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COURT UNIFICATION FOR NORTH DAKOTA — SHIBOLETH OR REALITY?

HONORABLE BRUCE BOHLMAN

Section 1 of Article 6 of the North Dakota Constitution states that:

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 for law.¹

The judicial article was approved on September 7, 1976. At the time it was enacted, there were district courts, county courts with increased jurisdiction, county courts without increased jurisdiction, county justices and municipal courts. Only district court judges and county court judges with increased jurisdiction were required to be law-trained.

In February of 1976, seven months before the voters were scheduled to vote on the constitutional measure in the September primary, the Chief Justice of the North Dakota Supreme Court formed a committee to study the concept of a unified court system in North Dakota. The committee was called the "Citizen's Committee" on the proposed judicial article. It was chaired by attorney Richard McGee of Minot and consisted of legislators, lawyers, judges, court employees and lay-persons. The Citizen's Committee worked hard for the approval of the new judicial article throughout the State. The public was informed about the six tiers of courts existing under the existing judicial system and the benefits to the public of having only two tiers — the Supreme Court and the District Court, mandated by the Constitution. The Citizen's Committee was instrumental in securing the passage of the new judicial article by the voters on September 7, 1976.

In December, 1976, the so called Citizen's Committee was divided into two groups, including the legislative sub-committee, chaired by attorney Harry Pearce of Bismarck. This sub-committee was to study and make recommendations for a statutory scheme creating the new unified court system.²

The legislative sub-committee worked for a total of 18 months

1. N.D. CONST. art. VI, § 1.

2. Committee on Judicial System, Report to the Legislative Council of 1978, at 105 (1978). See *infra* p. —, app. A for full text.

and designed a statutory approach to court unification. The guiding principles were:

1. The highest quality court system for North Dakota was to be implemented; and
2. The Court system was to be designed for the convenience of the citizens — not the lawyers and judges.

The legislative sub-committee of the Citizen's Committee submitted its recommendations for a unified court system to the Joint Interim Committee on the Judicial System at the first meeting of that committee in July, 1977. From those recommendations, the interim committee drafted the legislation which became known as House Bill 1066, presented to the 1979 Legislative Assembly.³

Under H.B. 1066, there were two alternatives. Alternative 1 provided for abolishing the county court structure and substituting "associate district judges" instead. The associate district judges would have the same jurisdiction as the county courts of increased jurisdiction and the judgeships would be funded by the State.

The second alternative in H.B. 1066 also abolished the county court system but simply increased the number of district court judges, without any distinction as to jurisdiction. District court judges would hear and determine all civil and criminal actions, without limitation.

H.B. 1066 passed the House in the 1979 legislature but it was defeated 27 to 22 in the Senate. The rural areas were opposed to the bill since it was perceived that there would be a loss of control in the counties and perhaps a diminution of services.

In 1981, H.B. 1060 was approved, which provided for the abolishment of the county justice courts and enacted a single level county court system with uniform jurisdiction law-trained judges. That single level county court exists today along with municipal courts as the statutory courts. The constitutional courts (the supreme court and the district court) together with the statutory courts comprise the so-called "unified judicial system." In many instances, the municipal courts are contracting with the county courts to provide judicial services for municipalities.

The movement toward complete unification continued. After ten years of relatively little activity, the Judicial Planning Committee of the Supreme Court adopted an objective of: "establishing a single state-funded trial court to replace district courts and county

3. *Id.*

counts with a single category of judges of equal jurisdiction, compensation and areas of election.”⁴ Almost simultaneously, the legislature through its Budget Committee on Governmental Administration also instituted a study of the court system in order to determine whether further unification was feasible at this time.

In response to the study of the Budget Committee on Governmental Administration, the Judicial Council created an Ad Hoc Commission on court unification to study and make recommendations concerning court unification.

The Ad Hoc Commission was formed in July, 1989 and consisted of a justice of the North Dakota Supreme Court, three district court judges, three county court judges, the state court administrator and two members of the bar association.

After considerable study and debate, the Ad Hoc Commission has recommended a plan which, in effect, is a modification of Alternative 2 contained in H.B. 1066. The county courts are abolished and a single category of judges is created with equal jurisdiction, compensation, and areas of election. All judges would become district court judges under the proposed plan of unification.

The total number of district court judges would be increased to 42. This represents an overall decrease of 12 judges from the present 54 district and county court judges. The phase-in period would extend through 1998 with all 42 judgeships being filled in the elections of 1994, 1996, and 1998. By January 1, 1999, the system would be totally unified.

The plan calls for the establishment of eight judicial districts in the State. Four of the districts would consist of the four largest metropolitan areas of the State (Grand Forks County, Cass County, Ward County, and Burleigh-Morton Counties). The other four districts would divide the State into roughly four areas and judges would be assigned to chamber cities strategically located to provide services to the district with a minimum of travel time involved.

Appendix A contains a copy of the plan and a district map with location of chamber cities provided. The judges would be elected from their respective districts and the main purpose of the urban districts is to allow the rural judges to run for election without competition from candidates from the urban areas, who could

4. North Dakota Judicial System Agenda for the Decade, Objective 1.1 of Goal 1 (May 2, 1990) (approved by the North Dakota Supreme Court).

presumably generate a large number of votes from the city and thereby displace the rural judge who lives in a sparsely populated area.

Under the plan, the Supreme Court would maintain complete administrative control over the courts. The reduction in numbers from 54 to 42 judges has received criticism and many individuals, including Chief Justice Erickstad, feel that the best approach is to allow reduction of the number of judgeships by not filling vacancies as they occur. The Ad Hoc Commission also recommended legislation for this approach. See Appendix B.

North Dakota has too many judges at the present time. The plan calls for 42 judges. With an estimated population of 650,000, North Dakota would have 6.46 judges per 100,000 population. Minnesota has only 5.4 judges per 100,000 population. The national average is approximately 5.5. The State would still have an apparent over-supply of judges at 42, but it must be remembered that the predominantly rural nature of the State requires a considerable amount of travel in order to provide service to all of the counties.

Certainly, it would be difficult to argue that North Dakota needs more than 42 judges to handle the caseload. In 1988, there were a total of 20,626 cases filed in district court. For the same year, there were approximately 35,000 case filings in the county courts (not including non-criminal traffic cases). For both the district and county courts, approximately 56,000 actions were filed. With 42 judges, an average of 1,333 cases would be handled per judge. North Dakota has one of the lowest number of case filings in the country; and with a judge to population ration of over the national average, even with the unified system in place, the needs of the people would be well served.

By having separate county court judges and district court judges, there is a division between the two which does not promote harmony. All too often, the past few years have seen needless divisions of opinions on important policy issues between the two groups of judges. Destructive competition and the feeling of "second class" judgeships is the result of the present two-tier trial court.

The recent experience in the legislature with county court judges' salaries indicates that there is a real need for eliminating disparity between county court judges and district court judges. All judges should be paid the same salary and each should be

expected to do a reasonably equivalent amount of work, when taking travel requirements into consideration.

No one would argue at this point that having a separation between county court and district court judges is in the best interest of the people of the State. Certainly, the most efficient judicial system mandates a completely unified court with equality among judges. This results in the best possible service to the citizens of North Dakota and is based on the needs of the people, not the convenience of the lawyers or judges. This was the original premise of the Citizen's Committee in 1976, and its guiding principles have not been diminished by time.

The present system of funding the county courts through the counties and administering the courts through the Supreme Court creates a conflict. The counties are paying the bill for the courts and receiving the revenues, but the courts are being administratively controlled by the Supreme Court. This problem is further exacerbated by the fact that county commissioners from the various counties can form county court districts from time to time which significantly change the ability of the county courts to provide services to all of the people. Usually, decisions by county commissioners are based upon cost for the service, and commissioners are not in a position to know the need for judicial services and how best to fill that need. In essence, I am stating that it is time for county commissioners to be removed from the process of judicial planning and delivery of services to the people. The people adopted the judicial article, which requires the Supreme Court to administer the total, unified court system. That mandate should be followed.

The present system also creates significant disparities in workloads between judges. Some county court judges handle as few as 400 actions per year, while others handle over 3000 actions.⁵ The county court judges are essentially not utilized to the full extent possible under the present system. Elimination of the county court system and replacing it with all district court judges would minimize the differences in workloads and provide for better overall service to the people.

The Supreme Court is charged with the responsibility for administering the unified judicial system. Since that is the case, the State should fund the district court and receive most of the revenues. The argument that the counties would lose a considera-

5. Annual Report of the North Dakota Judicial System, 1988, p. 27.

ble amount of revenue must also take into account that the State would be paying the cost of the judicial system. Under the proposed Ad Hoc Commission plan, the counties would still continue to share in the revenues received from administrative fees in order to compensate for the cost of providing space and certain personnel. The precise division of revenues is not suggested in the proposed legislation.

Aside from the objection that a certain number of judgeships would be lost by implementation of the plan, there can be little argument with the concept. No one is happy to see positions cut, but there is no guarantee that anyone has job security. If the judicial business of the State can be competently handled with 42 judges or less, then it makes little sense for the people of the State to pay for additional judgeships that are not needed. It is doubly wasteful to maintain a county court system with law-trained judges and a separate district court structure when all judges are equally qualified and each should be competent to handle any of the cases that come before the court.

In a state as rural and underpopulated as North Dakota, the goal should be to provide only as much government as is needed. To maintain unnecessary positions and unnecessary structure is contrary to the will of the people as expressed when the new judicial article was adopted in 1976. How long must they wait before the system responds to their needs?

APPENDIX "A"

DRAFT #3

CONSOLIDATION OF DISTRICT AND COUNTY COURTS

SECTION 1. COUNTIES TO PROVIDE OFFICE AND COURTROOM SPACE AND FACILITIES — STATE APPROPRIATION TO LEASE SPACE AND FACILITIES PROVIDED — COURT EQUIPMENT AND SUPPLIES. Counties where judicial chambers are located shall provide office and courtroom space and other local facilities required by the unified judicial system for the judges, clerks of the district court, court reporters, and other court employees.

As each interim judgeship terminates, but in no event later than December 31, 1998, all furniture, furnishings, office equipment, books, and office supplies located in the courtroom and office of or in use by the court personnel shall become the property of the State of North Dakota unless declined by the court administrator in writing within sixty days thereafter. Thereafter, the State of North Dakota shall provide for the furniture, furnishings, office equipment, books, and office supplies of the judicial system.

SECTION 2. COURT REVENUE DEPOSITED TO COUNTY TREASURY — APPELLATE FILING FEES DEPOSITED TO STATE GENERAL FUND. As each interim judgeship terminates, but in no event later than December 31, 1998, all district court revenues derived from court costs and other assessments not made as a penalty shall be deposited by the clerk of the district court with the treasurer of the county in which the revenue was collected. The deposits shall be made as soon as practicable, with an accounting therefor to be filed monthly with the treasurer by the clerk of the district court. Thereafter, on a monthly basis, the treasurer shall remit 80 percent of the said revenues to the state treasurer for deposit in the state general fund. Any filing fees for appeals to the supreme court deposited with the clerk of the district court shall be transmitted to the supreme court for deposit in the state general fund. The net proceeds of all fines imposed for violations of state law shall be deposited as provided in Section 154 of the Constitution of the State of North Dakota.

SECTION 3. JUDICIAL DISTRICTS — NUMBER, COMPOSITION, NUMBER OF JUDGES. Until changed by order of the supreme court, there shall be eight judicial districts in this state

composed of the following named counties, respectively, and judgeships shall be assigned to districts by the supreme court within the limits of the maximum number of judgeships allowed by the legislative assembly:

1. Northwest Judicial District shall consist of the counties of Bottineau, Burke, Divide, Dunn, McHenry, McKenzie, McLean, Mercer, Mountrail, Oliver, Renville, Sheridan, and Williams.

2. Northwest Central Judicial District shall consist of the county of Ward.

3. Northeast Judicial District shall consist of the counties of Benson, Cavalier, Eddy, Foster, Griggs, Nelson, Pembina, Pierce, Ramsey, Rolette, Towner, Traill, Steele, Walsh, and Wells.

4. Northeast Central Judicial District shall consist of the county of Grand Forks.

5. Southeast Judicial District shall consist of the counties of Barnes, Dickey, LaMoure, Ransom, Richland, Sargent, and Stutsman.

6. Southeast Central Judicial District shall consist of the county of Cass.

7. Southwest Judicial District shall consist of the counties of Adams, Billings, Bowman, Emmons, Grant, Golden Valley, Hettinger, Kidder, Logan, McIntosh, Sioux, Slope, and Stark.

8. Southwest Central Judicial District shall consist of the counties of Burleigh and Morton.

SECTION 4. ELECTION AND TERM OF OFFICE OF DISTRICT JUDGES-QUALIFICATIONS. Following assignment of judgeships as provided in Section 3, there shall be elected in each district the number of district judges equal to the number of judgeships assigned by the supreme court within the limits of the maximum number of judgeships allowed by the legislative assembly. Any judge so elected shall take office on the first Monday in January following the date of election and shall hold office for six years or until a successor is elected and has qualified. To be eligible for election as a district judge, the person to be elected shall be an elector of the district on the date of election and during his or her term of office. The elections shall be held in each district pursuant to Section 7.

SECTION 5. JURISDICTION OF DISTRICT COURTS. The district courts of this state have general jurisdiction of all causes conferred upon them by the constitution, and in the exercise of that jurisdiction they have power to issue all writs, process, and

commissions provided therein or by law or which may be necessary for the due execution of the powers with which they are vested. District Courts shall have:

1. Common law jurisdiction and authority within their respective judicial districts for the redress of all wrongs committed against the laws of this state affecting persons or property.
2. Power to hear and determine all civil and criminal actions and proceedings.
3. All the powers necessary to the full and complete jurisdiction of the causes and over the parties; to the full and complete administration of justice; and to carrying into effect their judgments, orders, and other determinations, subject to a reexamination by the supreme court as provided by law.
4. Jurisdiction of appeals from all final determinations of inferior officers, boards, or tribunals, in the cases and pursuant to the regulations prescribed by law.

SECTION 6. CERTAIN JUDGES TO BECOME INTERIM DISTRICT JUDGES — COMPENSATION — AUTHORITY. On January 1, 1995, all judges of county courts shall become interim district judges, and the office of county court judge is thereafter abolished. Each judge shall serve in the capacity of interim district judge until December 31, 1998, or until elected as judge of the district court, whichever first occurs. An interim judge shall receive the compensation prescribed for the office to which elected, and said compensation shall be paid by the county in which elected. Such compensation may be increased by the board of county commissioners in accordance with Section 11-10-10. Interim district judges shall have authority to hear and determine the following types of cases:

1. Civil cases with not more than fifteen thousand dollars.
2. Criminal misdemeanor cases and noncriminal traffic cases.
3. Small claims cases.
4. Probate, guardianship, and other testamentary cases, including trusts and contested matters.
5. Preliminary hearings and arraignments in felony criminal cases, and such other criminal proceedings as may be assigned by the presiding district judge.
6. Municipal ordinance violations in cities having no municipi-

pal judge or, pursuant to Section 27-24-08, in cities having a lay municipal judge.

7. Mental health and addiction proceedings.
8. Any other cases as assigned by the presiding district judge or as provided by law.

SECTION 7. INTERIM DISTRICT JUDGESHIPS — TERMINATION — DISTRICT JUDGES — TOTAL NUMBER — INITIAL ELECTION.

1. After expiration of the term of an interim district judge authorized by Section 6 or election of an interim district judge to a district court judgeship, the interim district judgeship shall terminate.
2. On January 1, 1999, there shall be forty-two district judgeships in the state, to be allotted, as needed, to judicial districts by order of the supreme court. The additional fifteen new judgeships created by this section shall be filled by election pursuant to this section. Until changed by order of the supreme court, the number of judgeships in the districts and their chamber cities are as follows:

NORTHWEST DISTRICT 6 JUDGES

BOTTINEAU (1)
 STANLEY (1)
 WASHBURN (1)
 WATFORD CITY (1)
 WILLISTON (2)

NORTHWEST CENTRAL DISTRICT 4 JUDGES

MINOT (4)

NORTHEAST DISTRICT — 6 JUDGES

DEVILS LAKE (1)
 GRAFTON (1)
 HILLSBORO (1)
 LANGDON (1)
 NEW ROCKFORD (1)
 RUGBY (1)

NORTHEAST CENTRAL DISTRICT — 5 JUDGES

GRAND FORKS (5)

SOUTHEAST DISTRICT — 5 JUDGES

JAMESTOWN (2)
 LISBON (1)

VALLEY CITY (1)

WAHPETON (1)

SOUTHEAST CENTRAL DISTRICT — 6 JUDGES

FARGO (6)

SOUTHWEST DISTRICT — 4 JUDGES

DICKINSON (2)

HETTINGER (1)

LINTON (1)

SOUTHWEST CENTRAL DISTRICT — 6 JUDGES

BISMARCK (5)

MANDAN (1)

3. For the initial elections in 1994, 1996, and 1998, there shall be the following number of judgeships elected from the districts:

			<u>1994</u>			
Northwest Dist.	2	judgeships		Williston/Stanley		
Northwest Central Dist.	1	judgeship		Minot		
Northeast Dist.	1	judgeship		Grafton		
Northeast Central Dist. .	2	judgeships		Grand Forks (2)		
Southeast Dist.	1	judgeship		Jamestown		
Southeast Central Dist. .	2	judgeships		Fargo (2)		
Southwest Dist.	2	judgeships		Dickinson (2)		
Southwest Central Dist..	1	judgeship		Bismarck		
			<u>1996</u>			
Northwest Dist.	3	judgeships		Bottineau/Washburn /Watford City		
Northwest Central Dist.	1	judgeship		Minot		
Northeast Dist.	3	judgeships		Hillsboro/Rugby/New Rockford		
Northeast Central Dist. .	1	judgeship		Grand Forks		
Southeast Dist.	3	judgeships		Jamestown, Lisbon/Wahpeton		
Southeast Central Dist. .	1	judgeship		Fargo		
Southwest Dist.	1	judgeship		Hettinger		
Southwest Central Dist..	2	judgeships		Bismarck, Mandan		
			<u>1998</u>			
Northwest Dist.	1	judgeship		Williston		
Northwest Central Dist.	2	judgeships		Minot (2)		
Northeast Dist.	2	judgeships		Devils Lake/Langdon		
Northeast Central Dist. .	2	judgeships		Grand Forks (2)		
Southeast Dist.	1	judgeship		Valley City		
Southeast Central Dist. .	3	judgeships		Fargo (3)		

Southwest Dist.	1	judgeship	Linton
Southwest Central Dist..	3	judgeships	Bismarck (2)/Mandan

4. After their initial election, district judges shall be elected each six years.

SECTION 8. CHAMBERS — RESIDENCE.

1. The locations of the chambers of the district judges until changed by order of the supreme court shall be in the cities of Bottineau, Stanley, Washburn, Watford City, Williston, Minot, Devils Lake, Grafton, Hillsboro, Langdon, New Rockford, Rugby, Grand Forks, Jamestown, Lisbon, Valley City, Wahpeton, Fargo, Dickinson, Hettinger, Linton, Bismarck, and Mandan.
2. From and after January 1, 1999, the supreme court shall designate the respective chambers within the district to which each district judge is assigned, and may designate the county of residence of each district judge.

COMMENTS

1. The Commission recommends that an appropriate committee of the Legislative Council be designated to monitor the progress of consolidation at least through the 1995 legislative session. Particular emphasis is appropriate to identify the statutory changes necessary to abolish the County Court system and to reestablish and recognize the authority of the Supreme Court over purely administrative matters, many of which are presently statutory and may be in conflict with the Constitution and the Separation of Powers doctrine.

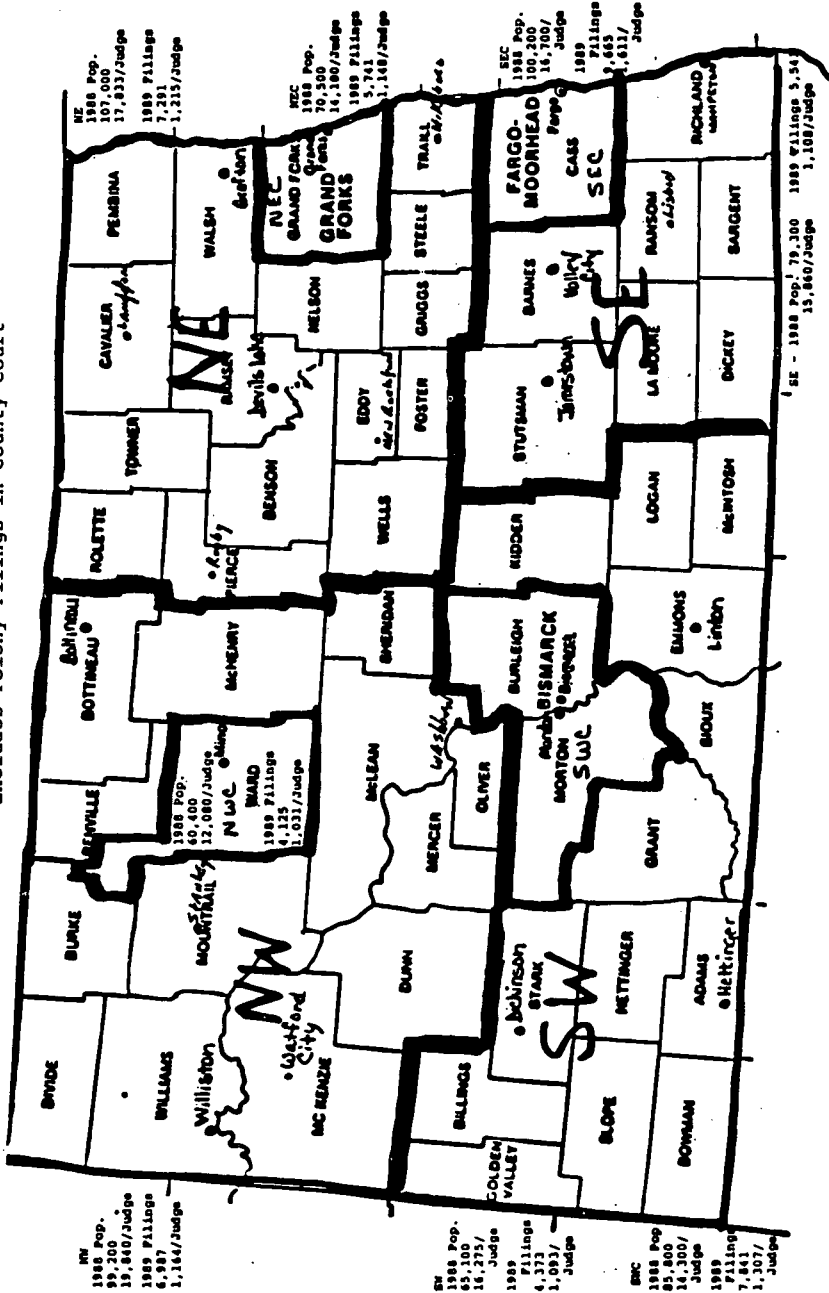
2. The Commission recommends continuing and intensive study and follow-up by the Supreme Court and the Judicial Conference during the 1991-1993 interim.

3. The Commission contemplates that the Supreme Court will contemporaneously and by *rule* designate the boundaries of the respective districts and the chamber cities within the districts.

4. The Commission contemplates intensive review by the Supreme Court and its Joint Procedure Committee of the Rules of Civil and Criminal Procedure during the 1991-1993 interim to identify changes necessary to accomplish consolidation.

5. The Commission urges the Budget Committee on Government Administration to recommend to the next session meaningful solutions to the problem of increasingly disparate levels of

DRAFT # 3
 Includes Formal Juvenile
 Excludes Non-Criminal Traffic
 Excludes Felony Filings in County Court



compensation and fringe benefits among and between the present county judges.

PROPOSED DISTRICTS

With Counties Over 25,000 Population in Separate Districts

<u>County</u>	<u>88 Pop</u>	<u>Dst Ct Filings</u>	<u>County Ct Filings*</u>	<u>Proposed Dst. Pop</u>	<u>Proposed District Filings</u>	<u>Pop /Judge</u>	<u>Filings /Judge</u>
<u>Northwest Central — 4 Judges</u>							
Ward	60,400	2,087	2,038	60,400	4,125	12,080	1,031
<u>Northwest — 6 Judges</u>							
Bottineau	8,600	265	372				
Burke	3,300	50	197				
Divide	3,100	48	141				
Dunn	4,500	109	231				
McHenry	7,200	97	260				
McKenzie	7,700	188	371				
McLean	11,800	236	492				
Mercer	13,500	231	487				
Mountrail	7,600	140	376				
Oliver	2,600	29	77				
Renville	3,400	35	95				
Sheridan	2,600	47	67				
Williams	23,300	1,150	1,196	99,200	6,987	19,840	1,164
<u>Northeast Central — 5 Judges</u>							
Grand Forks	70,500	2,748	2,993	70,500	5,741	14,100	1,148
<u>Northeast — 6 Judges</u>							
Benson	7,400	82	258				
Cavalier	6,500	97	306				
Eddy	3,200	43	83				
Foster	4,200	79	220				
Griggs	3,500	66	226				
Nelson	4,700	39	172				
Pembina	10,300	168	562				
Pierce	5,400	84	280				
Ramsey	13,000	364	920				
Rolette	12,300	167	338				
Steele	2,800	2	27				
Towner	3,800	68	240				
Trail	9,000	184	457				
Walsh	14,600	418	1,075				
Wells	6,300	76	190	107,000	7,291	17,833	1,215
<u>Southwest Central — 6 Judges</u>							
Burleigh	60,400	2,808	2,841				
Morton	25,400	663	1,529	85,800	7,841	14,300	1,307
<u>Southwest — 4 Judges</u>							
Adams	3,300	64	209				
Billings	1,300	17	57				
Bowman	4,000	48	209				
Emmons	5,400	63	133				
Golden Valley	2,300	24	110				
Grant	4,000	15	66				
Hettinger	3,700	61	109				
Kidder	3,700	58	137				
Logan	3,100	21	58				

Table (Continued)

<u>County</u>	<u>88 Pop</u>	<u>Dst Ct Filings</u>	<u>County Ct Filings*</u>	<u>Proposed Dst. Pop</u>	<u>Proposed District Filings</u>	<u>Pop /Judge</u>	<u>Filings /Judge</u>
McIntosh	4,300	41	87				
Sioux	4,200	30	30				
Slope	1,100	18	54				
Stark	24,700	1,063	1,591	65,100	4,373	16,275	1,093
<u>Southeast Central — 6 Judges</u>							
Cass	100,200	4,406	5,259	100,200	9,665	16,700	1,611
<u>Southeast — 5 Judges</u>							
Barnes	13,100	397	706				
Dickey	6,600	78	273				
LaMoure	5,800	37	177				
Ransom	6,200	121	263				
Richland	19,300	473	775				
Sargent	5,000	68	110				
Stutsman	23,300	529	1,534	79,300	5,541	15,860	1,108

*Does Not Include Non-Criminal Traffic

APPENDIX "B"

Fifty-Second
Legislative Assembly
of North Dakota

02/13/90

Introduced by

_____ BILL NO. _____

A BILL for an Act to create and enact a new section to chapter 27-05 of the North Dakota Century Code, relating to the determination of vacancies in district court judgeships; and to amend and reenact sections 27-05-01 and 27-05-02 of the North Dakota Century Code, relating to the number and election of district court judges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION I. AMENDMENT. Section 27-05-01 of the 1989 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-05-01. Judicial districts — Number of judges.

1. The judicial districts in this state are as designated by rule of the supreme court.
2. *The supreme court shall, pursuant to section 3 of this Act, reduce the total number of district court judges to 25 district court judges before January 1, 1996.*
3. The number of judges in each of the judicial districts is *shall be as follows: designated by rule of the supreme court.*

- ~~1. The northwest judicial district must have five judges.~~
- ~~2. The northeast judicial district must have three judges.~~
- ~~3. The northeast central judicial district must have four judges.~~
- ~~4. The east central judicial district must have four judges.~~
- ~~5. The southeast judicial district must have three judges.~~
- ~~6. The south central judicial district must have five judges.~~
- ~~7. The southwest judicial district must have three judges.~~

SECTION 2. AMENDMENT. Section 27-05-02 of the 1989 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-05-02. Election and term of office of district judges. There shall be elected in each judicial district of this state the number of judges for such district ~~provided for by law as provided by rule of~~

the supreme court. Any judge so elected shall hold office for six years or until ~~his~~ *the judge's* successor is elected and has qualified.

SECTION 3. A new section to chapter 27-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Determination of a judicial vacancy. When a judge of the district court dies, resigns, retires, or is removed from office, the supreme court, in consultation with judges and attorneys in the affected judicial district, must determine within ninety days of receiving notice of a vacancy from the governor whether the vacant office is necessary for effective judicial administration. The supreme court may continue the position, transfer the position to a judicial district where need for additional judgeships exists, or, in accordance with section 27-05-01, order the position abolished. The supreme court shall, among other criteria, consider population, caseload, and travel in making its determination. The supreme court shall notify the governor of the determination and, if the determination is to continue or transfer the position, shall certify any vacancy to the governor, who must fill the vacancy in the manner provided by law.

APPENDIX "C"

JUDICIAL SYSTEM

The Committee on Judicial System was assigned one study resolution. Senate Concurrent Resolution No. 4021 directed the Legislative Council to initiate a joint study with the Judicial Council to study the state's entire judicial system in light of the new Judicial Article of the Constitution. The study was to determine what, if any, structural changes might be made necessary by the passage of the new Judicial Article, and what timetable such changes should follow. The resolution also directed that the committee be composed not only of legislators and judges, but also of citizens and persons associated with and familiar with the state's judicial system. The committee was to seek the cooperation of the North Dakota Supreme Court, the North Dakota State Bar Association, the North Dakota State's Attorneys Association, and other judicial and court-related organizations.

Legislative Committee members were Senators Howard Freed, Chairman, Raymond Holmberg, Charles "Chuck" Orange, Lester Shirado, and Frank Wenstrom; and Representatives Pat Conmy, William Kretschmar, Henry Lundene, Craig Richie, Wayne Stenehjem, Michael Unhjem, Janet Wentz, and Dean Winkjer.

Representing the Judicial Council as members were District Judges A.C. Bakken, Eugene Burdick, and Douglas Heen; and Mr. Joel Medd, Judge of the Benson County Court with Increased Jurisdiction. Judge Bakken replaced former District Judge Ralph Maxwell after the latter's resignation. Citizen Committee members were Mrs. Mildred Burns Johnson; Mr. Harry Pearce; Mr. William Strutz; and Mrs. Lois Vogel. Throughout its study the committee received the cooperation and assistance of Mr. William Bohn, Court Administrator; Mr. Joel Gilbertson, Staff Attorney, Joint Procedures Committee; Ms. Christine Hogan, Assistant Court Planner; Mr. Lawrence Spears, Court Planner; and the legislative subcommittee of the Citizen's Committee on the New Judicial Article (chaired by Mr. Harry Pearce).

The report of the Committee on Judicial System was submitted to the Legislative Council at the biennial meeting of the Council held at Bismarck. The report was adopted for submission to the Forty-Sixth Legislative Assembly by the Legislative Council on November 1978.

The new Judicial Article of the State Constitution, which was

approved by North Dakota voters in September 1976, provides that the judicial power shall be in a unified judicial system, consisting of a Supreme Court, a district court, and such other courts as may be provided by law.

The committee determined that the concept of a "unified" judicial system involved five basic components, and that these components should be considered in developing a statutory framework for the system. Those components are (1) consolidation and simplification of the court structure; (2) centralized rulemaking; (3) centralized management; (4) centralized budgeting; and (5) state financing of the judicial system.

The committee recognized that the implementation of a unified judicial system in North Dakota required two types of action — statutory change by legislative action and the promulgation of rules by the Supreme Court. The committee believed that although much of its work would be affected by the action of the Supreme Court (e.g. with respect to judicial redistricting), it was important that the committee develop an initial plan for the structure of the unified judicial system. To prevent duplication of efforts and the development of conflicting results, the committee decided to work closely with the rules subcommittee of the Citizen's Committee on the New Judicial Article and with the Supreme Court.

As a starting point for its work, the committee considered a bill draft developed jointly by the court planning office of the Supreme Court and the Legislative Council staff. This bill draft was based on the recommendations made by the legislative subcommittee of the Citizens' Committee on the New Judicial Article, which had studied the new Judicial Article and the present court system, and had heard presentations from persons from other states relative to their efforts in court unification.

The legislative subcommittee recommendations called for a unified judicial system composed of three levels, the Supreme Court, district courts, and municipal courts. It was recommended that a division of the district court, presided over by associate district judges, be created to improve judicial services in rural areas by providing a number of law trained, circuit riding judges with limited original jurisdiction in each judicial district.

The subcommittee also recommended that the current practice of trials de novo in district court on appeal from lower courts be eliminated by requiring that all trials be "on the record" and tried to a law trained judge in the first instance. This would be

accomplished by requiring law trained municipal judges in cities with populations above 5,000. Lay municipal judges would have jurisdiction only when no jail term could be imposed, and a defendant would have to consent to being tried by a lay judge with no opportunity to appeal. If a defendant refused to consent, an associate district judge would preside over the trial. The legislative subcommittee also initially recommended that municipal judges and associate district judges be appointed rather than elected, and that the presiding district judge in each district be given supervisory and administrative control over the office of the clerk of the district court.

The three level unified judicial system concept recommended by the legislative subcommittee was approved by the interim committee, with some alterations. After considering seven drafts of the main revision bill, the committee recommends it to the Legislative Council. The committee's recommendation represents a major change in the existing court structure in North Dakota. The present North Dakota judicial system consists of six courts — a Supreme Court, district courts, county courts of increased jurisdiction, county justice courts, county courts, and municipal courts. As mentioned above, the committee recommends that North Dakota have a three-tiered court system — the Supreme Court, district courts, and municipal courts.

The committee also decided that the main revision bill should consist only of those provisions which are essential to the implementation of the unified judicial system. Other provisions, which are considered important but not necessary to the system, are presented in separate bills.

The main revision bill originally created eight chapters of the North Dakota Century Code and called for the repeal of 12 chapters. The committee later decided that Chapter 27-25, relating to the Judicial Nominating Committee, should be presented in a separate bill. In addition, the committee recommended inclusion in the main revision bill of two alternatives for Chapter 27-04.1, relating to the district courts. The concept of the associate district judgeships, as recommended by the legislative subcommittee, gave rise to a great deal of controversy within the committee and the controversy could not be resolved. For that reason, the committee included Alternative 1 and Alternative 2 for Chapter 27-04.1 to enable the legislature to consider two approaches. Alternative 1 provides for the creation of a number of associate district

judgeships, while Alternative 2 provides for additional district judgeships in lieu of the associate district judgeships.

Five other bills and one concurrent resolution which are recommended by the committee are considered separately in this report. One of these bills provides for amendments to the North Dakota Century Code which will be made necessary by the passage of the main revision bill. This "secondary revision bill" revises statutory material throughout the Century Code where it speaks to county courts, county justices, and police magistrates which cease to exist under the main revision bill. The concurrent resolution recommends the amendment of one section and the repeal of one subsection of the State Constitution. The other bills, which call for substantive changes in the law, relate to judicial retirement, assignment of Supreme Court justices to temporary duty in district courts, the appointment of temporary judges, and the creation of a Judicial Nominating Committee.

Because of the length of the main revision bill it is not discussed on a section-by-section basis in this report. Instead, a chapter-by-chapter analysis will be made with emphasis on the most important points contained in each chapter.

MAIN REVISION BILL

Chapter 27-01.1 — General Provisions

Chapter 27-01.1 of the main revision bill sets forth the general provisions of the unified judicial system. The chapter provides for a unified system consisting of a Supreme Court, the district courts, and the municipal courts, to be administered by the Chief Justice of the Supreme Court, pursuant to rules promulgated by the Supreme Court. All courts with law trained judges are to be courts of record. The chapter also contains a temporary section, which will not be codified, which abolishes county courts, county justice courts, and county courts of increased jurisdiction, and transfers all untried cases and unfinished business on the calendars of those courts to the calendars of the district courts.

The chapter follows current law in providing that courts shall not be open on Sundays or holidays and that court proceedings shall be public, but while under current law a judge may, in his discretion, exclude the public from cases of a scandalous or obscene nature, a new provision allows the exclusion of the public only as provided by law or by rule adopted or approved by the Supreme Court. This change is intended to promote uniformity throughout the judicial system with respect to closed proceedings.

Counties are required to provide office and courtroom space and other necessary facilities for the district courts, and that space will be leased to the state. All furniture, equipment, and supplies located in the courtrooms and offices on the effective date of the Act will become the property of the unified judicial system, unless declined by the Court Administrator.

Chapter 27-01.1 also requires costs and other assessments imposed by the courts to be deposited with the county treasurer, while criminal fines must be deposited in the state school fund as required by Section 154 of the State Constitution.

CHAPTER 27-02.1 — SUPREME COURT

Chapter 27-02.1 places the responsibility for preparing and submitting a comprehensive budget for the unified judicial system in the State Court Administrator, which budget includes all salaries and expenses for the Supreme Court and its employees, and the district courts and their employees.

The chapter provides for the election of the Chief Justice of the Supreme Court by the justices of the Supreme Court and the judges of the district courts. The phrase “judges of the district court” includes associate district judges, if such judgeships are created.

The Supreme Court retains its appellate jurisdiction and original jurisdiction to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and injunction, and is given the power to exercise administrative supervision over the unified judicial system, and the authority to promulgate rules and regulations in the exercise of its supervision.

CHAPTER 27-03.1 — SUPREME COURT OFFICIALS

Chapter 27-03.1 grants the Chief Justice the power to employ or authorize the employment of all necessary personnel for the unified judicial system and to establish their duties, responsibilities, and salaries. While recognizing that Section 94 of the State Constitution prohibits the Supreme Court from exercising any power of appointment, the committee determined, after considering research conducted by committee counsel, that the language of Section 94 would not be construed to prevent the appointment or employment by the Supreme Court of personnel necessary to carry out the duties of the judiciary.

The chapter provides for a Clerk of the Supreme Court to be appointed by a majority of the Supreme Court justices and to hold

office at their pleasure. The clerk is directed to collect a \$50 filing fee for each appellate or original action filed in the Supreme Court, and is to deposit such fees promptly with the State Treasurer.

The office of the State Court Administrator is created and the Chief Justice is to appoint a person to fill that position. Chapter 27-03.1 also provides for a State Law Librarian and provides for the supervision of the librarian by the Supreme Court. Security services for the court are to be provided, upon request by the Chief Justice, by the State Highway Patrol and other law enforcement agencies.

CHAPTER 27-04.1 — DISTRICT COURTS

The main revision bill provides two alternatives for Chapter 27-04.1. Alternatives 1 and 2 are identical, however, with the exception of three sections, and for that reason the two alternatives are discussed together and the differences are pointed out. The alternatives are presented in separate chapters in the bill because of the difficulty in numbering the sections caused by the different number of sections in each alternative. Chapter 27-04.1 provides for seven judicial districts until changed by order of the Supreme Court, and the seven districts recently created by a Supreme Court redistricting order are listed in the chapter. The bill recognizes that, under the new Judicial Article, judicial districts and the location of the judges' chambers may be changed by Supreme Court order.

District judges will be elected to six-year terms and must be electors of the district in which they are elected at the time of their election. The residency requirement is in addition to the requirements of Section 94 of the State Constitution that judges be United States citizens, North Dakota residents, and learned in the law. Although current law does not require district judges to be residents of the district they serve, such residency was required by the Constitution prior to the effective date of the new Judicial Article. The residency requirement applies only to judges who are elected, and does not apply to those who are appointed to fill vacancies. This was intended to aid in the appointment of interested, qualified persons to district judge vacancies. In those districts having more than one district judge, a presiding judge is to be selected by the Supreme Court.

As under present law, the chapter provides that a Supreme Court justice or a judge of the district court may retire for physical

or mental disability. If a finding of disability is made by two-thirds of the remaining Supreme Court justices and district judges, the judge would receive compensation for the remainder of the term to which he was elected and then receive retirement benefits.

District courts are assigned general jurisdiction, as provided under current law and mandated by the Constitution. This general jurisdiction is statewide, but the chapter also provides that judges must act only within their district except in enumerated instances. These instances are when a district judge is requested or designated to act in another district by a judge of that district or by the Supreme Court, or when requested by a party to act in an adjoining district if the judges of that adjoining district are absent, incapacitated, or disqualified. A judgment rendered in matters outside a judge's district is voidable but not void.

Chapter 27-04.1, Alternative 1, creates a number of associate district judgeships. The associate district judges were envisioned by the committee as law trained, circuit riding judges with limited jurisdiction, and they would be judges of the district court. Twenty-nine associate district judges are to be elected to six-year terms in districts assigned by the Supreme Court.

The legislative subcommittee initially recommended that the associate district judges be appointed by the presiding judge of the district, and the committee considered several appointment methods. These methods included appointment by the presiding district judge, appointment by the Governor, and an initial appointment by the Governor, followed by an election after at least three years in office. The appointment plans were rejected after both the interim committee and the legislative subcommittee decided that, although appointment might result in more qualified judges, there would be strong opposition by the public to a bill calling for appointment of judges. Associate district judges are to be United States citizens and North Dakota residents, and are to possess an unrevoked admission to the Bar of North Dakota, but are not required to be electors of the district in which they are elected at the time of their election. In considering the residency requirement for associate district judges, the committee decided against the requirement in an effort to attract a sufficient number of qualified candidates in all areas of the state, including the rural areas.

Alternative 1 provides that, on the effective date of the Act, all county justices and judges of county courts with increased jurisdiction are to become *interim* associate district judges for the dura-

tion of the terms to which they were elected, after which period the interim associate district judgeships would cease to exist. Interim associate district judges will have the authority prescribed by the presiding district judge and will be paid the salary they would have received as a county justice or judge of increased jurisdiction by the county in which they were elected. The boards of county commissioners are authorized to increase the salaries of the interim associate district judges in the same manner as they may currently increase the salaries of county justices and judges of increased jurisdiction. The committee envisioned that the interim associate district judges would assist in the transition to the unified judicial system.

The associate district judgeships will be filled by election at the general election in 1980, and until that time the only trial court judges would be the district judges, municipal judges, and the interim associate district judges, consisting of the existing county justices and judges of county courts with increased jurisdiction. Prior to the 1980 election, the Secretary of State is directed to determine by lot the length of the terms of office, of the associate district judges, with approximately one-third elected to two-year terms, one-third elected to four-year terms, and one-third elected to six-year terms. This determination is to be made on a timely basis to enable those interested in seeking office to be aware of the terms of the offices they seek. The authority of the associate district judges is limited to civil cases with not more than \$10,000 in controversy, criminal misdemeanor cases, small claims cases, probate matters including trusts, preliminary hearings and arraignments in felony cases, domestic relations matters, municipal ordinance violations, and mental health and addiction proceedings. In addition, any other cases may be assigned by the presiding district judge. This provision was intended to allow a presiding district judge to assign a felony case or a major civil case to an associate district judge if the presiding district judge believes the associate district judge is competent and qualified to handle such a case.

Chapter 27-04.1, Alternative 2, creates 29 additional district judgeships instead of the associate district judgeships created by Alternative 1. Fourteen of the new district judgeships are to be filled at the general election in 1980, and 15 are to be filled in 1982.

To assist in the transitional period, Alternative 2 provides that judges of county courts with increased jurisdiction are to become

interim district judges on July 1, 1979, and are to serve in that position until the expiration of the term to which they were elected. Under Alternative 2, the current county justices would not become interim district judges and the office of county justice would cease to exist on July 1, 1979. As with the interim associate district judges under Alternative 1, the interim district judges are to receive the salary prescribed for the office to which they were elected, and the salaries are to be paid by the counties in which they were elected. The interim district judges would have the same authority as that prescribed for the associate district judges in Alternative 1.

CHAPTER 27-06.1

DISTRICT COURT CLERKS, REPORTS, AND BAILIFFS

Chapter 27-06.1, which provides for various district court personnel, is primarily a compilation of present law with as few substantive changes as possible.

The chapter provides for the duties of district court clerks by combining three existing sections of Chapter 11-17 into one section. Although minor changes in language have been made, the duties remain the same, but the Supreme Court is given the power to change the duties by rule. The chapter retains the fee schedule for various services of the clerk contained in present law, but also gives the Supreme Court the power to change the fee schedule by rule. The chapter follows current law by authorizing the clerk to destroy certain records, but once again gives the Supreme Court the power to supersede the provision by rule.

A new feature of the chapter is a provision for the supervision of the clerks by the presiding district judges. The committee considered including language which would allow a district judge to commence removal proceedings against a clerk for malfeasance in office, but it was decided that this area is adequately covered by Title 44 of the North Dakota Century Code, which allows the removal of officers, including the clerks of court, by grand jury proceedings or by action of the Governor.

The chapter also allows each judge of the district court to appoint a court reporter and lists court reporters' duties. Court reporters would take all oral testimony, objections, rulings, exceptions, and instructions in shorthand. The committee considered a bill draft proposed by the Court Reporters Association which would have required court reporters to pass an examination given by the National Shorthand Reporters Association, but decided to

adhere to its original policy of making only those substantive changes necessary to implement the new Judicial Article. Chapter 27-06.1 also provides for the preparation of the transcripts, certification thereof, and fees for transcripts in the same manner as current law.

CHAPTER 27-07.1

PROBATE JURISDICTION OF DISTRICT COURT, COUNTY PROBATE OFFICER, MAGISTRATE

Chapter 27-07.1 was originally a lengthy chapter but, as most of the provisions relating to probate matters are contained in other chapters of the North Dakota Century Code, the committee agreed that the chapter should consist of only four sections.

The chapter provides that the district court of each county has exclusive original jurisdiction of probate and testamentary matters. In a provision designed to keep probate matters at a local level, the presiding judge in each district is directed to appoint a probate officer for each county who would have authority over all uncontested probate matters. The probate officer would be a part of the unified judicial system, and any qualified person may be appointed, including the clerk of the district court.

The office of the magistrate is also created as part of the unified judicial system, and the presiding judge of each district is empowered to appoint a magistrate in each county in which there are no chambers of a district judge or an associate district judge. If the presiding district judge fails to appoint a magistrate, the county probate officer and the clerk of the district court are to serve as magistrates with no additional compensation. Magistrates are to have the authority assigned by the presiding district judge. This section is intended to provide residents of sparsely populated areas with a local judicial officer to perform such duties as setting bail, issuing search warrants, and holding preliminary hearings.

CHAPTER 27-24 — MUNICIPAL COURTS

Chapter 27-24 requires only those municipal judges in cities with a population of 5,000 or more to be licensed attorneys and, because it is often difficult to find a qualified person in the community who is willing to serve as a municipal judge, municipal judges are not required to be residents of the cities they serve. Municipal judges are to be paid by the municipalities and their salaries are not to be in relation to the fees or fines collected by their courts.

The legislative subcommittee initially recommended that

municipal judges be appointed, but the committee decided to provide for the election of municipal judges. The executive officers of the municipalities are directed to fill vacancies in the office of municipal judge by appointment, subject to confirmation by the governing body and an alternative judge may also be appointed to serve when the municipal judge is not available. At the request of the governing body of the city, the presiding judge of a district may appoint an associate district judge or a district judge to serve as a municipal judge pending the election or appointment of a municipal judge, but such an appointment is not to exceed an aggregate period of 30 days. This limitation is intended to prevent cities from requesting reappointments of a district judge or an associate district judge to serve the city at state expense.

The chapter follows current law in providing that persons found guilty of the violation of a municipal ordinance may be required to work off the fine, and in allowing suspended sentences to be imposed by municipal judges.

Some procedural matters in trials for the violation of a city ordinance would be changed by Chapter 27-24 of the main revision bill. Current law allows lay municipal judges to impose a sentence of imprisonment upon conviction, and provides that there shall be no right to a jury trial in municipal court, but an appeal by trial de novo in district court is provided for, at which level there is a right to a jury trial, and an opportunity for review of the sentence by a law trained judge after being fully advised of the facts. Since the main revision bill eliminates the trial de novo and provides only for appeals on the record directly to the Supreme Court, the committee believes that it is necessary to provide a right to a jury trial at some level. The committee was also advised by committee counsel that rulings of the United States Supreme Court would not permit a lay judge to impose a jail term if a cure by trial de novo were not provided. Chapter 27-24 provides that a lay judge does not have jurisdiction to try a case if sentence upon conviction may include imprisonment unless the defendant consents in writing to being tried by a lay judge. The chapter also provides that there is no right to a jury trial before a lay judge. If it is determined that the sentence may include imprisonment and the defendant does not consent to the jurisdiction of a lay municipal judge, the presiding district judge is to assign an associate district judge or a district judge to hear the case. A law trained judge would have jurisdiction to try a case where there may be imprisonment and there would be a right to jury trial before a law trained

judge. Trials before either a law trained judge or a judge of the district court would be on the record and there would be the right to appeal to the Supreme Court, while trials before a lay judge would not be on the record and there would be no appeal therefrom.

Chapter 27-24 also requires municipal judges to attend a continuing education session each year. The state would pay the expenses of lay municipal judges, while the municipalities would pay the expenses of law trained judges. The committee believes that because lay municipal judges would be from small towns which would experience a hardship in paying such expenses, it is necessary for the state to assume them.

JUDICIAL NOMINATING COMMITTEE

To avoid further uncertainty in the filling of judicial vacancies by the Governor, the committee believes it imperative that a bill creating a judicial nominating committee, as required by Section 97 of the State Constitution, be passed by the 1979 Legislature. To separate the matter from more controversial issues contained in the main revision bill, the committee decided to submit Chapter 27-25 as a separate bill.

The bill is similar to one introduced in the 1977 Legislature, although several substantive changes have been made which will be considered later. A judicial nominating committee is created which would consist of nine members, three of whom would be appointed by the Chief Justice of the Supreme Court, three by the president of the State Bar Association, and three by the Speaker of the House of Representatives. Each appointment authority would be required to appoint at least one licensed attorney and at least one citizen who is not a judge or an attorney. Committee members would serve three-year terms and would be limited to serving two full three-years terms. A mechanism for an initial staggering of members' terms is also included in the bill.

A list of from two to seven nominees would be submitted to the Governor by the committee within 60 days after the committee's receipt of notice of a vacancy in the office of Supreme Court justice or district court judge. Within 30 days after receiving the list of nominees, the Governor would be required to either appoint one of the nominees to serve until the next general election, or call a special election. The bill allows for the submission of names to the committee by citizens and provides that committee

members are ineligible for appointment during their term and for two years thereafter.

Under the bill introduced in the 1977 Legislative Session, three members of the committee would be appointed by the Governor rather than the president of the State Bar Association, but the committee believes that the executive branch would be adequately represented in the process by the actual appointment of a nominee by the Governor. Language in the 1977 bill which prohibited the consideration of political affiliation in the appointing of persons to serve on the committee and in the selection of nominees for appointment to fill the vacancy has been removed. The committee decided that as a practical matter it is impossible to remove all partisan politics from the judicial selection procedure, and the inclusion of language prohibiting consideration of political affiliation would only invite political consideration.

The committee also made several other minor changes in the 1977 bill. The time in which the committee must act has been changed from 30 days after receiving notification of a vacancy (in the 1977 bill) to 60 days thereafter (in the bill recommended by the committee), and the minimum number of nominees to be submitted to the Governor by the committee has been reduced from three to two.

TEMPORARY JUDGES

The bill creating Chapter 27-26 of the North Dakota Century Code which provides for temporary judges is submitted as a separate bill because it is not considered to be essential to the implementation of the unified judicial system. The committee's intent is to create a mechanism to assist in clearing backlogs on the dockets of all courts, other than the Supreme Court, when that need arises.

The Supreme Court is given the authority to appoint any qualified person to serve as a temporary judge in any court other than the Supreme Court when the appointment is necessary and will promote the efficient administration of justice. A person appointed temporary judge must be a North Dakota resident and have been engaged in the active practice of law for three years. A temporary judge appointed under this bill would be paid five percent of the gross monthly salary of a regular judge for each day of service. A term of 30 days is prescribed for a temporary appointment, but the jurisdiction of a temporary judge extends beyond the expiration of that term when it is necessary to dispose of matters relating to cases heard during the appointment period.

The bill allows the temporary judges to be transferred during their term of appointment and requires any challenge to the eligibility, appointment, or qualification of an appointee to be made in a direct proceeding.

TEMPORARY ASSIGNMENT

This bill provides for the assignment of Supreme Court justices to temporary duty in the district courts. In considering this bill, the committee heard testimony from several Supreme Court justices who said that hearing cases at the district court level would be an educational and enjoyable experience for some justices, but that not all justices have the experience or the desire to hear cases at the trial level. In accordance with those comments, the bill provides that a justice, upon his request, shall be assigned, by the other justice, to temporary duty in the district courts. The assignment would be allowed only if it would not interfere with the efficient administration of justice. Each justice may be so assigned only once each biennium and only one justice may be assigned at any one time. The bill also provides that a justice cannot participate in the review of any case which he heard or decided while serving in the district court.

JUDICIAL RETIREMENT

In considering judicial retirement, the committee recognizes that it is imperative that the unified judicial system attract a sufficient number of well-qualified people to seek judicial office. To attract well-qualified people, most of whom would be in their peak earning years if engaged in private practice, an attractive retirement package is needed. The Public Employees Retirement System (PERS), of which most present judges are members, is considered inadequate by the committee because most judges enter into judicial service relatively late in life. The committee is therefore recommending two alternative retirement bills for introduction to and consideration by the 1979 Legislature, and those bills have been forwarded to the Legislative Council's Retirement Committee.

Alternative 1 is a return to the judicial retirement system as it existed before judges were brought into the Public Employees Retirement System on July 1, 1973. A judge would be entitled to receive 50 percent of the salary payable to judges in the classification the retired judge last held upon attaining age 65 with 20 years of service, or age 70 with 10 years of service. A judge would also be entitled to begin receiving retirement benefits between the

ages 65 and 70 with between 10 and 20 years of service. If a judge does not have the required number of years of service, that judge would be entitled to receive a proportional amount of the prescribed benefit.

Alternative 1 also provides that retirement benefits would be waived if a judge failed to retire upon attaining 73 years of age, except that if the judge had less than 10 years of service, he would be allowed to complete his term without waiving any benefits. Judges would receive credit for the time they were members of PERS. Alternative 1 also provides three optional methods of payment, under which the judges could choose to have their spouses receive various portions of their retirement benefits. Alternative 1 requires judges to contribute five percent of their salary during their first 20 years of service, and the judges or their legal representatives would be entitled to receive the amount of the assessments withheld in lieu of receiving judicial retirement salary. Retired judges and justices would be eligible to be assigned to active judicial duties, for which they would receive compensation. This compensation would have no effect on the judges' retirement benefits, except that no retired judge would be entitled to receive more than 100 percent of the salary of an active judge of the court from which he retired.

Alternative 2 creates a judicial retirement fund to be administered by the judicial retirement board. Each judge would contribute nine percent of salary, and the state would contribute 21 percent of each judge's salary. Upon attaining age 65 or completing 20 years of service, a judge would be eligible to receive a retirement benefit equal to 2.5 percent of the salary payable to active judges of the classification of retired judge last held multiplied by the number of years of service, with an upper limit of 60 percent. Alternative 2 also provides for a waiver of benefits if a judge fails to retire before reaching 73 years of age, and judges may select one of the three optional payment plans contained in Alternative 1.

SECONDARY REVISION BILL

The secondary revision bill is a bill, consisting of 177 sections, which amends all sections of the North Dakota Century Code that are affected by the main revision bill. Most of the sections amend current law by removing references to county courts, county justices, county judges, and police magistrates and replacing them, where necessary, with references to the district court and district

court judges. The bill also amends several sections of the North Dakota Century Code which require the payment of certain expenses by the counties. These sections include provisions for expenses of jurors and defense costs of indigents, which will become expenses of the unified judicial system, as is required by the concept of state funding of a unified judicial system.

CONSTITUTIONAL AMENDMENT

The committee is also recommending a concurrent resolution which calls for the amendment of Section 173 of the Constitution of the State of North Dakota and for the repeal of subsection 6 of Section 69 of the State Constitution.

Section 173 requires the election of various county officials, including a county judge, in each county, and further provides that the county judge shall serve as clerk of the district court in counties with a population of 15,000 or less. The concurrent resolution recommended by the committee would remove the references to county judges, both as being elected officials and as holding the office of the clerk of the district court.

The concurrent resolution also calls for the repeal of subsection 6 of Section 69, which provides that the legislature shall not pass any laws to regulate the jurisdiction or duties or justices of the peace, police magistrates, or constables. The office of the justice of the peace was abolished in 1959 pursuant to the authority of Section 112, which allowed the legislature to abolish that office and to confer the jurisdiction of that office upon the county judges. Section 112 has since been repealed by the new Judicial Article. The committee decided that this section is outdated and unnecessary, and that it should be repealed along with other changes necessary to implement the unified judicial system.

A temporary section provides that the amendment of Section 173 would not be effective until January 1, 1983, and requires the election of clerks of the district court in counties with less than 15,000 population at the general election in 1982. This temporary section is intended to allow the present county judges in those counties to continue to serve as clerks of the district court until new clerks can be elected.

