

COURT UNIFICATION STUDY - STATE FUNDING OF THE CLERK OF DISTRICT COURT OFFICE - BACKGROUND MEMORANDUM

Section 4 of House Bill No. 1002 directs a study of the impact of court unification on the judicial system and on the effective provision of judicial services to state residents. House Concurrent Resolution No. 3067 (copy attached as an appendix) directs the Legislative Council to review and monitor the implementation of legislation enacted by the Fifty-sixth Legislative Assembly which provides for the delivery of clerk of district court services through state funding and alternative methods. The resolution was introduced as a companion to House Bill No. 1275, which provides for the state funding of clerks for clerk of district court services. Supporters of the resolution testified at the standing committee hearing that a study is necessary to track the progress of court unification and the clerk of court legislation. House Concurrent Resolution No. 3068, which directs a study of the feasibility and desirability of an equitable sharing between the state and counties of the costs of providing facilities for the delivery of state-funded judicial and clerk of court services, was also introduced as a companion to House Bill No. 1275; however, the Legislative Council did not approve that resolution for study.

BACKGROUND

District Courts

Constitution of North Dakota Article VI, Section 1, which was approved September 7, 1976, 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 8, provides the district court has original jurisdiction of all causes, except as otherwise provided by law, and such appellate jurisdiction as may be provided by law or by rule of the Supreme Court.

Article VI, Section 9, requires the state to be divided into judicial districts by order of the Supreme Court. In 1979 the Supreme Court divided the state into seven judicial districts. In each judicial district there is a presiding judge who supervises all court services of all courts in the geographical area of the district. The duties of the presiding judge, as established by the Supreme Court, include convening regular meetings of the judges within the district to discuss issues of common concern, assigning cases among the judges of the district, and assigning judges within the district in cases of demand for a change of judge.

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

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

County Courts

In 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 before 1981. The 1981 legislation also provided that county judges must be law-trained and full time and provided for the assumption by the state of many district court expenses. The provisions relating to the county courts were codified as North Dakota Century Code (NDCC) Chapter 27-07.1, which was repealed by the 1991 court unification legislation. Section 27-07.1-17 provided that county courts had jurisdiction over civil cases involving \$10,000 or less; criminal misdemeanors, infractions, and traffic cases; small claims cases involving \$5,000 or less; probate, testamentary, guardianship, and mental health commitment proceedings; appeals from municipal courts; and any cases assigned by the presiding district judge of the judicial district in which the county is located.

1991 Court Unification Legislation

In 1991 the Legislative Assembly enacted legislation providing a transition process for establishing a single trial court of general jurisdiction. The unification of the court system was to be accomplished through the elimination of county courts and the creation of additional district court judgeships from county court judgeships. In 1991 there were 53 district and county court judges. Under unification, the total number of district court judgeships must be reduced to 42 before January 1, 2001. The Supreme Court began eliminating judgeships and by January 2, 1995, the primary implementation date for consolidation of trial courts, the number of judgeships was reduced to 47. As of July 1999, the Supreme Court had reduced the number of district court judgeships to 43.

PREVIOUS STUDIES AND RELATED LEGISLATION

1989-90 Interim

House Concurrent Resolution No. 3033 (1989) directed the Legislative Council to study the adequacy

of the state's elected officials' compensation. The study was assigned to the Legislative Council's interim Budget Committee on Government Administration. Under this study, the committee studied the issue of establishing a single trial court of general jurisdiction as a means to achieve statewide equality with respect to judicial compensation.

The Budget Committee on Government Administration determined that to achieve statewide equality within the judiciary, a unified court system must be established. That committee recommended 1991 Senate Bill No. 2026 to abolish county courts as of January 1, 1995; to provide for the establishment of a single trial court system consisting of eight judicial districts; and to reduce the number of district court judgeships from 53 to 42 by December 31, 1998. The bill also provided that on January 1, 1995, county court judges elected in 1994 would become interim district court judges with limited original jurisdiction. If any interim district court judge were elected to a district court judgeship or if the interim district court judgeship was abolished, 80 percent of the court revenue deposited in the county treasury would be deposited in the state general fund. Although the bill failed to pass the Senate, its provisions were essentially enacted as House Bill No. 1517, except that the number of district court judgeships was set at 44.

1991-92 Interim

During the 1991-92 interim, the Legislative Council's Court Services Committee, pursuant to House Concurrent Resolution No. 3046 and Senate Concurrent Resolution No. 4043, considered the unification of the state's judicial system. House Concurrent Resolution No. 3046 directed a study of the problems associated with the unification of the state's judicial system into a one-level trial system, and Senate Concurrent Resolution No. 4043 directed the Legislative Council to review and monitor the implementation of 1991 legislation to determine and ensure that a unified, consolidated court system is accomplished. In addition, Section 206 of 1991 House Bill No. 1517 provided that it was the intent of the Legislative Assembly that the 1991-92 interim legislative committee assigned to review and monitor the implementation of the bill, in conjunction with the office of the State Court Administrator, perform a detailed analysis of the fiscal implications of the bill prior to the convening of the next two Legislative Assemblies. Section 206 also stated it was the intent of the Legislative Assembly that the transition to a single trial court of general jurisdiction include revision of the distribution of court revenues and legislative appropriations from the state general fund to provide a fair and equitable allocation of expenditures between the counties and the state.

The interim committee recommended two bills that were enacted in 1993. Senate Bill No. 2032 provided that the authority of the Supreme Court to abolish the

office of a district court judge may be exercised from July 1, 1999, until December 31, 2000, if on July 1, 1999, the number of district judges is more than 42 rather than 44.

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

The committee also recommended Senate Bill No. 2034, which would have provided that the new judgeships established on January 2, 1995, under 1991 House Bill No. 1517, would be interim district court judgeships with the same jurisdiction as district court judges except the interim district court judge would not have had jurisdiction to hear or determine any case or proceeding relating to an offense classified as a Class AA felony. The bill failed to pass.

1993-94 Interim

During the 1993-94 interim, the Legislative Council's Court Services Committee, pursuant to Senate Concurrent Resolution No. 4005, studied the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction. The committee also studied the funding of court unification and possible changes in filing fees or in the distribution of county court revenues in order to ensure that a unified, consolidated court system is accomplished.

The interim committee received testimony that identified venue and jury pool selection as areas that may require further legislative action after implementation of court unification. The committee also received testimony concerning inadequate jury pools in counties with small populations.

The committee recommended Senate Bill No. 2048 to provide that a person cited for a noncriminal traffic violation may appeal to the district court from the initial hearing held before a municipal judge, a magistrate, or other qualified person, including a district judge appointed by the presiding judge of the judicial district. The committee also recommended House Concurrent Resolution No. 3005, which directed a study of the problems associated with the unification of the state's judicial system into a single court of general jurisdiction, with an emphasis on venue statutes. The Legislative Assembly enacted Senate Bill No. 2048 and adopted House Concurrent Resolution No. 3005.

1995 Legislation

In addition to Senate Bill No. 2048, which was recommended by the 1993-94 interim Court Services Committee, the 1995 Legislative Assembly enacted

House Bill No. 1002. House Bill No. 1002 changed the fees in civil cases which may be charged by the clerk of district court. The bill also changed the distribution of the fees between the state and the counties. The bill required the clerk of court to pay to the State Treasurer for deposit in the state general fund \$14 of the \$80 fee for filing a case for decision that is not a small claims action or a petition for dissolution of marriage, annulment, or separation from bed and board. The clerk of court is also required to deposit the \$30 fee for filing a motion to modify an order for alimony, property division, child support, or child custody with the State Treasurer for deposit in the state general fund. Effective July 1, 1997, the bill provided that \$50 of the \$80 fee for filing a case for decision that is not a small claims action and not a petition for dissolution of marriage, annulment, or separation from bed and board must be paid by the clerk of court to the State Treasurer for deposit in the state general fund. In addition, effective July 1, 1997, the bill provided that the \$50 fee for filing an answer to a case that is not a small claims action must be deposited in the state general fund. The bill also transferred the fee for filing an answer to a motion to modify an order for alimony, property division, child support, or child custody from the county to the state general fund, effective July 1, 1997.

1995-96 Interim

Judiciary Committee

During the 1995-96 interim, the Legislative Council's Judiciary Committee, pursuant to House Concurrent Resolution No. 3005, studied the problems associated with the unification of the state's judicial system into a single court of general jurisdiction, with emphasis on a review of venue statutes. The committee also studied the possibility of expanding the area for jury selection beyond county lines, the further reduction of judgeships, and the impact of court unification on family law.

The interim committee received testimony from district court judges which indicated that although the reduction in the number of judgeships is on schedule, there are concerns regarding the feasibility of further reductions. The testimony indicated that because of the increasing caseload of judges in urban areas and the extensive travel required by judges in rural areas, any further reduction in the number of judges would put a serious strain on the court system and would require major changes in the delivery of judicial services, especially in rural areas.

On the issue of venue, the interim committee received testimony from attorneys, district judges, and representatives of the judicial districts which indicated that the judges generally support the concept of permitting the court to change the location of pretrial proceedings. The committee also received extensive testimony regarding the issue of granting to the court the authority to change the location of criminal and

civil trials. Regarding the issue of jury pool expansion, the testimony indicated that the declining and aging population in some areas of the state has made it difficult to draw an adequate jury pool.

The interim committee recommended two bills that were enacted in 1997. House Bill No. 1063 authorized a court to change the place of a pretrial hearing or proceeding from the location in which the matter was originally to be heard. The bill also authorized a court to change the location of civil and criminal trials unless one of the parties objects to the change of location. House Bill No. 1064 authorized a court to select a jury pool from one or more counties in the judicial district if the population of the county is under 10,000 persons and the court determines that the number of pretrial jurors within the county of venue is inadequate to obtain a fair and impartial jury.

Budget Committee on Government Finance

Also during the 1995-96 interim, the Legislative Council's Budget Committee on Government Finance, pursuant to Section 5 of 1995 House Bill No. 1002, studied the unified court system with emphasis on the distribution of court revenues and the allocation of the costs of the system between the counties and the state. The study included consideration of the allocation of costs and revenues that existed under the existing statutes as well as changes needed to more equitably handle the funding of the unified court system.

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

The committee also reviewed court unification funding. Except for the salaries and expenses of the district court clerks and the facility costs, both of which are funded by the counties, district courts are funded through legislative appropriations.

The committee indicated its support for legislation introduced during the 1997 legislative session which would bring the clerks of district courts into the unified judicial system. The committee indicated its support for this due in part to child support collection and disbursement requirement changes in the federal Welfare Reform Act. The Act removes the child support collection and disbursement function from the clerks of district courts and requires each state to establish a centralized automated unit for the collection and disbursement of child support. Because of these changes and the decreased workload for the clerks of district courts, the committee concluded it would be an opportune time to bring the clerks into the unified court system.

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

1997 Legislation

The 1997 Legislative Assembly enacted Senate Bill No. 2002, which provided that counties are to use the provision of NDCC Chapter 11-10.2 (County Officer Combination, Separation, and Redesignation), Chapter 11-10.3 (Multisubdivisions Office Combinations), or Chapter 54-40.3 (Joint Powers Agreement) to combine or share the services of clerks of district courts and that the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund the administration of the district courts. The legislation further provided that (1) each county must have a register of deeds, and the register of deeds shall perform the functions of the clerk of district court in counties having a population of 6,000 or less, unless the board of county commissioners adopts a resolution separating the offices; (2) in a county having a population of more than 6,000, the offices of clerk of district court and the register of deeds may be combined into an office of register of deeds if the board of county commissioners adopts a resolution combining the offices; and (3) the distribution of fees for filing civil cases that are not small claims court actions would be revised:

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

The 1997 Legislative Assembly also enacted House Bill No. 1064, which permitted a court to select jurors from one or more counties in the judicial district

in which the court is located if the county of venue has a population of not more than 10,000 persons and the court determines that the number of prospective jurors within the county of venue is inadequate to obtain a fair and impartial jury and House Bill No. 1063, which authorized a court to change the place of a civil or criminal pretrial hearing or proceeding from the location in which the matter was originally to be heard. The bill also authorized a court to change the location of a civil or criminal trial unless a party files an objection to the change of trial.

1997-98 Interim

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

On the issue of court unification, the committee received testimony that the reduction in the number of judgeships is on schedule, and the court unification process is progressing well. It was reported that caseload problems exist in some districts, and additional caseload problems may arise as population shifts occur in some parts of the state.

The committee also received testimony regarding the results of the *North Dakota Clerk of Court Consolidation Study* conducted by the National Center for State Courts. The National Center reported that 23 counties could have their clerk of district court functions consolidated, and the consolidated counties could have their court support functions restructured while maintaining public access to the courts without full-scale clerk of court operations. 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 extensive testimony in opposition to the plan.

In an attempt to address the clerk of court issue, the committee recommended that the North Dakota Consensus Council be involved to develop a plan regarding the number of, the duties of, and the funding of the clerks of district court. The Clerk of Court Consensus Process, which was formed to develop a plan regarding clerks of district court, included representatives of the North Dakota Clerks Association, the State Bar Association of North Dakota, the interim Judiciary Committee, the North Dakota Association of Counties, and the North Dakota County Commissioners Association.

The Clerk of Court Consensus Process plan recommended that adequate and proper judicial services, including clerk of district court services, be provided in each county in the state and that funding

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

During the course of studying issues relating to the clerks of district courts, the committee also 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 recommended House Bill No. 1042 to impose a new fee or to increase the fees for certain types of filings.

1999 Legislation

The bills enacted by the Fifty-sixth Legislative Assembly concerning this study can be classified in these subject areas: filing fees, clerks of district courts, jury selection, and defeated legislation.

Filing Fees

House Bill No. 1042 imposes 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 increases the fee for filing a foreign judgment or decree from \$10 to \$80.

Clerks of District Courts

House Bill No. 1275 implements the plan proposed by the Clerk of Court Consensus Process. The bill transfers funding for clerk of district court services to the state effective January 1, 2001, and provides for state funding of clerk of district court services. The bill defines clerk of district court services as those duties and services that directly serve the judicial system and the provision of effective and efficient judicial services to the public. The bill provides that the options available to a county regarding state funding of clerk of district court services depend on the number of FTE positions the Supreme Court determines are necessary to provide

adequate clerk of district court services. Under the bill, a county in which the Supreme Court determines that at least two FTE employees are necessary would have the option of state-funded clerk of district court services or to provide clerk of court services at the county's own expense; a county in which the Supreme Court determines that more than one but less than two FTE employees are necessary may opt for state-funded clerk of district court services, contract with the Supreme Court for clerk of district court services, or provide the services at the county's own expense; and a county in which the Supreme Court determines that less than one FTE is necessary may either contract with the Supreme Court for clerk of district court services or provide clerk of district court services at its own expense. The bill also provides for the transfer of equipment between the county and the state, fees to be charged by the clerk of the district court for various filing services, and recordkeeping requirements of the clerk. The bill requires each board of county commissioners to notify the Supreme Court of its election to provide clerk of district court services, of its consent to the elected clerk of court and designated staff becoming state employees, or of its election to enter an agreement with the Supreme Court to provide funding for clerk of district court services by April 1, 2000.

House Bill No. 1002, the judicial branch appropriations bill, changed the effective date of the transfer of funding of clerk of district court services from January 1, 2001, to April 1, 2001.

House Bill No. 1382 changes the number of FTE employees that triggers a county's options for state-funded clerks of district court in House Bill No. 1275 (described above). Under this bill, the number of FTE employees required to trigger the first option in House Bill No. 1275 is changed from "at least two" to "at least five"; and the number of FTE employees required to trigger the second option in House Bill No. 1275 is changed from "one or more, but less than two" to "one or more, but less than five."

House Bill No. 1002, Section 4, which directs this study, directs a study of the impact of court unification on the judicial system and on the effective provision of judicial services to state residents.

House Concurrent Resolution No. 3067 directs the Legislative Council to review and monitor the implementation of legislation enacted by the Fifty-sixth Legislative Assembly which provides for the delivery of clerk of district court services through state funding and alternative methods.

House Concurrent Resolution No. 3068 directs a study of the feasibility and desirability of an equitable sharing between the state and counties of the costs of providing facilities for the delivery of state-funded judicial and clerk of court services. The Legislative Council did not approve this resolution for study.

Defeated Legislation

House Bill No. 1458 would have provided for the retention by the county of those fees collected by clerks of court and would have provided that the clerk of county court remain an elected county officer with the option for a county to combine the clerk of court office with the register of deeds. The bill would have removed a county's option for a state-funded clerk of court.

Suggested Study Approach

The committee, in its study of the impact of court unification on the judicial system and on the effective provision of judicial services to state residents and review and monitoring of the implementation of legislation enacted by the Fifty-sixth Legislative Assembly which provides for the delivery of clerk of district court services through state funding and alternative methods, may wish to approach this study as follows:

1. Receive testimony from representatives of the judicial branch regarding the status of the required reduction in the number of judgeships.
2. Receive testimony from representatives of the judicial branch as to whether additional legislation is necessary to complete court unification.
3. Receive testimony from representatives of the judicial branch, county representatives, and clerks of the district courts regarding the progress, problems, and issues related to implementing the state funding of clerks of district courts legislation.
4. Develop recommendations and prepare legislation necessary to implement the recommendations.

ATTACH:1

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

**HOUSE CONCURRENT RESOLUTION NO. 3067
(Representatives DeKrey, Delmore)
(Senator W. Stenehjem)**

A concurrent resolution directing the Legislative Council to review and monitor the implementation of legislation enacted by the Fifty-sixth Legislative Assembly which provides for the delivery of clerk of district court services through state funding and alternative methods.

WHEREAS, the Fifty-sixth Legislative Assembly is considering legislation to provide for the delivery of clerk of district court services through alternative means, including state funding; and

WHEREAS, the legislation is intended to ensure the local availability and delivery of clerk of district court services while recognizing the state's responsibility to provide funding as part of the implementation of the unified judicial system contemplated under Article VI of the Constitution of North Dakota; and

WHEREAS, the legislation contemplates a delayed time of taking effect and for transition periods in implementing alternative means of providing clerk of district court services; and

WHEREAS, it is important that the implementation of this legislation be monitored to identify any changes that may be necessary and to ensure that clerk of district court services are provided in a manner that benefits the citizens of this state and the interests of the state judicial system;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council review and monitor the implementation of legislation enacted by the Fifty-sixth Legislative Assembly which provides for the delivery of clerk of district court services through state funding and alternative methods; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-seventh Legislative Assembly.