committee received estimates that the implementation of the plan proposed in the study, which would include state funding for 30 counties, would be an estimated $11.2 million, plus or minus 10 percent. The estimate was based on the assumption that staffing requirements would require one full-time clerk for every 600 filings.

The committee received extensive testimony regarding the implementation of the plan developed by the National Center for State Courts. Testimony in opposition to the plan indicated that clerk of district court services should be retained in all counties, regardless of size. It was argued that the people of the state do not want to replace people with computers and that the Legislative Assembly should work to enhance rural communities, not aid in their demise. Further testimony indicated that the North Dakota Clerks of Court Association unanimously passed a resolution of nonendorsement of the National Center's plan. It was claimed that the implementation of the plan would cause economic development to work in reverse because of the outmigration of attorneys and their families in counties without clerk of district court services. In addition to the reduction in services to the smaller counties, the testimony indicated that the plan would place an additional burden on the courts of the larger counties, reduce services, and increase the cost to counties for more storage space for files which is already at a premium.

Testimony received from a district judge indicated that judicial services can be provided to rural communities in an efficient and cost-effective manner and that the consolidation plan proposed in the study would lead to increased costs for participants, the need for new facilities to be built at state expense, and a severe limitation on the public access to justice for rural citizens.

The committee also received testimony in opposition that indicated implementation of the plan would adversely affect abstractors, title insurance agents, and landsmen in their search of documents for judgments and chains of title. It was argued that the accessibility to records is vital to many professions.

Clerk of Court Consensus Process

During the course of reviewing information and receiving testimony regarding the consolidation of clerks of district court offices and the state funding of the clerks, the committee determined that the clerk of district court study may exceed the time the committee had to consider it. 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, which was formed to develop a plan regarding clerks of district court, included three representatives of the North Dakota Clerks Association, two representatives of the State Bar Association, three members of the interim Judiciary Committee, one representative of the North Dakota Association of Counties, and one representative of the North Dakota County Commissioners Association. The Consensus Process conducted five meetings.

The committee received testimony from a representative of the Consensus Process regarding its findings and recommendations. The testimony indicated that in developing a plan, the Consensus Process recognized the importance for the courts to be run efficiently but also recognized that any change to the current system must be done in an orderly fashion. The testimony also indicated that the participants in the Consensus Process did not support the conclusions or the proposals of the study by the National Center for State Courts. The participants support the proposal developed by the Consensus Process as a substitute for

consideration by the Supreme Court and the Legislative Assembly. The proposal of the Consensus Process consisted of proposed legislation, two interim study resolutions, and recommendations to the Legislative Assembly, the North Dakota Association of Counties, the North Dakota County Commissioners Association, and the Supreme 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 this 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. To accomplish this objective, the plan included the following general principles:

- **State Services.** Court services of clerks of district court are state services of the judicial system and state funding should be provided for state services.
- **Judicial System Management.** The judicial system should be responsible for the administration of and budget for court services of clerks of district court.
- **Separated Services.** Court services should be separated from noncourt services of clerks of court and noncourt services of clerks of court should remain the financial and administrative responsibility of the counties.
- **Flexibility.** A county should have flexibility to provide the court services of clerks of court in the county at the county's own expense.
- **Judicial Administration.** Judges should be able to administer court services of clerks of district court.
- **Combined Offices.** There should be no change in the combined offices of registers of deeds and clerks of court as provided for in North Dakota Century Code Section 11-10-02.
- **Elections.** There should be no state-mandated elections for clerks of court following the election in November 1998.

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 (FTE) positions the Supreme Court determines are necessary to provide adequate clerk of district court services. Under the plan, a county in which the Supreme Court determines that two or more FTE employees are necessary to provide adequate clerk of district court services would have two options: (1) state-funded clerk of district court services; or (2) county-funded clerk of district court services. A county in which the Supreme Court determines that more than one but less than two FTE employees are necessary to provide adequate clerk of district court services would have three options: (1) state-funded clerk of district court services; (2) contract with the Supreme Court for clerk of district court services; or (3) county-funded clerk of district court services. A county in which the Supreme Court determines that less than one FTE employee is necessary to provide adequate clerk of district court services would have two options: (1) contract with the Supreme Court for clerk of district court services; or (2) provide clerk of district court services at its own expense. The testimony indicated that the Legislative Assembly may need to give further consideration to the number of FTEs that triggers a county's options. The plan also provided that counties would be required to notify the Supreme Court of its decision as to which option it has chosen before April 1, 2000, and that state funding for the provision of clerk of district court services would be provided beginning January 1, 2001.

Recommendations

The committee recommends House Bill No. 1042 to impose a new fee for four types of filings, including an $80 fee for petition for subsequent administration, an $80 fee for filing a trust registration, an $80 fee for a petition for allowance of a trustee's annual report or other remedies, and a $10 fee for filing of annual reports by guardians, and which would increase the fee for filing a foreign judgment or decree from $10 to $80.

The committee recommends continuation of clerk of court services in every county. The committee expresses support for legislation introduced during the 1999 legislative session which would provide for adequate and proper judicial services, including clerk of district court services, in each county in this state and for funding for clerk of district court services by the state judicial system in cooperation with the boards of county commissioners in the counties of the state. The committee also expresses support for implementation of the proposals in the plan developed by the Clerk of Court Consensus Process.

DISCRIMINATION IN NORTH DAKOTA STUDY

A study of the level of and remedies for discrimination in this state was proposed as a companion proposal to 1997 Senate Bill No. 2332, which would have created a human rights commission. The bill failed to pass the Senate.

Background Civil Rights and Discrimination

A civil right is an enforceable right or privilege that if interfered with by another gives rise to an action for injury. Examples of civil rights are freedom of speech, press, assembly, the right to vote, freedom from involuntary servitude, and the right to equality in a public place. Discrimination occurs when the civil rights of an individual are denied or interfered with because of membership in a particular group or class. Statutes, both state and federal, have been enacted to prevent discrimination because of a person's race, sex, religion, age, previous condition of servitude, physical limitation, national origin, and in some instances sexual preference.

The most important expansion of civil rights in the United States was the enactment of the 13th Amendment of the United States Constitution which abolished slavery throughout the United States; and the 14th Amendment of the United States Constitution which was passed to ensure that no state "shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States . . . [or] deny to any person within its jurisdiction the equal protection of the laws." Section 5 of the 14th Amendment gave Congress the power to pass any laws needed for its enforcement. Many of these statutes are still in force today and protect individuals from discrimination and from the deprivation of their civil rights.

The most prominent civil rights legislation since Reconstruction is the Civil Rights Act of 1964. Congress enacted the Civil Rights Act of 1964 under its power to regulate interstate commerce. Under 42 U.S.C. Section 2000a, discrimination based on "race, color, religion, or national origin" in public establishments that had a connection to interstate commerce or was supported by the state is prohibited. The Civil Rights Act of 1964 and subsequent legislation also declared a strong legislative policy against discrimination in public schools and colleges. Title VI of the Civil Rights Act prohibits discrimination in federally funded programs. Title VII of the Civil Rights Act prohibits employment discrimination when the employer is engaged in interstate commerce. Since 1964, Congress has passed numerous other laws dealing with employment discrimination.

The judiciary, most notably the United States Supreme Court, plays a crucial role in interpreting the extent of civil rights. Supreme Court decisions can affect the manner in which Congress enacts civil rights legislation, as occurred with the Civil Rights Act of 1964. The federal courts are crucial in mandating and supervising school desegregation programs and other programs established to rectify state or local discrimination.

North Dakota Discrimination Laws

The Constitution of North Dakota, Article I and NDCC Chapter 14-02.4 contain provisions that provide for the protection of civil rights in North Dakota.

The Constitution of North Dakota, Article I contains the state's Declaration of Rights. Within this article are the protections afforded to the people of North Dakota regarding civil rights and discrimination. Article I, Section 1 provides:

All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

Article I, Section 7 contains the declaration of rights regarding employment. Section 7 provides:

- Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

North Dakota Century Code Section 1-01-07 provides that all original civil rights are either rights of person or rights of property. Section 1-01-08 provides that rights of property and of person may be waived, surrendered, or lost by neglect.

North Dakota Century Code Chapter 14-02.4 deals with discrimination in general. Discrimination on the basis of sex, race, color, religion, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance is prohibited. The chapter contains numerous provisions that are similar to the protections against discrimination which are afforded by federal law. This chapter often is referred to as the "North Dakota Human Rights Act." The state policy against discrimination is contained in Section 14-02.4-01, which provides:

- It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet,

or induce discrimination or coerce others to discriminate.

The North Dakota statutes contained in Chapter 14-02.4 also provide protection against discrimination in the areas of employment, public accommodations, housing, state and local government services, and credit transactions. Sections 14-02.4-03 through 14-02.4-10 prohibit discriminatory practices by employers; Sections 14-02.4-12 and 14-02.4-13 prohibit discriminatory housing practices; Sections 14-02.4-14 through 14-02.4-16 prohibit discriminatory practices in public accommodations; and Section 14-02.4-17 prohibits discriminatory practices in credit transactions.

The remedies for a person with a discrimination claim that arises under NDCC Chapter 14-02.4 are found in Sections 14-02.4-19 and 14-02.4-20. Under Section 14-02.4-19, a person may bring an action in district court within three years of the alleged act. If the discrimination claim involves an employer's discriminatory practice, the complaint of discrimination must be made to the Department of Labor within 300 days of the alleged discriminatory act. For a claim of discrimination regarding housing, public accommodations, or services, the claim must be made within 180 days of the alleged act.

Section 14-02.4-20 provides that if a person is determined by the district court to have committed a discriminatory practice, the court may order relief in the form of a temporary or permanent injunction, equitable relief, or back pay. The section also authorizes a court to grant to the prevailing party reasonable attorney's fees.

Federal Statutes

The 5th and 14th Amendments of the United States Constitution limit the power of the federal and state governments to discriminate. The Fifth Amendment has an explicit requirement that the federal government not deprive any individual of "life, liberty, or property," without due process of law. It also contains an implicit guarantee that each person receive the equal protection of the laws. The 14th Amendment explicitly prohibits states from violating an individual's rights of due process and equal protection.

Discrimination in the private sector is not directly constrained by the Constitution, but has become subject to a growing body of federal and state statutes. Some of the more commonly known federal statutes are the Equal Pay Act (29 U.S.C. Section 206); Title VII of the Civil Rights Act of 1964 (42 U.S.C. Chapter 21); the Nineteenth Century Civil Rights Acts (42 U.S.C. Sections 1981, 1981a, 1983, 1988); the Age Discrimination in Employment Act (29 U.S.C. Sections 621-634); the Rehabilitation Act (29 U.S.C. Sections 791, 793, 794(a)); the Americans with Disabilities Act (42 U.S.C Chapter 126); and the Black Lung Act (30 U.S.C. Section 938).

The Equal Employment Opportunity Commission interprets and enforces the Equal Pay Act, the Age Discrimination in Employment Act, Title VII, the Americans with Disabilities Act, and sections of the Rehabilitation Act. The Commission itself was established by Title VII. The Commission's enforcement provisions are contained in 42 U.S.C. Section 2000e-5, and its regulations and guidelines are contained in Title 29 of the Code of Federal Regulations, part 1614.

Testimony and Committee Considerations

The committee received testimony regarding the level of discrimination in the state from representatives of local and state government agencies, human service-type agencies, elected officials, agencies representing low-income populations and handicapped persons, and agencies that deal with housing.

Much of the testimony received by the committee focused on the lack of state remedies for discrimination complaints and the need for a centralized state agency to be available to receive and investigate discrimination complaints. The only state agency authorized to receive any type of discrimination complaints is the Labor Department. Representatives of the Labor Department provided testimony on the department's authority to receive employment discrimination complaints. The Labor Department maintains an annual contract with the Equal Employment Opportunity Commission to process employment discrimination complaints. Under the contract, the department receives $500 per case with a maximum of 65 cases per year. In 1996 the department processed 107 complaints.

The committee received testimony from a representative of the Governor's office that a small "one-stop shop" could be established as a single place in state government for persons with complaints to obtain information and seek redress.

Testimony received by the committee from a representative of the Attorney General's office indicated that because the Attorney General does not have the authority to handle discrimination complaints from private citizens, statistics are not being gathered on the number and nature of complaints. Without statistics, it is difficult to determine the level and amount of discrimination in

the state. The testimony indicated that citizens of the state are heavily dependent on federal discrimination enforcement laws and although the state offers redress through the state court system, the cost of hiring an attorney is prohibitive, and legal aid services are not available for discrimination claims.

Opponents of the idea of a centralized state agency authorized to receive and investigate discrimination complaints, e.g., a human rights commission, argued that a human rights commission is not needed and that the establishment of a new commission that may perform duplicative duties already belonging to other agencies and organizations would not be a positive change. Others in opposition to the idea argued that small business is already overregulated and a human rights commission would create more government regulation of small business.

North Dakota Advisory Committee

The chairman and several members of the North Dakota Advisory Committee to the United States Civil Rights Commission appeared before the committee to discuss the activities and findings of the advisory committee. The advisory committee, which is composed of 13 North Dakota citizens whose appointments to the committee reflect a balance of gender, race, and political and religious affiliation, is charged with the responsibility of advising the United States Civil Rights Commission on the existence and extent of discrimination in North Dakota and on whether a need exists to establish a human rights commission in North Dakota. The advisory committee gathers information by conducting hearings throughout the state and by receiving testimony from the public regarding personal experiences of discrimination. Members of the advisory committee testified that much of the testimony gathered at the hearings was focused on discrimination in the areas of employment and rental housing. Regarding rental housing, most of the discrimination tends to be directed at single women with children and at handicapped persons. Another major issue addressed in the testimony heard by the advisory committee was the lack of mediation, conciliation, and referral services to address complaints. A common complaint reported by the advisory committee was that people with discrimination claims become lost in the system and do not know where to go for assistance.

The advisory committee testified that, based upon the hearings it has conducted, it is convinced there are issues and instances of human rights violations in the state that are significant enough to warrant the establishment of a human rights commission. The advisory committee recommended that if a human rights commission were established in the state, the basic authority should be vested in the commission to investigate and mediate alleged discrimination, and the commission must have enforcement powers.

South Dakota Commission of Human Rights

A representative of the South Dakota Division of Human Rights was invited to appear before the committee to discuss the workings of the South Dakota Commission of Human Rights. The South Dakota commission's function is to promote equal opportunity through the enforcement of the state's Human Rights Act. The commission employs two full-time investigators, one part-time secretary, and one part-time director. The representative provided statistics on complaints, an explanation of the complaint procedure and its cost, a guide for complainants and respondents, and the rules of the commission. The testimony indicated that in 1997, 104 of the 110 complaints received by the division were employment-related.

Survey of Agencies and Departments

During the course of reviewing issues relating to the level of discrimination in the state, it was brought to the attention of the committee that a number of state agencies receive calls from persons who claim to be victims of discrimination; however, because the agencies lack the authority to handle discrimination complaints, statistics are not gathered on the number and nature of the calls. The committee requested that certain agencies and departments track the nature and number of calls it receives regarding discrimination complaints for a period of six months.

The survey revealed that the agencies or departments most frequently contacted to report discrimination claims were the Governor's office and the Department of Human Services. A representative of the Department of Human Services testified that the department receives 10 to 20 claims of discrimination per month. The department reported that the claims of discrimination were in a variety of areas, including employment, education, housing, disabilities, public assistance, and public accommodations.

Housing Discrimination

The committee received testimony from representatives of the North Dakota Fair Housing Council regarding the operations of the organization. The North Dakota Fair Housing Council is available to assist individuals with housing discrimination complaints, but the council has no authority to enforce housing discrimination laws. The council is authorized to do limited investigations to confirm if discrimination did or did not occur. The council also provides assistance in the form of outreach and education. Eighty percent of its funding of the council is received from the federal Housing and Urban Development agency; the remainder is received from community development block grant funds and from private fundraising. Most of the housing complaints received by the council involve rental situations. In 1995 the council received 350 allegations of housing discrimination, the majority of which involved race discrimination. The second highest number of complaints involve the exclusion of children in rental housing.

The committee received testimony that the North Dakota Fair Housing Council had filed a complaint against a Fargo-area newspaper for publishing rental property advertisements that contained descriptive terms that may be considered discriminatory. A representative of the newspaper testified that the newspaper had never been notified of the impropriety of the use of the terms nor was it offered any educational services by the council before the complaint was filed.

The committee received testimony from the Labor Department that the department could seek a grant from the Housing and Urban Development agency to receive and investigate housing discrimination cases. However, to qualify for the grants, changes to North Dakota law regarding housing discrimination would be necessary.

Recommendation

The committee recommends House Bill No. 1043 to repeal the current housing discrimination statutes and create new housing discrimination laws. The bill includes the procedures for filing a housing discrimination claim and the remedies available to a person when a finding of discrimination is made. The bill designates the Labor Department as the agency responsible for receiving and investigating housing discrimination claims.

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.

The state commission recommended four uniform Acts to the Legislative Council for its review and recommendation. 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 four Acts were the Uniform Management of Public Employee Retirement Systems Act; the Uniform Child Custody Jurisdiction and Enforcement Act; the Uniform Principal and Income Act (1997); and the Uniform Guardianship and Protective Proceedings Act (1997).

Uniform Management of Public Employee Retirement Systems Act

The national conference approved the Uniform Management of Public Employee Retirement Systems Act in 1997. The Act would govern public employee retirement systems, which are not governed by federal law under the Employees Retirement Income Security Act.

In compliance with NDCC Section 54-35-02.4, the committee referred the Act to the Employee Benefits Programs Committee for review and actuarial analysis. The Judiciary Committee received technical comments and an actuarial review regarding the Act. The Employee Benefits Programs Committee made no recommendation on the Act.

The committee makes no recommendation regarding the Uniform Management of Public Employee Retirement Systems Act.

Uniform Child Custody Jurisdiction and Enforcement Act

The Uniform Child Custody Jurisdiction and Enforcement Act would replace the Uniform Child Custody Jurisdiction Act, which North Dakota enacted in 1969 as NDCC Chapter 14-14. The 1969 Act has been adopted in every state.

Testimony in explanation of the Act indicated that the Act seeks to eliminate the differences between the Uniform Child Custody Jurisdiction Act and the federal Parental Kidnapping Prevention Act; to clarify the scope of child custody actions to which the Act applies; to prioritize the home state as a ground for taking jurisdiction and clarify the emergency jurisdictional grounds; and to add interstate enforcement procedures and powers to improve interstate enforcement of child custody orders.

The committee received no testimony in support or in opposition to the Act. The committee makes no recommendation regarding the Uniform Child Custody Jurisdiction and Enforcement Act.

Uniform Principal and Income Act (1997)

The national conference recommended the Uniform Principal and Income Act in 1997. The Act is a revision of the Uniform Principal and Income Act of 1962, which North Dakota enacted in 1969 as NDCC Chapter 59-04.1.

The committee reviewed information comparing NDCC Chapter 59-04.1 with the provisions of the revised Act. Testimony in explanation of the revised Act indicated that the Act intends to make principal and income rules conform to prudent investor rules under the Uniform Prudent Investor Act, which North Dakota enacted in 1997 as NDCC Sections 59-02-08.1 through 59-02-08.11. The revised Act is also intended to provide for investment modalities that were not in existence in 1962, such as derivatives, options, deferred payment obligations, and synthetic financial assets.

Testimony on the revised Act indicated that the Act has some favorable features. However, section 104 of the revised Act is both broad and vague and will encourage litigation between trustees and beneficiaries over the nature of the trust instrument and the extent of the beneficiary's interest in the trust. According to the testimony, section 104 would grant distinct authority, and its removal would not be detrimental to the remainder of the Act. The testimony indicated that the American Bankers Association has taken the position that the Act should be enacted without section 104.

The committee makes no recommendation regarding the Uniform Principal and Income Act (1997).

Uniform Guardianship and Protective Proceedings Act (1997)

The Uniform Guardianship and Protective Proceedings Act (1997), which was recommended by the national conference in 1997, is a revision of Article V of the Uniform Probate Code, which North Dakota enacted in 1973. Article V of the Uniform Probate Code consists of NDCC Chapters 30.1-27 through 30.1-30.

Testimony in explanation of the revised Article V indicated that the major objectives of the revision are to provide for standby guardians for children; require better control of conservators; and allow delegation of investment authority.

Testimony in opposition to the revised Article V indicated that the present law regarding guardianships is more specific and clear than the revised Act and that there are no major defects in the current structure. The testimony further indicated that there are areas of concern with the revised Act including the removal of the requirement to appoint a guardian ad litem in each case, the establishment of a guardianship without a hearing, the reduction of the time limit for an emergency temporary guardianship to 60 days, the lack of specificity in defining the areas of a limited guardianship, and the removal of the guardian's authority to place a ward in a mental health care facility under "voluntary" admission status for up to 45 days. The committee received no testimony in support of the revised Article V.

The committee makes no recommendation regarding the Uniform Guardianship and Protective Proceedings Act (1997).

CONTINGENT FEE ARRANGEMENTS

By the directive of the chairman of the Legislative Council, the committee conducted a study of the authority of the Attorney General to enter contingent fee agreements with private attorneys. The committee received and considered information and

recommendations relating to contingent fee arrangements and a North Dakota Supreme Court decision in which the court affirmed the constitutionality of the contingent fee arrangement that existed in that case.

Authority of Attorney General

Testimony received from a representative of the Attorney General's office indicated that the Attorney General's office does not have any agreements in which the office has agreed to pay special assistant attorneys general on a contingent fee basis. The testimony indicated, however, there are several special assistant attorneys general with contingency fee contracts with state agencies. Several state agencies have entered agreements with collection agencies, not particular attorneys, to do collection work for those state agencies. If it is necessary for the collection agency to sue to collect a debt on behalf of the state agency, the attorney the collection agency uses to bring the lawsuit in the name of the state agency must be appointed as a special assistant attorney general for that litigation. The attorneys the collection agencies use in these circumstances are paid by the collection agencies on a contingency fee basis.

Under NDCC Section 54-12-08, the power to appoint special assistant attorneys general lies with the Attorney General, but the special assistants' compensation is agreed to and paid by the agencies the attorneys are appointed to represent. The requesting agency and the attorney agree upon the attorney's compensation. That compensation may be an hourly fee, a flat fee, or a contingency fee. On a few occasions, agencies have agreed to pay attorneys on a contingent fee basis.

State v. Hagerty

The committee also received testimony from a representative of the Attorney General's office regarding the North Dakota Supreme Court decision *State v. Hagerty*, 580 N.W.2d 139 (1998), in which the court declared that because of the longstanding acceptance of contingent fee arrangements and in view of the historical authority of the Attorney General, the Attorney General has the authority to employ special assistant attorneys general under contingent fee agreements unless the agreements are specifically prohibited by statute. In *Hagerty* the agencies the attorneys represented had entered contracts providing the attorneys would be compensated on a contingent fee basis. The Attorney General then appointed the attorneys involved in the case as special assistant attorneys general. The Supreme Court concluded this arrangement did not violate the "public moneys" provision of the Constitution of North Dakota, Article X, Section 12. Section 12 provides, in part:

- All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the legislature;

The committee considered two bill drafts. One provided that the Attorney General may not appoint a special assistant attorney general in a civil case in which the amount in controversy exceeds $150,000, and the special assistant attorney general is to be compensated by a contingent fee arrangement unless the arrangement is approved by the Legislative Council; and the other provided that the arrangement must be approved by the Emergency Commission.

Testimony in opposition to the bill drafts indicated that the bill drafts raised the issue as to whether the approval of the contingent fee arrangements is an executive or legislative function because the court, in *Hagerty*, held that the decision to enter the arrangements is a core function of the Attorney General. A concern was also expressed over the confidentiality issues that would arise if the Legislative Council had the authority to approve the arrangement because the Legislative Council meetings may not be closed to the public. The testimony indicated that a constitutional amendment would be necessary for the Legislative Council to conduct closed meetings.

Recommendation

The committee recommends Senate Bill No. 2047 to provide that the Attorney General may not appoint a special assistant attorney general in a civil case in which the amount in controversy exceeds $150,000, and the special assistant attorney general is to be compensated by a contingent fee arrangement unless the arrangement is approved by the Emergency Commission. The bill provides that any proceeding or information used by the Emergency Commission under the bill is not subject to the open records and meetings provisions of NDCC Sections 44-04-18 and 44-04-19.

PUBLIC HEARINGS ON BALLOT MEASURES

By directive of the chairman of the Legislative Council, the committee conducted public hearings on the constitutional measures scheduled to appear on the primary and general election ballots. The purpose of the hearings was to promote public discussion and debate on the measures and to create a public history.

Measure No. 1 - Primary Election

The only constitutional measure on the June 1998 primary election ballot related to the filling of judicial vacancies. The measure, which would amend the Constitution of North Dakota, Article VI, Section 13, provided that persons appointed to the Supreme Court or district court positions would serve for at least two years before having to face an election.

Testimony in support of the measure indicated that the measure would be a means to ensure the future quality of the judiciary in North Dakota. The measure would alleviate the immediate financial pressures associated with running in an election and would allow a newly appointed judge an opportunity to serve the public for a two-year grace period. According to the testimony, the measure provides a balance between finding qualified individuals willing to seek judicial appointment and the voters' right to elect judges.

There was no testimony in opposition to the primary election ballot measure.

The measure was approved in the June 9, 1998, primary election.

Measure No. 1 - General Election

Measure No. 1 on the general election ballot would remove the references to the names, locations, and missions of the institutions of higher education from the Constitution of North Dakota.

Testimony in support of measure No. 1 indicated the original drafters of the constitution designated various cities to house the various institutions of higher learning in order to make education accessible to the people of the state, but that was over 100 years ago. With the knowledge and technology available today, the mode of higher education has changed. Having the names and missions in the constitution is restrictive to the schools and the removal of the language would allow the Legislative Assembly and the State Board of Higher Education to move higher education forward into the twenty-first century. The number of full-time students enrolled in higher education institutions in the state is declining because of fewer higher school graduates, but there is continually increased funding for higher education. The testimony further indicated that measure No. 1 is about allowing for flexibility, not about closing colleges. The only reason a college should remain open is for excellence in education.

Testimony in opposition to measure No. 1 argued that the drafters of the constitution believed it was necessary to name the locations of the institutions of higher education and that thinking has withstood the test of time. The purpose of the constitution is to protect the rights of the people and a vote in support of the measure would give away the power reserved to the people to protect the colleges. The testimony further indicated that those in support of the measure claim passage of the measure would make institutions more responsive, would force administration and faculty to become more innovative, would make institutions operate more efficiently, and would give the Board of Higher Education more latitude; however, the real intent and purpose of the measure is to ask the people of the state to give up their constitutional protection that requires educational decisions to be made on an institution-by-institution basis.

Other testimony in opposition to the measure indicated that all of the institutions of higher education are necessary for education to be accessible to all areas of the state. The opposition claimed the measure would take power away from the people and place it with an unelected board. It also was argued that the University System in the state is a tremendous asset and is a solution to the state's economic problems, not the problem. The testimony in opposition further claimed that the passage of the measure would send a message of uncertainty to the staff at the institutions and may make staff and faculty recruitment more difficult.

Testimony from the Chancellor of the North Dakota University System indicated that it is a myth that all the University System does is educate people to leave the state. In 1995, 61 percent of North Dakotans enrolled in the University System remained in the state, and 25 to 30 percent of out-of-state students remained in the state after graduating from the University System. In addition, 50 to 60 percent of the physicians in North Dakota have attended the University of North Dakota School of Medicine and Health Sciences. The testimony further indicated every student has an impact of $10,000 per year on the community in which that student lives.

The measure was defeated in the November 3, 1998, general election.

Measure No. 2 - General Election

Measure No. 2 on the 1998 general election ballot relates to the election of county officers. The measure would require elected county officers to be elected by the voters in the jurisdiction they will serve, require candidates for elective county office to be residents at the time of election, and require that sheriffs be elected.

Testimony received by the committee in support of the measure No. 2 indicated that the position of county sheriff should be an elected position, because as an elected official, the sheriff is accountable to the citizens of the county, not just three or five county commissioners. Further testimony in support of the measure indicated that an elected sheriff works harder, is more responsive to the needs of the people, and is able to work as a buffer between the citizens of the county and the county commissioners. The committee received testimony that a survey conducted by the North Dakota Association of Counties indicated that 91.9 percent of the responders believed the sheriff should be elected; 7 percent believed the sheriff should not be elected; and 1 percent were undecided.

Testimony in opposition to measure No. 2 argued that the measure sets apart sheriffs from other elected officials and the measure would work to unravel legislation encouraging government restructuring. The measure would allow larger counties to vote on a measure that will take away the rights of the smaller counties. The testimony in opposition to the measure further indicated that because of the residency requirement in the measure, a deputy in one county could not run for sheriff in another county without moving to that county before the election. It was indicated in the testimony that this residency requirement would apply to all elected county officials, not just sheriffs.

The measure was approved in the November 3, 1998, general election.

CONSTITUTIONAL AND STATUTORY REVISION

The committee continued the tradition of reviewing and making recommendations regarding revisions to the North Dakota Century Code which 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 a district court decision in which a section of the North Dakota Century Code was declared unconstitutional. Further, the committee received testimony and considered information and recommendations regarding a problem created by the repeal of a statute in 1997.

Billey v. North Dakota Stockmen's Association - Recommendation

The committee received testimony regarding the North Dakota Supreme Court decision *Billey v. North Dakota Stockmen's Association*, 579 N.W.2d 171 (N.D. 1998), in which the court declared unconstitutional those portions of NDCC Sections 36-09-18 and 36-22-03 which direct payment of fees into the general fund of the North Dakota Stockmen's Association. The issue before the court in *Billey* was whether four types of fees the association collected and retained were "public moneys" required by the Constitution of North Dakota, Article X, Section 12 to be deposited with the state treasurer and be paid out only pursuant to appropriation. Sections 36-09-18 and 36-22-03 specifically authorized the association to collect these fees and to deposit them in the general fund of the Stockmen's Association. The court concluded that the association acts as an agent of the state when performing brand inspection and recording services, and the fees generated from those services are public moneys under the constitution. The Supreme Court affirmed the decision of the district court and held that the order is stayed until the end of the 1999 legislative session.

The committee recommends Senate Bill No. 2048 to provide that fees collected for certain services of the North Dakota Stockmen's Association must be remitted to the State Treasurer for deposit in the North Dakota Stockmen's Association fund. The bill further provides that the moneys in the fund are appropriated on a continuing basis to the North Dakota Stockmen's Association.

Grandparent Visitation

The committee received testimony regarding a district court decision, *Hoff v. Berg*, Civil No. 97-C-1663, Burleigh County District Court (N.D. Apr. 24, 1998), in which the court declared NDCC Section 14-09-05.1 unconstitutional. Section 14-09-05.1 permits grandparents and great-grandparents to petition for visitation with grandchildren. In *Hoff*, the district court found "the legislature has gone too far," because it had designed the grandparent visitation statute "to give the grandparents an absolute and unrestricted right to visitation unless the parent can establish it is not in the best interest of the child." The district court found the statute facially unconstitutional because it infringed impermissibly on the right of a parent to raise a child without interference from the state. Testimony from a representative of the Attorney General's office indicated that, upon appeal to the North Dakota Supreme Court, the Attorney General would file an amicus brief supporting the constitutionality of the statute. The testimony indicated that the district court decision does not affect the continued implementation of the grandparent visitation statute in any cases other than *Hoff v. Berg*.

At the time the Judiciary Committee adjourned, the district court decision had been appealed to the Supreme Court; however, the appeal had not been scheduled on the court's calendar. Under the Constitution of North Dakota, Article VI, Section 4, the Supreme Court may not declare a legislative enactment unconstitutional unless at least four members of the court so decide.

Safe Deposit Box Entry - Recommendation

In 1997 the Legislative Assembly repealed NDCC Section 57-37.1-12, which provided a procedure for the acquisition of the contents of a safe deposit box after the death of the owner. Under the section, a person could obtain a petition from the clerk of court and have a bank officer aid in the inventory of the safe deposit box. The committee received testimony that the repeal of the law has created a lack of uniformity in the procedure to gain entrance to a safe deposit box and that a special administrator is now required to be appointed to gain entry to a box.

The committee recommends Senate Bill No. 2049 to provide for an affidavit procedure whereby an interested person may have access to a safe deposit box after the death of the owner to determine if the box contains a will or other documents that state the owner's wishes regarding a funeral or burial arrangements.

Technical Corrections and Twentieth Century References - Recommendations

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. Because many of the statutory forms contain references to the twentieth century, the committee also reviewed statutes that contain those references to determine if changes were necessary.

The committee recommends House Bill No. 1044 to remove references to the twentieth century in statutory forms. The bill draft also removes antiquated and gender specific language. Testimony in explanation of the bill draft indicated that the most common change in the bill consists of removing the 19 in "19__".

The committee recommends House Bill No. 1045 to make technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change.

1-04-09	Chapter 10-22 was repealed by 1997 S.L., ch. 103
4-24-10	The change corrects a reference to the Milk Stabilization Board, which was changed to the Milk Marketing Board by 1997 S.L., ch. 69
9-10-06	Section 32-03-19 was repealed by 1997 S.L., ch. 51
10-04-06(10)	The change removes a chapter number reference that was repealed by 1997 S.L., ch. 105
10-06.1-12	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-06.1-13	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-05	Chapter 10-23 was repealed by 1997 S.L., ch. 103

10-19.1-10(3)(4)(5)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-10	Section 10-19.1-77 was repealed by 1997 S.L., ch. 103
10-19.1-11	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-23	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-61	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-75.2(2)(3)	Section 10-19.1-80 was repealed by 1997 S.L., ch. 103
10-19.1-99(2)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-100(4)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-101(2)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-103(4)	Chapter 10-22 was repealed by 1997 S.L., ch. 103
10-19.1-106(2)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-108(1)	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-110.1	The change corrects an incorrect cross-reference
10-19.1-112	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-113.1	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-129	Chapter 10-23 was repealed by 1997 S.L., ch. 103
10-19.1-131	Section 10-19.1-131 is repealed because it is identical to Section 10-19.1-151, created in 1997 S.L., ch. 103
10-30-05	Chapters 10-22 and 10-23 were repealed in 1997 S.L., ch. 103
10-30.1-04(1)	Chapters 10-20 and 10-21 were repealed by 1985 S.L., ch. 147, and Chapters 10-22 and 10-23 were repealed by 1997 S.L., ch. 103
10-30.5-04	The change removes a chapter number reference that was repealed by 1997 S.L., ch. 105
10-32-07(2)(3)(4)	Section 10-32-45 was repealed by 1997 S.L., ch. 103
10-32-56(5)(b)	Section 10-32-45 was repealed by 1997 S.L., ch. 103
10-32-107(4)	Chapter 10-22 was repealed by 1997 S.L., ch. 103
10-33-06(5)(j)	The change corrects an erroneous reference in 1997 S.L., ch. 105
10-33-21(24)	Section 59-02-08 was repealed by 1997 S.L., ch. 508
11-10.2-01(3)	The change removes the reference to county judge which was eliminated by 1991 S.L., ch. 326
12.1-32-15(3)(b)	The change removes an incorrect cross-reference
14-02.1-06	The section is repealed because it was declared unconstitutional
16.1-01-07	The change removes a reference to a subsection that was removed by 1987 S.L., ch. 547
16.1-08.1-01(3)	Section 16.1-03-06 was repealed by 1997 S.L., ch. 189
18-08-12	The institution referred to in the statute no longer exists and the new institution referred to was created in 1997
20.1-08-04.6	The change is to correct an error contained in 1997 S.L., ch. 213
23-06.4-03(2)	The change removes the reference to county courts, which were eliminated by 1991 S.L., ch. 326
23-06.5-10(2)	The change removes the reference to county courts, which were eliminated by 1991 S.L., ch. 326

25-03.1-02(12)	Chapters 10-22 and 10-23 were repealed by 1997 S.L., ch. 103
26.1-17-02	Chapter 10-24 was repealed by 1997 S.L., ch. 103
26.1-17-33	Chapters 10-25 and 10-26 were repealed by 1997 S.L., ch. 105
26.1-18.1-02	Section 10-22-01 was repealed by 1997 S.L., ch. 103
26.1-19-04(1)	Section 10-22-01 was repealed by 1997 S.L., ch. 103
26.1-49-03	Chapter 10-24 was repealed by 1997 S.L., ch. 103
28-04-05.1	The change removes the reference to county courts, which were eliminated by 1991 S.L., ch. 326
28-32-22	The section is repealed to remove an effective date clause, generally not codified.
29-12-05	The change corrects a reference to a form for a search warrant but which should be a form for a bench warrant
30.1-15-02	The change corrects a cross-reference to reflect the changes made in 1977 S.L., ch. 295
30.1-29-26	The change reflects a change to a cross-reference made in 1983 S.L., ch. 313
32-03-36	Section 32-03-19 and 32-03-26 were repealed as obsolete in 1997 S.L., ch. 51
36-01-08.1	The change corrects a reference to a term that was changed by 1993 S.L., ch. 355
38-08.1-03	Chapter 10-22 was repealed by 1997 S.L., ch. 103
38-08.1-03.1(3)	Chapter 10-22 was repealed by 1997 S.L., ch. 103
40-51.2-05	Section 40-51.2-10 was repealed by 1997 S.L., ch. 357
40-57.1-05	The change corrects a grammatically incorrect sentence
41-09-16(4)	Chapter 13-03 was repealed by 1997 S.L., ch. 141
43-07-19	Chapter 10-22 was repealed by 1997 S.L., ch. 103
43-17-02(10)	The change clarifies a reference to "physicians assistants"
43-17.1-06(1)	The change corrects a grammatical error
45-10.1-02(1)(h)	The change corrects an erroneous cross-reference
45-15.1-03(1)	The change corrects an error in 1993 S.L., ch. 450, which created Chapter 47-15.1, relating to consumer rental purchase agreements
50-06-01.8(3)	Section 50-03-07 was repealed by 1997 S.L., ch. 403
51-14-03.2	Chapter 13-03 was repealed and replaced by Chapter 13-03.1 in 1997 S.L., ch. 141
53-06.2-11(5)	The change corrects a reference to restrictions on eligible uses of gaming proceeds which were moved from Section 53-06.1-01(6) to Section 53-06.1-11(2) by 1997 S.L., ch. 428
54-40-01(1)	The change corrects a statutory reference from "town" to "city"
57-15-08	The change corrects a reference to city levies for a band or public library which are covered in Chapters 40-37 and 40-38
61-04.1-13	Chapter 10-22 was repealed and replaced by Chapter 10-19.1 in 1997 S.L., ch. 103
61-04.1-14	Chapter 10-22 was repealed and replaced by Chapter 10-19.1 in 1997 S.L., ch. 103
61-21-47	The change is the result of an Attorney General's opinion regarding an unintentional change
Chapter 61-24.4	Chapter 61-24.4 was held to be unconstitutional by the North Dakota Supreme Court in 1984
61-35-25	Chapter 10-26 was repealed and replaced by provisions of Chapter 10-33 under 1997 S.L., ch. 103